PROFESSIONAL
PROGRAMME

GROUP 1
PAPER 1

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

PART I – GOVERNANCE AND SUSTAINABILITY

PART II – RISK MANAGEMENT

PART III- ENVIRONMENT & SUSTAINABILITY REPORTING


THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

STUDY MATERIAL

PROFESSIONAL PROGRAMME

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# PROFESSIONAL PROGRAMME

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

Corporate governance is the fulcrum of organizational sustainability and growth, as it encompasses the tenets of best practices pertaining to business activities, stakeholders management, especially the shareholders of the company, environment, reporting, board effectiveness, data governance, green initiatives and so on and so forth.

It is imperative for Governance Professionals to espouse various critical facets of corporate governance in order to discharge their professional obligations efficiently and safeguard the interests of the stakeholders. Further, the scope of governance has expanded its wings and covers environmental and social aspects too. In view of this, it is essential for a Governance Professional to be conversant with the various developments occurring in environmental and social dimensions.

In light of the aforesaid fact, this Paper has made an endeavour to incorporate all the pertinent laws, approaches, models, case studies, concepts etc. relating to environmental, social and governance.

This Paper is divided into three parts: Part I deals with Governance and Sustainability, Part II deals with Risk Management and Part III deals with Environment and Sustainability Reporting.

Part I elucidates the conceptual, legal framework and approaches relating to corporate governance, various corporate governance forums, boards effectiveness, types of board committees, i.e., mandatory and non-mandatory committees, data governance, whistle blower mechanism, environmental aspects, green initiatives, empowering of the Company Secretary Profession etc. **Lesson 6: Building Better Boards have been merged with Lesson 3: Board Effectiveness / Building Better Boards.**

Part II focus on risk management and all the crucial aspects related to it have been extensively covered, i.e., concept of risk management, forms of risks, case studies on risk management etc.

Part III emphasizes on environment and sustainability reporting, ESG rating, Integrated Reporting Framework, Global Reporting Initiative Framework etc. This portion have made an attempt to throw light on the contemporary and significant topics like evolution of integrated reporting framework, Business Responsibility and Sustainability Reporting (BRSR), key dimensions of sustainability audit, GRI Standards for Reporting etc.

It is to be noted that the concept of ESG (Environmental, Social and Governance) have gained significant position both at global and national levels and corporate world across the globe.

The legislative changes made upto May 31, 2024 have been incorporated in the study material. In addition to Study Material students are advised to refer to the updations at the Regulator's website, supplements relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, **students are advised to read "Student Company Secretary" e-Journal which covers regulatory and other relevant**

**developments relating to the subject,** which is available at academic portal *https://www.icsi.edu/student-n/academic-portal/*. In the event of any doubt, students may contact the Directorate of Academics at *academics@icsi.edu.*

***The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.***

Although due care has been taken in publishing this study material, the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

## PROFESSIONAL PROGRAMME

### Group 1

### Paper 1

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

## SYLLABUS

### OBJECTIVES

**To develop skills of high order so as to provide thorough knowledge and insight into the best Governance Practices, Risk Management, ESG Principles and corporate sustainability reporting, Fundamentals of ESG, Importance of ESG, ESG as business strategy, Key ESG Factors, ESG and Sustainable development, ESG as an investment, ESG Management Systems.**

**Level of Knowledge** : Expert Knowledge

### Part I : Governance and Sustainability (65 Marks)

1. **Conceptual Framework of Corporate Governance:** Evolution of Corporate Governance ● Corporate governance concepts ● Corporate Governance Forums ● Corporate Governance Codes and international legislative framework on corporate governance ● Indian & International concept of Corporate Governance
2. **Legislative Framework of Corporate Governance in India:** Listed Companies ● Unlisted Companies ● PSUs ● Banks and Insurance Companies ● Stewardship Code
3. **Board Effectiveness:** Role clarity of Board and Management ● Composition and Structure ● Duties and Liabilities, Evolution of Jurisprudence ● Diversity in Board Room, Selection and Appointment Process ● Independent Directors, expectations, liabilities and their role ● Code of Conduct ● Responsibilities and Effectiveness ● Conflict Management ● Related Party Transactions ● Role of Directors' in Prevention of Insider Trading
4. **Board Processes through Secretarial Standards**
5. **Board Committees:** Composition & Terms of Reference ● Roles and Responsibilities
6. **Building Better Boards:** Directors' Training ● Development ● Familiarization ● Board Evaluation ● Succession Planning
7. **Concept of Governance in Professional Managed Company & Promoters Driven Company**
8. **Board Disclosures and Website Disclosures**
9. **Data Governance**: Importance of data governance ● Data governance challenges ● Difference between data governance and data management, Implementing an effective data governance framework

10. **Stakeholders Rights:** Whistle/ Vigil/ Grievance Redressal Mechanism, Human Rights ● Health and Safety ● Prevention of sexual harassment at workplace ● Attrition Rate ● Supplier Code of Conduct ● Gender parity ratio at Workforce ● Local procurement, Monetary and non-monetary benefits

11. Business Ethics ● Code of Conduct and Anti-bribery

12. **Board's Accountability on ESG**

13. **Environment:** Environmental Policy ● Environmental Impacts ● Energy Consumption ● Awareness on environment protection, energy conservation and management

14. **CSR:** Policy ● Practice ● Need assessment ● Impact assessment ● Mapping Sustainable Development Goals (SDGs) with CSR Programs of the Company, Governance challenges

15. **Green Initiatives:** Pollution abatement and testing ● Reduction in Carbon/ CHG Emissions ● Resource efficiency ● Renewable Energy Intensity ● Water Management ● Waste Management

16. **Governance Influencers:** ICSI- Corporate Leader in Corporate Governance ● Investor Associations ● Proxy Advisory Firms ● Institutional Investors ● ESG Investment

17. **Empowerment of the Company Secretary Profession:** International View & Evolving Role of Company Secretary in 21st Century ● Comparative analysis of law applicable to Governance Professionals in different jurisdictions ● Facilitating innovation in Board Governance ● Role of Company Secretary in ESG.

## Part II : Risk Management (20 Marks)

18. **Risk Management:** Risk Identification ● Risk Analysis ● Risk Measurement ● Risk Mitigation ● Risk Elimination ● Importance of Risk Management Committee ● Role of Internal Audit ● Internal control ● Material Risk and Opportunity Assessment ● Reputation Risk ● Climate Risk ● Fraud Risk Management ● Business Continuity Plan with Case Study ● Risk Related Disclosures ● Crisis Management, Disaster Risk Management ● Relationship between Business Continuity Plan, Crisis Management and Disaster Recovery Plan, ESG Risk assessment ● Cyber Risk Management ● Fundamentals of Cyber Security Threats and Countermeasures ● Identifying most critical assets and threats ● Assessing Cyber Security Risks ● Implementing a Cyber Risk Management Programme ● Role of CS in Risk Management ● Case studies in Risk Management

## Part III : Environment & Sustainability Reporting (15 Marks)

19. Sustainability Audit ● ESG Rating ● Emerging Mandates from Government and Regulators

20. Integrated Reporting Framework ● Global Reporting Initiative Framework ● Business Responsibility and Sustainability Reporting

# ARRANGEMENT OF STUDY LESSONS

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

# GROUP 1 • PAPER 1

# LESSON WISE SUMMARY

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

## PART I – GOVERNANCE AND SUSTAINABILITY (65 MARKS)

### Lesson 1 – Conceptual Framework of Corporate Governance

The phrase "corporate governance" describes "the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies, and those in control, are held to account."

Corporate governance is the broad term used to describe the processes, customs, policies, laws and institutions that direct the organizations and corporations in the way they act or administer and control their operations. It works to achieve the goal of the organization and manages the relationship with the stakeholders including the board of directors and the shareholders.

In light of the aforesaid facts, the mentioned lesson made and endeavour to explore the evolution of corporate governance, various important concepts of corporate governance, corporate governance forums and other significant topics to have a comprehensive knowledge of the conceptual structure of corporate governance.

### Lesson 2 – Legislative Framework of Corporate Governance in India

The initiatives taken by Government of India in 1991, aimed at economic liberalization, privatization and globalisation of the domestic economy, led to various initiatives by the Government of India to improve corporate governance mechanism. Today we have a strong mechanism for governing the activities of companies, all listed entities, banks, NBFCs and Insurance Companies.

The companies in our country are formed, registered and regulated majorly by the Companies Act, 2013 or under the previous Companies Act. The erstwhile Companies Act 1956 was completely revamped in 2013 and new Act was framed which is landmark legislation with regard to improving corporate governance of companies. The Companies Act, 2013 clearly indicates focus of regulators toward enhancing the responsibility and accountability of boards.

As it is a well accepted fact that legislative framework acts as a fulcrum in ensuring corporate houses and other forms of business organisations abide by the law in true letter and spirit. In light of this fact, it is imperative to comprehend the legislative framework governing the companies.

This lesson has attempted to throw light on the legislative framework governing Listed Companies, Unlisted Companies, Public Sector Undertakings (PSUs), Banks and Insurance Companies and most significantly the Stewardship Code governing business landscape.

### Lesson 3 – Board Effectiveness/Building Better Boards

The institution of board of directors was based on the premise that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of the board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company.

For smooth functioning of any company and accomplishment of its objectives, the board needs to be effective and it is only possible when the board and management has clarity of their roles, duties and responsibilities, diversity in board rooms, conflict management mechanism is in place etc.

The mentioned chapter encompasses all the critical dimensions of board effectiveness by focusing on key attributes such as board evaluation, distinction of role between the Chairman and CEO, appointment and removal of directors, code of conduct for the board, related party transactions and so on and so forth.

### Lesson 4 – Boards Processes through Secretarial Standards

With the onset of the Companies Act, 2013, there have been significant developments with regard to conduct of board meetings. The use of electronic mode for sending notice of meetings, passing of resolution by circulation and other areas have been allowed. The Act has also permitted directors to participate in board meetings through video conferencing or other audio visual means. Further, certain new actions like issuance of securities, grant of loans, guarantee or security, approval of financial statement and board's report, diversification of business have been identified for approval by directors in a board meeting.

Thus, in view of the dynamics of board processes, this lesson makes an extensive study of various vital elements pertaining to boards' processes, especially the Secretarial Standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India.

### Lesson 5 – Board Committees

With increasing business complexities and time commitment of Board members, constituting committees has become inevitable for organization of any significant size. A committee of the board is a small working group identified by the board, consisting primarily of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some specified work. Members of the committee are expected to have expertise in the specified field.

Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

Keeping in view the significance of committees, this lesson has focused on significant dimensions such as rationale behind board committees, committee management, the process involved in selection of committee members, appointment of committee chairman etc.

### Lesson 6 – Building Better Boards

*This lesson has been merged with Lesson 3: Board Effectiveness / Building Better Boards.*

### Lesson 7 – Concept of Governance in Professional Managed Company & Promoters Driven Company

India enjoys a rich and glorious history of family-owned business. A family business may be company, partnership firm, HUF or any other form of business owned, controlled and operated by members of a family. In India the majority of businesses are controlled by families. But with the passage of time professionally managed companies gradually gained steam.

Thus, the existence of both professionally managed and promoters driven companies in India generate substantial academic interests to explore the unique challenges / governance issues of family businesses, inclusion of provisions of corporate governance like independent and women directors, corporate social responsibility, audit committee etc., governance scenario of professionally management and promoters driven companies on the parameters of Chairman's independence, separation of ownership and management, promoters holding, succession planning, business continuity plans, sustainability focused approach and conflict management; key takeaways from the research studies conducted on family businesses by renowned research based organisations like KPMG, EY and University of St.Gallen Family Business Index, PwC's Family Business Survey 2023 etc.

### Lesson 8 – Board Disclosures and Website Disclosures

Transparency is a pivotal feature in the market based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis, which can help attract capital and maintain confidence in the capital markets.

Adequate disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental and ethical standards, and companies' relationships with the communities in which they operate. Disclosures are made both through the print media and the electronic media.

The legal environment makes it mandatory for the corporate houses to make various disclosures in order to safeguard the interests of stakeholders such as, Disclosures under the Companies Act, 2013 and Rules made thereunder; SEBI (LODR) Regulations, 2015 and other regulations applicable for Listed Companies; Secretarial Standard on Board's Report-SS4 (Recommendatory); etc. The mentioned lesson has discussed on various vital facets of board disclosures and website disclosures at length.

### Lesson 9 – Data Governance

Data governance is everything one do to ensure data is secure, private, accurate, available, and usable. It includes the actions people must take, the processes they must follow, and the technology that supports them throughout the data life cycle.

Data governance (DG) is the process of managing the availability, usability, integrity and security of the data in enterprise systems, based on internal data standards and policies that also control data usage. Effective data governance ensures that data is consistent and trustworthy and doesn't get misused. It's increasingly critical as organizations face new data privacy regulations and rely more and more on data analytics to help optimize operations and drive business decision-making.

In view of the significance of data governance, the lesson has focused on important dimensions like, data governance principles, importance of data governance, challenges in data governance, data governance in selected sectors - Banking, Automobile, Energy, Hospitality, Information Technology, Telecom and E-Commerce etc.

### Lesson 10 – Stakeholders Rights

Human rights are basic rights and freedoms that protect us all. They are based on dignity, fairness, equality and respect. Businesses have a significant impact on the way we live our life and enjoy these human rights, whether it's as an employee, a customer or simply living alongside companies that share our cities and towns.

Companies do need to pay close attention to their supply chains but businesses can affect people's human rights in more subtle ways, at home and abroad. Companies with an online presence will need to make sure that they respect people's right to privacy and uphold data protection laws, care home providers need to treat the people they look after with dignity and respect and all businesses have an obligation to ensure safe working conditions for their staff.

As stakeholders rights holds tremendous significance, this lesson has focused on various important topics like whistle blowing mechanism, vigil mechanism, grievance redressal mechanism, human rights, health and safety, prevention of sexual harassment at work place etc.

### Lesson 11 – Business Ethics, Code of Conduct and Anti-bribery

Present day global crisis has raised questions about the legitimacy of capitalism. Ethical failures certainly played a role. While it remains to be seen whether and how many people blatantly broke the law, there are abundant signs of various forms of potentially unethical behaviour.

These include greed, unreasonable amounts of leverage, subtle forms of corruption (such as ratings agencies that appear to have had a conflict of interest), complex financial instruments that no one really understood, and herd behaviour where people just followed along and failed to exercise independent judgment. Business leaders must use their personal moral compasses to make ethical decisions. In this regard, this lesson has given emphasis on the concepts of business ethics, fundamental ethical principles, ethical dilemma, code of conduct, Lokpal and Lokayukta and Anti-bribery Code.

### Lesson 12 – Board's Accountability on ESG

With the concepts of Environmental, Social and Governance (ESG) capturing the centre stage in the world of business, it has resulted into enhanced board's accountability on ESG related matters. Further, board and management work complementary to each other in ensuring effective corporate governance and sustainability of an organisation. While the Board plays major role in devising strategies, policies and has the oversight responsibility, the management plays significant role in effective implementation of the same. The oversight roles of the Board is supported by management also include strategies/policies/risks/opportunities Environmental, Social, Governance issues.

In view of the aforesaid facts, this lesson has focused on the components of 'E', 'S' and 'G'; ESG Governance Structure, International Perspective, Accountability of the Board on 'E', 'S' and 'G' related matters etc.

### Lesson 13 – Environment

The environment consists of all things-living or non-living that influence human life. It plays a vital role in the functioning of our daily lives. The environment/nature and its wonderful species existed even before human habitat. Every species, be it on land or water, existed peacefully. The mayhem began after the dawn of human civilization and industrialization. Humans began to use the environment as a means to an end without giving much thought to the consequences of the abuse or respect that it should give to the facilitator of life on Earth.

Environment provides us with resources for production which include renewable and non-renewable resources; environment comprising of sun, water, air, and soil without which human life would not exist; in absence of environment human life would have not existed and so on and so forth.

Thus, in this lesson environmental policy, environmental permits, environmental impacts, energy conservation scenarios, awareness on environment protection, energy conservation and management etc. have been discussed expansively.

### Lesson 14 – Corporate Social Responsibility (CSR)

Corporate Social Responsibility is also called Corporate Citizenship or Corporate Responsibility. Generally, CSR is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society.

Corporate Social Responsibility is the way companies manage their businesses to produce an overall positive impact on society through economic, environmental and social actions. Corporate social responsibility (CSR), also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business/ businesses. Business depends for its survival on long term prosperity of the society.

Since CSR has occupied a prominent position in the corporate arena, this lesson has amply covered the important angles of CSR like significance of CSR for the sustainability of business, constitution of CSR Committee, activities covered under CSR, impact assessment of CSR, United Nations SDGs and so on and so forth.

## Lesson 15 – Green Initiatives

Climate change is a global phenomenon and all the countries and various global forums are paying utmost attention to it, as rising GHG (Green House Gas) emissions are hazardous for both people as well as planet. The global temperature has already soared 1.1ºC above the pre-industrial level, with glaciers melting and the sea level rising. Impacts of climate change also includes flooding and drought, displacing millions of people, sinking them into poverty and hunger, denying them access to basic services, such as health and education, expanding inequalities, stifling economic growth and even causing conflict.

In light of the mentioned facts, the lesson has focused on the key facets pertaining to green initiatives, i.e., pollution abatement and testing, reduction in carbon / GHG emission, achieving resource efficiency, renewable energy intensity, water management and waste management. Apart from the mentioned facets, other relevant matters have also been covered in the lesson.

## Lesson 16 – Governance Influencers

Since corporate governance holds paramount position in the corporate sector, there are many organisations / associations that acts as a governance influencer to ensure that the tenets of corporate governance are adhered to by the corporates. In view of this, the lesson has covered at length the various organisations that act as governance influencers, such as the Institute of Company Secretaries of India (ICSI), Investors Associations, Proxy Advisory Firms etc. Most significantly, the various initiatives taken by the various organisations acting as governance influencers have been also discussed in the lesson.

## Lesson 17 – Empowerment of the Company Secretary Profession

Company Secretary (CS) professionals are recognized as Key Managerial Personnel (KMP) under the Companies Act, 2013, wherein they are entrusted with a senior-level position in the management and are an intrinsic part of the Board of corporate entity. Since past five decades, Professionals have witnessed a substantial and spectacular growth and development made by Institute of Company Secretaries of India (ICSI) especially in the areas of recognitions obtained from various Agencies/ Government for the benefit of its members.

The ICSI provides top-quality education to the students of Company Secretaryship (CS) Course and has set best quality standards at each level. CS as hardcore professionals have developed core competence in compliances and corporate governance. They are specialized professionals in the matter of compliance enjoined under various statutes and rules, regulations, bye-laws, guidelines made thereunder.

With the passage of time and especially after the enactment of Companies Act,2013 the role of Company Secretaries have grown manifold. In view of this, the lesson has focused on the past, current and evolving role of Company Secretaries, role of Company Secretaries in employment and practice, their role in board governance and so on and so forth.

## PART II – RISK MANAGEMENT (20 MARKS)

### Lesson 18 – Risk Management

Most businesses now consider risk management to be essential. However, even within the same industry, organisations can have diverse structures for risk management. All organisations, no matter how big or little, should practise risk management. Effective risk management procedures promote accountability, performance evaluation, and compensation, and they can boost productivity throughout the entire organisation at all levels. A thorough knowledge and comprehension of the organisation (internally and externally) and the business processes are necessary for risk management.

Risk management is an indispensable element of a business organisation, as poor risk management may lead to business fiasco. Keeping in view the importance of risk management, this lesson has extensively covered different critical aspects or dimensions of the risk management like concept of risk management, advantages of risk management, steps in risk management process, risk mitigation, need for CRM framework in India, fraud risk management etc.

## PART III – ENVIRONMENT & SUSTAINABILITY REPORTING (15 MARKS)

### Lesson 19 – Sustainability Audit; ESG Rating; Emerging Mandates from Government and Regulators

Sustainable development is a relatively new concept and gained momentum in the late 1980s. The UN's Brundtland report defined it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Theoretically, the concept has its ties with ecological modernization which opines that economic growth and ecological concerns can be favorably combined. Sustainability recognizes the interdependence of economic, social and environmental factors for all round development.

ESG (environmental, social, and corporate governance) is a framework designed to be embedded into an organization's strategy that considers the needs and ways in which to generate value for all of organizational stakeholders (such as employees, customers and suppliers and financiers).

In light of the aforesaid facts, the lesson have thrown light on the significant aspects like rise and evolution of sustainability audit, framework of sustainability audit, process of conducting sustainability audit, ESG Reporting in India, ESG Regulations around the world etc.

### Lesson 20 – Integrated Reporting Framework; Global Reporting Initiative Framework; Business Responsibility & Sustainability Reporting

Integrated reporting is part of an evolving corporate reporting system. This system is enabled by comprehensive frameworks and standards, addressing measurement and disclosure in relation to all capitals, appropriate regulation and effective assurance.

Integrated reporting brings together material information about an organization's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how the organization demonstrates stewardship and how it creates value, now and in the future.

In view of the growing significance of integrated reporting framework, this lesson has laid emphasis on the structure of Integrated Reporting Framework, benefits of Integrated Reporting, GRI Standards for Reporting, Overview and applicability of BRSR, Benefits of BRS reporting etc.

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## PART I – GOVERNANCE AND SUSTAINABILITY

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### CONCEPTUAL FRAMEWORK OF CORPORATE GOVERNANCE

**LESSON 3**

**BOARD EFFECTIVENESS/BUILDING BETTER BOARDS**

**LESSON 4**

**BOARD PROCESSES THROUGH SECRETARIAL STANDARDS**



**LESSON 5**

**BOARD COMMITTEES**

**LESSON 6**

**BUILDING BETTER BOARDS**

This Lesson has been merged with Lesson 3 Board Effectiveness / Building Better Boards

**LESSON 7**

**CONCEPT OF GOVERNANCE IN PROFESSIONAL MANAGED COMPANY & PROMOTERS DRIVEN COMPANY**

**LESSON 8**

**BOARD DISCLOSURES AND WEBSITE DISCLOSURES**

**LESSON 9**

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## EMPOWERMENT OF THE COMPANY SECRETARY PROFESSION

## PART II – RISK MANAGEMENT

### LESSON 18

### RISK MANAGEMENT

## PART III – ENVIRONMENT & SUSTAINABILITY REPORTING

### LESSON 19

### SUSTAINABILITY AUDIT; ESG RATING; EMERGING MANDATES FROM GOVERNMENT AND REGULATORS

# PART I

# GOVERNANCE AND SUSTAINABILITY

# Conceptual Framework of Corporate Governance

Lesson 1

## KEY CONCEPTS

■ Corporate Performance ■ Theories of Corporate Governance ■ Triple Bottom line ■ Board Independence ■ Management vs Ownership ■ Corporate Governance Code ■ Accountability ■ Investor trust

## Learning Objectives

**To understand:**

- Concept of Corporate Governance,
- Developments across jurisdictions
- Historic origin of Corporate Governance
- Need and importance of corporate governance
- Evolution of Corporate Governance across countries including India
- Corporate Governance framework and its evolution in the Indian Ethos

## Lesson Outline

- Meaning and Definitions of Corporate Governance
- Advantages of Corporate Governance
- Need for Corporate Governance
- Elements/Scope of Corporate Governance
- Evolution of Corporate Governance
  - Theories of Corporate Governance
  - Concept of Management vs. Ownership
  - Concept of Majority vs. Minority
- Roots of Corporate Governance in Indian Ethos
- Corporate Governance in India-Contemporary Developments
- History of development of Corporate Governance
  - Stages of Development of corporate governance in USA
  - Development of corporate governance in UK
- Corporate Governance Codes in Major Jurisdictions of the world
- OECD Principles of Corporate Governance
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## MEANING AND DEFINITIONS OF CORPORATE GOVERNANCE

> "Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders."
>
> The Institute of Company Secretaries of India

The phrase "corporate governance" describes "the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies, and those in control, are held to account."

Corporate governance is the broad term used to describe the processes, customs, policies, laws and institutions that direct the organizations and corporations in the way they act or administer and control their operations. It works to achieve the goal of the organization and manages the relationship with the stakeholders including the board of directors and the shareholders.

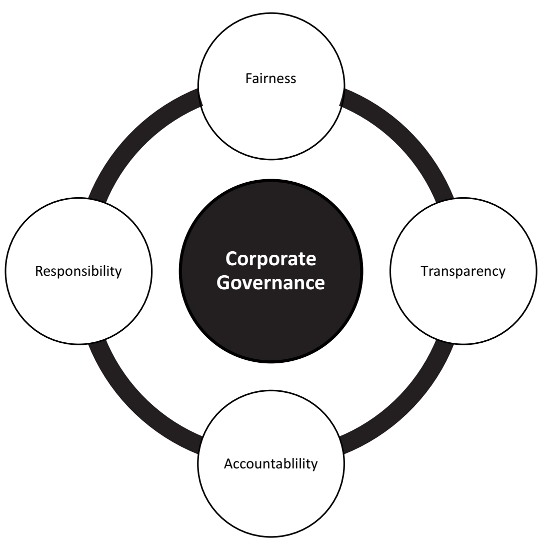
Corporate governance means to steer an organization in the desired direction by determining ways to take effective strategic decisions. It also deals with the accountability of the individuals through a mechanism which reduces the principal-agent problem in the organization.

> "Corporate Governance is concerned with the way corporate entities are governed, as distinct from the way business within those companies are managed. Corporate governance addresses the issues facing Board of Directors, such as the interaction with top management and relationships with the owners and others interested in the affairs of the company" RobertIan (Bob) Tricker (who introduced the words corporate governance for the first time in his book in 1984)

Corporate Governance has a broad scope. It includes both social and institutional aspects. Corporate Governance encourages a trustworthy, moral, as well as ethical environment. In other words, the heart of corporate governance is transparency, disclosure, accountability and integrity. It is to be borne in mind that mere legislation does not ensure good governance. Good governance flows from ethical business practices even when there is no legislation.

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed on stock exchanges to compete for capital. Good corporate governance is essential to develop additional values to the stakeholders as it ensures transparency which ensures strong and balanced economic development. This also ensures that the interests of all shareholders (majority as well as minority shareholders) are safeguarded. It ensures that all shareholders fully exercise their rights and that the organization fully recognizes their rights.

Corporate Governance is managing, monitoring and overseeing various corporate systems in such a manner that corporate reliability, reputation are not put at stake. Corporate Governance pillars on transparency and fairness in action satisfying accountability and responsibility towards the stakeholders.



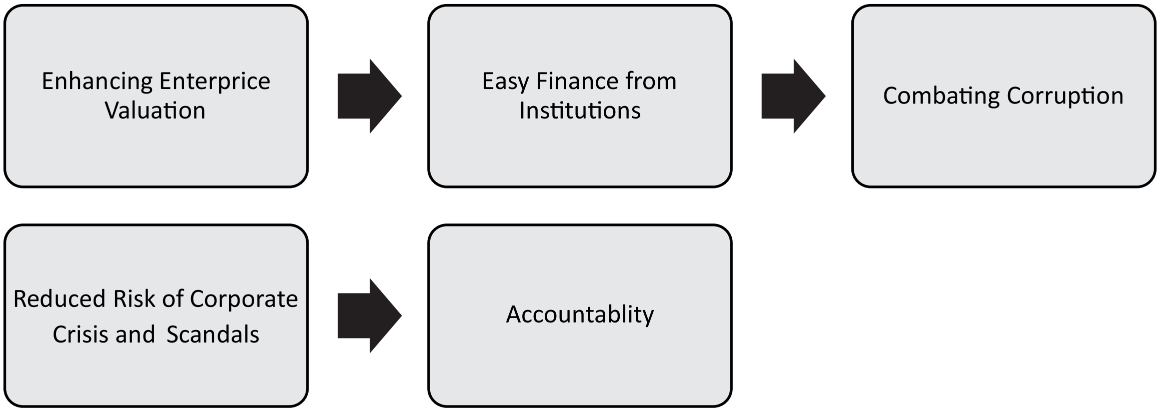
The long term performance of a corporate is judged by a wide constituency of stakeholders. Various stakeholders affected by the governance practices of the company include:


## Advantages of Corporate Governance

1. Good corporate governance ensures corporate success and economic growth.
2. Strong corporate governance maintains investors' confidence, as a result of which, company can raise capital efficiently and effectively.
3. There is a positive impact on the share price.
4. It provides proper inducement to the owners as well as managers to achieve objectives that are in interests of the shareholders and the organization.
5. Good corporate governance also minimizes wastages, corruption, risks and mismanagement.
6. It helps in brand formation and development.
7. It ensures organization is managed in a manner that fits the best interests of all.
8. It reduces cost and aids in long term sustenance and growth of the Company.

## NEED FOR CORPORATE GOVERNANCE

Corporate Governance is integral to the existence of the company. Corporate Governance is needed to create a corporate culture of transparency, accountability and disclosure.




**(a) Corporate Performance**

Improved governance structures and processes ensure quality decision-making, encourage effective succession planning for senior management and enhance the long-term prosperity of companies, independent of the type of company and its sources of finance. This can be linked with improved corporate performance- either in terms of share price or profitability.

**(b) Enhanced Investor Trust**

As individuals and institutions invest capital directly or through intermediary funds, they look to see if well- governed corporate boards are there to protect their interests. Investors who are provided with high levels of disclosure and transparency such as relating to data on matters such as pay governance, pay components, performance goals, and the rationale for pay decisions etc. are likely to invest openly in those companies. On Apple's investor relations site, for example, the firm outlines its leadership and governance, including its executive team, its board of directors and also the firm's committee charters and governance documents, such as bylaws, stock ownership guidelines etc.

**(c) Better Access to Global Market**

Good corporate governance systems attract investment from global investors, which subsequently leads to greater efficiencies in the financial sector. The relation between corporate governance practices and the increasing international character of investment is very important. International flows of capital enable companies to access financing from a much larger pool of investors. In order to reap the full benefits of the global capital market and attract long-term capital, corporate governance arrangements must be credible, well understood across borders and should adhere to internationally accepted principles. On the other hand, even if corporations do not rely primarily on foreign sources of capital, adherence to good corporate governance practices helps improve the confidence of domestic investors, reduces the cost of capital, enables good functioning of financial markets and ultimately leads to more stable sources of finance.

**(d) Combating Corruption**

Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions, provide environment where corruption would certainly fade out. Corporate Governance enables a corporation to compete more efficiently and prevent fraud and malpractices within the organization.

**(e) Easy Finance from Institutions**

Several structural changes like increased role of financial intermediaries and institutional investors, size of the enterprises, investment choices available to investors, increased competition, and increased risk exposure have made monitoring the use of capital more complex thereby increasing the need of Good Corporate Governance. Evidences indicate that well-governed companies receive higher market valuations. The credit worthiness of a company can be trusted on the basis of corporate governance practiced in the company.

**(f) Enhancing Enterprise Valuation**

Improved management accountability and operational transparency fulfill investors' expectations and confidence on management and corporations, and in return, increase the value of corporations.

**(g) Reduced Risk of Corporate Crisis and Scandals**

Effective Corporate Governance ensures efficient risk mitigation system in place. A transparent and accountable system makes the Board of a company aware of the majority of the mask risks involved in a particular strategy, thereby, placing various control systems in place to facilitate the monitoring of the related issues.

**(h) Accountability**

Investor relations are essential part of good corporate governance. Investors directly/ indirectly entrust management of the company to create enhanced value for their investment. The company is hence obliged to make timely disclosures on regular basis to all its shareholders in order to maintain good investor relation. Good Corporate Governance practices create the environment whereby Boards cannot ignore their accountability to these stakeholders.

## ELEMENTS / SCOPE OF GOOD CORPORATE GOVERNANCE

Some of the important elements of good corporate governance are discussed as under:

**1. Role and powers of Board**

Board of Directors is the primary interface between the Company and its various stake holders. Directors are elected by shareholders to represent them and are tasked with making important decisions, such as corporate officer appointments, executive compensation and dividend policy. In some instances, board obligations stretch beyond financial optimization, when shareholder resolutions call for certain social or environmental concerns to be prioritized.

The Board as a main functionary is primary responsible to ensure value creation for its stakeholders. The absence of clearly designated role and powers of Board weakens accountability mechanism and threatens the achievement of organizational goals. Therefore, the foremost requirement of good governance is the clear identification of powers, roles, responsibilities and accountability of the Board, CEO, and the Chairman of the Board. The role of the Board should be clearly documented in a Board Charter.

**2. Legislation**

Clear and unambiguous legislation and regulations are fundamental to effective corporate governance. Legislation that requires continuing legal interpretation or is difficult to interpret on a day-to-day basis can be subject to deliberate manipulation or inadvertent misinterpretation.

**3. Management environment**

Management environment includes setting-up of clear objectives and appropriate ethical framework, establishing due processes, providing for transparency and clear enunciation of responsibility and accountability, implementing sound business planning, encouraging business risk assessment, having right people and right skill for the jobs, establishing clear boundaries for acceptable behavior, establishing performance evaluation measures and evaluating performance and sufficiently recognizing individual and group contribution within the organisation.

**4. Board skills**

To be able to undertake its functions efficiently and effectively, the Board must possess the necessary blend of qualities, skills, knowledge and experience. Each of the directors should make quality contribution to the organizations policies, operations and management. Illustratively, a Board should have a mix of the following skills, knowledge and experience:

– Operational or technical expertise, commitment to establish leadership;

– Financial skills;

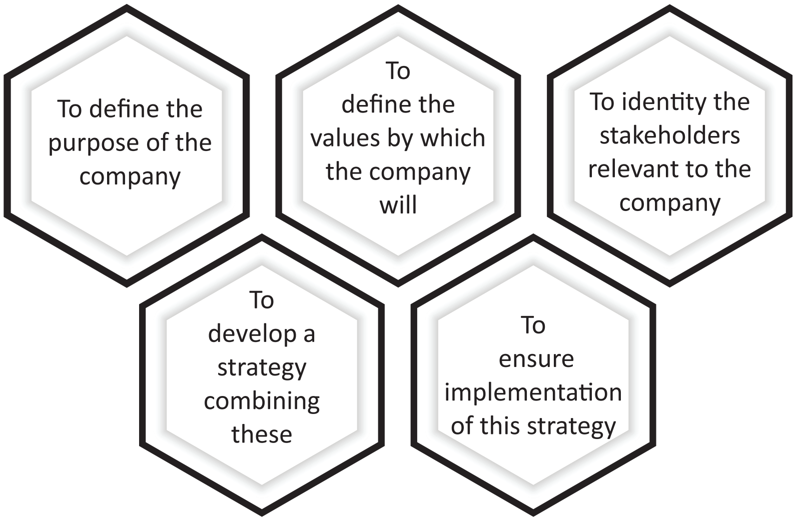
– Legal skills; and

– Knowledge of Government and regulatory requirement.

**5. Board appointments**

To ensure that the most competent people are appointed on the Board, the Board positions should be filled only after making an extensive search. A well-defined and open procedure must be in place for re-appointments as well as for appointment of new directors. Appointment mechanism should satisfy all statutory and administrative requirements. High on the priority should be an understanding of skill requirements of the Board particularly at the time of making a choice for appointing a new director. All new directors should be provided with a letter of appointment setting out in detail their duties and responsibilities. Orientation program for new directors should also be provided to apprise them about the company, its internal and external management and the expectations from the directors and the Board.

The role of the board of directors was summarized by the King Report (a South African report on corporate governance) as:




**6. Board induction and training**

Directors must have a broad understanding of the area of operation of the company's business, corporate strategy and challenges being faced by the Board. Attendance at continuing education and professional development programmes is essential to ensure that directors remain abreast of all developments, which are or may impact their corporate governance and other related duties.

**7. Board independence**

Independent Board is essential for sound corporate governance. This goal may be achieved by associating sufficient number of independent directors with the Board. Independence of directors would ensure that there are no actual or perceived conflicts of interest. It also ensures that the Board is effective in supervising and, where necessary, challenging the activities of management. The Board needs to be capable of assessing the performance of managers with an objective perspective. Accordingly, a portion of the Board members should be independent of both the management team and any commercial dealings with the company. At the same time a proper balance between independent and non-independent directors is also very important.

**8. Board meetings**

Directors must devote sufficient time and give due attention to meet their obligations. Attending Board meetings regularly and preparing thoroughly before entering the Boardroom increases the quality of interaction at Board meetings. Board meetings are the forums for Board decision-making. These meetings enable directors to discharge their responsibilities. The effectiveness of Board meetings is dependent on carefully planned agendas and providing relevant papers and material to directors sufficiently prior to Board meetings.

**9. Code of conduct**

It is essential that the organization's explicitly prescribed norms of ethical practices and code of conduct are communicated to all concerned and are clearly understood and followed by each member of the organization. Systems should be in place to periodically measure, evaluate and if possible recognize the adherence to code of conduct.

**10. Strategy setting**

The objectives of the company must be clearly documented in a long-term corporate strategy including an annual business plan together with achievable and measurable performance targets and milestones.

**11. Business and community obligations**

Though basic activity of a business entity is inherently commercial yet it must also take care of community's obligations. Commercial objectives and community service obligations should be clearly documented after approval by the Board. The stakeholders must be informed about the proposed and ongoing initiatives taken to meet the community obligations. Corporate Social Responsibility is rapidly becoming an integral part of the management's role and responsibility.

**12. Financial and operational reporting**

The Board requires comprehensive, regular, reliable, timely, correct and relevant information in a form and of a quality that is appropriate to discharge its function of monitoring corporate performance. For this purpose, clearly defined performance measures - financial and non-financial should be prescribed which would add to the efficiency and effectiveness of the organization.

The reports and information provided by the management must be comprehensive but not so extensive and detailed as to hamper comprehension of the key issues. The reports should be available to Board members well in advance to allow informed decision-making. Reporting should include status report about the state of implementation to facilitate the monitoring of the progress of all significant Board approved initiatives.

**13. Monitoring the Board performance**

The Board must monitor and evaluate its combined performance and also that of individual directors at periodic intervals, using key performance indicators besides peer review. The Board should establish an appropriate mechanism for reporting the results of Board's performance evaluation. Companies Act, 2013 mandates Board evaluation of specified classes of Companies.

**14. Audit Committee**

The Audit Committee is inter alia responsible for liaison with the management; internal and statutory auditors, reviewing the adequacy of internal control and compliance with significant policies and procedures, reporting to the Board on the key issues. The quality of Audit Committee significantly contributes to the governance of the company.

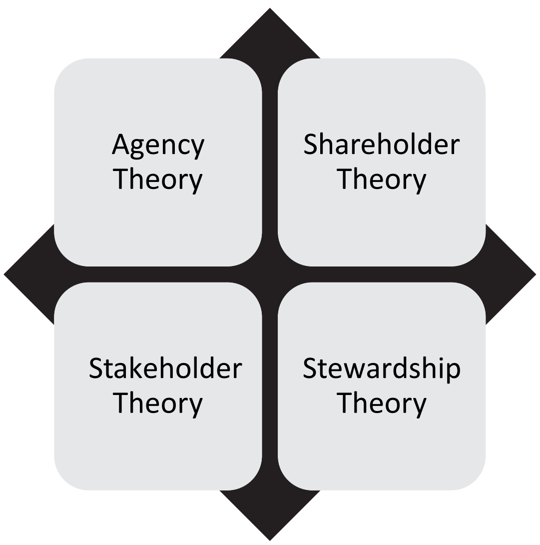
**15. Risk management**

Risk is an important element of corporate functioning and governance. There should be a clearly established process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives. It also involves establishing a link between risk-return and resourcing priorities. Appropriate control procedures in the form of a risk management plan must be put in place to manage risk throughout the organization. The plan should cover activities as diverse as review of operating performance, effective use of information technology, contracting out and outsourcing.

> "Corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions vis-a-vis its claimants-in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of 'good' corporate governance: maximizing long-term shareholder value."
>
> Confederation of Indian Industry (CII)– Desirable Corporate Governance Code (1998)

## EVOLUTION OF CORPORATE GOVERNANCE

The following theories elucidate the basis of evolution of corporate governance.




**(a) Agency Theory**

According to this theory, managers act as 'Agents' of the corporation. The owners set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to-day work of the company. Corporate Governance is control of management through designing the structures and processes.

In agency theory, the owners are the principals. But principals may not have knowledge or skill for getting the objectives executed. Thus, principal authorizes the mangers to act as 'Agents' and a contract between principal and agent is made. Under the contract of agency, the agent should act in good faith. He should protect the interest of the principal and should remain faithful to the goals.

In modern corporations, the shareholding is widely spread. The management (the agent) directly or indirectly selected by the shareholders (the Principals), pursue the objectives set out by the shareholders. The main thrust of the Agency Theory is that the actions of the management differ from those required by the shareholders to maximize their return.

The principals who are widely scattered may not be able to counter this in the absence of proper systems in place as regards timely disclosures, monitoring and oversight. Corporate Governance puts in place such systems of oversight.

**(b) Shareholder Theory**

According to this theory, it is the corporation which is considered as the property of shareholders. They can dispose off this property as they like. They want to get maximum return from this property.

The owners seek a return on their investment and that is why they invest in a corporation. But this narrow role has been expanded into overseeing the operations of the corporations and its mangers to ensure that the corporation is in compliance with ethical and legal standards set by the government. So the directors are responsible for any damage or harm done to their property i.e., the corporation. The role of managers is to maximise the wealth of the shareholders. They, therefore should exercise due diligence, care and avoid conflict of interest and should not violate the confidence reposed in them. The agents must be faithful to shareholders.

**(c) Stakeholder Theory**

According to this theory, the company is seen as an input-output model and all the interest groups which include creditors, employees, customers, suppliers, local-community and the government are to be considered. From their point of view, a corporation exists for them and not the shareholders alone.

Different stakeholders have different self-interest. The interests of these different stakeholders are at times conflicting. The managers and the corporation are responsible to mediate between these different stakeholders interest. The stake holders have solidarity with each other. This theory assumes that stakeholders are capable and willing to negotiate and bargain with one another. This results in long term self interest.

The role of shareholders is reduced in the corporation. But they should also work to make their interest compatible with the other stake holders. This requires integrity and managers play an important role here. They are faithful agents but of all stakeholders, not just stockholders.

**(d) Stewardship Theory**

The word 'steward' means a person who manages another's property or estate. Here, the word is used in the sense of guardian in relation to a corporation (this theory is value based). The managers and employees are to safeguard the resources of corporation and its property and interest when the owner is absent. They are like a caretaker. They have to take utmost care of the corporation. They should not use the property for their selfish ends. This theory thus makes use of the social approach to human nature.

The managers should manage the corporation as if it is their own corporation. They are not agents as such but occupy a position of stewards. The managers are motivated by the principal's objective and the behavior pattern is collective, pro-organizational and trustworthy. Thus, under this theory, first of all values as standards are identified and formulated. Second step is to develop training programmes that help to achieve excellence. Thirdly, moral support is important to fill any gaps in values.

At this juncture it would be of substantial academic interest to delve into the evolution of corporate governance through various noteworthy initiatives at global level. The following exhibit elucidate the eye-catchy development in the sphere of ESG chronologically since 1972 and how the past almost 50 years have been watershed years in the arena of ESG.

| ***Years*** | ***Global Developments*** | ***Brief on Global Developments Initiatives*** |
|---|---|---|
| 1972 | Stockholm Conference | The 1972 United Nations Conference on the Human Environment in Stockholm was the first world conference to make the environment a major issue. The participants adopted a series of principles for sound management of the environment including the Stockholm Declaration and Action Plan for the Human Environment and several resolutions. |
| 1987 | OUR COMMON FUTURE | "A global agenda for change" - this was what the World Commission on Environment and Development was asked to formulate. It was an urgent call by the General Assembly of the United Nations:<br>a) to propose long-term environmental strategies for achieving sustainable development by the year 2000 and beyond;<br>b) to recommend ways concern for the environment may be translated into greater co-operation among developing countries and between countries at different stages of economical and social development and lead to the achievement of common and mutually supportive objectives that take account of the interrelationships between people, resources, environment, and development;<br>c) to consider ways and means by which the international community can deal more effectively with environment concerns; and<br>d) to help define shared perceptions of long-term environmental issues and the appropriate efforts needed to deal successfully with the problems of protecting and enhancing the environment, a long term agenda for action during the coming decades, and aspirational goals for the world community. |
| 1988 | IPCC | The Intergovernmental Panel on Climate Change (IPCC) was established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988.<br>The establishment of the IPCC was endorsed by UN General Assembly in 1988. Its initial task, as outlined in UN General Assembly Resolution 43/53 of 6 December 1988, was to prepare a comprehensive review and recommendations with respect to the state of knowledge of the science of climate change; the social and economic impact of climate change, and potential response strategies and elements for inclusion in a possible future international convention on climate. |

| *Years* | *Global Developments* | *Brief on Global Developments Initiatives* |
|---|---|---|
| 1992 | Rio Earth Summit | The United Nations Conference on Environment and Development (UNCED), also known as the 'Earth Summit', was held in Rio de Janeiro, Brazil, from 3-14 June 1992.<br>The Rio de Janeiro conference highlighted how different social, economic and environmental factors are interdependent and evolve together, and how success in one sector requires action in other sectors to be sustained over time.<br>The primary objective of the Rio 'Earth Summit' was to produce a broad agenda and a new blueprint for international action on environmental and development issues that would help guide international cooperation and development policy in the twenty-first century. |
| | UNEP Finance Initiative | Founded in 1992, UNEP FI was the first organisation to engage the finance sector on sustainability and incubated the Principles for Responsible Investment, now the world's leading proponent on responsible investment. |
| 1997 | UNFCCC | The United Nations Framework Convention on Climate Change (UNFCCC) was operationalized through Kyoto Protocol by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets.<br>The supreme decision making body of the Convention is COP. All States that are Parties to the Convention are represented at the COP, at which they review the implementation of the Convention and any other legal instruments that the COP adopts and take decisions necessary to promote the effective implementation of the Convention, including institutional and administrative arrangements. The last COP, i.e. COP 27 was held at Sharm el-Sheikh, Egypt. |
| | GRI | GRI was founded in Boston (USA) in 1997 following on from the public outcry over the environmental damage of the Exxon Valdez oil spill, eight years previously.<br>The first version of what was then the GRI Guidelines (G1) published in 2000 – providing the first global framework for sustainability reporting. The following year, GRI was established as an independent, non-profit institution.<br>In 2002, the GRI's Secretariat relocated to Amsterdam (The Netherlands), and the first update to the Guidelines (G2) launched. As demand for GRI reporting and uptake from organizations steadily grew, the Guidelines were expanded and improved, leading to G3 (2006) and G4 (2013). |
| 1998 | IFC | IFC (International Finance Corporationl) of World Bank Group adopted its Environmental and Social Safeguard Policies and its Disclosure Policy. |

| *Years* | *Global Developments* | *Brief on Global Developments Initiatives* |
|---|---|---|
| 1999 | AccountAbility (AA)(Institute of Social and Ethical Accountability) | AA 1000 Accountability Principles. The principles were updated in 2018. The AA 1000 AP (2018) is an internationally accepted, principles-based framework that guides organisations through the process of identifying, prioritizing, and responding to sustainability challenges, with the goal of improving long-term performance. |
| | OECD | The OECD Council, meeting at Ministerial level on 27-28 April 1998, called upon the OECD to develop, in conjunction with national governments, other relevant international organisations and the private sector, a set of corporate governance standards and guidelines. In order to fulfil this objective, the OECD established the Ad-Hoc Task Force on Corporate Governance to develop nonbinding principles that embody the views of Member countries on this issue.<br>The Principles developed are as under:<br>1. The Rights of Shareholders.<br>2. The Equitable Treatment of Shareholders.<br>3. The Role of Stakeholders in Corporate Governance.<br>4. Disclosure and Transparency.<br>5. The Responsibilities of the Board. |
| 2000 | Earth Charter | In 1987 The World Commission on Environment and Development (known as "the Brundtland Commission") launched *Our Common Future Report* with a call for a "new charter" to set "new norms" to guide the transition to sustainable development.<br>Following that, discussion about an Earth Charter took place in the process leading to the Earth Summit in Rio de Janeiro in 1992, but the time for such a declaration was not right. The Rio Declaration became the statement of the achievable consensus at that time.<br>In 1994, Maurice Strong (Secretary-General of the Rio Earth Summit) and Mikhail Gorbachev, working through organizations they each founded (Earth Council and Green Cross International respectively), launched an initiative (with the support from the Dutch Government) to develop an Earth Charter as a civil society initiative. The initial drafting and consultation process drew on hundreds of international documents.<br>An independent **Earth Charter Commission** was formed in 1997 to oversee the development of the text, analyze the outcomes of a world-wide consultation process and to come to an agreement on a global consensus document. |
| | UN Global Compact | UN Global Compact is a voluntary initiative based on CEO commitments to implement universal sustainability principles and to take steps to support to UN goals. |

| Years | Global Developments | Brief on Global Developments Initiatives |
|---|---|---|
| | CD | Formerly called the Climate Disclosure Project, CDP runs the global disclosure system for investors, companies, cities, states and region to manage their environmental impacts. |
| 2003 | Equator Principles | The Equator Principles are a risk management framework for financial institutions to determine, assess and manage environmental and social risk in projects. They are primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making. |
| 2004 | A4S: Accountability for Sustainability | The Accounting for Sustainability Project (A4S) was established by HRH The Prince of Wales with the aim to "make sustainable business decision-making business as usual". It laid the foundation for the development of other initiatives such as IIRC.<br>A4S aims to inspire action by finance leaders to drive a fundamental shift towards resilient business models and a sustainable economy. To do this, A4S has three core aims:<br>i) Inspire finance leaders to adopt sustainable and resilient business models.<br>ii) Transform financial decision making to enable an integrated approach, reflective of the opportunities and risks posed by environmental and social issues.<br>iii) Scale up action across the global finance and accounting community |
| 2005 | Kyoto Protocol | The Kyoto Protocol is based on the principles and provisions of the Convention and follows its annex-based structure.<br>It only binds developed countries, and places a heavier burden on them under the principle of "common but differentiated responsibility and respective capabilities", because it recognizes that they are largely responsible for the current high levels of GHG emissions in the atmosphere.<br>One important element of the Kyoto Protocol was the establishment of flexible market mechanisms, which are based on the trade of emissions permits. Under the Protocol, countries must meet their targets primarily through national measures.<br>However, the Protocol also offers them an additional means to meet their targets by way of three market-based mechanisms:<br>i) International Emissions Trading.<br>ii) Clean Development Mechanism (CDM).<br>iii) Joint implementation (JI) |

| *Years* | *Global Developments* | *Brief on Global Developments Initiatives* |
|---|---|---|
| 2006 | PRI | The United Nations Principles for Responsible Investment (UN PRI) were launched by the UNEP FI and the UN Global Compact in collaboration with investors. |
| | IFC | The Safeguard Polices were replaced by the policy on Social and Environmental Sustainability and the Performance Standards.<br>The Sustainability Framework articulates IFC's strategic commitment to sustainable development and is an integral part of the risk management approach. |
| 2007 | CDSB | The Climate Disclosure Standards Board (CDSB) is an international consortium of business and environmental NGOs. |
| 2008 | IFC'S Corporate Governance Methodology | IFC's Corporate Governance Methodology is an approach to evaluate and improve the corporate governance of a company to identify, reduce and manage risk. |
| 2009 | Sustainable Stock Exchanges (SSE) | United Nations Sustainable Stock Exchanges Initiative (UNSSE) has a mission to provide a global platform for exploring how exchanges, in collaboration with investors, companies (issuers), regulators, policymakers and relevant international organisations, can enhance performance on ESG issues and encourage sustainable investment, including the financing of the UN Sustainable Development Goals. |
| 2010 | ISO | ISO 26000 Standard is intended to assist organisations in contributing to sustainable development.<br>ISO 26000 provides guidance to all types of organizations, regardless of their size or location, on:<br>a) concepts, terms and definitions related to social responsibility;<br>b) the background, trends and characteristics of social responsibility;<br>c) principles and practices relating to social responsibility;<br>d) the core subjects and issues of social responsibility;<br>e) integrating, implementing and promoting socially responsible behaviour throughout the organization and, through its policies and practices, within its sphere of influence;<br>f) dentifying and engaging with stakeholders; and<br>g) communicating commitments, performance and other information related to social responsibility. |
| 2011 | OECD's Guidelines for Multinational Enterprises | The OECD's Guidelines for Multinational Enterprises are recommendations from governments to multinational enterprises on responsible business conduct. |

| *Years* | *Global Developments* | *Brief on Global Developments Initiatives* |
|---|---|---|
| 2011 | SASB | The Sustainability Accounting Board (SASB) aims to encourage high-quality disclosure of material non-financial information. SASB develops various standards, industry-specific, related to SEC filings. |
| | CGDF (Corporate Governance Development Framework ) | IFC and 28 other Development Financial Institutions (DFIs) signed the Corporate Governance Development Framework, a common methodology for assessing corporate governance in the DFIs investment work, which is based on IFC's corporate governance methodology. |
| 2012 | RIO+20 | The United Nations Conference on Sustainable Development - or Rio+20 - took place in Rio de Janeiro, Brazil on 20-22 June 2012. It resulted in a focused political outcome document which contains clear and practical measures for implementing sustainable development. |
| | IFC Sustainability Framework-2012 Edition | IFC updated its Sustainability Framework. The new framework strengthened IFC's commitments to climate change, business and human rights, corporate governance and gender among other areas. |
| | Sustainable Banking and Finance Network (SBFN) | Established in 2012, SBFN is a voluntary community of financial sector regulators, central banks, ministries of finance, ministries of environment, and industry associations from emerging markets committed to advancing sustainable finance for national development priorities, financial market deepening, and stability.<br><br>As of September 2021, SBFN represents 43 countries and US$43 trillion (86 percent) of the total banking assets in emerging markets. IFC is the Secretariat and technical advisor to SBFN.<br><br>SBFN members are committed to moving their financial sectors towards sustainability, with the twin goals of improved ESG risk management (including disclosure of climate risks) and increased capital flows to activities with positive climate impact.<br><br>It is a platform for knowledge sharing and capacity building that facilitates the mobilization of practical support for members to design and implement national initiatives. |
| 2013 | IR (Integrated Reporting) | International Integrated Reporting Framework published by International Integrated Reporting Committee has a framework that provides a tool for all companies to report on their efforts to embed ESG and non-financial management into their core business, and report on ESG and financial performance together, in a single, streamlined report. |

| *Years* | *Global Developments* | *Brief on Global Developments Initiatives* |
|---|---|---|
| 2014 | Corporate Reporting Dialogue | The Corporate Reporting Dialogue is a platform that aims to strengthen cooperation and alignment between key standards setters and framework developers. Its participants are CDP, CDSB, FASB, GRI, IASB, IIRC, ISO, SASB. |
| | European Commission | Through the Non-Financial Reporting Director, the EU began requiring all companies of a certain size to disclose non-financial information along with financial reporting.<br>On 21 April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive, which would amend the existing reporting requirements of the Non-Financial Reporting Directive. |
| | Sustainable Development Goals (SDGs) | The United Nations developed a list of 17 Sustainable Development Goals. Today, many companies use the SDGs to assess the impact of their operations and investors use the SDGs as a matrix to structure their ESG approach. |
| 2015 | PARIS 2015: COP 21:CMP11 | The twenty-first session of the Conference of the Parties (COP) and the eleventh session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) took place from 30 November to 11 December 2015, in Paris, France. |
| | OECD (G20/ OECD Principles of Corporate Governance) | In 2015, the updated Principles (G20/OECD Principles of Corporate Governance) were endorsed by the OECD Council and the G20 Leaders Summit |
| | TCFD (Task Force Climate Related Disclosures) | The Financial Stability Board established the TCFD to develop recommendations for more effective climate-related disclosures that could promote more informed investment, credit, and insurance underwriting decisions and, in turn, enable stakeholders to better understand the concentrations of carbon-related assets in the financial sector and the financial system's exposures to climate-related risks. |
| 2016 | Green Finance Study Group | In 2016, the G20 launched a Green Finance Study Group to investigate possibilities to encourage private investors to increase green initiatives. |
| 2017 | NGFS | At the Paris "One Planet Summit" in December 2017, eight central banks and supervisors established the Network of Central Banks and Supervisors for Greening the Financial System (NGFS). Since then, the membership of the Network has grown dramatically, across the five continents.<br>The Network's purpose is to help strengthening the global response required to meet the goals of the Paris agreement and to enhance the role of the financial system to manage risks and to mobilize capital for green and low-carbon investments in the broader context of environmentally sustainable development. |

| Years | Global Developments | Brief on Global Developments Initiatives |
|---|---|---|
| | | To this end, the Network defines and promotes best practices to be implemented within and outside of the Membership of the NGFS and conducts or commissions analytical work on green finance. |
| 2018 | ACMF | ASEAN Sustainability Bond Standards apply to bonds where the proceeds will be exclusively applied to finance or re-finance a combination of both Green and Social Projects that respectively offer environmental and social benefits. |
| | IFC's Corporate Governance Updated Methodology | i)I FC's Corporate Governance Methodology was updated in 2018 to include a new parameter on the Governance of Stakeholder Engagement.<br>ii)I FC's Disclosure & Transparency Toolkit provides a framework and resources to help emerging market companies disclose ESG and financial performance to reduce risk, increase understanding, and attract investors and capital. |
| 2019 | Business Roundtable | Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America's leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. GDP.<br>Through CEO-led policy committees, Business Roundtable members develop and advocate directly for policies to promote a thriving U.S. economy and expanded opportunity for all Americans. |
| | European Commission (EU Taxonomy for Sustainable Activities) | The EU taxonomy is a tool to help investors understand the transition to a low-carbon economy for their investments, and how environmentally sustainable economic activities are.<br>The taxonomy helps all the market players speak a common language and assess how their investment decisions are consistent with the Paris Agreement. |
| 2020 | OICU-IOSCO | The International Organization of Securities Commissions (IOSCO) is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. It works intensively with the G20 and the Financial Stability Board (FSB) on the global regulatory reform agenda.<br>IOSCO was established in 1983. Its membership regulates more than 95% of the world's securities markets in more than 130 jurisdictions: securities regulators in emerging markets account for 75% of its ordinary membership. |

| *Years* | *Global Developments* | *Brief on Global Developments Initiatives* |
|---|---|---|
| | | The *IOSCO Objectives and Principles of Securities Regulation* have been endorsed by both the G20 and the FSB as the relevant standards in this area.<br>They are the overarching core principles that guide IOSCO in the development and implementation of internationally recognized and consistent standards of regulation, oversight and enforcement.<br>They form the basis for the evaluation of the securities sector for the Financial Sector Assessment Programs (FSAPs) of the International Monetary Fund (IMF) and the World Bank. |
| 2021 | Sustainable Banking and Finance Network | In 2021, the Sustainable Finance Study Group was replaced by Sustainable Finance Working Group.<br>The Group is tasked to identify institutional and market barriers to sustainable finance and to develop options to overcome such barriers, and to contribute to a better alignment of the international financial system to the objectives of the 2030 Agenda and the Paris Agreement. |
| | ISO 37000 – Governance of organizations—Guidance | This document gives guidance on the governance of organizations. It provides principles and key aspects of practices to guide governing bodies and governing groups on how to meet their responsibilities so that the organizations they govern can fulfil their purpose.<br>It is also intended for stakeholders involved in, or impacted by, the organization and its governance.<br>It is applicable to all organizations regardless of type, size, location, structure or purpose. |
| | IFRS working group on enterprise value reporting | In order to accelerate convergence in global sustainability reporting standards and to undertake technical preparation for a potential international sustainability reporting standards board under the governance of the IFRS Foundation, the Trustees of the IFRS Foundation have set up a working group. The working group is intended to provide structured engagement with initiatives focused on enterprise value reporting with a view to facilitating consolidation and reducing fragmentation in sustainability reporting standards. |
| | IFRS - International Sustainability Standards Board<br>(IFRS ISSB) | The Trustees announced the formation of the ISSB on 3 November 2021 at COP26 in Glasgow.<br>The ISSB has set out four objectives:<br>● developing standards for a global baseline of sustainability disclosures. |

| Years | Global Developments | Brief on Global Developments Initiatives |
|---|---|---|
| | | • meeting the information needs of investors.<br>• enabling companies to provide comprehensive sustainability information to global capital markets.<br>• facilitating interoperability with disclosures that are jurisdiction-specific and/or aimed at broader stakeholder groups.<br>The ISSB builds on the work of market-led investor-focused reporting initiatives—including the Climate Disclosure Standards Board (CDSB), the Task Force for Climate-related Financial Disclosures (TCFD), the Value Reporting Foundation's Integrated Reporting Framework and industry-based SASB Standards, as well as the World Economic Forum's Stakeholder Capitalism Metrics. |
| 2023 | OECD Guidelines for Multinational Enterprises on Responsible Business Conduct(2023 Edition) | The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct are recommendations addressed by governments to multinational enterprises. They aim to encourage positive contributions enterprises can make to economic, environmental and social progress, and to minimise adverse impacts on matters covered by the Guidelines that may be associated with an enterprise's operations, products and services.<br>The Guidelines cover all key areas of business responsibility, including human rights, labour rights, environment, bribery, consumer interests, disclosure, science and technology, competition, and taxation. The 2023 edition of the Guidelines provides updated recommendations for responsible business conduct across key areas, such as climate change, biodiversity, technology, business integrity and supply chain due diligence, as well as updated implementation procedures for the National Contact Points for Responsible Business Conduct. |
| | G20/OECD Principles of Corporate Governance | The G20/OECD Principles of Corporate Governance are the international standard for corporate governance. The Principles help policy makers evaluate and improve the legal, regulatory and institutional framework for corporate governance, with a view to supporting economic efficiency, sustainable growth and financial stability.<br>The Principles were revised in 2023 to reflect recent evolutions in capital markets and corporate governance policies and practices. They offer new and updated recommendations on shareholder rights, the role of institutional investors, corporate disclosure and reporting, the responsibilities of boards, and, for the first time, on sustainability and resilience to help companies manage climate-related and other sustainability risks and opportunities. The Principles were first issued in 1999 and the revised Principles were endorsed by G20 Leaders in 2023. |

## IFRS Sustainability Disclosure Standards

**IFRS S 1**

*IFRS S1 is effective for annual reporting periods beginning on or after 1 January 2024 with earlier application permitted as long as IFRS S2* Climate-related Disclosures *is also applied.*

The objective of IFRS S1 is to require an entity to disclose information about its sustainability-related risks and opportunities that is useful to users of general purpose financial reports in making decisions relating to providing resources to the entity.

IFRS S1 requires an entity to disclose information about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term (collectively referred to as 'sustainability-related risks and opportunities that could reasonably be expected to affect the entity's prospects').

IFRS S1 prescribes how an entity prepares and reports its sustainability-related financial disclosures. It sets out general requirements for the content and presentation of those disclosures so that the information disclosed is useful to users in making decisions relating to providing resources to the entity.

IFRS S1 sets out the requirements for disclosing information about an entity's sustainability-related risks and opportunities. In particular, an entity is required to provide disclosures about:

a. the governance processes, controls and procedures the entity uses to monitor, manage and oversee sustainability-related risks and opportunities;

b. the entity's strategy for managing sustainability-related risks and opportunities;

c. the processes the entity uses to identify, assess, prioritise and monitor sustainability-related risks and opportunities; and

d. the entity's performance in relation to sustainability-related risks and opportunities, including progress towards any targets the entity has set or is required to meet by law or regulation.

**IFRS S 2**

IFRS S2 is effective for annual reporting periods beginning on or after 1 January 2024 with earlier application permitted as long as IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* is also applied.

The objective of IFRS S2 is to require an entity to disclose information about its climate-related risks and opportunities that is useful to users of general purpose financial reports in making decisions relating to providing resources to the entity.

IFRS S2 requires an entity to disclose information about climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term (collectively referred to as 'climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects').

IFRS S2 applies to:

a. climate-related risks to which the entity is exposed, which are:

   i. climate-related physical risks; and

   ii. climate-related transition risks; and

b. climate-related opportunities available to the entity.

IFRS S2 sets out the requirements for disclosing information about an entity's climate-related risks and opportunities. In particular, IFRS S2 requires an entity to disclose information that enables users of general purpose financial reports to understand:

a. the governance processes, controls and procedures the entity uses to monitor, manage and oversee climate-related risks and opportunities;

b. the entity's strategy for managing climate-related risks and opportunities;

c. the processes the entity uses to identify, assess, prioritise and monitor climate-related risks and opportunities, including whether and how those processes are integrated into and inform the entity's overall risk management process; and

d. the entity's performance in relation to its climate-related risks and opportunities, including progress towards any climate-related targets it has set, and any targets it is required to meet by law or regulation.

(For more details on IFRS S1 and IFRS S2 please refer the following websites-

*IFRSS1:https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s1-general-requirements.html/content/dam/ifrs/publications/html-standards-issb/english/2023/issued/issbs1/*

*IFRS S2, please refer the following website- https://www.ifrs.org/issued-standards/ifrs-sustainability-standards-navigator/ifrs-s2-climate-related-disclosures.html/content/dam/ifrs/publications/html-standards-issb/english/2023/issued/issbs2/ )*

## ABOUT CSRD

i) Launched in 5 Jan, 2023.

ii) It modernises and strengthens the rules concerning the social and environmental information that companies have to report.

iii) Companies subject to the CSRD will have to report according to European Sustainability Reporting Standards (ESRS).

**1. Reasons for adoption of CSRD**

– The EU (European Union) believes that consumers and investors deserve to know the sustainability impact of businesses, and the CSRD was created because the existing legislation wasn't cutting it.

Before the CSRD, the Non-Financial Reporting Directive (NFRD) established the reporting principles for large companies. However, the European Commission discovered that the information reported by companies was insufficient.

**2. Application of CSRD**

– The CSRD more than quadruples the number of companies required to report on sustainability, from the 11,000 covered by the NFRD (The NFRD applies only to so-called "public-interest entities", such as listed companies, banks, or insurance companies, with more than 500 employees) to the nearly 50,000 that will be covered by the CSRD.

Large companies – even ones based outside of the EU

Companies meeting two of the following three conditions will have to comply with the CSRD:

1. €50 million in net turnover
2. €25 million in assets
3. 250 or more employees

In addition, non-EU companies that have a turnover of above €150 million in the EU will also have to comply. It is to be noted that the CSRD doesn't place any new reporting requirements on small companies, except for those with securities listed on regulated markets. And to make it easier for listed SMEs, they can report using simplified standards. But while the CSRD doesn't apply to non-listed SMEs, the European Commission has also proposed developing separate standards that non-listed SMEs could voluntarily use.

**3. Facts to be reported under CSRD**

Companies will need to disclose the sustainability information in their management reports, which means that financial and sustainability information will be published at the same time.

This sustainability data will have to be submitted in a standardized digital format, to allow for easier checking and comparison in the European single access point database.

The submitted data will then be subject to "limited third-party assurance," meaning that an auditor will need to evaluate the data.

**4. Effective dates of CSRD**

The European Commission adopted the CSRD in late 2022. The rules will start applying between 2024 and 2028:

- From 1 January 2024 for large public-interest companies (with over 500 employees) already subject to the Non-Financial Reporting Directive (NFRD), with reports due in 2025;
- From 1 January 2025 for large companies that are not presently subject to the NFRD (with more than 250 employees and/or €40 million in turnover and/or €20 million in total assets), with reports due in 2026;
- From 1 January 2026 for listed SMEs and other undertakings, with reports due in 2027. SMEs can opt-out until 2028.

## Impacts inward & impacts outward

The CSRD – like the NFRD – requires "double materiality," which means that businesses will have to disclose not only the risks they face from a changing climate, but also the impacts they may cause to the climate and to society. For businesses who have historically only analyzed the risks posed to them by climate change – and neglected the role they played in changing the climate – this is a call to do some self-reflection.

## Better comparability through standardization

The CSRD will require company sustainability data to be submitted in a standardized digital format. This is meant to provide a clear format for company sustainability reporting – which is currently rife with many idiosyncratic formats – allowing for better understandability and easier comparison between companies.

The EU CSRD sets out reporting requirements and obligations, while the ESRS provide a framework and methodology for reporting on sustainability issues. Both the CSRD and ESRS are legally binding. They are part of the same legal framework around corporate sustainability transparency.

## European Sustainability Reporting Standards

The European Commission adopted European Sustainability Reporting Standards (ESRS) on July 2023. There are 12 ESRS, covering the full range of sustainability issues, in line with EFRAG's (European Financial Reporting Advisory Group) proposal:

| Group | Number | Subject |
|---|---|---|
| Cross-cutting | ESRS 1 | General Requirements |
| Cross-cutting | ESRS 2 | General Disclosures |
| Environment | ESRS E1 | Climate |
| Environment | ESRS E2 | Pollution |
| Environment | ESRS E3 | Water and marine resources |
| Environment | ESRS E4 | Biodiversity and ecosystems |
| Environment | ESRS E5 | Resource use and circular economy |
| Social | ESRS S1 | Own workforce |
| Social | ESRS S2 | Workers in the value chain |
| Social | ESRS S3 | Affected communities |
| Social | ESRS S4 | Consumers and end users |
| Governance | ESRS G1 | Business conduct |

ESRS 1 ("General Requirements") sets general principles to be applied when reporting according to ESRS and does not itself set specific disclosure requirements. ESRS 2 ("General Disclosures") specifies essential information to be disclosed irrespective of which sustainability matter is being considered. ESRS 2 is mandatory for all companies under the CSRD scope.

All the other standards and the individual disclosure requirements and datapoints within them are subject to a materiality assessment. This means that the company will report only relevant information and may omit the information in question that is not relevant ("material") for its business model and activity.

Disclosure requirements subject to materiality are not voluntary. The information in question must be disclosed if it is material, and the undertaking's materiality assessment process is subject to external assurance in accordance with the provisions of the Accounting Directive. The standards require undertakings to perform a robust materiality assessment to ensure that all sustainability information necessary to meet the objectives and requirements of the Accounting Directive will be disclosed.

If a company concludes that climate change is not a material topic and therefore does not report in accordance with that standard, it has to provide a detailed explanation of the conclusions of its materiality assessment with regard to climate change. This requirement reflects the fact that climate change has wide-ranging and systemic impacts across the economy.

*For details, please refer the following link: https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4043*

The word ESG was first coined in the year 2004 in the report of IFC titled "Who cares Wins"

Published in 2004 and publicly endorsed by 20 financial institutions with combined assets under management of over US$6 trillion, overseen by UN Global Compact the report titled "Who cares Wins" covers guidelines and recommendations on how to better integrate environmental, social and governance (ESG) issues in asset management, securities brokerage services and associated research functions. The focus of the report is a series of recommendations, targeting different financial sector actors, which taken together seek to address the central issue of integrating ESG value drivers into financial market research, analysis and investment.

## GOVERNANCE FROM INDIAN SCRIPTURES

The concept of National Governance in India has been sourced significantly from our ancient scriptures, though post-independence, practices and developments in developed nations coupled with India's own experience have been the guiding factor. To a great extent, the epics – Ramayana and Mahabharata (including Bhagavad Gita and Vidur Niti) have been a great influence on the National and Corporate Governance in India. The Arthashasthra by Kautilya can be regarded as one of the first and significant source in the development of principles of National as well as Corporate Governance in India.

Some of the relevant principles of Ramayana which have a bearing in the modern day society can be summed up in these 5 points:

a) Governance has no inequality, no ups and downs, no differences between rich and poor.

b) The structure of governance should be such that the environment of mutual trust and love is promoted and this means that there is no jealousy or malice amongst the subjects.

c) Governance should promote commitment to duty and doing the duty properly gives ultimate happiness.

d) Governance systems should promote education of one and all, whether man or woman. Education is everyone's right.

e) Governance should promote the good health of all the persons in the society.

### Vidur Niti

The meaning of the word "Vidur" in Sanskrit is "skilled, intelligent and wise". Vidura-niti, or Vidura's Statecraft, which are narrated in the form of a dialogue between Vidura and King Dhritrashtra were stated to have taken place before the commencement of the Kurukshetra war. While most of the qualities and principles seem to be grounded in politics, these required qualities and principles can equally be well applied to daily life as well as to governance.

### Shantiparva

Shantiparva, meaning the book of peace, comprises of 18 parvas (books). It is believed to be the set of instructions given by Shri Bhishma (eldest among the Kuru Family, also called "Pitamah") to King Yudhisthira. The book comprises of 365 chapters and 13,716 Shlokas, which is further divided into three sub-parvas namely:

a) Raja Dharma Parva (Chapters 1 to 130 & 4716 Shlokas): Duties of king and his governance.

b) Apad Dharma Parva (Chapters 131 to 173 & 1649 Shlokas): Rules of conduct when one faces adversity.

c) Moksha Dharma Parva (Chapters 174 to 365 & 7351 Shlokas): Behaviour and rules to achieve moksha (emancipation, release, freedom).

### Bhagavad Gita

The emphasis of Bhagavad Gita is "Dharma". Dharma means righteousness; accountability of self, family, organisation and society for order and progress. It is the right path, which will uphold the family, organisational and the social fabric. Hence, it helps in the long-term upliftment of all living beings and ensures welfare of society. Some of the important aspects of governance touched upon in this epic of Mahabharata based on the above ethical principles:-

a) Public Interest should be given priority over private or personal interest.

b) Uphold Dharma regardless of conflict of interest, following the principle of "Sva-Dharma" (meaning own dharma), which is unique to that person.

c) Transparency should be maintained in demonstrating the path of Dharma.

### Arthashastra

Kautilya's Arthashastra is considered to be one of the ancient Indian discourses on statecraft, economic policy, and military strategy, written in Sanskrit. "Kautilya" also known as Chanakya was a scholar at Takshashila. He was also the teacher and guardian of Emperor Chandragupta Maurya, the creator of the Mauryan Empire. Though, Arthashasthra was literally meant to deal with the discipline of politics, its scope in fact is much wider.

The scope of Arthasastra is wide enough to cover the nature of government, law, civil and criminal court systems, ethics, economics, markets and trade, the methods for screening ministers, diplomacy, theories of war, nature of peace, and the duties and obligations of a king.

According to Arthashastra, the King has a major responsibility towards ensuring a strong governance framework. Some of the important aspects of the governance framework to which the King should give attention are briefly discussed below: -

i) King is a servant of the Kingdom / State.

ii) Leaders should be responsive, accountable and removable.

iii) Strict ethical guidelines and code of conduct.

iv) Emphasis of Stakeholder concept.

v) Effective Administration.

In the context of today's corporate world, a well governed corporate entity which sets high standards of governance following the above and other applicable principles of Arthashastra will always stand out distinctly in the eyes of the stakeholder as compared to other corporates.

## THEORIES OF BUSINESS ETHICS

**The theories of business ethics can be divided into two categories:**

1. Teleological theories, and
2. Deontological theories.

**1. Teleological Theories:**

The term 'teleological' is derived from the Greek word 'telos' which means an end. According to teleological theories the Tightness of an action is determined solely by its consequences rather than by any feature of the action itself. Actions that result in greatest possible balance of good or evil are considered ethical. Thus, teleological theories are based on the concept of goodness.

Now the question is which is good and what is evil. In classical utilitarianism, pleasure is regarded good, and pain is considered evil. In broader terms, goodness is human well-being.

**Bentham and Mill explained the doctrine of utilitarianism:**

**i. The Principle of Utility:**

**Jeremy Bentham (1748-1832) explains this principle as follows:**

"By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appear to have to augment or diminish the happiness of the party whose interest is in question – or, what is the same thing in other words, to promote or to oppose that happiness."

Thus, the consequences of an action are measured in terms of the pleasure and pain caused to different individuals. Bentham suggested a procedure called hedonistic calculus for this purpose.

Bentham's theory is criticised for two reasons. First, it is not always possible to measure in quantities the pleasure and pain caused by an action. Second, pleasure does not constitute human well-being. Even pigs are capable of pleasure and his theory is criticised as a 'pig philosophy' fit only for swine.

According to critics, one absurd consequence of Bentham's principle is that it would be better to live the life of a satisfied pig than that of a dissatisfied human being such as Socrates. For human beings, friendship and aesthetic enjoyment are as good as pleasure.

**ii. The Principle of Utilitarianism:**

John Stuart Mill (1806-1873) modified the principle of utility by recognising that pleasures differ in their quality which is an important as the quantity of pleasure. Mill concluded, "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fools, or the pig, are of a different opinion, it is because they know only their side of the question."

**Thus, there are two forms of utilitarianism:**

(a) Action utilitarianism under which an action is right if and only if it produces the greatest balance of pleasure over pain for everyone. For example, telling a lie or breaking a promise is right if its consequences are better than those of any alternative course of action. Thus, classical utilitarianism does not require observing rules such as "Tell the Truth."

(b) Rule Utilitarianism under which an action is right if and only if it confirms to generally accepted rules and produces the greatest balance of pleasure over pain.

Act utilitarianism is simple and easily understood. But rule utilitarianism is morally more sound and does not require calculating the consequences of each action.

**The principle of utilitarianism consists of the following elements:**

(1) Consequentialism – The Tightness of any action depends solely on its consequences.

(2) Hedonism – Pleasure alone is good.

(3) Maximisation – A right action is one that creates greatest amount of net pleasure.

(4) Universalism – Everyone's consequences are alike.

**2. Deontological Theories:**

The term 'deontological' is derived from the Greek word 'deon' which means duty. Duty or obligation is the fundamental concept in deontological theories. According to deontological theories certain actions are right not due to some benefit to self or others but due to their basic nature or the rules underlying them. For example, bribery by its very nature is wrong irrespective of its consequences.

Similarly, the Golden Rule "Do unto others as you want them do unto you" appeals to human dignity and respect for others.

**W.D. Ross, the 20th century Britisher philosopher has given the following moral rules:**

(i) Duties of Fidelity — to keep promises, both explicit and implicit, and to tell the truth.

(ii) Duties of Reparation — to compensate people for injury that we have wrongfully inflicted on them.

(iii) Duties of Gratitude — to return favours that others do for us.

(iv) Duties of Justice — to ensure that goods are distributed according to people's merits.

(v) Duties of Beneficence — to do whatever we can to improve the condition of others.

(vi) Duties of Self-improvement — to improve our own condition with respect to virtue and intelligence.

(vii) Duties of Non-maleficence — to avoid injury to other.

Thus, deontological theories refute the argument that consequences determine what we ought to do. Actions are right or wrong not because of their consequences but because of our duty or obligation.

## CONCEPT OF MANAGEMENT Vs. OWNERSHIP

Theoretically, shareholders own the company and hence the company ought to work according to the dictates of the shareholders. However, it is not practically possible for each shareholder to participate in the decision-making process on a day-to-day basis. Further shareholders generally cannot know and manage the full details of a corporation's business (nor do many wish to), they elect a board of directors to make broad corporate policy.

Companies allow for the separation of ownership and management. That means that owners don't need to be managers and managers don't need to be owners. In most small corporations, the owners typically manage the company but it is not necessary that owners run the company or are even involved in the day-to- day operations of the company.

## CONCEPT OF MAJORITY RULE Vs. MINORITY INTEREST

As a company is an artificial person with no human existence, it functions through the instrumentality of the board of directors who is guided by the wishes of the majority, subject, of course, to the welfare of the company as a whole.

It is, therefore, a cardinal rule of company law that prima facie a majority of members of the company are entitled to exercise the powers of the company and generally to control its affairs.

The rule of majority was established way back in 1843 in the case of Foss v. Harbottle [1843] 67 ER 189 wherein it was held that the Courts would not generally interfere with the decisions of the company which it was empowered to take insofar they had been approved of by the majority and made exceptions to breaches of charter documents, fiduciary duties and frauds or oppression and inadequate notice to the shareholders.

> The concept of *Majority Rule* Vs. *Minority Interest* has been explained in detail in Paper No. 6: Resolution of Corporate Disputes, Non-Compliances and Remedies, under Lesson 1: Shareholders' Democracy.

## ROOTS OF CORPORATE GOVERNANCE IN INDIAN ETHOS

The concept of corporate governance in India has ancient connections. There is a great deal of similarity in the governance structures of the ancient kingdoms and modern corporations as is evident from our ancient text and scriptures like Vedas, Manu Smriti, Somadevaneetistuti, Baharspatya Neetistuti, Arthashastra etc. which focuses on good governance. All Upanishads, Vedas, and the Epic Kavyas like Mahabharata, Ramayana and Bhagwad Gita emphasize the essence of ethics being followed from within, be it Individual or be it the King or be it the whole kingdom. Further, all religious teachings or philosophical writing contain some directives on governance.

**Ramayana:** The Ramayana, the saga of Rama's life written by Valmiki, is widely acclaimed as among the greatest of all Indian epics. In fact, this famous Grantha carries useful tips on ethics and values, statecraft and politics, and even general and human resources management. With Rama Rajya as a model for good governance, the Ramayana is a must read for practitioners of statecraft.

**Bhagwad Gita:** In Bhagwad Gita, Lord Krishna details the divine treasure as fearlessness, purity of heart, steadfastness in knowledge and yoga, charity, self control, and sacrifice, study of scriptures, austerity and uprightness. The Bhagavad Gita emphasized the concept of duty and its importance for good leadership.

**Mahabharata:** Shanti Parva which is the part of Indian Epic Mahabharata recites the duties of the ruler, dharma and good governance, as counselled by the dying Bhishmato Yudhishthira and various Rishis. Shanti parva recites a theory of governance and duties of a leader. The Shanti parva dedicates over 100 chapters on duties of a king and rules of proper governance. A prosperous kingdom must be guided by truth and justice. The duty of a ruler and his cabinet is to enable people to be happy, pursue truth and act sincerely. The proper function of a ruler is to rule according to dharma; he should lead a simple life and he should not use his power to enjoy the luxuries of life. Shanti parva asserts rulers have a dharma (duty, responsibility) to help the upliftment of all living beings. The best law, claims Shanti parva, is one that enhances the welfare of all living beings, without injuring any specific group.

**Arthashastra:** Kautilya's Arthashastra maintains that for good governance, all administrators, including the king are considered servants of the people. Good governance and stability are completely linked. If rulers are responsive, accountable, removable, recallable, there is stability. If not there is instability. These tenets hold good even today.

| **Kautilya's fourfold duty of a king–** | The substitution of the state with the corporation, the king with the CEO or the board of a corporation, and the subjects with the shareholders, bring out the quintessence of corporate governance, because central to the concept of corporate governance is the belief that public good should be ahead of private good and that the corporation's resources cannot be used for personal benefit. |
|---|---|
| **Raksha** | **Raksha –** literally means protection, in the corporate scenario it can be equated with the risk management aspect. |
| **Vriddhi** | **Vriddhi** – literally means growth, in the present day context can be equated to stakeholder value enhancement |
| **Palana** | **Palana** – literally means maintenance/compliance, in the present day context it can be equated to compliance to the law in letter and spirit. |
| **Yogakshema** | **Yogakshema** – literally means well being and in Kautilya's Arthashastra it is used in context of a social security system. In the present day context it can be equated to corporate social responsibility. |

## CORPORATE GOVERNANCE – CONTEMPORARY DEVELOPMENTS IN INDIA

"Corporate Governance is the acceptance by management of the in a lienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company."

Report of N. R. Narayana Murthy Committee on Corporate Governance constituted by SEBI (2003)

The initiatives taken by Government of India in 1991, aimed at economic liberalization, privatization and globalisation of the domestic economy, led India to initiate reform process in order to suitably respond to the developments taking place world over. On account of the interest generated by Cadbury Committee Report, the Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted Committees to recommend initiatives in Corporate Governance.

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|---|---|
| **1998**<br>**Desirable Corporate Governance: A Code** | CII took a special initiative on Corporate Governance, the first institution initiative in Indian Industry. The objective was to develop and promote a code for Corporate Governance to be adopted and followed by Indian companies, whether in the Private Sector, the Public Sector, Banks or Financial Institutions, all of which are corporate entities. The final draft of the said Code was widely circulated in 1997. In April 1998, the Code was released. It was called Desirable Corporate Governance: A Code. |
| **1999**<br>**Kumar Mangalam Birla Committee** | The Securities and Exchange Board of India (SEBI) had set up a Committee on May 7, 1999 under the Chairmanship of Kumar Mangalam Birla to promote and raise standards of corporate governance. The Report of the committee was the first formal and comprehensive attempt to evolve a Code of Corporate Governance, in the context of prevailing conditions of governance in Indian companies, as well as the state of capital markets at that time. The recommendations of the Report, led to inclusion of Clause 49 in the Listing Agreement in the year 2000. |
| **2000**<br>**Task Force on Corporate Excellence through Governance** | In May 2000, the Department of Company Affairs [now Ministry of Corporate Affairs (MCA)] formed a broad-based study group under the chairmanship of Dr. P.L. Sanjeev Reddy, Secretary, DCA. The group was given the ambitious task of examining ways to “operationalise the concept of corporate excellence on a sustained basis”, so as to “sharpen India’s global competitive edge and to further develop corporate culture in the country”. In November 2000, a Task Force on Corporate Excellence set up by the group produced a report containing a range of recommendations for raising governance standards among all companies in India. It also suggested the setting up of a Centre for Corporate Excellence. |
| **2002**<br>**Naresh Chandra Committee** | The Enron debacle of 2001 involving the hand-in-glove relationship between the auditor and the corporate client, the scams involving the fall of the corporate giants in the U.S. like the WorldCom, Qwest, Global Crossing, Xerox and the consequent enactment of the stringent Sarbanes Oxley Act in the U.S. were some important factors which led the Indian Government to wake up and in the year 2002, Naresh Chandra Committee was appointed to examine and recommend inter alia amendments to the law involving the auditor-client relationships and the role of independent directors. |
| **2003**<br>**N. R. Narayana Murthy Committee** | In the year 2002, SEBI analyzed the statistics of compliance with the clause 49 by listed companies and felt that there was a need to look beyond the mere systems and procedures if corporate governance was to be made effective in protecting the interest of investors. SEBI therefore constituted a Committee under the Chairmanship of Shri N. R. Narayana Murthy, for reviewing implementation of the corporate governance code by listed companies and for issue of revised clause 49 based on its recommendations. |

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| **2004**<br>**Dr. J. J. Irani Committee on Company Law** | The Government constituted a committee under the Chairmanship of Dr. J. J. Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that would be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever- changing business models.<br>The Committee recommended that effective measures be initiated for protecting the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices. With a view to protect the interest of various stakeholders, the Committee also recommended the constitution of a "Stakeholders' Relationship Committee" and provision of duties of directors in the Act with civil consequences for non- performance. |
| **2009**<br>**CII's Task Force on Corporate Governance** | In 2009, CII's Task Force on Corporate Governance gave its report and suggested certain voluntary recommendations for industry to adopt. |
| **2009**<br>**Corporate Governance Voluntary Guidelines** | Inspired by the industry recommendations, the MCA, in late 2009, released a set of voluntary guidelines on corporate governance. The Guidelines were derived out of the unique challenges of the Indian economy, and took cognizance of the fact that all agencies need to collaborate together, to ensure that businesses flourish, even as they contribute to the wholesome and inclusive development of the country. The Guidelines emphasized that responsible businesses alone will be able to help India meet its ambitious goal of inclusive and sustainable all round development. It urged businesses to embrace the "triple bottom-line" approach whereby their financial performance could be harmonized with the expectations of society, the environment and the many stakeholders in a sustainable manner. |
| **2010**<br>**NASSCOM Recommendations** | Corporate Governance and Ethics Committee of the National Association of Software and Services Companies (NASSCOM) issued recommendations in mid-2010, focusing on the stakeholders of the company. |
| **2012**<br>**Policy Document on Corporate Governance** | The Ministry of Corporate Affairs constituted a Committee to formulate a Policy Document on Corporate Governance under the chairmanship of Mr. Adi Godrej with the President ICSI as Member Secretary/ Convenor.<br>The Policy Document sought to synthesize the disparate elements in the diverse guidelines, draw on innovative best practices adopted by specific companies, incorporate current international trends and anticipate emerging demands on corporate governance in enterprises in various classes and scale of operations.<br>The Adi Godrej Committee submitted its report which was articulated in the form of 17 Guiding Principles of Corporate Governance. |

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| **2013**<br>**Companies Act** | The Companies Act, 2013 brought with it radical changes in the sphere of Corporate Governance in India. It provided a major overhaul in Corporate Governance norms and sought to have far-reaching implications on the manner in which corporate operates in India. The Act has since been amended thrice – in 2015, 2017 and 2019. The Amendments impacts different aspects of business management in India, including key structuring, disclosure, and compliance requirements. |
| **2015**<br>**SEBI (Listing Obligations and Disclosure Requirements) Regulations** | With a view to consolidate and streamline the provisions of the erstwhile listing agreements for different segments of the capital market and the provisions pertaining to listed entities with the Companies Act, 2013, the SEBI notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the listed entities having listed designated securities on recognized stock exchanges. The provisions of Corporate Governance in SEBI (LODR) Regulations, 2015 are discussed at relevant places in this study material. |
| **2017**<br>**Uday Kotak Committee** | The SEBI Committee on corporate governance was formed in June 2017 under the Chairmanship of Mr.Uday Kotak with the aim of improving standards of corporate governance of listed companies in India.<br>With the aim of improving standards of Corporate Governance of listed companies in India, the Committee was requested to make recommendations to SEBI on the following issues:<br>● Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;<br>● Improving safeguards and disclosures pertaining to Related Party Transactions;<br>● Issues in accounting and auditing practices by listed companies;<br>● Improving effectiveness of Board Evaluation practices;<br>● Addressing issues faced by investors on voting and participation in general meetings;<br>● Disclosure and transparency related issues, if any;<br>● Any other matter, as the Committee deems fit pertaining to corporate governance in India.<br>The Committee submitted its report to SEBI in October 2017. The recommendations of the Committee were given in 11 Chapters as follows:<br>● Composition and Role of the Board of Directors<br>● The Institution of Independent Directors<br>● Board Committees<br>● Enhanced Monitoring of Group Companies |

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| | - Promoters/Controlling Shareholders and Related Party Transactions<br>- Disclosures and Transparency<br>- Accounting and Audited related Issues<br>- Investors participation in Meetings of Listed Entities<br>- Governance aspects of Public Sector Enterprises<br>- Leniency Mechanism<br>- Capacity building in SEBI for enhancing Corporate Governance in Listed Entities<br><br>In its board meeting on March 27, 2018, SEBI, after detailed consideration and due deliberation, accepted several recommendations of the Kotak Committee without any modifications and accepted a few other recommendations with certain modifications as to timelines for implementation, applicability thresholds among others. Some of the major changes accepted relate to:<br><br>- Increasing Transparency -Enhanced Disclosure Requirements<br>- Disclosure of Utilization of Funds from Qualified Institutional Placement (QIP) / Preferential Issues<br>- Disclosures of Auditor Credentials, Audit Fee, Reasons for Resignation of Auditors<br>- Disclosure of Expertise/Skills of Directors<br>- Enhanced Disclosure of Related Party Transactions (RPT)-A<br>- Mandatory Disclosure of Consolidated Quarterly Results with effect from Financial Year 2019-2020-<br>- Reshaping the Institution of the Board of Directors and Enhancing the Role of Committees of the Board<br>- Separation of the office of the chairperson (i.e. the leader of the board) and CEO/ MD (i.e. the leader of the management)<br>- Augmenting board strength and diversity<br>- Enhanced Quorum<br>- Capping the Maximum Number of Directorships<br>- Expanded Eligibility Criteria for Independent Directors<br>- Enhanced Role of committees<br>- Down-streaming Corporate Governance<br>- Enhanced Obligations on Listed Entities with Respect to Subsidiaries<br>- Secretarial Audit to be Mandatory for Listed Entities and their Material Unlisted Subsidiaries |

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| **2019**<br>**National Guidelines on Responsible Business Conduct (NGRBC)** | Ministry of Corporate Affairs propounded the National Guidelines on Responsible Business Conduct (NGBRC).<br>The NGRBC are designed to be used by all businesses, irrespective of their ownership, size, sector, structure or location.<br>It is expected that all businesses investing or operating in India, including foreign multinational corporations (MNCs) will follow these guidelines. Correspondingly, the NGRBC also provide a useful framework for guiding Indian MNCs in their overseas operations, in addition to aligning with applicable local national standards and norms governing responsible business conduct.<br>The principles of NGRBC are-<br>1. Businesses should conduct and govern themselves with integrity in a manner that is Ethical, Transparent and Accountable.<br>2. Businesses should provide goods and services in a manner that is sustainable and safe<br>3. Businesses should respect and promote the well-being of all employees, including those in their value chains.<br>4. Businesses should respect the interests of and be responsive to all their stakeholders.<br>5. Businesses should respect and promote human rights.<br>6. Businesses should respect and make efforts to protect and restore the environment.<br>7. Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.<br>8. Businesses should promote inclusive growth and equitable development.<br>9. Businesses should engage with and provide value to their consumers in a responsible manner. |
| **2020**<br>**Guidelines on Integrity and Transparency in Governance and Responsible Code of Conduct, The CII Code 2020** | Keeping in mind the leadership position that Indian industry is aiming and in view of the fact that companies have to continue to work towards ensuring that business priorities are complemented with responsible governance initiatives and ethical actions, CII brought out the mentioned guidelines. The recommendations made under the Guidelines on Integrity and Transparency in Governance and Responsible Code of Conduct are as under:<br>1. Integrity, Ethics and Governance.<br>2. Responsible Governance and Citizenship.<br>3. Role of High performing Board.<br>4. Balance Interests of Stakeholders.<br>5. Independent Directors and Women Directors.<br>6. Safe Harbours for Independent Directors: Easier settlement norms and amnesty provisions.<br>7. Risk Management. |

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| | 8. Succession Planning.<br>9. Role of the Audit Committee.<br>10. Improving audit quality, and enhancing accountability of third parties who play a fiduciary role.<br>11. Disclosure and transparency related issues.<br>12. Vigil Mechanism.<br>13. Stakeholder, Vendor and Customer Governance.<br>14. Investor Activism.<br>15. Start-ups and MSMEs. |
| **2020**<br>**Report of the Committee on Business Responsibility Reporting** | In 2018, while the NVGs were being updated, it was decided that the SEBI-BRR framework should also be revised to reflect the changes made in the base document. The Secretary, Corporate Affairs, constituted a Committee under the chairmanship of Joint Secretary, MCA, to prepare the Business Responsibility Reporting (BRR) formats for both, listed and unlisted companies.<br>The Committee followed certain principles for developing the proposed formats:<br>1. The base document was the Business Responsibility Reporting Framework in Chapter 5 of NGRBCs.<br>2. The NGRBC-BRR framework was examined in the context of the current SEBI-BRR filings, SDGs, UNGPs, and the prevalent non-financial reporting frameworks to formulate a holistic, all-encompassing format containing the essential elements of non-financial sustainability reporting.<br>3. The formats were developed to serve as a single comprehensive source of non-financial, sustainability information relevant to all business stakeholders - investors, shareholders, regulators, and public at large.<br>4. The formats were developed to be simple, and mindful of the burden and cost of compliance by businesses so as not be onerous or repetitive.<br>5. The information sought in the formats is a mix of quantitative and qualitative data. Quantitative data allows for easy measurement and comparability across companies, sectors, and in time.<br>Qualitative data helps capture the unique ways in which organisations have implemented and embedded responsible business conduct. These may be adopted and adapted by other businesses to their contexts.<br>6. The formats were developed for all companies - listed as well as unlisted. However, different reporting requirements have been considered for different classes of companies, especially smaller companies.<br>7. The formats were developed as questionnaires which allow businesses to disclose aspects material to them, are amenable to measurement, comparable, reliable, and, machine readable.<br>8. The formats were developed with a view to be filled electronically and integrated with the MCA21 database. |

## INTERNATIONAL REGULATORY FRAMEWORK

| Sl. No. | Description |
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| 1. | U.K Stewardship Code 2020 |
| 2. | Sarbanes-Oxley Act, 2002 |
| 3. | U.K Corporate Governance Code, 2018 |
| 4. | Corporate Governance Principles and Recommendations, Australia, 2019 |
| 5. | Code of Corporate Governance, Singapore, 2018 |
| 6. | King IV Report on Corporate Governance, South Africa, 2016 |
| 7. | OECD Principles of Corporate Governance |
| 8. | Finnish Corporate Governance Code 2020 |
| 9. | Italian Corporate Governance Code |
| 10. | Principles of Responsible Institutional Investors- Japanese Stewardship Code |

## STAGES OF CORPORATE GOVERNANCE ACROSS GLOBE

### Stages of Development of Corporate Governance in USA

After World War II, the United States of America (USA) experienced strong economic growth, which had a strong impact on the history of corporate governance. Corporations were thriving and growing rapidly. In the 1970s, the Securities and Exchange Commission (SEC) brought the issue of corporate governance to the forefront when they took a stance on official corporate governance reforms. In 1976, the term “corporate governance” first appeared in the Federal Register, the official journal of the federal government.

| Years | Developments |
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| 1977<br>The Foreign Corrupt Practices Act | Provided for specific provisions regarding establishment, maintenance and review of systems of internal control. |
| 1979<br>US Securities Exchange Commission | Prescribed mandatory reporting on internal financial controls. |
| 1985<br>Treadway commission | Emphasized the need of putting in place a proper control environment, desirability of constituting independent boards and its committees and objective internal audit function. As a consequence, the Committee of Sponsoring Organisations (COSO) took birth. |
| 1992<br>COSO issued Internal Control – Integrated Framework. | The Committee of Sponsoring Organizations of the Treadway Commission (COSO) issued Internal Control – Integrated Framework. It is a framework “to help businesses and other entities assess and enhance their internal control systems”. |

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| 2002<br>Sarbanes – Oxley (SOX) Act | The Act made fundamental changes in virtually every aspect of corporate governance in general and auditor independence, conflict of interests, corporate responsibility, enhanced financial disclosures and severe penalties for willful default by managers and auditors, in particular. |
| The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010 | The Dodd-Frank Act places strict regulations on lenders and banks in an effort to protect consumers and prevent another all-out economic recession. Dodd-Frank also created several new agencies to oversee the regulatory process and implement certain changes. |

## Development of Corporate Governance in Union Kingdom (UK)

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| 1992<br>Cadbury Report | The Committee on the Financial Aspects of Corporate Governance under the chairmanship of Sir Adrian Cadbury was set up in May 1991 by the Financial Reporting Council, the Stock Exchange and the accountancy profession in response to continuing concerns about standards of financial reporting and accountability, particularly in light of the BCCI and Maxwell cases. The Committee submitted its report in 1992 and developed a set of principles of good corporate governance which were incorporated into the London Stock Exchange (LSE)'s Listing Rules. It also introduced the principle of 'comply or explain'. It made the following three basic recommendations: |
| | • the CEO and Chairman of companies should be separated;<br>• boards should have at least three non-executive directors, two of whom should have no financial or personal ties to executives; and<br>• each board should have an audit committee composed of non- executive directors. |
| 1995<br>Greenbury Report | The Confederation of British Industry constituted a group under the chairmanship of Sir Richard Greenbury to make recommendations on Directors' Remuneration. The group submitted its report in 1995, its major findings were as under:<br>• Constitution of a Remuneration Committee comprising of Non- Executive Directors<br>• Responsibility of this committee in determining the remuneration of CEO and executive directors<br>• Responsibility of the committee in determining the remuneration policy.<br>• Level of disclosure to shareholders regarding the remuneration of directors'.<br>• Remuneration should be linked more explicitly to performance.<br>These findings were incorporated in Code of Best Practice on Directors' Remuneration of the Report. The majority of the recommendations were incorporated in Listing Rules of London Stock Exchange. |
| 1998<br>Hampel Report | The Hampel Committee was established in November, 1995 to review and revise the earlier recommendations of the Cadbury and Greenbury Committees. An important development was in the area of accountability and audit. The Board was identified as having responsibility to maintain a sound system of internal control, |

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| | thereby safeguarding shareholders' investments. Further, the Board was to be held accountable for all aspects of risk management. Recommendations of this Report and further consultations by the London Stock Exchange became the Combined Code on Corporate Governance. |
| 1998<br>Combined Code Corporate Governance | The resulting Hampel Report led to the publication of Combined Code which applied to all listed companies. It added that:<br>● the Chairman of the board should be seen as the "leader" of the non- executive directors;<br>● institutional investors should be responsible to make considered use of their vote; and<br>● all kinds of remuneration including pensions should be disclosed. |
| 1999<br>Turnbull Report | The Turnbull Committee was established to provide direction on the internal control requirements of the Combined Code, including how to carry out risk management. The report informs directors of their obligations under the Combined Code with regard to keeping good "internal controls" in their companies, or having good audits and checks to ensure the quality of financial reporting and catch any fraud before it becomes a problem. Turnbull Committee published **"Internal Control Guidance for Directors on Combined Code".** |
| 2001<br>Myners : Review of Institutional Investment | Paul Myners **'Institutional Investment in the UK: A Review'** published in 2001, was commissioned by the Government, 'to consider whether there were factors distorting the investment decision-making of institutions.' The analysis contained in the Report pointed to a number of problems with the existing structures used by the various types of institutional investors to make investment decisions. |
| 2003<br>Higgs Report | Sir Derek Higgs was commissioned by the UK Government to review the roles of independent directors and of audit committees. The resulting Report proposed that:<br>● at least half of a board (excluding the Chair) be comprised of non- executive directors;<br>● that the non-executives should meet at least once a year in isolation to discuss company performance;<br>● that a senior independent director be nominated and made available for shareholders to express any concerns to; and<br>● that potential non-executive directors should satisfy themselves that they possess the knowledge, experience, skills and time to carry out their duties with due diligence. |
| 2003 | The Financial Reporting Council published the Smith Report, "Guidance on Audit Committees".<br>The Tyson Report on the recruitment and development of non- executive directors commissioned by the Department of Trade and Industry. |

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| 2009<br>Walker Review of Corporate Governance of UK Banking Industry | The principal focus of this Review was on banks, but many of the issues arising, and associated, conclusions and recommendations, are relevant – if in a lesser degree – for other major financial institutions such as life assurance companies. The terms of reference were as follows:<br>*"To examine corporate governance in the UK banking industry and make recommendations, including in the following areas: the effectiveness of risk management at board level, including the incentives in remuneration policy to manage risk effectively; the balance of skills, experience and independence required on the boards of UK banking institutions; the effectiveness of board practices and the performance of audit, risk, remuneration and nomination committees; the role of institutional shareholders in engaging effectively with companies and monitoring of boards; and whether the UK approach is consistent with international practice and how national and international best practice can be promulgated."* |
| 2011<br>Sharman Inquiry | The Financial Reporting Council announced the launch of an enquiry led by Lord Sharman to identify lessons for companies and auditors addressing going concern and liquidity risk. |
| 2018<br>UK Corporate Governance Code | In November 2016, the Department for Business, Energy and Industrial Strategy (BEIS) published a Green Paper on corporate governance reforms which focused on executive pay and strengthening the voice of employees and other stakeholders in the boardroom. Consequently, FRC made an announcement in February 2017 to take account of the issues raised in the BEIS Green Paper by undertaking a fundamental review of UK Code of Corporate Governance. |
| | On 29 August 2017, the Government identified a number of proposals that it intended to take forward, including inviting the FRC to initiate a consultation with the aim of revising the UK Corporate Governance Code in a number of key areas. On 5 December, 2017 the FRC published for consultation proposed revisions to the UK Corporate Governance Code and Guide on Board Effectiveness.<br>The Financial Reporting Council (FRC) published its new 2018 UK Corporate Governance Code (2018 Code) on July 16, 2018, together with revised Guidance on Board Effectiveness (Guidance) which supplements the 2018 Code by suggesting good practice to assist companies in applying the 2018 Code's Principles and reporting on that application.<br>The 2018 Code sets higher standards of corporate governance in the UK so as to promote transparency and integrity in business and, at the same time, attract investment in the UK in the long-term, benefiting the economy and wider society.<br>The 2018 Code emphasizes the importance of positive relationships between companies, shareholders and stakeholders, a clear purpose and strategy aligned with healthy corporate culture, high quality board composition and a focus on diversity, and remuneration which is proportionate and supports long-term success. |

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| 2020<br>The UK Stewardship Code 2020 | Stewardship is the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.<br>The UK Stewardship Code 2020 is a substantial and ambitious revision to the 2012 edition of the Code which took effect from 1 January 2020.The UK Stewardship Code 2020 (the Code) sets high stewardship standards for asset owners and asset managers, and for service providers that support them. The Code comprises a set of 'apply and explain' Principles for asset managers and asset owners, and a separate set of Principles for service providers. The Code does not prescribe a single approach to effective stewardship. Instead, it allows organisations to meet the expectations in a manner that is aligned with their own business model and strategy.<br>The Code consists of 12 Principles for asset managers and asset owners, and 6 Principles for service providers. |

## CORPORATE GOVERNANCE CODES IN MAJOR JURISDICTIONS ACROSS THE WORLD

Corporate governance is a critical factor in economic stability and organisational success. In the last few decades, many emerging markets, international bodies, governments, financial institutions, public and private sector bodies have reformed their corporate governance systems and are encouraging debate and spearheading initiatives towards good corporate governance. Better regulatory and self-regulatory corporate governance frameworks and enforcement mechanisms are being implemented through tougher legislations and Corporate Governance Codes.

The legislative framework of corporate governance adopted by some countries like USA, UK, Australia, Singapore and South Africa are discussed below.

### Corporate Governance Framework in USA

The companies in U.S are governed by a variety of legal regimes relating to corporate governance matters. These consist of state laws and federal statutory rules and regulations of various government agencies including rules promulgated by U.S. Securities and Exchange Commission (the SEC) and self regulatory organizations such as stock exchanges that impose requirements on companies whose securities are listed on such stock exchanges.

The primary sources of federal rules and regulations include the Securities Act of 1933 and the Securities Exchange Act of 1934 and the regulations framed under those Acts.

Other regulations imposing disclosure and compliance requirements include the Sarbanes Oxley Act of 2002 and the Dodd-Frank Wall Street reform and Consumer Protection Act of 2010.

Also, major stock exchanges like NYSE and NASDAQ provides for the rules pertaining to corporate governance matters which companies must comply as a condition to being listed on the stock exchange.

**U.S. Securities and Exchange Commission (SEC):** The aim of U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. The SEC is concerned primarily with promoting the disclosure of important market- related information, maintaining fair dealing, and protecting against fraud.

## Sarbanes-Oxley Act of 2002

In 2002, the United States Congress passed the Sarbanes-Oxley Act (SOX) to protect shareholders and the general public from accounting errors and fraudulent practices in enterprises, and to improve the accuracy of corporate disclosures. Congressmen Paul Sarbanes and Michael Oxley drafted the act with the goal of improving corporate governance and accountability, in light of the financial scandals that occurred at Enron, WorldCom, and Tyco, among others.

The act sets deadlines for compliance and publishes rules on requirements. The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and also created the "Public Company Accounting Oversight Board," also known as the PCAOB, to oversee the activities of the auditing profession. The Act became effective since 2006 for all publicly-traded companies which are required to implement and report to the SEC for compliance. In addition, certain provisions of Sarbanes-Oxley also apply to privately-held companies.

The summary highlights of the most important Sarbanes-Oxley sections for compliance are listed below.

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| SOX Section 302<br>Corporate Responsibility for Financial Reports | a) CEO and CFO must review all financial reports.<br>b) Financial report does not contain any misrepresentations.<br>c) Information in the financial report is "fairly presented".<br>d) CEO and CFO are responsible for the internal accounting controls.<br>e) CEO and CFO must report any deficiencies in internal accounting controls, or any fraud involving the management of the audit committee.<br>f) CEO and CFO must indicate any material changes in internal accounting controls. |
| SOX Section 401<br>Disclosures in Periodic Reports | All financial statements and their requirement to be accurate and presented in a manner that does not contain incorrect statements or admit to state material information. Such financial statements should also include all material off-balance sheet liabilities, obligations, and transactions. |
| SOX Section 404<br>Management Assessment of Internal Controls | All annual financial reports must include an Internal Control Report stating that management is responsible for an "adequate" internal control structure, and an assessment by management of the effectiveness of the control structure. Any shortcomings in these controls must also be reported. In addition, registered external auditors must attest to the accuracy of the company management's assertion that internal accounting controls are in place, operational and effective. |
| SOX Section 409<br>Real Time Issuer Disclosures | Companies are required to disclose on a almost real-time basis information concerning material changes in its financial condition or operations. |
| SOX Section 802<br>Criminal Penalties for Altering Documents | This section specifies the penalties for knowingly altering documents in an ongoing legal investigation, audit, or bankruptcy proceeding. |

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| SOX Section 806<br>Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud | This section deals with whistleblower protection. |
| SOX Section 902<br>Attempts & Conspiracies to Commit Fraud Offenses | It is a crime for any person to corruptly alter, destroy, mutilate, or conceal any document with the intent to impair the object's integrity or availability for use in an official proceeding. |
| SOX Section 906<br>Corporate Responsibility for Financial Reports | Section 906 addresses criminal penalties for certifying a misleading or fraudulent financial report. Under SOX 906, penalties can be upwards of $5 million in fines and 20 years in prison. |

## SEC proposal on corporate Climate Related Disclosures

On March 21, 2022 the U.S. Securities and Exchange Commission proposed rule changes requiring companies to disclose certain climate-related information, ranging from greenhouse gas emissions to expected climate risks to transition plans. Drawing from the TCFD framework, the proposals would provide investors with consistent, comparable, and decision-useful information for making investment decisions, and consistent and clear reporting obligations for issuers.

*Highlights of the SEC's Climate Disclosure Proposal*

- Climate-related risks and their actual or likely material impacts on business, strategy, and outlook.
- Details about governance practices on climate-related risks and relevant risk management processes.
- Scope 1 and Scope 2 greenhouse gas emissions, which would require attestation reports for accelerated filers.
- Scope 3 emissions if either of two conditions are present: 1) If Scope 3 emissions are material to the company or 2) if the company has set an emissions target or goal that includes Scope 3 emissions.
- Certain climate-related financial statement metrics and related disclosures in a note to audited financial statements.
- Information about climate-related targets and goals, and transition plan, if any.

## Section 303A Corporate Governance Standards- NYSE

**General Application**

Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in the Section 303A. Consistent with the NYSE's traditional approach, as well as the requirements of the Sarbanes-Oxley Act of 2002, certain provisions of Section 303A are applicable to some listed companies but not to others.

**Equity Listings**

Section 303A applies in full to all companies listing common equity securities, with the following exceptions:

**Controlled Companies**

A listed company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Sections 303A.01, .04 or .05. A controlled company that chooses to take advantage of any or all of these exemptions must disclose that choice, that it is a controlled company and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. Controlled companies must comply with the remaining provisions of Section 303A.

**Limited Partnerships and Companies in Bankruptcy**

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Sections 303A.01, .04 or .05. However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Section 303A.

**Closed-End and Open-End Funds**

The Exchange considers the significantly expanded standards and requirements provided for in Section 303A to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, closed-end funds must comply with the requirements of Sections 303A.06, .07(a) and (c), and .12.

Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Commentary to 303A.07(a), which calls for disclosure of a board's determination with respect to simultaneous service on more than three public company audit committees. However, the other provisions of that paragraph will apply. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Section 303A applicable to domestic issuers other than Sections 303A.02 and .07(b). For purposes of Sections 303A.01, .03, .04, .05, and .09, a director of a business development company shall be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940. As required by Rule 10A-3 under the Exchange Act, open-end funds (which can be listed as Investment Company Units, more commonly known as Exchange Traded Funds or ETFs) are required to comply with the requirements of Sections 303A.06 and .12(b) and (c).

Rule 10A-3(b)(3)(ii) under the Exchange Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. In view of the external management structure often employed by closed-end and open-end funds, the Exchange also requires the audit committees of such companies to establish such procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the management company, as well as employees of the management company. This responsibility must be addressed in the audit committee charter.

**Other Entities**

Except as otherwise required by Rule 10A-3 under the Exchange Act (for example, with respect to open-end funds), Section 303A does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities (such as those described in Sections 703.16, 703.19, 703.20 and 703.21). To the extent that Rule 10A-3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Sections 303A.06 and .12(b).

**Foreign Private Issuers**

Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Section 303A, except that such companies are required to comply with the requirements of Sections 303A.06, .11 and .12(b) and (c).

**Preferred and Debt Listings**

Section 303A does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A-3 under the Exchange Act, all companies listing only preferred or debt securities on the NYSE are required to comply with the requirements of Sections 303A.06 and .12(b) and (c).

## UK Corporate Governance Code, 2018

The Financial Reporting Council (FRC), an independent regulator in the UK and Ireland, is responsible for regulating auditors, accountants and actuaries and promotes transparency and integrity in business. The FRC sets the UK Corporate Governance and Stewardship Codes and UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries.

The FRC published its new **2018 UK Corporate Governance Code (2018 Code)** on July 16, 2018, together with revised **Guidance on Board Effectiveness** which supplements the 2018 Code by suggesting good practice to assist companies in applying the 2018 Code's Principles and reporting on that application.

The Code is applicable to all companies with a premium listing, whether incorporated in the UK or elsewhere. The new Code applies to accounting periods beginning on or after 1 January 2019.

The 2018 Code sets out the principles by which the board of directors should promote the purpose, values and future success of the company. The Code sets out standards of good practice in relation to issues such as leadership, effectiveness, accountability, remuneration, and relations with shareholders. The Code does not set out a rigid set of rules; instead it offers flexibility through the application of Principles and through 'comply or explain' Provisions and supporting guidance. It is the responsibility of boards to use this flexibility wisely and of investors and their advisors to assess differing company approaches thoughtfully.

The Listing Rules require companies to explain how they have applied the main principles of the Code and the extent to which they have complied with the detailed provisions. The main principles provided in the code are given hereunder.

| ***Heading*** | ***Principles*** |
|---|---|
| **BOARD LEADERSHIP AND COMPANY PURPOSE** | A. A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society.<br>B. The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.<br>C. The board should ensure that the necessary resources are in place for the company to meet its objectives and measure performance against them. The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.<br>D. In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.<br>E. The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern. |

| *Heading* | *Principles* |
|---|---|
| **DIVISION OF RESPONSIBILITIES** | F. The chair leads the board and is responsible for its overall effectiveness in directing the company. They should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information.<br>G. The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision-making. There should be a clear division of responsibilities between the leadership of the board and the executive leadership of the company's business.<br>H. Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.<br>I. The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently. |
| **COMPOSITION, SUCCESSION AND EVALUATION** | J. Appointments to the board should be subject to a formal, rigorous and transparent procedure, and an effective succession plan should be maintained for board and senior management.4 Both appointments and succession plans should be based on merit and objective criteria5 and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.<br>K. The board and its committees should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the board as a whole and membership regularly refreshed.<br>L. Annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively. |
| **AUDIT, RISK AND INTERNAL CONTROL** | M. The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.<br>N. The board should present a fair, balanced and understandable assessment of the company's position and prospects.<br>O. The board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the company is willing to take in order to achieve its long- term strategic objectives. |
| **REMUNERATION** | P. Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy. |

| Heading | Principles |
|---|---|
| | Q. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management10 remuneration should be established. No director should be involved in deciding their own remuneration outcome.<br>R. Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of company and individual performance, and wider circumstances. |

## Corporate Governance Principles and Recommendations, Australia - 2019

The ASX Corporate Governance Council ("Council"), convened in August 2002 is the organisation which brings together various business, shareholder and industry groups, each offering valuable insights and expertise on governance issues from the perspective of their particular stakeholders. Its primary work has been the development of the Principles and Recommendations.

The Corporate Governance Principles and Recommendations ("Principles and Recommendations") were first introduced in 2003. A second edition was published in 2007 and a third in 2014. In 2017, the Council agreed that it was an appropriate time to commence work on a fourth edition of the Principles and Recommendations to address emerging issues around culture, values and trust, fuelled by recent examples of conduct by some listed entities falling short of community standards and expectations.

The fourth edition comes into force for financial years commencing on or after 1 January 2020.

These Principles and Recommendations set out recommended corporate governance practices for entities admitted to the ASX official list as an ASX listing, regardless of the legal form they take, whether they are established in Australia or elsewhere, and whether they are internally or externally managed. The Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices that a listed entity must adopt.

The "if not, why not" approach is fundamental to the operation of the Principles and Recommendations. This approach ensures that the market receives an appropriate level of information about the entity's governance arrangements so that investors and other stakeholders can have a meaningful dialogue with the board and management on governance matters and can factor the information provided into their decision on whether or not to invest in the entity and how to vote on particular resolutions.

The Principles and Recommendations are structured around, and seek to promote, 8 central principles. There are 35 specific recommendations of general application intended to give effect to these principles, as well as 3 additional recommendations that only apply in certain limited cases.

## 8 Central Principles

1. **Lay solid foundations for management and oversight:** A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.
2. **Structure the board to be effective and add value:** The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.
3. **Instill a culture of acting lawfully, ethically and responsibly:** A listed entity should instill and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.

4. **Safeguard the integrity of corporate reports:** A listed entity should have appropriate processes to verify the integrity of its corporate reports.

5. **Make timely and balanced disclosure:** A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

6. **Respect the rights of security holders:** A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.

7. **Recognise and manage risk:** A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

8. **Remunerate fairly and responsibly:** A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders and with the entity's values and risk appetite.

## New Code of Corporate Governance, Singapore - 2018

The Code of Corporate Governance which is applicable to listed companies in Singapore on a comply-or-explain basis, first came into effect on 1 January 2003.

The Code aims to promote high levels of corporate governance in Singapore by putting forth Principles of good corporate governance and Provisions with which companies are expected to comply. The Practice Guidance complements the Code by providing guidance on the application of the Principles and Provisions and setting out best practices for companies. Adoption of the Practice Guidance is voluntary.

This version of the Code, has at its core broad Principles of corporate governance. Compliance with, and observation of, these Principles is mandatory. These Principles set out broadly accepted characteristics of good corporate governance. Companies are required to describe their corporate governance practices with reference to both the Principles and Provisions, and how the company's practices conform to the Principles.

**Principles**

1. The company is headed by an effective Board which is collectively responsible and works with Management for the long-term success of the company.

2. The Board has an appropriate level of independence and diversity of thought and background in its composition to enable it to make decisions in the best interests of the company.

3. There is a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making.

4. The Board has a formal and transparent process for the appointment and reappointment of directors, taking into account the need for progressive renewal of the Board.

5. The Board undertakes a formal annual assessment of its effectiveness as a whole, and that of each of its board committees and individual directors.

6. The Board has a formal and transparent procedure for developing policies on director and executive remuneration, and for fixing the remuneration packages of individual directors and key management personnel. No director is involved in deciding his or her own remuneration.

7. The level and structure of remuneration of the Board and key management personnel are appropriate and proportionate to the sustained performance and value creation of the company, taking into account the strategic objectives of the company.

8. The company is transparent on its remuneration policies, level and mix of remuneration, the procedure for setting remuneration, and the relationships between remuneration, performance and value creation.
9. The Board is responsible for the governance of risk and ensures that Management maintains a sound system of risk management and internal controls, to safeguard the interests of the company and its shareholders.
10. The Board has an Audit Committee ("AC") which discharges its duties objectively.
11. The company treats all shareholders fairly and equitably in order to enable them to exercise shareholders' rights and have the opportunity to communicate their views on matters affecting the company. The company gives shareholders a balanced and understandable assessment of its performance, position and prospects.
12. The company communicates regularly with its shareholders and facilitates the participation of shareholders during general meetings and other dialogues to allow shareholders to communicate their views on various matters affecting the company.
13. The Board adopts an inclusive approach by considering and balancing the needs and interests of material stakeholders, as part of its overall responsibility to ensure that the best interests of the company are served.

In terms of the corporate governance practices, the new Code has made some notable changes, including:

*Director Independence and Director Nomination Processes*

- From January 1, 2022, independent directors will have a tenure limit of nine years. Where an independent director has served nine consecutive years of service, continuation on the board as an independent director will be subject to a two-tier vote from (i) all shareholders; and (ii) all shareholders, excluding directors, the chief executive officer, and their associates.
- From January 1, 2022, boards must be majority independent where the board chair is not independent, and the Code establishes that regardless of board chair, non-executive directors will need to comprise the majority of boards.
- Companies will be required to disclose the criteria used for selecting, appointing, and re-appointing directors. The criteria will also include disclosure of director relationships and time commitments, including outside board directorships and other professional obligations.
- The threshold to qualify as a "substantial shareholder" will now be 5% of issued share capital, previously 10%.

*Remuneration Matters*

- Companies must disclose how the board and key management personnel's remuneration are appropriate and proportionate to a company's sustained performance and value creation, as based on a company's strategic objectives.
- Annual reports will include the disclosure of remuneration for each director and CEO, aligned with the top five key management personnel in bands no wider than $250,000. Companies will also need to disclose the names and remuneration of substantial shareholders, or immediate family members if their remuneration exceeds $100,000 per year, along with the familial relationship to a director and/or CEO.

*Audit, Risk Management, and Internal Controls*

- Companies may choose to establish a separate board-level risk committee.
- While there will only be a two-year look back for former audit partners serving as a director, audit

committees should meet independently with external and internal auditors without the presence of management at least annually.

*Shareholder Rights and Engagement*

- Companies should present proposals at general meetings that are not "bundled"; if any proposals are linked or interdependent, the company should disclose an explanation, including material implications, in the notice of meeting.
- Shareholders would gain the ability to abstain from voting, provided a company's Constitution or other documents allow for such a voting option.
- Improved disclosure on board and shareholder communication, as part of policies to promote communication with shareholders.
- The development of new mechanisms to enable shareholders to contact companies with questions.
- Strengthened policies regarding engagement with stakeholder groups, including the role of corporate websites to communicate with stakeholders.

The Code also calls for the formation of a Corporate Governance Committee to promote industry-led good corporate practice. As for compliance, the Code is based on a comply-or-explain basis, while any variation from the Code will require explicit explanations from companies as to how the intent of their practices aligns with Code principles.

## King IV Report on Corporate Governance, South Africa – 2016

The King Committee, a private-sector body comprising of former South African Supreme Court Judge, Mervyn King was formed in 1992, to draft corporate governance guidelines. Four reports have been issued by the King Committee since then –

- (King I), 1994
- (King II), 2002
- (King III), 2009 and
- (King IV) 2016.

King IV is structured as a Report that includes a Code, with additional, separate sector supplements for SME's, NPO's, State-Owned Entities, Municipalities and Retirement Funds. The King Code contains both principles and recommended practices aimed at achieving governance outcomes.

King IV requires an "Apply AND Explain" approach to disclosure, as opposed to King III which was 'Apply or Explain'. This means that application of the principles is assumed and that an explanation is disclosed on the practices that have been implemented and how these support achieving the associated governance principle.

Whilst King IV is voluntary (unless prescribed by law or a stock exchange Listings Requirement) it is envisaged that it will be applicable to all organisations irrespective of their form or manner of incorporation.

The objectives of King IV are to:

- Promote corporate governance as integral to running an organisation and delivering governance outcomes such as ethical culture, good performance, effective control and legitimacy.
- Broaden the acceptance of the King IV by making it accessible and fit for implementation across a variety of sectors and organisational types.
- Reinforce corporate governance as a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner.

- Encourage transparent and meaningful reporting to stakeholders.
- Present corporate governance as concerned with not only structure and process, but also with an ethical and consciousness and conduct.

## King IV Principles

| *GOVERNANCE ELEMENT* | *PRINCIPLES* |
|---|---|
| LEADERSHIP, ETHICS AND CORPORATE CITIZENSHIP | 1. The governing body should lead ethically and effectively.<br>2. The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.<br>3. The governing body should ensure that the organisation is and is seen to be a responsible corporate citizen. |
| STRATEGY, PERFORMANCE AND REPORTING | 4. The governing body should appreciate that the organisation' score purpose, its risks and opportunities, strategy, business model, performance and sustainable development are all inseparable elements of the value creation process.<br>5. The governing body should ensure that reports issued by the organisation enable stakeholders to make informed assessments of the organisation's performance, and its short, medium and long-term prospects. |
| GOVERNING STRUCTURES AND DELEGATION | 6. The governing body should serve as the focal point and custodian of corporate governance in the organisation.<br>7. The governing body should comprise the appropriate balance of knowledge, skills, experience, diversity and independence for it to discharge its governance role and responsibilities objectively and effectively.<br>8. The governing body should ensure that its arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of its duties.<br>9. The governing body should ensure that the evaluation of its own performance and that of its committees, its chair and its individual members, support continued improvement in its performance and effectiveness.<br>10. The governing body should ensure that the appointment of, and delegation to, management contribute to role clarity and the effective exercise of authority and responsibilities. |
| GOVERNANCE FUNCTIONAL AREAS | 11. The governing body should govern risk in a way that supports the organisation in setting and achieving its strategic objectives.<br>12. The governing body should govern technology and information in a way that supports the organisation setting and achieving its strategic objectives. |

| *GOVERNANCE ELEMENT* | *PRINCIPLES* |
|---|---|
| | 13. The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen.<br>14. The governing body should ensure that the organisation remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.<br>15. The governing body should ensure that assurance services and functions enable an effective control environment, and that these support the integrity of information for internal decision-making and of the organisation's external reports. |
| STAKEHOLDER RELATIONSHIPS | 16. In the execution of its governance role and responsibilities, the governing body should adopt a stakeholder-inclusive approach that balances the needs, interests and expectations of material stakeholders in the best interests of the organisation over time.<br>17. The governing body of an institutional investor organisation should ensure that responsible investment is practiced by the organisation to promote the good governance and the creation of value by the companies in which it invests. |

## OECD PRINCIPLES OF CORPORATE GOVERNANCE

Good corporate governance is not an end in itself. It is a means to create market confidence and business integrity, which in turn is essential for companies that need access to equity capital for long term investment. Access to equity capital is particularly important for future oriented growth companies and to balance any increase in leveraging. The updated G20/OECD Principles of Corporate Governance (the Principles) therefore provide a very timely and tangible contribution to the G20 priority in 2015 to support investment as a powerful driver of growth.

The Principles are also about inclusiveness. Today, millions of households around the world have their savings in the stock market, directly or indirectly. And publicly listed companies provide for more than 200 million jobs. The Principles also address the rights of these stakeholders and their ability to participate in corporate wealth creation.

> "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."
>
> **G20/OECD Principles of Corporate Governance**

The Principles were originally developed by the OECD in 1999 and further updated in 2004. Following the request by the G20 Finance Ministers and Central Bank Governors at their meeting on 9-10 February 2015 in Istanbul, a draft of the revised Principles was presented and discussed at the G20/OECD Corporate Governance Forum in Istanbul on 10 April 2015 where they found broad support among participants. The Principles were subsequently presented at the May and August 2015 meetings of the G20 Investment and Infrastructure Working Group. The OECD Council adopted the Principles on 8 July 2015. The Principles were then submitted to the G20 Finance Ministers and Central Bank Governors meeting in Ankara 4-5 September for endorsement as joint G20/ OECD Principles and transmission to the G20 Leaders Summit in November 2015.

**The Principles provide guidance through recommendations and annotations across six chapters.**

**I. Ensuring the basis for an effective corporate governance framework:**

The corporate governance framework should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement:

A. The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and well-functioning markets.

B. The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable.

C. The division of responsibilities among different authorities should be clearly articulated and designed to serve the public interest.

D. Stock market regulation should support effective corporate governance.

E. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

F. Cross-border co-operation should be enhanced, including through bilateral and multilateral arrangements for exchange of information.

**II. The rights and equitable treatment of shareholders and key ownership functions:**

The corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights:

A. Basic shareholder rights should include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove members of the board; and 6) share in the profits of the corporation.

B. Shareholders should be sufficiently informed about, and have the right to approve or participate in, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.

C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.

2. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.

3. Shareholders should have the opportunity to ask questions to the board, including questions relating to the annual external audit, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.

4. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known, including through votes at shareholder meetings, on the remuneration of board members and/or key executives, as applicable. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.

5. Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

6. Impediments to cross border voting should be eliminated.

D. 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.

E. All shareholders of the same series of a class should be treated equally. Capital structures and arrangements that enable certain shareholders to obtain a degree of influence or control disproportionate to their equity ownership should be disclosed.

1. Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in economic or voting rights should be subject to approval by those classes of shares which are negatively affected.

2. The disclosure of capital structures and control arrangements should be required.

F. Related-party transactions should be approved and conducted in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders.

1. Conflicts of interest inherent in related-party transactions should be addressed.

2. Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

G. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. Abusive self dealing should be prohibited.

H. Markets for corporate control should be allowed to function in an efficient and transparent manner.

1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.

2. Anti-take-over devices should not be used to shield management and the board from accountability.

**III. Institutional investors, stock markets, and other intermediaries:**

The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance:

A. Institutional investors acting in a fiduciary capacity should disclose their 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.

B. Votes should be cast by custodians or nominees in line with the directions of the beneficial owner of the shares.

C. 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.

D. The corporate governance framework should require that proxy advisors, analysts, brokers, rating agencies and others that provide analysis or advice relevant to decisions by investors, disclose and minimise conflicts of interest that might compromise the integrity of their analysis or advice.

E. Insider trading and market manipulation should be prohibited and the applicable rules enforced.

F. For companies who are listed in a jurisdiction other than their jurisdiction of incorporation, the applicable corporate governance laws and regulations should be clearly disclosed. In the case of cross listings, the criteria and procedure for recognising the listing requirements of the primary listing should be transparent and documented.

G. Stock markets should provide fair and efficient price discovery as a means to help promote effective corporate governance.

**IV. The role of stakeholders in corporate governance:**

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises:

A. The rights of stakeholders that are established by law or through mutual agreements are to be respected.

B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

C. Mechanisms for employee participation should be permitted to develop.

D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

E. 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 to the competent public authorities and their rights should not be compromised for doing this.

F. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

**V. Disclosure and transparency:**

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company:

A. Disclosure should include, but not be limited to, material information on:

1. The financial and operating results of the company.
2. Company objectives and non-financial information.
3. Major share ownership, including beneficial owners, and voting rights.

4. Remuneration of members of the board and key executives.
5. Information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.
6. Related party transactions.
7. Foreseeable risk factors.
8. Issues regarding employees and other stakeholders.
9. Governance structures and policies, including the content of any corporate governance code or policy and the process by which it is implemented.

B. Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial reporting.

C. An annual audit should be conducted by an independent, competent and qualified, auditor in accordance with high-quality auditing standards in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

E. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

**VI. The responsibilities of the board:**

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders:

A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

C. The board should apply high ethical standards. It should take into account the interests of stakeholders.

D. The board should fulfil certain key functions, including:

1. Reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.
2. Monitoring the effectiveness of the company's governance practices and making changes as needed.
3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.

5. Ensuring a formal and transparent board nomination and election process.

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

7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

8. Overseeing the process of disclosure and communications.

E. The board should be able to exercise objective independent judgement on corporate affairs.

1. Boards should consider assigning a sufficient number of nonexecutive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.

2. Boards should consider setting up specialised committees to support the full board in performing its functions, particularly in respect to audit, and, depending upon the company's size and risk profile, also in respect to risk management and remuneration. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.

3. Board members should be able to commit themselves effectively to their responsibilities.

4. Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.

F. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.

G. When employee representation on the board is mandated, mechanisms should be developed to facilitate access to information and training for employee representatives, so that this representation is exercised effectively and best contributes to the enhancement of board skills, information and independence.

## The Finnish Corporate Governance Code, 2020

The new Corporate Governance Code for Finnish listed companies ("2020 CG Code") entered into force from 01 January 2020 replacing the previous CG Code applied since 2016 ("2015 CG Code"). The purpose of the Corporate Governance Code is to harmonise the procedures of listed companies and to promote openness with regard to corporate governance and remuneration. From the perspective of a shareholder and an investor, the Corporate Governance Code increases the transparency of corporate governance and the ability of shareholders and investors to evaluate the practices applied by individual companies. The Corporate Governance Code also provides investors with an overview of the kinds of corporate governance practices that are acceptable for Finnish listed companies.

While the number of recommendations in the 2020 CG Code has decreased, the 2020 CG Code introduces additional requirements on listed companies, in particular in relation to remuneration and related party transactions as required by the Shareholders' Rights Directive and the national rules implementing the Directive. The 2020 CG Code also introduces changes to the recommendation concerning the audit committee and clarifications to the recommendation concerning the assessment and disclosure of independence of board members. For example, the company's remuneration statement has been replaced by the remuneration policy for governing bodies ("remuneration policy") and remuneration report for governing bodies ("remuneration report"), which are supplemented by information provided on the company's website. The remuneration policy and report concern the company's board of directors, supervisory board, if any, and the managing director and deputy managing director. Information on the remuneration of the rest of the management team will in future be provided on the company's website. The remuneration reporting section also includes a checklist to clarify the reporting obligations. Similarly, the board must in future report which of the board members are independent of the company and which are independent of the company's significant shareholders. In addition, the reasoning for determining that a board member is not independent must also be reported. The criteria to be taken into account in the overall assessment of independence have also been supplemented so that under the interpretation of the criteria, the benefits paid and offered to a member of the board by a shareholder otherwise than on the basis of an employment or service relationship may require assessment.

The Finnish Securities Market Association's board adopted the amended and updated CG Code in September 2019. As a result of which the new 2020 CG Code came into force in January 2020 replacing the previous Finnish CG Code.

The 'comply or explain' principle applies to the CG Code. Thus, the starting point is that the company must comply with all recommendations set out in the CG Code.

## The Italian Corporate Governance Code

The Italian Corporate Governance Code applies to all companies with shares listed on the Italian main market ("Mercato Telematico Azionario") managed by Borsa Italiana ("companies").

Adoption of this Code is voluntary and is disclosed in the report on corporate governance and ownership structures ("corporate governance report").

The code has 6 articles and each article of the Code is divided into principles, which define the objectives of good governance, and into recommendations, which indicate the behaviour that the Code deems appropriate to achieve the objectives indicated in the principles.

The Code is neutral with respect to the governance model specifically adopted by the company (traditional; "one- tier", which includes the so-called "modello monistico" for Italian companies; "two-tier", which includes the so-called "modello dualistico" for Italian companies). For companies adopting the "two-tier" model, the Code requires that the supervisory board is to be assigned the task of deliberating on the company's strategic guidelines and transactions of strategic importance (so-called "high level" management powers).

Companies apply the Code according to the principle of substance over form and the recommendations thereof on a "comply or explain" basis.

Companies adopting the Code provide in their corporate governance report accurate, easily understandable and exhaustive, albeit concise, information on how the Code is applied.

The application of the Code is based on principles of flexibility and proportionality.

Companies disclose in their corporate governance report how they have specifically applied the Code's principles. The choice to depart from one or more recommendations of the Code may depend on factors internal and external to the company, whereby the practice recommended by the Code may not be functional or compatible with its governance model. The application of the Code implies, however, that each deviation is clearly indicated in the corporate governance report and that companies: (a) explain how the best practice recommended by the Code has been disregarded; (b) describe the reasons for the deviation; (c) describe how the decision to depart from the recommendations has been made within the company; (d) if the deviation is limited in time, indicate when they plan to apply the related best practice; (e) describe any action adopted as an alternative to the best practice which they have not implemented and explain how this choice helps the company achieving the objective underlying the Code's principles and in any case contributes to good corporate governance.

In order to ensure a proportional application of the Code, some recommendations are calibrated according to the company's size and ownership structure, providing for:

- a set of recommendations intended only for larger companies ( "large companies" category contained in the Code's "definitions");
- a simplified application of some recommendations by companies other than the "large" ones;
- the adaptation of some recommendations to companies with concentrated ownership (cf. the category of "companies with concentrated ownership" contained in the Code's "definitions").

In the presence of primary or secondary regulations incompatible with the application of certain recommendations of the Code, disclosure of the reasons for their failed or partial application is not required.

The Committee monitors the state of the Code's application, the evolution of the applicable regulatory framework and the international best practices, and is responsible for updating the Code. To this end, it evaluates a possible revision of the Code usually every two years.

The application of the Code is facilitated by a set of Q&As, periodically updated also in consideration of any requests that might be submitted by those companies that apply the Code.

The present Code was approved by the Committee in January 2020.

The companies adopting the Code are required to apply it starting from the first financial year that begins after 31 December 2020, while the disclosure shall be provided in the corporate governance report to be published during 2022.

"Large companies" apply the recommendations regarding the presence of independent directors in the board of directors starting from the first renewal of the board of directors following 31 December 2020.

## Japan's Stewardship Code - Principles for Responsible Institutional Investors

In this Code, "stewardship responsibilities" refers to the responsibilities of institutional investors to enhance the medium- to long-term investment return for their clients and beneficiaries (including ultimate beneficiaries; the same shall apply hereafter) by improving and fostering the investee companies' corporate value and sustainable growth through constructive engagement, or purposeful dialogue, based on in-depth knowledge of the companies and their business environment and consideration of sustainability (medium- to long-term sustainability including ESG factors) consistent with their investment management strategies.

This Code defines principles considered to be helpful for institutional investors who behave as responsible institutional investors in fulfilling their stewardship responsibilities with due regard both to their clients and beneficiaries and to investee companies. By fulfilling their stewardship responsibilities properly in line with this Code, institutional investors will also be able to contribute to the growth of the economy as a whole.

Activities by institutional investors done to discharge their stewardship responsibilities (hereafter, "stewardship activities") should not be seen to be confined to voting, although voting is an essential element of stewardship activities. Stewardship activities include proper monitoring of the investee companies and constructive engagement with them done to discharge the stewardship responsibilities to foster sustainable growth of the companies

In the Code, two categories of institutional investors are identified: "institutional investors as asset managers" (hereafter, "asset managers"), which are entrusted to manage funds and invest in companies; and "institutional investors as asset owners" (hereafter, "asset owners"), including providers of funds.

The asset managers are expected to contribute to the enhancement of the corporate value of investee companies through day-to-day constructive dialogue with them.

The asset owners are expected to disclose their policies on fulfilling their stewardship responsibilities and contribute to the enhancement of the corporate value of investee companies through their own actions and/or the actions of the asset managers, to which they outsource their asset management activities.

The asset managers should aim to know the intention of the asset owners so that they can provide services as expected, and the asset owners should aim to assess the asset managers in line with the Code, not placing undue emphasis on short-term performance.

Parties such as proxy advisors and investment consultants for pensions which provide services at the request of institutional investors, etc. to contribute to the institutional investors' effective execution of stewardship activities (hereafter "service providers for institutional investors") are expected to play important roles in enhancing the functions of the entire investment chain running from their clients and beneficiaries to the investee companies.

## GLOBAL CORPORATE GOVERNANCE FORUMS

### A) Organisation for Economic Cooperation and Development

The Organization of Economic Cooperation and Development released its first set of corporate governance principles in 1999. A revised version was then released in 2004.

The principles were developed and endorsed by the ministers of OECD member countries in order to help OECD and Non-OECD governments in their efforts to create legal and regulatory frameworks for corporate governance in their countries.

The Organization for Economic Cooperation and Development (OECD) is a unique forum where the governments of 36-member states with market economies work with each other, as well as with more than 70 non-member economies to promote economic growth, prosperity, and sustainable development. The OECD Corporate Governance Factbook provides easily accessible and up-to-date information about the institutional, legal and regulatory frameworks for corporate governance across 49 jurisdictions worldwide. The Factbook complements the G20/OECD Principles of Corporate Governance and can be used by governments, regulators and the private sector to compare their own frameworks with those of other countries and also to get information on practices in specific jurisdictions.

The Factbook is divided into five main areas that are crucial for understanding how corporate governance functions in different jurisdictions:

I) The corporate and market landscape.

II) The corporate governance and institutional framework.

III) The rights and equitable treatment of shareholders and key ownership functions.

IV) The corporate board of directors.

V) Mechanisms for flexibility and proportionality in corporate governance.

The Factbook compiles information gathered from OECD, G20 and Financial Stability Board member delegates to the OECD Corporate Governance Committee. The factbook covers 49 jurisdictions including all 36 OECD countries as well as Argentina, Brazil, China, Colombia, Costa Rica, Hong Kong (China), India, Indonesia, Malaysia, Russian Federation, Saudi Arabia, Singapore and South Africa.

**Principles of OECD Corporate Governance**

1) **Ensure the basis of an effective corporate governance framework**

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

2) **The rights of shareholders and key ownership functions**

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Basic shareholder rights should include the right to:

a) Secure methods of ownership registration;

b) Convey or transfer shares;

c) Obtain relevant and material information on the corporation on a timely and regular basis;

d) Participate and vote in general shareholder meetings;

e) Elect and remove members of the board; and

f) Share in the profits of the corporation.

3) **The equitable treatment of shareholders; The rights and equitable treatment of shareholders and key ownership functions**

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. The principles also state that:

a) All shareholders of the same series of a class should be treated equally;

b) Insider trading and abusive self-dealing should be prohibited;

c) Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

4) **The role of stakeholders in corporate governance**

The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co- operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

5) **Disclosure and transparency**

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

6) **The responsibilities of the board**

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

## B) National Foundation for Corporate Governance (NFCG)

With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, has set up National Foundation for Corporate Governance (NFCG) in the year 2003 in partnership with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI). In the year 2010, Institute of Cost Accountants of India and National Stock Exchange and in 2013 Indian Institute of Corporate Affairs were included in NFCG as trustees.

The Mission of NFCG are:

– To foster a culture of good governance, voluntary compliance and facilitate effective participation of different stakeholders;

– To catalyse capacity building in new emerging areas of Corporate Governance.

## C) The Institute of Directors (IOD), UK

The IOD is a non-party-political business organisation established in United Kingdom in 1903. The IOD seeks to provide an environment conducive to business success.

The objects of IOD are:

(a) to promote for the public benefit high levels of skill, knowledge, professional competence and integrity on the part of directors, and equivalent office holders however described, of companies and other organisations;

(b) to promote the study, research and development of the law and practice of corporate governance, and to publish, disseminate or otherwise make available the useful results of such study or research;

(c) to represent the interests of members and of the business community to government and in all public fora and to encourage and foster a climate favourable to entrepreneurial activity and wealth creation; and

(d) to advance the interests of members of the Institute, and to provide facilities, services and benefits for them.

The day-to-day running of the Institute is managed by the Executive Directorate, headed by the Director General.

## D) Commonwealth Association of Corporate Governance

The Commonwealth Association of Corporate Governance (CACG) was established in April 1998 to promote excellence in Corporate Governance in the Commonwealth. The CACG has two primary objectives:

a) to promote good standards in corporate governance and business practice throughout the Commonwealth; and

b) to facilitate the development of appropriate institutions which will be able to advance, teach and disseminate such standards.

The CACG also aims to facilitate the development of institutional capacity that promotes good corporate governance by education, consultation and information in all Commonwealth countries.

The Commonwealth Foundation is funded principally through annual contributions made by member governments.

Board of Governors comprising, in the main, UK-based representatives of member governments and five representatives of civil society, determines the policies.

There are 54 countries of the Commonwealth, of which 46 are currently Commonwealth Foundation members. Membership of the Foundation is voluntary, and is open to all Common-wealth governments.

## E) International Corporate Governance Network

The International Corporate Governance Network ("ICGN") is a not-for-profit company limited by guarantee and not having share capital under the laws of England and Wales founded in 1995.

ICGN's mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide.

ICGN's positions are guided by the ICGN Global Governance Principles and Global Stewardship Principles, which were first published in 2003, as a statement on shareholder stewardship responsibilities both of which are implemented by:

- Influence policy by providing a reliable source of investor opinion on governance and stewardship;
- Connect peers at global events to enhance dialogue between companies and investors around long-term value creation; and
- Inform dialogue through education to enhance the professionalism of governance and stewardship practices.

It has four primary purposes:

(i) to provide an investor-led network for the exchange of views and information about corporate governance issues internationally;

(ii) to examine corporate governance principles and practices;

(iii) to develop and encourage adherence to corporate governance standards and guidelines; and

(iv) to generally promote good corporate governance.

The Network's mission is to develop and encourage adherence to corporate governance standards and guidelines, and to promote good corporate governance worldwide.

Membership of ICGN is open to those who are committed to the development of good corporate governance. The Membership section explains the benefits of membership, the different types of membership and how to join the ICGN.

The ICGN is governed by the ICGN Memorandum and Articles of Association.

The management and control of ICGN affairs are the responsibility of the Board of Governors. The Board in turn appoints a number of committees to recommend policy positions, to implement approved projects and to perform such functions that the Board may specify.

The Institute of Company Secretaries of India is a member of ICGN and also the country correspondent from India.

The ICGN Global Governance principles describe the responsibilities of board of directors and investors respectively and aim to enhance dialogue between the two parties. They embody ICGN's mission to inspire effective standards of governance and to advance efficient markets worldwide. The combination of responsibilities of boards of directors and investors in a single set of Principles emphasizes a mutual interest in protecting and generating sustainable corporate value. These principles were first initiated in 1995. The fourth edition of Principles was released in 2014.

## F) The European Corporate Governance Institute

The European Corporate Governance Institute (ECGI) was founded in 2002. It has been established to improve corporate governance through fostering independent scientific research and related activities.

The ECGI is an international scientific non-profit association. It provides a forum for debate and dialogue between academics, legislators and practitioners, focusing on major corporate governance issues and thereby promoting best practice.

Its primary role is to undertake, commission and disseminate research on corporate governance. Based upon impartial and objective research and the collective knowledge and wisdom of its members, it advises on the formulation of corporate governance policy and development of best practice and undertake any other activity that will improve understanding and exercise of corporate governance.

It acts as a focal point for academics working on corporate governance in Europe and elsewhere, encouraging the interaction between the different disciplines, such as economics, law, finance and management.

The Institute articulates its work by expanding on the activities of the European Corporate Governance Network, disseminating research results and other relevant material.

It draws on the expertise of scholars from numerous countries and brings together a critical mass of expertise and interest to bear on this important subject.

**Vision Statement of ECGI:**

- Corporate governance lies at the heart of our capitalist systems. It is the interface between capital markets and companies, between employees and executives, and between society and the corporate sector. It is the driver of what companies do, how they do it and the effects they have on others. In other words, it sits at the centre of the success and failure of our economic systems.
- As such it warrants knowledge, research and insights of the best thinkers, practitioners and policymakers of our age. That is precisely what ECGI seeks to provide. It draws on the finest minds in academia from all over the world to tackle some of the most important issues that confront business and governments today. It uses the power of research to change ideas, influence practice and formulate policy to benefit all of us.
- Corporate governance refers to the way in which private and public companies, enterprises, entrepreneurship and financial institutions are governed and run in relation to their purpose, values, ownership, representation, accountability, financing, investment, performance, leadership, direction, management, employment, law, regulation and taxation.

**Mission Statement of ECGI:**

- The mission of ECGI is to assist the top academics in the field of corporate governance in bringing their research to the attention of leading practitioners, policymakers and thought leaders by making state of the art knowledge accessible and relevant to them. It promotes the development of new ideas through research that extends the boundaries of our understanding of how corporate governance contributes to the flourishing of business, economies and societies.

## G) Conference Board

The Conference Board was established in year 1916 in the United States of America. The Conference Board is a global, independent business membership and research association working in the public interest and is a not-for-profit organization. The Conference Board creates and disseminates knowledge about management and the marketplace to help businesses strengthen their performance and serve the society in a better way.

Mission: The Conference Board is dedicated to equipping the world's leading corporations with the practical knowledge they need to improve their performance and better serve society. It is an objective, independent source of economic and business knowledge with only one agenda: to help our members understand and deal with the most critical issues of our time.

It works as a global, independent membership organization in the public interest, it conducts research, convenes conferences, makes forecasts, assesses trends, publishes information and analysis, and brings executives together to learn from one another.

The Conference Board governance programs helps companies improve their processes, inspire public confidence, and ensure they are complying with regulations.

The Conference Board Directors' Institute is a premiere provider of governance education for directors. Through the Directors' Institute, the pro- gram provides corporate directors with a non-academic, impartial forum for open dialogue about the real-world business challenges they face.

The Corporate Governance program at The Conference Board has helped corporations develop strong core principals by improving their governance processes through a variety of programs including director training and global ethics education.

The Conference Board Global Corporate Governance Research Center brings together a distinguished group of senior corporate executives from leading world- class companies and influential institutional investors in a non-adversarial setting. In small groups of prominent senior executives, all discussions are confidential, enabling a free-flowing exchange of ideas and effective networking. This highly unique forum allows industry leaders to debate, develop, and advance innovative governance practices, and to drive landmark research in corporate governance.

## H) The Asian Corporate Governance Association

The Asian Corporate Governance Association (ACGA) is an independent, non- profit membership organization dedicated to working with investors, companies and regulators in the implementation of effective corporate governance practices throughout Asia. ACGA was founded in 1999 from a belief that sound and improving corporate governance is fundamental to the long-term development of Asian economies and capital markets.

ACGA's scope of work covers three areas:

1. **Research:**

   Tracking corporate governance developments across 12 markets in Asia Pacific and producing independent analyses of new laws and regulations, investor engagement and corporate practices.

2. **Advocacy:**

   Engaging in a constructive dialogue with financial regulators, stock exchanges, institutional investors and companies on practical issues affecting the regulatory environment and the implementation of better corporate governance practices in Asia.

3. **Education:**

   Organising conferences and seminars that foster a deeper understanding of the competitive benefits of sound corporate governance and ways to implement it effectively.

   ACGA is funded by a network of sponsors and corporate members, including leading pension and investment funds, other financial institutions, listed companies, accounting firms and educational institutions. It is incorporated under the laws of Hong Kong and is managed by a secretariat based there. Its governing Council comprises directors from around Asia and other parts of the world.

## I) Corporate Secretaries International Association (CSIA)

CSIA, a Geneva- registered body, which was established on 23rd March 2010 as an international organization whose members comprise national bodies of professionals at the frontline of governance. It is dedicated to promoting the values and practices of governance professionals in order to create, foster or enhance the environment in which business can be con-ducted in a fair, profitable and sustainable manner. CSIA issued Twenty Practical Steps to Better Corporate Governance.

**Twenty Practical Steps to Better Corporate Governance**

1. Recognize that good corporate governance is about the effectiveness of the governing body — not about compliance with codes.

2. Confirm the leadership role of the board chairman.
3. Check that non-executive directors have the necessary skills, experience, and courage.
4. Consider the caliber of the non-executive directors.
5. Review the role and contribution of non-executive directors.
6. Ensure that all directors have a sound understanding of the company.
7. Confirm that the board's relationship with executive management is sound.
8. Check that directors can access all the information they need.
9. Consider whether the board is responsible for formulating strategy.
10. Recognize that the governance of risk is a board responsibility.
11. Monitor board performance and pursue opportunities for improvement.
12. Review relations with shareholders — particularly institutional investors.
13. Emphasise that the company does not belong to the directors.
14. Ensure that directors' remuneration packages are justifiable and justified.
15. Review relations between external auditors and the company.
16. Consider relations with the corporate regulators.
17. Develop written board-level policies covering relations between the company and the societies it affects.
18. Review the company's attitudes to ethical behaviour.
19. Ensure that company secretary's function is providing value.
20. Consider how corporate secretary's function might be developed.

## J) International Integrated Reporting Council (IIRC)

The IIRC, is a powerful, international cross section of leaders from the corporate, investment, accounting, securities, regulatory, academic and standard-setting sectors as well as civil society.

The IIRC was established in 2010 in recognition of the need to move towards an International Integrated Reporting Framework that is fit-for-purpose for the 21st century.

**Mission:**

The IIRC's mission is to establish integrated reporting and thinking within mainstream business practice as the norm in the public and private sectors.

**Vision:**

The IIRC's vision is to align capital allocation and corporate behaviour to wider goals of financial stability and sustainable development through the cycle of integrated reporting and thinking.

The IIRC seeks to build upon, enhance and support the work that has been done to date, and is ongoing, to achieve a reporting framework that:

- communicates the organization's strategy, business model, performance and plans against the background of the context in which it operates;
- provides a coherent framework within which market and regulatory driven reporting requirements can be integrated;

- is internationally agreed, so as to encourage convergence of approach and hence more ready understanding of information presented;
- reflects the use of and effect on all of the resources and relationships or "capitals" (human, natural and social as well as financial, manufactured and intellectual) on which the organization and society depend for prosperity; and
- reflects and communicates the interdependencies between the success of the organization and the value it creates for investors, employees, customers and, more broadly, society.

The IIRC is developing an International Integrated Reporting Framework that will facilitate the development of reporting over the coming decades. The core objective of the Framework is to guide organizations on communicating the broad set of information needed by investors and other stakeholders to assess the organization's long-term prospects in a clear, concise, connected and comparable format. This will enable those organizations, their investors and others to make better short-and long-term decisions.

**LESSON ROUND-UP**

- The root of the word Governance is from 'gubernate', which means to steer. Corporate governance would mean to steer an organization in the desired direction. The responsibility to steer lies with the board of directors/governing board. Governance is concerned with the intrinsic nature, purpose, integrity and identity of an organization with primary focus on the entity's relevance, continuity and fiduciary aspects.
- Corporate Governance Basic theories: Agency Theory; Stock Holder Theory; Stake Holder Theory; Stewardship Theory.
- OECD has defined corporate governance to mean "A system by which business corporations are directed and controlled".
- As per CII "Corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions vis-à-vis its claimants - in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of 'good' corporate governance: maximising long-term shareholder value."
- The Kumar Mangalam Birla Committee constituted by SEBI has observed that: "Strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure."
- N.R. Narayana Murthy Committee on Corporate Governance constituted by SEBI has observed that: "Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company."
- The Institute of Company Secretaries of India has also defined the term Corporate Governance to mean "Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders."

- Initiated by Cadbury Committee, corporate governance has grown multifold in UK. UK Corporate Governance Code, 2016 is a revised version of earlier code with few new recommendations.
- With the introduction of Sarbanes–Oxley Act, 2002 Corporate Governance practices have been fundamentally altered – auditor independence, conflict of interests, financial disclosures, severe penalties for willful default by managers and auditors in particular.
- Good governance is integral to the very existence of a company. It inspires and strengthens investor's confidence by ensuring company's commitment to higher growth and profits.
- Ancient Indian scriptures contain learning on governance. Kautilya's Arthashastra maintains that for good governance, all administrators, including the king were considered servants of the people.

## GLOSSARY

**Governance:** Relates to "the processes of interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, or reproduction of social norms and institutions."

**Corporate Performance**: It is a composite assessment of how well an organization executes on its most important parameters, typically financial, market and shareholder performance.

**Triple Bottom Line**: It is an accounting framework with three parts: social, environmental and financial. Organizations have adopted the TBL framework to evaluate their performance in a broader perspective to create greater business value.

**Sarbanes Oxley Act:** An American federal law, 2002, which substantially revised and strengthened securities laws and their administration in the aftermath of high profile corporate accounting scandals such as that involving Enron.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Discuss in brief the development of the concept of Corporate Governance in U.K.
2. Discuss briefly the Corporate Governance developments in India.
3. Explain why Corporate Governance is gaining importance.
4. What are the elements of Good Corporate Governance?
5. What are the basic theories that led to the evolution of concept of the Corporate Governance?

## LIST OF FURTHER READINGS

- Corporate Governance (Kindle Edition) by Christine A. Mallin
- Corporate Governance by Cornelis A. de Kluyver, University of Oregon
- Corporate Governance, 5th Edition by Robert A. G. Monks, Nell Minow
- Power and Accountability Robert A. G. Monks, Nell Minow

**OTHER REFERENCES**


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# Legislative Framework of Corporate Governance in India

Lesson 2

## KEY CONCEPTS

■ Board of Directors Transparency ■ Audit Committee ■ Key Managerial Personal ■ Whistle Blower Policy ■ Chief Risk Officer ■ Fit and proper criteria

## Learning Objectives

**To understand:**

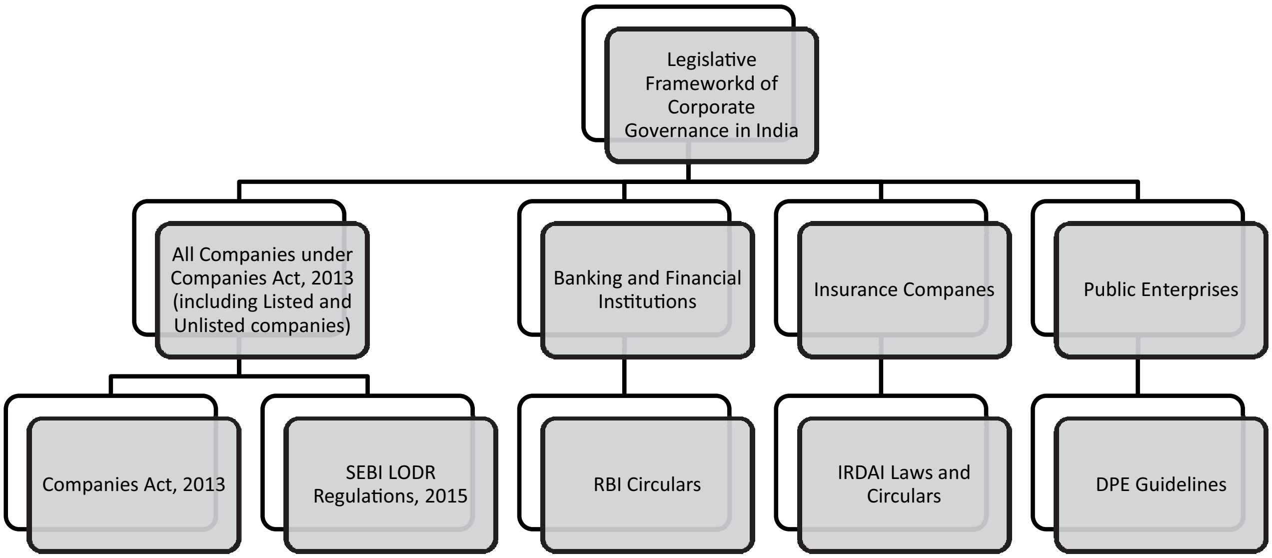
- Legislative framework of Corporate Governance for:
  - Listed and unlisted Companies
  - Banks
  - Insurance Companies and
  - Public Sector Undertakings

## Lesson Outline

- Introduction & Legislative Framework
- Provisions of Companies Act, 2013 related to Corporate Governance
- Regulation 4 of SEBI (LODR) Regulations 2015
- Corporate Governance in Banks/Financial Institutions
- Basel Committee on Corporate Governance
- RBI Guidelines on Corporate Governance for NBFCs
- IRDAI Guidelines on Corporate Governance for Insurance Companies
- Stewardship Code for Insurers
- Guidelines on Corporate Governance for CPSE
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

## INTRODUCTION

The initiatives taken by Government of India in 1991, aimed at economic liberalization, privatization and globalisation of the domestic economy, led to various initiatives by the Government of India to improve corporate governance mechanism. Today we have a strong mechanism for governing the activities of companies, all listed entities, banks, NBFCs and Insurance Companies.




The companies in our country are formed, registered and regulated majorly by the Companies Act, 2013 or under the previous Companies Act. The erstwhile Companies Act 1956 was completely revamped in 2013 and new Act was framed which is landmark legislation with regard to improving corporate governance of companies. The Companies Act, 2013 clearly indicates focus of regulators toward enhancing the responsibility and accountability of boards. The Act outlines various requirements for Governance, disclosures and enhanced roles, responsibilities and liabilities of the board, its committees and independent directors.

Some of the Provisions of Companies Act, 2013 related to Corporate Governance are:

- Appointment and maximum tenure of Independent Directors;
- Appointment of Woman Director;
- Appointment of Whole time Key Managerial Personnel;
- Performance Evaluation of the Directors and Committee & Board as a whole;
- Enhanced disclosures and assertions in Board Report, Annual Return and Boards' Report with regard to Managerial Remuneration, risk management, internal control for financial reporting, legal compliance, Related Party Transactions, Corporate Social Responsibility, shareholding pattern, public money lying unutilised, etc.
- Stricter yet forward-looking procedural requirements for Secretarial compliances and Secretarial Standards made mandatory;
- Enhanced compliances of Related Party Transactions and introduction of concept of arm's length pricing;
- Enhanced restrictions on appointment of Auditors and mandatory rotation of Auditors;
- Separation of role of Chairperson and Chief Executive Officer;

- Mandatory provisions regarding vigil mechanism;
- Constitution of Audit Committee and Nomination and Remuneration Committee;
- Constitution of CSR Committee;
- Secretarial Audit;
- Constitution of NFRA;
- Mandatory provision of E-voting by certain class of Companies;
- Mandatory Vigil Mechanism.

All such provisions of new Company Law are instrumental in providing a good Corporate Governance structure. Further, the Companies (Amendment)Act, 2017 and the Companies (Amendment) Act, 2019 introduced several amendments to the Companies Act 2013, realigning provisions to improve corporate governance and ease of doing business in India while continuing to strengthen compliance and investor protection.

All the listed entities are regulated by the Securities and Exchange Board of India. SEBI is a regulatory authority established on April 12, 1992. SEBI was established with the main purpose of curbing the malpractices and protecting the interest of its investors. Its main objective is to regulate the activities of Stock Exchange and at the same time ensuring the healthy development in the financial market. In order to ensure good corporate governance SEBI had issued detailed Corporate Governance Norms in form of Clause 49 of Listing Agreement which has been now revised and notified as the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Apart from these, a gamut of legislations like the Competition Act, 2002, the Consumer Protection Act, 2019, the Code on Wages, 2019, the Code on Social Security, 2020, the Industrial Relations Code, 2020, the Occupational Safety, Health and Working Conditions Code, 2020 the environment laws, the Prevention of Money Laundering Act, 2002, Insolvency and Bankruptcy Code, 2016 etc, seeks to ensure good governance practices among the corporate.

***NOTE:*** The Companies Act, 2013 and SEBI (LODR) Regulations, 2015 together deals with virtually all areas affecting Corporate Governance like Board Processes, Board Committees, Corporate Policies and Disclosures, Accounting and Audit related issues, RPTs and Vigil Mechanism, Accounting and Audit related issues, RPTs and Vigil Mechanism, Shareholders and other stakeholders Rights, Compliance risk etc. are discussed at relevant places in the entire study material.

## REGULATORY FRAMEWORK – GOVERNING LISTED COMPANIES

### Regulation 4 of SEBI (LODR) Regulations, 2015

Chapter II of the SEBI (LODR) Regulations, 2015 provides broad principles for periodic disclosures and obligations of listed entities. The SEBI (LODR) Regulations 2015 covers obligations of listed entities with respect to aspects including

- Board Composition Requirements
- Board Committee Requirements
- Obligation w.r.t. intimations and disclosures to stock exchange
- Requirement w.r.t. Board process and meetings
- Website requirements

- Advertisement mandates
- Requirement w.r.t. polices
- Requirements on share holding pattern
- Requirements w.r.t. corporate actions etc.

These mandates are cores in detail in different chapters of this study material. The principles for periodic disclosures are based on the principles given by International Organization of Securities Commissions (IOSCO) and also have incorporated the principles for corporate governance (in line with OECD principles). These principles underlie specific requirements prescribed in different chapters of the Regulations. In the event of the absence of specific requirements or ambiguity, these principles would serve to guide the listed entities.

## Principles governing disclosures and obligations – Regulation 4

(1) The listed entity which has listed its securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) Channels for disseminating information shall provide for equal timely and cost-efficient access to relevant information by investors.

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

(2) The listed entity which has listed its specified securities shall comply with the corporate governance provisions as specified in chapter IV which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below:

**(a) The rights of shareholders- Regulation (4)(2)(a):** The listed entity shall seek to protect and facilitate the exercise of the following rights of shareholders:

(i) Right to participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes.

(ii) Opportunity to participate effectively and vote in general shareholder meetings.

(iii) being informed of the rules, including voting procedures that govern general shareholder meetings.

(iv) opportunity to ask questions to the board of directors, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.

(v) effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors.

(vi) exercise of ownership rights by all shareholders, including institutional investors.

(vii) adequate mechanism to address the grievances of the shareholders.

(viii) protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and effective means of redress.

**(b) Timely information- Regulation 4(2)(b) :** The listed entity shall provide adequate and timely information to shareholders, including but not limited to the following:

(i) sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.

(ii) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership.

(iii) rights attached to all series and classes of shares, which shall be disclosed to investors before they acquire shares.

**(c) Equitable treatment- Regulation 4(2)(c):** The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:

(i) All shareholders of the same series of a class shall be treated equally.

(ii) Effective share holder participation in key corporate governance decisions, such as the nomination and election of members of board of directors, shall be facilitated.

(iii) Exercise of voting rights by foreign shareholders shall be facilitated.

(iv) The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.

(v) Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.

(vi) Procedures of listed entity shall not make it unduly difficult or expensive to cast votes.

**(d) Role of stakeholders in corporate governance- Regulation 4(2)(d):** The listed entity shall recognise the rights of its stakeholders and encourage co-operation between listed entity and the stakeholders, in the following manner:

(i) The listed entity shall respect the rights of stakeholders that are established by law or through mutual agreements.

(ii) Stakeholders shall have the opportunity to obtain effective redress for violation of their rights.

(iii) Stakeholders shall have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in corporate governance process.

(iv) The listed entity shall devise an effective vigil mechanism/ whistle blower policy enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

**(e) Disclosure and transparency– Regulation 4(2)(e):** The listed entity shall ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the listed entity, in the following manner:

(i) Information shall be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.

(ii) Channels for disseminating information shall provide for equal, timely and cost-efficient access to relevant information by users.

(iii) Minutes of the meeting shall be maintained explicitly recording dissenting opinions, if any.

**(f) Responsibilities of the board of directors – Regulation 4(2)(f):** The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information– Regulation 4(2)(f)(i):

(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.

(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

(ii) Key functions of the board of directors- Regulation 4(2)(f)(ii):

(1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

(2) Monitoring the effectiveness of the listed entity's governance practices and making changes as needed.

(3) Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

(4) Aligning key managerial personnel and remuneration of board of directors with the longer term interests of the listed entity and its shareholders.

(5) Ensuring a transparent nomination process to the board of directors with the diversity of thought, experience, knowledge, perspective and gender in the board of directors.

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

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and those appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

(8) Overseeing the process of disclosure and communications.

(9) Monitoring and reviewing board of director's evaluation framework.

(iii) Other responsibilities– Regulation 4(2)(f)(iii):

(1) The board of directors shall provide strategic guidance to the listed entity, ensure effective monitoring of the management and shall be accountable to the listed entity and the shareholders.

(2) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.

(3) Members of the board of directors shall act on a fully informed basis, in good faith, with Due diligence and care, and in the best interest of the listed entity and the shareholders.

(4) The board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

(5) Where decisions of the board of directors may affect different shareholder groups differently, the board of directors shall treat all shareholders fairly.

(6) The board of directors shall maintain high ethical standards and shall take in to account the interests of stakeholders.

(7) The board of directors shall exercise objective in dependent judgement on corporate affairs.

(8) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.

(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.

(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the listed entity's focus.

(11) When committees of the board of directors are established, their man date, composition and working procedures shall be well defined and disclosed by the board of directors.

(12) Members of the board of directors shall be able to commit themselves effectively to their responsibilities.

(13) In order to fulfil the irresponsibility, members of the board of directors shall have access to accurate, relevant and timely information.

(14) The board of directors and senior management shall facilitate the independent directors to perform their role effectively as a member of the board of directors and also a member of a committee of board of directors.

(3) In case of any ambiguity or incongruity between the principles and relevant regulations, the principles specified in Chapter II shall prevail- Regulation 4(3) .

## CORPORATE GOVERNANCE IN UNLISTED COMPANIES

**1. Provisions under the Companies Act, 2013- A Bird's Eye view**

**i) Disclosure of Interest by Director – Section 184**

**a) Disclosure by new director in first meeting of board and thereafter at the first meeting in every financial year – Section 184(1).**

Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

**b) Disclosure of interest in a contract – Section 184(2)**

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

**c) Participation in the meeting by interested director in the contract shall be voidable -Section 184 (3)**

A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

**d) Penal Provision - Section 184(4)**

If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be liable to a penalty of one lakh rupees.

**e) No restriction in any contract by director, only disclosure to be made- Section 184(5)**

Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the Directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

**f) Register of contracts or arrangements in which Directors are interested – Section 189**

***i) Company to keep registers of contract – Section 189(1):*** Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the Directors present at the meeting.

***ii) Director to disclose interest within 30 days of his appointment – Section 189(2)***: Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

***iii) Register of contracts to be kept at Registered Office – Section 189(3)***: The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.

***iv) Register of contracts to be produced before AGM – Section 189(4)***: The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.

***v) Contracts not exceeding Rs. Five lakh in year – Section 189(5)***: Nothing contained in sub-section (1) shall apply to any contract or arrangement—

(a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or

(b) by a banking company for the collection of bills in the ordinary course of its business.

***vi) Penal Provisions – Section 189(6)***: Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

**g) Duties of Directors – Section 166**

(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

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

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

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

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

## CORPORATE GOVERNANCE IN BANKS/ FINANCIAL INSTITUTIONS

Banking and financial institutions are the strong back bone of any economy. Functioning of banking and financial Institutions differs with other corporate entities in many ways which makes good corporate governance of banks very critical and important. RBI had under taken several measures to strengthen the corporate governance in the Indian banking sector. Various advisory groups and consultative groups were formed to deeply study banking sector in the light of effective corporate governance.

In March 2000, an advisory group on corporate governance was formed under the chairmanship of Dr. R. H. Patil.

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Subsequently, another consultative group was formed in November 2001 under the Chairmanship of Dr. A.S. Ganguly, with an objective to strengthen the internal supervisory role of the Boards in banks. The Committee made several recommendations for effective functioning of banks which were circulated by RBI for adoption by all banks.

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On 20th January, 2014, another Committee to Review Governance of Boards of Banks in India was constituted by the RBI Governor under the Chairmanship of Mr. P. J. Nayak. The Committee had submitted its report with various recommendations in May 2014.

Considering the recommendations of these advisory groups and the global corporate governance experiences, various areas of governance which were potentially important and needed attention, were emphasized. It included defined role of supervisors, ensuring an environment supportive to the sound corporate governance, effective organizational structure to have responsible board of directors, etc. Another global initiative in1999 of the Basel Committee also brought important principles on corporate governance for banks.

Presently Indian banking sector comprises of Scheduled and Non-Scheduled banks, co-operative banks, commercial banks dominated by the government-managed banks including public sector banks, nationalized banks and rural banks, etc. These banks in our country have been established under the different statutes.

- Majorly banks are governed by the Banking Regulation Act, 1949.
- The State Bank of India is governed by the State Bank of India Act, 1955.
- Nationalized banks are governed by the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.
- The private sector banks came into being as company registered under the Companies Act (whether under the Companies Act, 2013/1956 or under the Indian Companies Act, 1913 or prior to that) and hence are regulated by the Companies Act also to the extent applicable.
- The banks listed with the stock exchange have to additionally adhere to the requirement of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Additionally Foreign Exchange Management Act (FEMA), 1999, Payment and Settlement Systems Act, 2007, and other directives/ regulations/ guidelines/ instructions issued by RBI and SEBI from time to time also need to be adhered.

## Basel Committee on Corporate Governance

Growing size and complexity of India's financial system underscores the significance of strengthening governance standards in banks. Recent events in a dynamic and rapidly evolving financial landscape have led to increasing scrutiny of the role of promoters, major shareholders and senior management vis-a-vis the role of a board. In the context where management plays the role of an agent of a board and the board in turn plays the role of an agent of shareholders, governance failures have brought to fore the impact of quality of governance on efficiency in allocation of resources, protection of depositors' interest as well as maintaining financial stability.

Effective corporate governance is critical to the proper functioning of the banking sector and the economy as a whole. Banks perform a crucial role in the economy by intermediating funds from savers and depositors to activities that support enterprise and help drive economic growth. Banks' safety and soundness are key to financial stability, and the manner in which they conduct their business, therefore, is central to economic health. Governance weaknesses at banks that play a significant role in the financial system can result in the transmission of problems across the banking sector and the economy as a whole.

The Basel Committee's guidance draws from principles of corporate governance published by the Organisation for Economic Co-operation and Development (OECD). The OECD's widely accepted and long-established principles aim to assist governments in their efforts to evaluate and improve their frameworks for corporate governance and to provide guidance for participants and regulators of financial markets.

Basel Committee on Banking Supervision (BCBS) released Guidelines on Corporate Governance for banks were released by the Basel Committee on Banking Supervision in July 2015.

The principles of corporate governance of these guidelines are as under:

- **Principle 1: Board's overall responsibilities:** The board has overall responsibility for the bank, including approving and overseeing the implementation of the bank's strategic objectives, governance framework and corporate culture. The board is also responsible for providing oversight of senior management.

- **Principle 2: Board qualifications and composition:** Board members should be and remain qualified, individually and collectively, for their positions. They should understand their oversight and corporate governance role and be able to exercise sound, objective judgment about the affairs of the bank.
- **Principle 3: Board's own structure and practices:** The board should define appropriate governance structures and practices for its own work, and put in place the means for such practices to be followed and periodically reviewed for ongoing effectiveness.
- **Principle 4: Senior management:** Under the direction and oversight of the board, senior management should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, remuneration and other policies approved by the board.
- **Principle 5: Governance of group structures:** In a group structure, the board of the parent company has the overall responsibility for the group and for ensuring the establishment and operation of a clear governance framework appropriate to the structure, business and risks of the group and its entities. The board and senior management should know and understand the bank group's operational structure and the risks that it poses.
- **Principle 6: Risk management function:** Banks should have an effective independent risk management function, under the direction of a chief risk officer (CRO), with sufficient stature, independence, resources and access to the board.
- **Principle 7: Risk identification, monitoring and controlling:** Risks should be identified, monitored and controlled on an ongoing bank-wide and individual entity basis. The sophistication of the bank's risk management and internal control infrastructure should keep pace with changes to the bank's risk profile, to the external risk landscape and in industry practice.
- **Principle 8: Risk communication:** An effective risk governance framework requires robust communication within the bank about risk, both across the organisation and through reporting to the board and senior management.
- **Principle 9: Compliance:** The bank's board of directors is responsible for overseeing the management of the bank's compliance risk. The board should approve the bank's compliance approach and policies, including the establishment of a permanent compliance function.
- **Principle 10: Internal Audit:** The internal audit function provides independent assurance to the board and supports board and senior management in promoting an effective governance process and the long- term soundness of the bank. The internal audit function should have a clear mandate, be accountable to the board, be independent of the audited activities and have sufficient standing, skills, resources and authority within the bank.
- **Principle 11: Compensation:** The bank's compensation structure should be effectively aligned with sound risk management and should promote long term health of the organisation and appropriate risk-taking behavior.
- **Principle 12: Disclosure and transparency:** The governance of the bank should be adequately transparent to its shareholders, depositors, other relevant stakeholders and market participants.
- **Principle 13: The role of supervisors:** Supervisors should provide guidance for and supervise corporate governance at banks, including through comprehensive evaluations and regular interaction with boards and senior management, should require improvement and remedial action as necessary, and should share information on corporate governance with other supervisors.

The Reserve Bank of India plans to overhaul the corporate governance structure of Indian banking system, limiting the terms of directors and chief executive officers and placing more responsibility on the board of directors for a bank's culture and compensation. Board of directors would be responsible for the remuneration and the outcome or performance and would be accountable for the risk a bank takes. Related party transactions and conflict of interest between various entities of a group to which the bank belongs also dominate the latest set of governance rules that the regulator is proposing. Among other things, the new guidelines put the burden of outcomes vis-a-vis the compensation on the board.

## Master Direction - Reserve Bank of India ('Fit and Proper' Criteria for Elected Directors on the Boards of PSBs) Directions, 2019

The RBI vide its Master Direction No. RBI/DBR/ 2019-20 / 71 .DBR. Appt. No. 9/29.67.001./ 2019-20 dated 2nd August, 2019 (Updated as on 3rd June, 2020) issued the Master Direction – RBI 'Fit and Proper' Criteria for Elected Directors on the Boards of PSBs ) Directions, 2019.

These Directions shall be applicable to Public Sector Banks.

**'Fit and Proper' Criteria for Elected Directors on the Boards of State Bank of India and Nationalised Banks:**

***Authority***

All the banks are required to constitute a Nomination and Remuneration Committee consisting of a minimum of three non-executive directors from amongst the Board of Directors, out of which not less than one-half shall be independent directors and should include at least one member from Risk Management Committee of the Board, for undertaking a process of due diligence to determine the 'fit and proper' status of the persons to be elected as directors under sub-section (c) of Section 19 of the SBI Act/clause (i) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980. The Government of India nominee director and the director nominated under section 19(f) of the SBI Act/section 9(3)(c) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 shall not be part of the Committee. The non-executive Chairperson of the bank may be appointed as a member of the Committee but shall not chair such Committee. The Board should also nominate one among them as Chairman of the Committee. The quorum required is three, including the Chairman. In case the absence of any nominated member results in want of quorum, the Board may nominate any other non- executive director in his place for the meeting. At the time of constituting the Committee, the Board can decide on its tenure.

***Manner and procedure***

The banks shall obtain necessary information, and a declaration & undertaking, in the prescribed form, from the persons who file their nominations for election. The Committee shall meet after the last date prescribed for acceptance of nominations and determine whether or not the person's candidature should be accepted, based on the criteria mentioned below. The Committee's discussions shall be properly recorded as formal minutes of the meeting and the voting, if done, shall also be noted. Based on the information provided in the signed declaration, the Committee shall decide on the acceptance or otherwise of the candidature and shall make references, where considered necessary, to the appropriate authority / persons, to ensure that the candidate conforms to the requirements indicated.

***Criteria***

The Committee shall determine the 'fit and proper' status of the proposed candidates based on the broad criteria mentioned hereunder:

- ***Age*** – The candidate's age should be between 35 to 67 years as on the cut-off date fixed for submission of nominations for election.

- ***Educational qualification*** – The candidate should at least be a graduate.
- ***Experience and field of expertise*** – The candidate shall have special knowledge or practical experience in respect of one or more of the matters enumerated in section 19A(a) of the SBI Act / section 9(3A)(A) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, as the case may be, read with RBI Circular DBR .Appt .BC No 39/29.39.001/2016-17 dated November 24, 2016.
- ***Disqualifications*** **-** In addition to 'Disqualifications of Directors' as prescribed in Section 22 of the SBI Act, 1955 / Clause 10 of Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/80:

  a. The candidate should not be a member of the Board of any bank or the Reserve Bank or a Financial Institution (FI) or an Insurance Company or a Non-operative Financial Holding Company (NOFHC) holding any other bank.

     *Explanation:* For the purpose of this sub-para and sub-para (c), the expression "bank" shall include a banking company, a corresponding new bank, State Bank of India, a co-operative bank and a regional rural bank.

  b. A person connected with hire purchase, financing, money lending, investment, leasing and other para banking activities shall not be considered for appointment as elected director on the board of a PSB. However, investors of such entities would not be disqualified for appointment as directors if they do not enjoy any managerial control in them.

  c. No person may be elected/ re-elected on the Board of a bank if he/she has served as director in the past on the board of any bank/FI/RBI/Insurance Company under any category for six years, whether continuously or intermittently.

  d. The candidate should not be engaging in the business of stock broking.

  e. The candidate should not be holding the position of a Member of Parliament or State Legislature or Municipal Corporation or Municipality or other local bodies.

  f. The candidate should not be acting as a partner of a Chartered Accountant firm which is currently engaged as a Statutory Central Auditor of any nationalised bank or State Bank of India.

  g. The candidate should not be acting as a partner of a Chartered Accountant firm which is currently engaged as Statutory Branch Auditor or Concurrent Auditor of the bank in which nomination for election is filed.

- ***Tenure*** – An elected director shall hold office for three years and shall be eligible for re-election: Provided that no such director shall hold office for a period exceeding six years, whether served continuously or intermittently.
- ***Professional Restrictions –***

  (a) The candidate should neither have any business connection (including legal services, advisory services etc.) with the concerned bank nor should be engaged in activities which might result in a conflict of business interests with that bank.

  (b) The candidate should not be having any professional relationship with a bank or any NOFHC holding any other bank.

  Provided that a candidate having any such relationship with a bank at the time of filing nomination for election shall be deemed to be meeting the requirement under item (b), the candidate shall submit a declaration to the Committee that such relationship with the bank shall be severed if he is elected as a director, and upon being elected, severs such relationship before appointment as a director of the bank.

- ***Track record and integrity*** - The candidate should not be under adverse notice of any regulatory or supervisory authority/agency, or law enforcement agency and should not be a defaulter of any lending institution.

**The banks shall obtain from the elected director:**

(a) a Deed of Covenant executed in the prescribed format before such person assumes office of director;

(b) a simple declaration every year as on 31st March to the effect that the information already provided by such person has not undergone any change;

(c) Where the elected director informs that there is change in the information provided earlier, the bank shall obtain from such director a fresh Annex 1 incorporating the changes.

**The banks shall also:**

Ensure compliance to Section 20 of the Banking Regulation Act, 1949. In addition,

(a) Put in place a system of safeguards, including proper disclosure of the elected CA director's/his firm's clients, and not participating in bank's credit/investment decisions involving his/firm's clients. The elected CA director should be required to compulsorily dissociate himself from the entire process and sign a covenant to this effect.

(b) Require the elected director to make a full and proper disclosure of his interests and directorships in business entities, with the director personally distancing himself from and not participating in the bank's credit/ investment decisions involving entities in which he is interested.

(c) Not allot any professional work to a person who was an elected director of that bank, for a period of two years after demitting office as such director.

Where the elected director:

(a) fails to

  (i) submit the Deed of Covenant or declaration; or

  (ii) make proper disclosures; or

  (iii) refrain from participating in credit/investment decisions, where he is interested; or

(b) makes incomplete or incorrect disclosures, or

(c) involves in such activities that render him/her 'not fit and proper' as per the criteria mentioned above, such director shall be deemed to be not fulfilling the requirements of sub-section (2) of section 19A of the SBI Act/ sub-section (3AA) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 and shall be liable for the consequences thereof.

The Committee shall adopt the revised criteria stated above while scrutinizing the nomination of candidates seeking election as new directors (appointment/re-appointment). However, existing elected directors may be allowed to complete their current terms as per the pre-revised criteria.

## GUIDELINES ON CORPORATE GOVERNANCE FOR NBFCs

In order to enable NBFCs to adopt best practices and greater transparency in their operations the RBI vide its Master Direction No. RBI /DNBR/ 2016-17/45. DNBR.PD.008/03.10.119/2016-17 dated 1st September, 2016 (updated as on 17th February, 2020 issued the guidelines. These guidelines are applicable for NBFC-Systematically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016.

The provisions of these directions shall apply to the following:

i. every Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND-SI) registered with the Bank under the provisions of RBI Act, 1934;

ii. every Deposit taking Non-Banking Financial Company (NBFC-D) registered with the Bank under the provisions of RBI Act, 1934;

iii. every NBFC-Factor registered with the Bank under section 3 of the Factoring Regulation Act, 2011 and having an asset size of Rs. 500 crore and above;

iv. every Infrastructure Debt Fund – Non-Banking Finance Company (IDF-NBFC) registered with the Bank under the provisions of RBI Act, 1934;

v. every Non-Banking Finance Company – Micro Finance Institutions (NBFC-MFIs) registered with the Bank under the provisions of RBI Act, 1934 and having an asset size of Rs. 500 crore and above;

vi. every Non-Banking Finance Company - Infrastructure Finance Company (NBFCIFC) registered with the Bank under the provisions of RBI Act, 1934 and having an asset size of Rs. 500 crore and above.

The Category of NBFCs as mentioned at points (i) to (vi) above are hereafter referred to as 'applicable NBFCs', for the purpose of these Directions.

Chapter XI of the captioned Master Directions deals with the Corporate Governance and provides as under:

1. **Audit Committee:**

   i. All Applicable NBFCs shall constitute an Audit Committee, consisting of not less than three members of its Board of Directors.

   *Explanation I :* The Audit Committee constituted by an on-banking financial company as required under Section177 of the Companies Act, 2013 shall be the Audit Committee for the purposes of this paragraph.

   *Explanation II :* The Audit Committee constituted under this paragraph shall have the same powers, functions and duties as laid down in Section 177 of the Companies Act, 2013.

   ii. The Audit Committee must ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the NBFCs.

2. **Nomination Committee:** All Applicable NBFCs shall form a Nomination Committee to ensure 'fit and proper' status of proposed/ existing directors.

   *Explanation I*: The Nomination Committee constituted under this paragraph shall have the same powers, functions and duties as laid down in Section 178 of the Companies Act, 2013.

3. **Risk Management Committee:** To manage the integrated risk, all Applicable NBFCs shall form a Risk Management Committee, besides the Asset Liability Management Committee.

## Appointment of Chief Risk Officer

With the increasing role of NBFCs in direct credit intermediation, there is a need for NBFCs to augment risk management practices. While Boards of NBFCs should strive to follow best practices in risk management, NBFCs with asset size of more than Rs.50 billion in categories - Investment and Credit Companies, Infrastructure Finance Companies, Micro Finance Institutions, Factors and Infrastructure Debt Funds shall appoint a CRO with clearly specified role and responsibilities. The CRO is required to function independently so as to ensure highest standards of risk management.

The NBFCs shall strictly adhere to the following instructions in this regard:

(a) The CRO shall be a senior official in the hierarchy of an NBFC and shall possess adequate professional qualification/ experience in the area of risk management.

(b) The CRO shall be appointed for a fixed tenure with the approval of the Board. The CRO can be transferred/ removed from his post before completion of the tenure only with the approval of the Board and such premature transfer/ removal shall be reported to the Department of Non-Banking Supervision of the regional office of the Bank under whose jurisdiction the NBFC is registered. In case the NBFC is listed, any change in incumbency of the CRO shall also be reported to the stock exchanges.

(c) The Board shall put in place policies to safeguard the independence of the CRO. In this regard, the CRO shall have direct reporting lines to the MD & CEO/ Risk Management Committee (RMC) of the Board. In case the CRO reports to the MD & CEO, the RMC/ Board shall meet the CRO without the presence of the MD & CEO, at least on a quarterly basis. The CRO shall not have any reporting relationship with the business verticals of the NBFC and shall not be given any business targets. Further, there shall not be any 'dual hatting' i.e. the CRO shall not be given any other responsibility.

(d) The CRO shall be involved in the process of identification, measurement and mitigation of risks. All credit products (retail or wholesale) shall be vetted by the CRO from the angle of inherent and control risks. The CRO's role in deciding credit proposals shall be limited to being an advisor.

(e) In NBFCs that follow committee approach in credit sanction process for high value proposals, if the CRO is one of the decision makers in the credit sanction process, the CRO shall have voting power and all members who are part of the credit sanction process, shall individually and severally be liable for all the aspects, including risk perspective related to the credit proposal.

## Fit and Proper Criteria

All applicable NBFCs shall -

(i) ensure that a policy is put in place with the approval of the Board of Directors for ascertaining the fit and proper criteria of the directors at the time of appointment, and on a continuing basis;

(ii) obtain a declaration and undertaking from the directors giving additional information on the directors;

(iii) obtain a Deed of Covenant signed by the directors;

(iv) furnish to the Bank a quarterly statement on change of directors, and a certificate from the Managing Director of the applicable NBFC that fit and proper criteria in selection of the directors has been followed. The statement must reach the Regional Office of the Department of Non-Banking Supervision of the Bank where the company is registered, within 15 days of the close of the respective quarter. The statement submitted by applicable NBFC for the quarter ending March 31, shall be certified by the auditors.

Provided that the Bank, if it deems fit and in public interest, reserves the right to examine the fit and proper criteria of directors of any NBFC irrespective of the asset size of such NBFC.

Disclosure and transparency:

(1) All Applicable NBFCs shall put upto the Board of Directors, at regular intervals, as may be prescribed by the Board in this regard, the following:

i. the progress made in putting in place a progressive risk management system and risk management policy and strategy followed by the NBFC;

ii. conformity with corporate governance standards viz., in composition of various committees, their role and functions, periodicity of the meetings and compliance with coverage and review functions, etc.

(2) All Applicable NBFCs shall also disclose the following in their Annual Financial Statements, with effect from March 31, 2015:

i. registration/licence/authorisation, by whatever name called, obtained from other financial sector regulators;

ii. ratings assigned by credit rating agencies and migration of ratings during the year;

iii. penalties, if any, levied by any regulator;

iv. information namely, area, country of operation and joint venture partners with regard to Joint ventures and overseas subsidiaries; and

v. Asset-Liability profile, extent of financing of parent company products, NPAs and movement of NPAs, details of all off-balance sheet exposures, structured products issued by the mas also securitization/ assignment transactions and other disclosures.

### Rotation of partners of the Statutory Auditors Audit Firm

All applicable NBFCs shall rotate the partner/s of the Chartered Accountant firm conducting the audit, every three years so that same partner shall not conduct audit of the company continuously for more than a period of three years. However, the partner so rotated shall be eligible for conducting the audit of the applicable NBFC after an interval of three years, if the applicable NBFC, so decides. The applicable NBFC shall incorporate appropriate terms in the letter of appointment of the firm of auditors and ensure its compliance.

**Framing of Internal Guidelines:**

All applicable NBFCs shall frame their internal guidelines on corporate governance with the approval of the Board of Directors, enhancing the scope of the guidelines without sacrificing the spirit underlying the above guidelines and it shall be published on the company's web-site, if any, for the information of various stakeholders.

## CORPORATE GOVERNANCE GUIDELINES FOR INSURANCE COMPANIES

The Insurance Regulatory and Development Authority of India (IRDAI) issued Guidelines on Corporate Governance for insurance companies vide circular dated 5th August, 2009. The Authority had also issued separate guidelines for appointment/reappointment and remuneration of MD/CEO/WTD as well as other Key Management Persons (KMPs) and also the Appointment of statutory auditors of insurers through various circulars.

The IRDAI revised the existing Guidelines in the light of changes brought in by the Companies Act, 2013 vide Circular Dated 18th May 2016 to ensure that the structure, responsibilities and functions of Board of Directors and the management of the company recognize the expectations of all stakeholders as well as those of the regulator. These guidelines are applicable to all insurers granted registration by the Authority except:

(i) reinsurance companies may not be required to have the Policy holders 'Protection Committee; and

(ii) branches of foreigner insurers in India may not be required to constitute the Board and its mandatory committees as indicated herein.

The guidelines address the various requirements broadly covering the following major structural elements of Corporate Governance in insurance companies:-

**1. General**

**1.1** Corporate Governance is understood as a system of financial and other controls in a corporate entity and broadly defines the relationship between the shareholders, Board of Directors and management. In case of the financial sector, where the entities accept public liabilities for fulfillment of certain contracts, the relationship is fiduciary with enhanced responsibility to protect the interests of all stakeholders. The Corporate Governance framework should clearly define the roles and responsibilities and accountability within an organization with built-in checks and balances. The importance of Corporate Governance has received emphasis in recent times since poor governance and weak internal controls have been associated with major corporate failures. It has also been appreciated that the financial sector needs to have a more intensive governance structure in view of its role in the economic development and since the safety and financial strength of the institutions are critical for the overall strength of the financial sector on which the economic growth is built upon. As regards the insurance sector, the regulatory responsibility to protect the interests of the policyholders demands that the insurers have in place, good governance practices for maintenance of solvency, sound long term investment policy and assumption of underwriting risks on a prudential basis. The emergence of insurance companies as a part of financial conglomerates has added a further dimension to sound Corporate Governance in the insurance sector with emphasis on overall risk management across the structure and to prevent any contagion and to ensure financial stability.

**1.2** The Insurance Regulatory and Development Authority of India (IRDAI) has outlined in general terms, governance responsibilities of the Board in the management of the insurance functions under various Regulations notified by it covering different operational areas. It has now been decided to put them together and to issue the following comprehensive guidelines for adoption by an Insurer. In the light of changes brought in by the Companies Act, 2013, the existing guidelines on Corporate Governance practices of insurers are being revised as below. These revised Guidelines shall replace the existing guidelines on Corporate Governance issued by the Authority and shall take effect from FY 2016-17. These guidelines shall also supercede the Guidelines on Reporting of Key Persons dt. 9th October, 2013 and stipulations regarding appointment of Statutory Auditors issued *vide* Circulars dt.25.07.2005 and 22.04.2009.

**2. Objectives**

**2.1** The objective of the guidelines is to ensure that the structure, responsibilities and functions of Board of Directors and the management of the company recognize the expectations of all stakeholders as well as those of the regulator. The structure should take steps required to adopt sound and prudent principles and practices for the governance of the company and should have the ability to quickly address issues of non-compliance or weak oversight and controls. These guidelines therefore amplify on certain issues which are covered in the Insurance Act, 1938 and the regulations framed thereunder and include measures which are additionally considered essential by IRDAI for adoption by insurers.

**2.2** The guidelines accordingly address the various requirements broadly covering the following major structural elements of Corporate Governance in insurance companies:-

- Governance structure
- Board of Directors
- CEO
- Key Management functions

- Role of Appointed Actuaries
- External audit – Appointment of Statutory Auditors
- Disclosures
- Relationship with stakeholders
- Interaction with the Supervisor
- Whistle blower policy

**2.3** In these guidelines, the reference to the "Board" would apply to the "Board of Directors" and the term "Key Management Persons" shall be as defined in these guidelines.

**3. Significant Owners, Controlling Shareholders – Role of Board**

**3.1** IRDAI prescribes a minimum lock-in period of 5 years from the date of certificate of commencement of business of an insurer (R3) for the promoters of the insurance company and no transfer of shares of the promoters is permitted within this period without the specific approval of the Authority.

**3.2** Section 2 (7A) of the Insurance Act, 1938 has prescribed the ceiling of Foreign Investment in Indian Insurance Companies at 49%, subject to the Indian Insurance Company being Indian owned and controlled. The manner of computation of Foreign Investment to satisfy this requirement is specified in the Rules and Regulations issued by the Government and IRDAI from time to time.

Explanation to sub-clause (b) of clause 7A of Section 2 of the Insurance Act, 1938, which defines 'Indian Insurance Company' provides that the expression "control" shall include the right to appoint a majority of directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

Therefore, it has to be demonstrated through express provisions in the agreements between the promoters/ shareholders and/ or the Articles of Association of the Insurance companies that the ownership as well as control does not lie with foreign entities but ultimately rests with resident Indian citizens at all times.

**3.3** The Insurance Act, 1938 stipulates prior approval of the IRDAI for registration/transfer of shares, exceeding one per cent and /or which involve holding of share capital, after such transfer, in excess of 5 per cent of the paid-up capital of the company. The Board of Directors of the company shall ensure that the registration of shares is in compliance with the above provisions of the Act, Regulations and circulars issued by IRDAI from time to time.

**3A. Conflict of Interest – Role of Board**

**1.** Where it is proposed to enter into a contract or arrangement with Related parties as defined in Companies Act 2013, the disclosures by Directors and necessary approvals as required under Sections 184, 177(4)(iv) and 188 of Companies Act 2013, read with the relevant Rules thereunder, shall be obtained. Adequate systems, policies and procedures to address potential conflicts of interest and compliance with the provisions of Companies Act, 2013 need to be established by the insurers. These include Board level review of key transactions, disclosure of any conflicts of interest to manage and control such issues. Where the transactions with related parties are in the nature of transactions such as reinsurance arrangements or investment transactions or outsourcing to related parties, for which specific regulations or guidelines have been notified, compliance with the respective regulations or guidelines shall also be ensured.

The Board of Directors of an insurer shall formulate a Policy on Related Party Transactions laying down the following:

(a) Definition of Transactions in the ordinary course of the insurance business giving examples specific to the insurance company.

(b) Method of determination of arm's length pricing.

(c) List of items requiring approvals from various authorities, Audit Committee, Board, Shareholders etc.

(d) Any other matter relevant to the Related party transactions.

The Policy shall be reviewed by the Board on an yearly basis. In the case of insurance cover given by the insurance company to the group companies, price/ premium quoted by the companies under F&U guidelines should be considered as arm's length. The disclosures about payments made to group entities of the insurer out of the policyholders funds, shall be made as a part of the related party disclosures in terms of para 9 of these guidelines; and all such transactions may be grouped together under the related party transactions.

**2.** Auditors, Actuaries, Directors and Key Management Persons shall not simultaneously hold two positions in the insurance company that could lead to conflict or potential conflicts of interest.

**3.** The Board should ensure ongoing compliance with the statutory requirements on capital structure while planning or examining options for capital augmentation of the Company.

**4. Governance Structure**

The insurance companies presently could have different structures with the Board of Directors headed by a Executive or Non-executive Chairman with distinct oversight responsibilities over the other Directors and Key Management Persons. It is expected that whatever form is taken, the broader elements of good Corporate Governance are present.

The governance structure of the insurer could also be influenced by its association with an insurance group or a larger financial/ non-financial conglomerate. Insurers who are a part of a financial group could also be subject to the regulatory requirements on governance policies and practices established for the group level and implemented uniformly across the group.

However, these practices should be reoriented at the level of the in surer taking in to account its specific business and risk profile and sectoral regulatory requirements. Such insurers should nevertheless strive to maintain consistency in policies and practices in order tore in force controls across the group.

**5. Board of Directors**

**5.1. Composition**

- The Insurance Act stipulates that the insurance companies in India would be public companies and hence, would require a properly constituted Board.
- Insurance companies should ensure that the Board comprises of competent and qualified Directors to drive the strategies in a manner that would sustain growth and protect the interests of the stakeholders in general and policyholders in particular.
- The size of the Board in addition to being compliant with legal requirements (where applicable), should be consistent with scale, nature and complexity of business.
- It is expected that the shareholders of the companies elect or nominate Directors from various areas of financial and management expertise such as accountancy, law, insurance, pension, banking, securities, economics, etc., with qualifications and experience that is appropriate to the company.

- It is essential that the Directors possess the knowledge of group structure, organizational structure, process and products of the insurer and the Board generally complies with the following requirements-
  - The Board of Directors and Key Management Persons should understand the operational structure of the insurer and have a general understanding of the lines of business and products of the insurer, more particularly as the insurer grows in size and complexity.
  - The Board of Directors of an in surer be longing to a larger group structure/ conglomerate should understand the material risks and issues that could affect the group entities, with attendant implication on the insurer.
- The Board of Directors is required to have a minimum of three "Independent Directors". However, this requirement is relaxed to 'two' independent directors, for the initial five years from grant of Certificate b of Registration to insurers. An independent Directors hall fulfill all the conditions specified under Section 149 of the Companies Act, 2013.
- In case the number of independent directors falls below the required minimum laid down, such vacancy shall be filled up before the immediately following Board meeting or 3 months from the date of such vacancy, whichever is later, under intimation to the Authority.
- Where the Chairman of the Board is non-executive, the Chief Executive Officer should be a wholetime director of the Board.

As required under Section 149 of the Companies Act,2013, there shall be at least one Woman Director on the Board of every Insurance company.

**5.2. The Role and responsibility of the Board**

The Role and Responsibilities of the Board of insurers are detailed as under:

Role and Responsibilities of the Board of Directors

1) The Board should ensure that the Governance principles set for the insurer comply with all relevant laws, regulations and other applicable codes of conduct.
2) The Board should set the following policies in consultation with the Management of the Company.
   (a) Define and periodically review the business strategy.
   (b) Define the underwriting policy of the insurer.
   (c) Determine the retention and reinsurance policy and in particular, the levels of retentions of risk by the insurer and the nature and extent of reinsurance protection to be maintained by the insurer.
   (d) Define the policy of the insurer as regards investment of its assets consistent with an appropriate asset liability management structure.
   (e) Define the insurer's policy on appointments and qualification requirements for human resources and ensure that the incentive structure does not encourage imprudent behaviour.

3) The Board should define and set the following standards:-

   (a) Define the standards of business conduct and ethical behaviour for directors and senior management.

   (b) Define the standards to be maintained in policyholder servicing and in redressal of grievances of policyholders.

4) The Board would be responsible to provide guidance for implementation of business strategy and review the same periodically.

5) As an integral part of proper implementation of the business strategy, the Board should take action as under:-

   (a) Establish appropriate systems to regulate the risk appetite and risk profile of the Company. It will also enable identification and measurement of significant risks to which the company is exposed in order to develop an effective risk management system.

   (b) Ensure that all directions of IRDAI are submitted to the Board and the recommendations are implemented as per the Board philosophy.

   (c) Ensure that the IT systems in the company are appropriate and have built-in checks and balances to produce data with integrity and put in place a business continuity and disaster recovery plan.

   (d) Ensure that the company has put in place a robust compliance system for all applicable laws and regulations.

   (e) Prescribe requirements and frequency of reporting in respect of each of the above areas of responsibility as may be decided by the Board.

6) In discharge of the above and other Governance functions, the Board may delegate the responsibilities to mandated/ other recommended Empowered Committees of Directors while retaining its primary accountability.

The Board would primarily concentrate on the direction, control and governance of the insurer and in particular should articulate and commit to a corporate philosophy and governance that will shape the level of risk adoption, standards of business conduct and ethical behaviour of the company at the macro level. The Board should also set clear and transparent policy framework for translation of the corporate objectives. The Board can delegate its authority to the Board Committees in the discharge of this responsibility but such delegation does not absolve the Board from its primary responsibilities. In this regard, the Board should seek detailed and transparent information flow from the senior management (CEO and other KMPs) through well documented agenda notes and also devise appropriate systems to serve as effective monitoring arrangements. As the Boards generally do not meet at frequent intervals, it is imperative that the senior management is clearly made accountable for the two way information flow. The structure of the Board of Directors should be oriented to setting- up of objectives to meet the expectations of various stakeholders, strategies for their fulfillment and for monitoring the achievements. The Boards of insurance companies need to consider interests of all stakeholders, and especially their policyholders as a specific group. Further, since there could arise a conflict of interest amongst the various stakeholders, a key board function would be to establish strategies and policies that define ethical individual and corporate behaviour and ongoing, effective processes that ensure adherence to these strategies and policies.

Thus, with a view to being effective, the Board in active consultation with the Key Management Persons, should establish and evaluate strategies and policies to address, at the minimum, a broad range of areas, as indicated below. There should concurrently be arrangements to review the policies from time to time to ensure that they are dynamic.

- Overall direction of the business of the insurance company, including policies, strategies and risk management across all the functions;
- Projections on the capital requirements, revenue streams, expenses and the profitability. While laying down the projections, the Board must address the expectations of the shareholders and the policyholders;
- Obligation to fully comply with the Insurance Act and the regulations framed thereunder, and other statutory requirements applicable to it;
- Addressing conflicts of interest;
- Ensuring fair treatment of policyholders and employees;
- Ensuring information sharing with and disclosures to stakeholders, including investors, policyholders, employees, the regulators, consumers, financial analysts and/or rating agencies.
- Establishing channels for encouraging and facilitating employees raising concerns or reporting a possible breach of law or regulations, with appropriate measures to protect whistle blowers;
- Developing a corporate culture that recognizes and rewards adherence to ethical standards.

**5.3. Fit and Proper Criteria**

In line with the international and domestic norms, the Directors of insurers have to meet the “fit and proper” criteria. The criteria to be satisfied, at a minimum, would relate to integrity demonstrated in personal behaviour and business conduct, soundness of judgment and financial soundness. The Insurance Act prohibits (i) an insurance intermediary/ agent to be the Director of an insurance company (except with prior approval of the Authority); and (ii) the common directorship among life insurance companies. Currently, the fit and proper requirements seek to ensure that the Director should not have been convicted or come under adverse notice of the laws and regulations involving moral turpitude or of any professional body. With a view to ensuring that the Directors comply with the above requirement, a due diligence enquiry should be undertaken on the person to be appointed as Director or for the continuance of the existing Directors only after obtaining a declaration from the proposed/existing Directors in the format given in Annexure 2, at the time of their appointment/re- appointment.

**5.4. Disclosures about Meetings of the Board and its Committees**

Insurers shall ensure compliance with the provisions of the Companies Act, 2013 and the Secretarial Standards issued by the ICSI from time to time as regards conduct of the meetings of the Board of Directors and their committees. In addition to the above, all insurers shall disclose the following in the Director’s Report:

(a) Number of meetings of the Board of Directors and Committees mandated under these Guidelines, in the financial year

(b) Details of the composition of the Board of Directors and Committees mandated, setting out name, qualification, field of specialization, status of directorship held etc.

(c) Number of meetings attended by the Directors and members of the Committee

(d) Details of the remuneration paid, if any, to all directors (including Independent Directors)

**6. Control Functions**

Given the risks that an insurer takes in carrying out its operations, and the potential impact it has on its business, it is important that the Board lays down the policy framework to put in place:

- robust and efficient mechanisms for the identification, assessment, quantification, control, mitigation and monitoring of the risks;
- appropriate processes for ensuring compliance with the Board approved policy, and applicable laws and regulations;
- appropriate internal controls to ensure that the risk management and compliance policies are observed;
- an internal audit function capable of reviewing and assessing the adequacy and effectiveness of, and the insurer's adherence to its internal controls as well as reporting on its strategies, policies and procedures; and
- Independence of the control functions, including the risk management function, from business operations demonstrated by a credible reporting arrangement.

The Board shall be responsible for the oversight over the control functions of an Insurer.

For insurers within a group, appropriate and effective group-wide risk control systems should be in place in addition to the control systems at the level of the insurer. It is essential to manage risks appropriately on a group-wide basis as well as at the level of the insurer. The Boards of the respective insurers are required to lay down requisite policy framework to ensure that such risks are adequately addressed.

**7. Delegation of Functions- Committees of the Board**

With a view to providing adequate Board time for discharge of the significant corporate responsibilities, the Board can consider setting up of various Committees of Directors by delegating the overall monitoring responsibilities after laying down the roles and responsibilities of these Committees to the Board. In particular, the following aspects need to be defined in respect of the role and functions of the Committees:

- Constitution
- Objectives
- Responsibilities
- Frequency of meeting / quorum requirements
- Appointment and removal of members
- Reporting to the Board

Insurers may establish several Committees to undertake specific functions depending on the size and level of the complexity of the operations. Typically, the Committees that assist the Board are Audit Committee, Risk Management Committee, Nomination and Remuneration Committee, Investment Committee, Ethics Committee and Asset-Liability Management Committee.

However, the Authority advises all insurers that it is mandatory to establish Committees for Audit, Investment, Risk Management, Policyholder Protection, Nomination and Remuneration, Corporate Social Responsibility (only for insurers earning profits).

In addition, Regulation 45d of the IRDA (Non-linked Insurance Products) Regulations, 2013 requires constitution of a 'With Profits' Committee by Life Insurance Companies comprising of one Independent Director of the Board, the Chief Executive Officer, the Appointed Actuary of the Company and an Independent Actuary. Establishment of the other Committees is left to the option of the insurer. The role and responsibilities of the Committees would generally be as detailed below:-

**7.1. Audit Committee (Mandatory)**

- Every Insurer shall constitute an Audit Committee as per Section 177 of the Companies Act, 2013.
- The Audit Committee shall oversee the financial statements, financial reporting, statement of cash flow and disclosure processes both on an annual and quarterly basis. It shall set-up procedures and processes to address all concerns relating to adequacy of checks and control mechanisms.
- The Chairperson of the Audit Committee should be an Independent Director of the Board with an accounting/finance/audit experience and may be a Chartered Accountant or a person with a strong financial analysis background. The association of the CEO in the Audit Committee should be limited to occasions where the Audit Committee requires eliciting any specific information concerning audit findings. As required under Section 177 of the Companies Act, 2013, the Audit Committee shall comprise of a minimum of three directors, majority of whom shall be Independent Directors.
- The Audit Committee will oversee the efficient functioning of the internal audit department and review its reports. The Committee will additionally monitor the progress made in rectification of irregularities and changes in processes wherever deficiencies have come to notice.
- The Audit Committee shall be directly responsible for the recommendation of the appointment, remuneration, performance and oversight of the work of the auditors (internal/statutory/Concurrent). In case of statutory audit, the independence of the external auditors shall be ensured (although the approval of appointment, remuneration and removal of the statutory auditors shall be done by the shareholders at the general body meeting).
- The Audit Committee shall have the oversight on the procedures and processes established to attend to issues relating to maintenance of books of account, administration procedures, transactions and other matters having a bearing on the financial position of the insurer, whether raised by the auditors or by any other person.
- The Audit Committee shall discuss with the statutory auditors before the audit commences, about the nature and scope of audit as well as have post-audit discussions to address areas of concern.
- Act as a Compliance Committee to discuss the level of compliance in the Company and any associated risks and to monitor and report to the Board on any significant compliance breaches.
- Any additional work other than statutory/internal audit that is entrusted to the auditor or any of its associated persons or companies shall be specifically approved by the Board keeping in mind the necessity to maintain the independence and integrity of the audit relationship. All such other work entrusted to the auditor or its associates shall be specifically disclosed in the Notes to Accounts forming part of the annual accounts of the insurance companies. However, it may be ensured that insurance companies comply with Section 144 of the Companies Act, 2013 before deciding to provide any additional work to the Statutory Auditors.

**7.2. Investment Committee (Mandatory)**

The Board of every Insurer shall set up an Investment Committee comprising of at least two Non-Executive Directors, the Chief Executive Officer, Chief of Finance, Chief of Investment, Chief Risk Officer and, the Appointed Actuary.

The Committee shall be responsible to recommend investment policy and lay down the operational framework for the investment operations of the insurer. The policy should focus on a prudential Asset Liability Management (ALM) supported by robust internal control systems. The investment policy and operational framework should, inter alia, encompass aspects concerning liquidity for smooth operations, compliance with prudential regulatory norms on investments, risk management / mitigation strategies to ensure commensurate yield on investments and above all protection of policyholders' funds.

The Investment Committee shall be responsible for implementing the Investment Policy duly approved by the Board.

Members of the Committee should familiarize themselves and be conversant with the various Acts, Rules, Regulations, Guidelines, Circulars, etc., issued by the Authority as amended from-time-to-time.

For assessment of credit risk and market risk, the members of the Committee should not be influenced only by the credit rating. The committee should independently review their investment decisions and ensure that support by the internal due diligence process is an input in making appropriate investment decisions.

The Committee shall formulate an effective reporting system to ensure compliance with the policy set out by it apart from Internal /Concurrent Audit mechanisms for a sustained and on-going monitoring of Investment Operations.

The Committee shall meet at least once in a quarter to review investment operations and submit a report to the Board on the performance of the investment portfolio with regard to its safety and soundness.

**7.3. Risk Management Committee (Mandatory)**

It is now well recognized that the sound management of an insurance company, as in the case of other financial sector entities, is dependent on how well the various risks are managed across the organization. In pursuit of development of a strong risk management system and mitigation strategies, insurers shall set up a separate Risk Management Committee to implement the company's Risk Management Strategy. The risk management function should be under the overall guidance and supervision of the Chief Risk Officer (CRO) with a clearly defined role. It shall be organized in such a way that it is able to monitor all the risks across the various lines of business of the company and the operating head has direct access to the Board. It should not focus solely on compliance; it should focus on adding value to rest of the business. Risk management function should work in close co-ordination with the finance function, but independently assess and evaluate the capital, finance and other operating decisions. Broadly, the Risk Management Committee shall:

- Establish effective Risk Management framework and recommend to the Board the Risk Management policy and processes for the organization.
- Set the risk tolerance limits and assess the cost and benefits associated with risk exposure.
- Review the Company's risk- reward performance to align with overall policy objectives.

- Discuss and consider best practices in risk management in the market and advise the respective functions.
- Assist the Board in effective operation of the risk management system by performing specialized analyses and quality reviews.
- Maintain an aggregated view on the risk profile of the Company for all categories of risk including insurance risk, market risk, credit risk, liquidity risk, operational risk, compliance risk, legal risk, reputation risk, etc.
- Advise the Board with regard to risk management decisions in relation to strategic and operational matters such as corporate strategy, mergers and acquisitions and related matters.
- Report to the Board, details on the risk exposures and the actions taken to manage the exposures; review, monitor and challenge where necessary, risks undertaken by the Company.
- Review the solvency position of the Company on a regular basis.
- Monitor and review regular updates on business continuity.
- Formulation of a Fraud monitoring policy and framework for approval by the Board.
- Monitor implementation of Anti-fraud policy for effective deterrence, prevention, detection and mitigation of frauds.
- Review compliance with the guidelines on Insurance Fraud Monitoring Framework dt. 21st January, 2013, issued by the Authority.

**7.4. Policy holder Protection Committee (Mandatory)**

The Authority is mandated by statute to protect policy holders' interests and therefore adoption of sound and healthy market practices in terms of sales, marketing, advertisements, promotion, publicity, redressal of customer grievances, consumer awareness and education is essential. The Authority has, therefore, notified the following Regulations/Guidelines/Circulars:-

i) Protection of Policyholders' Interests Regulations, 2002;

ii) Insurance Advertisements and Disclosure Regulations, 2002;

iii) Master Circular on Insurance Advertisements in August, 2015;

iv) Guidelines on Public Disclosure for insurance companies;

v) Guidelines on Advertisements, Promotion & Publicity of Insurance Companies and Insurance Intermediaries in May 2007;

vi) Various Circulars on Handling and Disclosure of the Unclaimed Amounts pertaining to the Policyholders;

vii) Guidelines on Grievance Redressal by Insurance Companies in July 2010 and Handling of Complaints/ Grievances from Policyholders in April 2015; and

viii) Guidelines on Electronic Mode of Payments for Claims.

Indian Insurance companies are also required to report on the number and nature of complaints to the IRDAI at monthly intervals to enable IRDAI to assess the governance and market conduct issues with respect to each insurance company. With a view to addressing the various compliance issues relating to protection of the interests of policyholders, as also relating to keeping the policyholders well informed of and educated about insurance products and complaint-handling procedures, each insurer shall set up a Policyholder Protection Committee.

Such Committee shall be headed by a Non-Executive Director and shall include an expert/representative of customers as an invitee to enable insurers to formulate policies and assess compliance thereof. The Committee shall recommend a policy on customer education for approval of the Board and ensure proper implementation of the same. The Committee should put in place systems to ensure that policyholders have access to redressal mechanisms and shall establish policies and procedures, for the creation of a dedicated unit to deal with customer complaints and resolve disputes expeditiously. The functions and responsibilities of the Policyholders' Protection Committee shall include:-

- Adopt standard operating procedures to treat the customer fairly including time-frames for policy and claims servicing parameters and monitoring implementation thereof.
- Establish effective mechanism to address complaints and grievances of policyholders including mis- selling by intermediaries.
- Put in place a framework for review of awards given by Insurance Ombudsman/Consumer Forums. Analyze the root cause of customer complaints, identify market conduct issues and advise the management appropriately about rectifying systemic issues, if any.
- Review all the awards given by Insurance Ombudsman/Consumer Forums remaining unimplemented for more than three (3) months with reasons therefor and report the same to the Board for initiating remedial action, where necessary.
- Review the measures and take steps to reduce customer complaints at periodic intervals.
- Ensure compliance with the statutory requirements as laid down in the regulatory framework.
- Ensure adequacy of disclosure of "material information" to the policyholders. These disclosures shall comply with the requirements laid down by the Authority both at the point of sale and at periodic intervals.
- Provide details of grievances at periodic intervals in such formats as may be prescribed by the Authority.
- Ensure that details of insurance ombudsmen are provided to the policyholders.
- Review of Claims Report, including status of Outstanding Claims with ageing of outstanding claims.
- Reviewing Repudiated claims with analysis of reasons.
- Status of settlement of other customer benefit payouts like Surrenders, Loan, Partial withdrawal requests etc.
- Review of unclaimed amounts of Policyholders, as required under the Circulars and guidelines issued by the Authority.

The Board shall review the status report on policyholders' protection issues, submitted by the Committee, in each of its meeting.

**7.5. Nomination and Remuneration Committee (Mandatory)**

The Nomination and Remuneration Committee shall be constituted in line with the provisions of Section 178 of the Companies Act, 2013. Indian Insurance Companies which have constituted two independent committees for Nomination and Remuneration separately may merge these two Committees after seeking the Board approval, under intimation to the Authority, within a period of 180 days from the date of issue of these guidelines.

The Nomination and Remuneration Committee shall scrutinize the declarations of intending applicants before the appointment/reappointment/election of directors by the shareholders at the General Meetings. The Committee shall also scrutinize the applications and details submitted by the aspirants for appointment as the Key Management Persons. The Nomination and Remuneration Committee could also make independent/ discreet references, where necessary, well in time to verify the accuracy of the information furnished by the applicant. The insurance companies are further advised that they should obtain an annual declaration from the Directors/ KMPs that the information provided in the declaration at the time of appointment/ reappointment has not undergone any change subsequently and the changes, if any, are apprised by the concerned Director to the Board. The Directors are also required to enter into a Deed of Covenant. With the insurance company, duly approved by the Board, pursuant to their terms of appointment to ensure that there is a clear understanding of the mutual role of the company, the Directors and the Board in Corporate Governance.

It is pertinent to draw attention to the provisions of Section 34 (A) (1) of the Insurance Act, 1938 which stipulates that the remuneration of CEOs/Whole-time Directors of Indian insurance companies is subject to statutory approval of the IRDAI. Further, the overall management costs of the insurer are also additionally governed by the limits prescribed statutorily in the Insurance Act and Regulations framed there under in order to protect the interests of the policyholders. The setting up of a Nomination and Remuneration Committee should keep the above requirements in view. Further, the envisaged role of the Committee includes the following aspects:-

The Nomination and Remuneration Committee is required to determine on behalf of the Board and on behalf of the shareholders with agreed terms of reference, the insurance company's policy on remuneration packages and any compensation payment, for the CEO, the Executive Directors, Key management Persons of the company.

The remuneration package shall be aligned appropriately with the performance objectives laid down for the Key Management Persons.

In order to avoid conflict of interest, the Nomination and Remuneration Committee, may comprise of at least three non-executive directors, with the Chairman of the Committee being an independent director. At least one-half of the Committee shall comprise of Independent Directors.

The Nomination and Remuneration Committee shall ensure that the remuneration packages of the Key Management Persons of the company are as per the Remuneration Policy approved by the Board.

The Committee shall also ensure that the proposed appointments/ re-appointments of Key Management Persons or Directors are in conformity with the Board approved policy on retirement/ superannuation.

**7.6. Corporate Social Responsibility Committee ('CSR Committee') (Mandatory)**

Section 135 of the Companies Act, 2013 requires constitution of a CSR Committee if certain conditions as mentioned in the said Section are fulfilled. For Indian Insurance Companies, a CSR Committee is required to be set up if the insurance company earns a Net Profit of Rs. 5 Crores or more during the preceding financial year. Further the 'Net Profit' for this purpose shall be as under:-

"Net profit" means the "profit/(loss) before tax" as per its financial statements prepared in accordance with the applicable provisions of the Insurance Act, 1938 and the Regulations framed thereunder, but shall not include the following, namely

(i) *Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and*

(ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Companies Act.

***Provided*** *that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Insurance Act, 1938, shall not be required to be re-calculated in accordance with the provisions of the Companies Act.*

In line with Section 135(5) of Companies Act, 2013, the Board of Directors of the Company shall ensure that the Company spends not less than 2% of the three years' average Net Profits as defined above towards the CSR activities.

(a) CSR will be based only on the average of the three years' profit as per the Statement of Profit and Loss Account as stated above.

(b) The CSR Committee shall formulate a CSR policy and get it approved by the Board. Constitution of CSR Committee will be as per Companies Act, 2013.

(c) The expense incurred on CSR shall not be included for the purpose of calculation of ceilings on Expenses of Management under Section 40B or Section 40C, as the case may be.

(d) The expenses incurred on CSR activities should not be charged to the Policyholders' Account.

**7.7. With Profits Committee**

The Authority has issued IRDA (Non-Linked Insurance Products) Regulations 2013, which lay down the framework about the With Profit Fund Management and Asset sharing, among other things. In terms of these Regulations, every Insurer transacting life insurance business shall constitute a With Profits Committee comprising of an Independent Director, the CEO, The Appointed Actuary and an independent Actuary. The Committee shall meet as often as is required to transact the business and carry out the functions of determining the following:

- the share of assets attributable to the policyholders
- the investment income attributable to the participating fund of policyholders
- the expenses allocated to the policyholders.

The report of the With Profits Committee in respect of the above matters should be attached to the Actuarial Report and Abstract furnished by the insurers to the Authority. The Board of an insurer shall ensure that any other stipulations regarding the constitution and/ or functioning of the With Profits Committee as indicated in the Regulations made by the Authority from time to time shall be complied with at all times.

**7.8. Other Committees**

The other Committees which can be set up by the Board, include the Ethics Committee and ALM Committee (other than life insurers). In cases where Board decides not to constitute such Committees, their functions and responsibilities can be addressed in such manner as the Board may deem fit. However, once these Optional Committees are in place, the insurer is required to comply with the requirements on the "Role and Responsibilities" of such Committees as laid down under these Guidelines.

Wherever the functions of the mandatory committees are capable of being merged without affecting the independence and objectivity envisaged in the corporate governance structure, insurance companies may do so under specific approval of their Boards and intimation to the Authority. However, the Audit Committee and the Investment Committee shall not be merged with any other Committee of the Board under any circumstances.

**7.8.1 Ethics Committee (not mandatory)**

Functions and Responsibilities of the Ethics Committee shall include:

Monitoring the compliance function and the insurance company's risk profile in respect of compliance with external laws and regulations and internal policies, including its code of ethics or conduct.

Receiving reports on the above and on proactive compliance activities aimed at increasing the insurance company's ability to meet its legal and ethical obligations, on identified weaknesses, lapses, breaches or violations and the controls and other measures in place to help detect and address the same.

Supervising and monitoring matters reported using the insurer's whistle blowing or other confidential mechanisms for employees and others to report ethical and compliance concerns or potential breaches or violations.

Advising the board on the effect of the above on the insurer's conduct of business and helping the board set the correct "tone at the top" by communicating, or supporting the communication, at all levels of the insurer of the importance of ethics and compliance.

Approving compliance programmes, reviewing their effectiveness on a regular basis and signing off on any material compliance issues or matters.

**7.8.2 Asset Liability Management (ALM) Committee**

ALM is an ongoing process of formulating, implementing, monitoring and revising strategies related to assets and liabilities to achieve an organization's financial objectives, given the organization's risk appetite, risk tolerances and business profile. The need for ALM cannot be over-emphasized as it lays down the framework to ensure that the insurer invests in a manner which would enable it to meet its cash flow needs and capital requirements at a future date to mitigate liquidity risk and solvency stipulations.

The functions of the ALM Committee (wherever constituted) shall include:

- Setting the insurer's risk/reward objectives and assessing policyholder expectations.
- Quantifying the level of risk exposure (e.g. market, credit and liquidity) and assessing the expected rewards and costs associated with the risk exposure.
- Formulating and implementing optimal ALM strategies and meeting risk-reward objectives at both product and enterprise level.
- Ensuring that liabilities are backed by appropriate assets and manage mismatches between assets and liabilities to ensure they remain within acceptable monitored tolerances for liquidity, solvency and the risk profile of the entity.
- Monitoring risk exposures at periodic intervals and revising ALM strategies where required. Reviewing, approving and monitoring systems, controls and reporting used to manage balance sheet risks including any mitigation strategies.

- Regular review and monitoring of mismatch between assets and liabilities and the acceptable tolerance limits for mismatch, if any.
- Ensuring that management and valuation of all assets and liabilities comply with standards, prevailing legislation and internal and external reporting requirements.
- Submitting the ALM information before the Board at periodic intervals. Annual review of strategic asset allocation.
- Reviewing key methodologies and assumptions including actuarial assumptions, used to value assets and liabilities.
- Managing capital requirements at the company level using the regulatory solvency requirements.
- Reviewing, approving and monitoring capital plans and related decisions over capital transactions (e.g. dividend payments, acquisitions, disposals, etc).

Where an insurer does not constitute the Asset Liability Management (ALM) Committee, the functions of ALM shall form part of the Risk Management Committee.

**7.9.** The mandatory committees, **except Nomination and Remuneration Committee, the Corporate Social Responsibility Committee and the With Profits Committee** shall meet at least four times in a year and not more than four months shall elapse between two successive meetings of such Committees. The quorum shall be two members or one-third of the members of the Committee, whichever is greater, however in case independent director(s) is/ are mandated to be in any of the Committees, **at least one such independent director or his alternate director**, should necessarily be present to form the quorum.

As specified in the proviso to Section 161(2) of the Companies Act, 2013, no person shall be appointed as an alternate director for an independent director unless he/she is qualified to be appointed as an independent director under the provisions of this Act. This condition shall be applicable even while appointing an alternate director to an Independent director in any of the Committees.

It is emphasized that the overall responsibility for directing the affairs of the insurers shall be with the Board and it shall continue to exercise its oversight directly on matters that are not specifically delegated to any of its Committees.

**8. Key Managerial Persons**

**8.1 CEO/ Managing Director/ Whole-Time Director**

The Chief Executive Officer / Whole Time Director/Managing Director of the company and other key functionaries are responsible for the operations and day to day management of the company in line with the directions of the Board and the Committees setup by the Board. Section 34A of the Insurance Act,1938 requires prior approval of the Authority for appointment, re-appointment or termination of the Chief Executive Officer and the Whole Time Directors. The Authority expects the CEO to be responsible for the conduct of the company's affairs in a manner which is not detrimental to the interests of the policyholders and which is consistent with the policies and directions of the Board. The Board should, therefore, carry out effective due diligence to establish that the new incumbent is 'fit and proper' before recommending the name for Authority's approval. In case the CEO resigns, the Authority should be kept informed of such resignation and the reasons therefor. The Insurance Act also prohibits the Managing Director or other Officer of a life insurance company from being a Managing Director or Other Officer of any other Life insurance company or of a Banking company or an Investment Company. As the appointment of the CEO is made with the prior approval of the IRDAI the Board should take proactive steps to decide on the continuance of CEO well in time before the expiry of his tenure or to identify the new incumbent. The Authority requires the proposal to be submitted with the approval of the Board at least a month before the completion of the tenure of the incumbent. As a corollary, the insurers should also have practices in place for succession planning for the key senior functionaries through a process of proper identification and nurturing of individuals for taking over senior management positions.

**8.2. Role of Appointed Actuaries**

IRDAI has brought out detailed Regulations on Appointed Actuary *vide* IRDA (Appointed Actuary) Regulations, 2000, detailing the procedure for his appointment, qualifications, powers along with his duties and obligations. The Regulations also stipulate that prior approval of the Authority shall be taken for the appointment of the Appointed Actuary. The Board should ensure that the requirements are scrupulously complied with. In brief, it is reiterated that:

- The Appointed Actuary should qualify and satisfy the 'Fit & Proper' criteria and other eligibility conditions as mentioned in IRDA (Appointed Actuary) Regulations, 2000, as amended from time to time.
- The insurance companies shall clearly set forth the Appointed Actuary's responsibilities and any advisory role vis-à-vis the Board or the management as well as his/her rights and obligations. These Shall be in addition to the duties of the Appointed Actuaries as specified in the IRDA Regulations and any other directions of IRDA in the matter.
- As soon as the Appointed Actuary realizes that the entity does not comply or is likely to fail in complying with the requirements of solvency and other parameters of sound operations, he/she shall inform the Board of the insurer. If no viable/acceptable action is taken by the Board, then he/she has to inform the same to IRDAI.
- The Board shall interact directly with the Appointed Actuary wherever it considers it expedient to secure his advice, it may do so in such manner as it may deem fit. The Appointed Actuary shall provide professional advice or certification to the board with regard to:-
  - Estimation of technical provisions in accordance with the valuation framework setup by the insurer
  - Identification and estimation of material risks and appropriate management of the risks
  - Financial condition testing
  - Solvency margin requirements
  - Appropriateness of premiums (and surrender value)
  - Allocation of bonuses to with-profit insurance contracts
  - Management of participating funds (including analysis of material effects caused by strategies and policies)
  - Product design, risk mitigation (including reinsurance) and other related risk management roles.

While the areas of advice/certification listed above are with specific reference to life companies, the appointed actuaries in case of non-life insurance companies shall provide such advice/

certification to the extent applicable. In order to facilitate the Appointed Actuary in discharging his/her responsibilities, he/ she shall at all times be provided access to the information as required.

**8A. External Audit – Appointment of Statutory Auditors**

The IRDAI (Preparation of Financial Statements and Auditors 'Report of Insurance Companies) Regulations, 2002 empower the Authority to issue directions/guidelines on appointment, continuance or removal of auditors of an insurer. These guidelines/directions may include prescriptions on qualifications and experience of auditors, their rotation, period of appointment, etc. as may be deemed necessary by the Authority.

The detailed guidelines as regards appointment of auditors and the reporting about all the auditors appointed by insurers are given in Annexure 7 to these guidelines. The Board should therefore ensure that the statutory auditors are compliant with the regulatory requirements and there are no conflicts of interest in their appointment. The auditors should possess the competence and integrity to alert the appropriate authorities promptly of any event that could seriously affect the insurance company's financial position or the organization structure of its administration or accounting and of any criminal violations or material irregularities that come to his notice.

**8A.1. Access to Board and Audit Committee**

The Audit Committee should have discussions with the statutory auditors periodically about internal control systems, the scope of audit including the observations of the auditors (where applicable) and review the quarterly/half yearly and annual financial statements as the case may be before submission to the Board of Directors and also ensure compliance with the internal control systems. The statutory auditors should also have access to the Board of Directors through the Audit Committee.

**9. Disclosure Requirements**

The IRDAI (Preparation of Financial Statements and Auditors 'Report of Insurance Companies) Regulations, 2002, have prescribed certain disclosures in the financial statements and the Authority is in the process of finalizing additional disclosures to be made by insurers at periodical intervals. In the meantime, it may be ensured by the Board that the information on the following, including the basis, methods and assumptions on which the information is prepared and the impact of any changes therein are also disclosed in the annual accounts-

- Quantitative and qualitative information on the insurance company's financial and operating ratios, viz. incurred claim, commission and expenses ratios
- Actual solvency margin details vis-à-vis the required margin
- Insurers engaged in life insurance business shall disclose persistency ratio of policies sold by them
- Financial performance including growth rate and current financial position of the insurance company
- Description of the risk management architecture
- Details of number of claims intimated, disposed off and pending with details of duration
- All pecuniary relationships or transactions of the Non-Executive Directors vis-à-vis the insurance company shall be disclosed in the Annual Report
- Elements of remuneration package (including incentives) of MD & CEO and all other directors and Key Management Persons

- Payments made to group entities from the Policyholders Funds
- Any other matters, which have material impact on the insurer's financial position.

Where finalization of annual accounts extends beyond 90 days from the end of the Financial Year, the status on disclosure in the financial statements required under this clause may be made with in15days of adoption of annual accounts by the Board of Directors of the Insurers.

**10. Outsourcing Arrangements**

All out sourcing arrangements of an Insurer shall have the approval of a Committee of Key Management Persons and should meet the terms of the Board approved out sourcing policy. The Board or the Risk Management Committee should be periodically apprised about the outsourcing arrangements entered into by the insurer and also confirmation to the effect that they comply with the stipulations of the Authority as well as the internal policy be placed before them. An insurer shall not outsource any of the company's core functions other than those that have been specifically permitted by the Authority. Every outsourcing contract shall contain explicit safeguards regarding confidentiality of data and all outputs from the data, continuing ownership of the data with the insurer and orderly handing over of the data and all related software programs on termination of the outsourcing arrangement.

The management of the insurance company shall monitor and review the performance of agencies to whom operations have been outsourced at least annually and report findings to the Board.

The Authority reserves the right to access the operations of the outsourced entity to the extent these are relevant to the insurance company and for the protection of policyholder.

**11. Interaction with the Regulator**

Effective corporate governance practices in the office of the insurance company will enable IRDAI to have greater confidence in the work and judgment of its board, Key Management Persons and control functions.

In assessing the governance practices in place, the IRDAI would:

- Seek confirmation that the insurance company has adopted and effectively implemented sound corporate governance policies and practices;
- Assess the fitness and propriety of board members;
- Monitor the performance of boards;
- Assess the quality of insurance company's internal reporting, risk management, audit and control functions;
- Evaluate the effects of the insurance company's group structure on the governance strategies;
- Assess the adequacy of governance processes in the area of crisis management and business continuity.

The IRDAI would bring to the attention of the Board and senior management, concerns which have been detected by it through supervisory activities.

**Reporting to IRDAI**

Insurers should examine to what extent they are currently complying with these guidelines and initiate immediate action to achieve compliance (where not already in compliance) within a period of three months from the date of notification of these guidelines. It is expected that all the arrangements should be in place to ensure full compliance with the guidelines from the financial year 2016-2017. Where such compliance is not possible for any specific reason, the insurance companies should write to the IRDAI for further guidance.

Each insurer should designate Company Secretary as the Compliance officer whose duty will be to monitor continuing compliance with these guidelines.

Annual Report of insurers shall have a separate certification from the Compliance Officer.

All insurers are required to file are port on status of compliance with the Corporate Governance guidelines on an annual basis. This report shall be filed within 3 months from the end of the financial year, i.e., before 30 June. The report shall be filed as per the format in the Annexure 9.

**12. Whistle Blower Policy**

Insurers are well advised to put in place a "whistle blower" policy, where-by mechanism sexist for employees to raise concerns internally about possible irregularities, governance weaknesses, financial reporting issues or other such matters. These could include employee reporting in confidence directly to the Chairman of the Board or of a Committee of the Board or to the Statutory Auditor.

The Policy illustratively covers the following aspects:

- Awareness of the employees that such channels are available, how to use them and how their report will be handled.
- Handling of the reports received confidentially, for independent assessment, investigation and where necessary for taking appropriate follow-up actions.
- A robust anti-retaliation policy to protect employees who make reports in good faith.
- Briefing of the board of directors.

The appointed actuary and the statutory / internal auditors have the duty to 'whistle blow',i.e .,to report in a timely manner to the IRDAI if they are aware that the insurance company has failed to take appropriate steps to rectify a matter which has a material adverse effect on its financial condition. This would enable the IRDAI to take prompt action before policy holders' interests are undermined.

**13. Evaluation of Board of Directors including Independent Directors**

As required under Schedule IV of the Companies Act, 2013, the independent directors shall meet at least once in a year to evaluate the performance of other than independent Directors. Similarly, there shall be an evaluation of the Independent Directors by the other members of the Board of Directors as required in the Schedule.

**14. Applicability**

These guidelines shall be applicable to all insurers granted registration by the Authority except that:

(i) reinsurance companies may not be required to have the Policyholders' Protection Committee; and

(ii) branches of foreign reinsurers in India may not be required to constitute the Board and its mandatory committees as indicated herein.

## STEWARDSHIP CODE FOR INSURERS IN INDIA

Insurance companies are significant institutional investors in listed companies and the investments are held by them as custodians of policy holders. The state of governance of the investee companies is an important aspect and insurance companies must ensure that investee companies maintain corporate governance standards at high level. Therefore, it is felt that insurance companies should play an active role in the general meetings of investee companies and engage with the managements at a greater level to improve their governance. This will result in informed decisions by the parties and ultimately improve the return on investments of insurers which will ultimately benefit the policyholders..

The IRDAI had issued a code for Stewardship for the Insurers in India in March 2017. The code was in the form of a set of principles, which the insurance companies needed to adopt and made applicable from FY 2017-18. As per the code, insurer should have a board approved stewardship policy which should identify and define the stewardship responsibilities that the insurer wishes to undertake and how the policy intends to fulfill the responsibilities to enhance the wealth of its policyholders who are ultimate beneficiaries.

The IRDAI *vide* its Circular No. IRDAI/ F&A/GDL/CPM/045/02/2020 dated 7th February, 2020 issued the Revised Guidelines on Stewardship Code for Insurers in India.

All the insurers need to review and update their existing stewardship policy based on the Revised Guidelines on Stewardship Code for Insurers in India within 3 months from the date of issue of the same and the updated stewardship policy needs to be approved by the Board of Directors. The updated policy should be disclosed on the website within 30 days of approval by the Board by all insurers, alongside the public disclosures. Any subsequent change / modification to the stewardship policy should be specifically disclosed at the time of updating the policy document on the website.

All insurers shall comply with all the principles given in the guidelines and submit an Annual Certificate of Compliance approved by the Board to the Authority as per Annexure B referred in the guidelines, duly certified by CEO and Compliance Officer on or before 30th June every year.

These guidelines are issued under the provisions of Section 34 (1) of the Insurance Act, 1938 for compliance by all insurers from FY 2020-21.

## Revised Guidelines on Stewardship Code for Insurers in India

Insurers should formulate a policy for Stewardship based on the principles indicated in these guidelines and get the approval of their Boards for implementation of the same.

The principles and the guidance for the implementation are given below:

**Stewardship Principles**

**Principle 1: Insurers should formulate a policy on the discharge of their stewardship responsibilities and publicly disclose it.**

**Principle 2: Insurers should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.**

**Principle 3: Insurers should monitor their investee companies.**

**Principle 4: Insurers should have a clear policy on intervention in their investee companies.**

**Principle 5: Insurers should have a clear policy for collaboration with other institutional investors, where required, to preserve the interest of the policyholder (ultimate investors), which should be disclosed.**

**Principle 6: Insurers should have clear policy on voting and disclosure of voting activity.**

**Principle 7:Insurers should report periodically on their stewardship activities.**

**Principle 1: Insurers should formulate a policy on the discharge of their stewardship responsibilities and publicly disclose it.**

**Guidance:** Stewardship activities include monitoring and engaging with investee companies on matters such as strategy, performance of risk, capital structure, and corporate governance, including culture and remuneration. The Stewardship policy should identify and define the stewardship responsibilities that the insurer wishes to undertake and how it intends to fulfill the same to enhance the wealth of its clients. The policy should address all the aspects relating to stewardship activity like Managing conflict of interest Training of personnel, l4onitoring of investee companies, Intervention in investee companies, Collaboration with other institutional investors and Voting activities. The policy should be approved by the Board of the insurer and should bring out how the insurer applies stewardship with the aim of enhancing and protecting the value for the ultimate beneficiary or client. While the Boards of an insurer could decide to engage in all cases, it may also decide to selectively intervene based on its extent or level of investment. In such case, the policy should clearly identify the threshold (level of investment or any other criteria as may be determined by the Board) for intervention. The policy should clearly state whether the insurer intends to use the services of external service providers such as institutional advisors. In case services of any external service providers are used, the policy should provide for the mechanism to ensure that in such cases, stewardship responsibilities are exercised diligently. Though core function of investment cannot be outsourced, professional advices to arrive at voting decisions and research reports like Market survey data, Industry wide anal)sis, Business valuation, etc. may be sought from external agencies. The policy should clearly provide that the ultimate stewardship responsibilities shall be discharged by the insurer. The policy should be reviewed and updated periodically and the updated policy should be publicly disclosed on the insurer's website.

**Principle 2: Insurers should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.**

**Guidance:** The stewardship policy put in place by the insurers should also cover the aspects of identifying and managing conflicts of interest with the aim of taking all reasonable steps to put the interests of their client or beneficiary first. The policy should identify scenarios of likely conflict of interest as envisaged by the Board and should also address how matters are handled when the interests of clients or beneficiaries diverge from each other. Aspects covered in the stewardship policy with regard to conflict of interest may, among other issues, address the following:

1. Identifying possible situations where conflict of interest may arise. If in case of investee companies being associates of the entity.
2. Procedures put in place by the entity in case such conflicts of interest situations arise which may, inter alia, include:
    a. Blanket bans on investments in certain cases.
    b. Referring such matters to Audit Committee.

c. Clear segregation of voting function and client relations / sales functions.

d. Policy for persons to recuse from decision making in case of the person having any actual / potential conflict of interest in the transaction.

e. Maintenance of records of minutes of decisions taken to address such conflicts.

**Principle 3: Insurers should monitor their investee companies.**

**Guidance:** Insurers should have mechanisms for regular monitoring of their investee companies in respect of their performance, leadership effectiveness, succession planning, corporate governance, reporting and other parameters they consider important. Insurers may or may not wish to have more participation through nominations on the Board for active involvement with the investee companies. An insurer who may be willing to have nominations on the Board of an investee company should indicate in its stewardship statement the willingness to do so and the mechanism by which this could be done.

Aspects covered in the stewardship policy with regard to monitoring shall address the following:

1. Different levels of monitoring in different investee companies.

   E.g. companies where larger investments are made may involve higher levels of monitoring vis-a-vis companies where amount invested is insignificant from the point of view of its assets under management (AUM).

2. Areas of monitoring which shall, inter-alia, include:

   a. Company strategy and performance - operational and financial.

   b. Industry level monitoring and possible impact on the investee companies.

   c. Quality of company management and Board, leadership.

   d. Corporate governance including remuneration, structure of the Board (including Board diversity and independent directors) and related party transactions.

   e. Risks including Environmental, Social and Governance (ESG) risks.

   f. Shareholder rights and their grievances.

3. Identification of situations which may trigger communication of insider information and the procedures adopted to ensure SEBI (Prohibition of Insider Trading) Regulation 2015 as amended time to time are complied with in such cases.

**Principle 4: Insurers should have a clear policy on intervention in their investee companies.**

**Guidance:** Insurers may decide their own engagement strategy and the stewardship policy should clearly set out the criteria/ circumstances in which they will actively intervene. The policy should provide for regular assessment of the outcomes of intervention by the insurer. Intervention should be considered regardless of whether an active or a passive investment policy is followed. Circumstances for intervention may, inter alia, include but not limited to, poor financial performance of the company, corporate governance related practices, remuneration, strategy, Environmental, Social and Governance (ESG) risks, leadership issues and litigations.

The mechanisms for intervention may include meetings / discussions with the management for constructive resolution of the issue and in case of escalation thereof, meetings with the Boards, collaboration with other investors and voting against decisions. Various levels of intervention and circumstances in which escalation is required may be identified and disclosed in the stewardship policy. This may also include interaction with the companies through the insurance councils in case of any industry level issues. Investment Committee of the insurer has to consider which mechanism to be opted and escalation of matters in specified cases.

**Principle 5: Insurers should have a clear policy for collaboration with other institutional investors, where required, to preserve the interest of the policyholder (ultimate investors), which should be disclosed.**

**Guidance:** For issues that require larger engagement with the investee company/ insurers may choose to act collectively with other institutional investors in order to safeguard the interests of their investors. In such situations, the stewardship policy should guide their actions and extent of engagement.

**Principle 6: Insurers should have clear policy on voting and disclosure of voting activity.**

**Guidance:** Insurers should exercise their own independent judgment as regards voting decisions on resolutions and should not automatically support the proposals of the Board of the investee company. The decisions should be aimed at promoting the overall growth of the investee companies and, in turn, enhance the value of their investors.

The stewardship policy should cover the aspects of voting activity. Audit Committee will monitor oversight on voting mechanism. Insurers should disclose their approach to stock lending and recalling lent stock in their stewardship policy.

Insurers should mandatorily undertake active participation and voting on resolutions/proposals of the investee companies under the following circumstances:

| *Size of the AUM of the Insurers (Rs. in Crore)* | *Compulsory voting required, if the insurer's holding of the paid up capital of investee company (in %) is* |
|---|---|
| Up to 2,50,000 | 3% and above |
| Above 2,50,000 | 5% and above |

In other cases, insurers may voluntarily participate and vote if such resolutions/proposals are considered significant and may have an impact on the value of investments of tie insurer. Disclosures have to be made by the insurers regarding the voting activity in the investee companies in which the insurers have actively participated and voted on resolutions/proposals. The disclosures will form part of Public Disclosures on website and have to be made on quarterly basis as per the timelines prescribed for quarterly public disclosures on website, in the given format at Annexure A.

**Principle 7: Insurers should report periodically on their stewardship activities.**

**Guidance:** In addition to the regular fulfilment of their stewardship activities, insurers should also provide a periodic report to their ultimate beneficiaries (policyholders) of how they have discharged their responsibilities, in a format which is easy to understand, as a part of public disclosures.

### Compliance and Reporting

The compliance with the aforesaid principles does not constitute an invitation to manage the affairs of a company or preclude a decision to sell a holding when this is considered in the best interest of clients or beneficiaries, The Board shall ensure that there is effective oversight on the insurer's stewardship activities and the Audit Committee of the Board shall exercise the same. All insurers shall comply with all the principles given in the guidelines and submit an Annual Certificate of Compliance approved by the Board to the Authority as per Annexure B duly certified by CEO and compliance officer on or before 30th June every year.

## CORPORATE GOVERNANCE IN CENTRAL PUBLIC SECTOR ENTERPRISES (CPSEs)

Corporate Governance involves a set of relationships between a company's management, its Board, its shareholders and other stakeholders. Corporate Governance provides a principled process and structure through which the objectives of the company, the means of attaining the objectives and systems of monitoring performance are also set. Corporate Governance is a set of accepted principles by management of the inalienable rights of the shareholders as a true owner of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, ethical business conduct, transparency and makes a distinction between personal and corporate funds in the management of a company.

Department of Public Enterprises (DPE) is the nodal department for issuing the corporate governance guidelines for the Public Sector Enterprises for both at center and state level. Since Government is the major shareholder in Public Sector Undertakings (PSUs)/ Central Public Sector Enterprises (CPSEs), it is responsible to set the high standard of governance to be followed by these public sector enterprises. As the government's disinvestment strategy gathers momentum, there is a genuine need to improve the levels of transparency, and accountability within PSUs.

The guidelines on Corporate Governance are formulated with the objective that the CPSEs follow the guidelines in their functioning. Proper implementation of these guidelines would protect the interest of shareholders and relevant stakeholders.

The Department of Public Enterprises (DPE) had issued guidelines on composition of Board of Directors of Central Public Sector Enterprises (CPSEs) in 1992. According to these guidelines at least one-third of the Directors on the Board of a CPSE should be non-official Directors. The Maharatna, Navratna and Miniratna schemes provide that exercise of the enhanced powers delegated to these CPSEs is subject to the condition that their Boards are professionalised by inducting adequate number of non-official Directors, with minimum of four in case of Maharatna, Navratnas and minimum of three in case of Miniratnas. The schemes for Maharatna, Navratna and Miniratna CPSEs also provide for setting up of Audit Committees.

In November 2001, DPE issued further guidelines on the composition of Board of Directors of listed CPSEs. It provided that the number of Independent Directors should be at least one-third of the Board if the Chairman is non- executive, and not less than 50% if the Board has an executive Chairman.

To bring in more transparency and accountability in the functioning of CPSEs, the Government in June, 2007 introduced, for an experimental period of one year, the Guidelines on Corporate Governance for CPSEs. These Guidelines were of voluntary nature. Since the issue of these guidelines, the CPSEs have had the opportunity to implement them for the whole of the financial year 2008-09. These Guidelines have been modified and improved upon based on the experience gained during the experimental period of one year.

The Government have felt the need for continuing the adoption of good Corporate Governance Guidelines by CPSEs for ensuring higher level of transparency and decided to make these Guidelines mandatory and applicable to all CPSEs. Accordingly, revised Guidelines on Corporate Governance for Central Public Sector Enterprises was issued by DPE in 2010.

Apart from these instructions of DPE, the CPSEs are governed by the Companies Act, 2013 and regulations of various authorities like Comptroller and Auditor General of India (C&AG), Central Vigilance Commission (CVC), Administrative Ministries, other nodal Ministries, etc. The Right to Information Act 2005 is also applicable to the CPSEs. The CPSEs fall under the definition of 'State' as provided in Article 12 of the Constitution of India. Further, some principles of Corporate Governance are already in vogue in public sector because (a) the Chairman, Managing Director and Directors are appointed independently through a prescribed procedure; (b) Statutory auditors are appointed independently by the C&AG; (c) Arbitrary actions, if any, of the Management can be challenged through writ petitions; (d) Remuneration of Directors, employees, etc. are determined on the basis of recommendations of Pay Committees constituted for this purpose; etc.

In case of Listed CPSEs the Listing Regulations would also be applicable in addition to other applicable laws and DPE Guidelines. For the purpose of DPE Guidelines on Corporate Governance, CPSEs have been categorised into two groups, namely, (i) those listed on the Stock Exchanges; (ii) those not listed on the Stock Exchanges.

**CPSEs listed on Stock Exchanges:** In so far as listed CPSEs are concerned, they have to follow the SEBI (LODR) Regulations, 2015. In addition, they shall follow those provisions in these Guidelines which do not exist in the SEBI Guidelines and also do not contradict any of the provisions of the SEBI Guidelines.

**Non-listed CPSEs:** Each CPSE should strive to institutionalize good Corporate Governance practices broadly in conformity with the SEBI Guidelines. The listing of the non-listed CPSEs on the stock exchanges may also be considered within a reasonable time frame to beset by the Administrative Ministry concerned in consultation with the CPSEs concerned. The non-listed CPSEs shall follow the Guidelines on Corporate Governance on a mandatory basis.

DPE guidelines on Corporate Governance provide following governance parameters

- Board of Directors
- Audit Committee
- Remuneration Committee
- Subsidiary Companies
- Disclosures
- Report, Compliance and Schedule of Implementation.

## Salient features of Guidelines on Corporate Governance for Central Public Sector Enterprises 2010

**(a) Board of Directors**

**Composition of Board of Directors:** The Board of Directors of the company shall have an optimum combination of Functional, Nominee and Independent Directors. The number of Functional Directors (including CMD/ MD) should not exceed 50% of the actual strength of the Board. The number of Nominee Directors appointed by Government/other CPSEs shall be restricted to a maximum of two. In case of a CPSE listed on the Stock Exchanges and whose Board of Directors is headed by an Executive Chairman, the number of Independent Directors shall be at least 50% of Board Members; and in case of all other CPSEs (i.e. listed on Stock Exchange but without an Executive Chairman, or not listed CPSEs), at least one-third of the Board Members should be Independent Directors.

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

**Part-time Directors' compensation and disclosures:** All fees/compensation, if any, paid to part-time Directors, including Independent Directors, shall be fixed by the Board of Directors subject to the provisions in the DPE guidelines and the Companies Act, 2013.

**Number of Board meetings:** The Board shall meet atleast once in every three months and atleast four such meetings shall be held every year. Further, the time gap between any two meetings should not be more than three months. 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.

**Compliance of Laws to be reviewed:** The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.

**Code of Conduct:** The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be circulated and also posted on the website of the company. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by its Chief Executive. Guidelines and policies evolved by the Central Government with respect to the structure, composition, selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed. There shall be no extravagance in expenditure on the part of Board members and senior management personnel. CPSEs executives shall be accountable for their performance in conformity with established norms of conduct. Any external / internal changes made from time to time, due to addition of or amendment to laws/regulatory rules, applicable to CPSEs, need to be dealt with carefully by the respective Boards/senior management personnel.

**Functional Role Clarity between Board of Directors and Management:** A clear definition of the roles and the division of responsibilities between the Board and the Management is necessary to enable the Board to effectively perform its role. The Board should have a formal statement of Board Charter which clearly defines the roles and responsibilities of the Board and individual Directors. The Board of each CPSE may been courage to articulate its Corporate Governance objectives and approach (within the broad parameters of these guidelines and the general perception of business risk) to satisfy the expectations of its majority shareholders and other stakeholders.

**Risk Management:** Enterprise risk management helps management in achieving CPSE's performance and profitability targets. It helps to ensure effective reporting and compliance with laws and regulations, and helps avoid damage to the entity's reputation and associated consequences. Considering the significance of risk management in the scheme of corporate management strategies, its oversight should be one of the main responsibilities of the Board/Management. The Board should ensure the integration and alignment of the risk management system with the corporate and operational objectives and also that risk management is undertaken as a part of normal business practice and not as a separate task at set times.

**Training of Directors:** The company concerned shall undertake training programme for its new Board members (Functional, Government, Nominee and Independent) in the business model of the company including risk profile of the business of company, responsibility of respective Directors and the manner in which such responsibilities are to be discharged. They shall also be imparted training on Corporate Governance, model code of business ethics and conduct applicable for the respective Directors.

**(b) Audit Committee**

**Qualified and Independent Audit Committee:** A qualified and independent Audit Committee shall be set up, giving the terms of reference. The Audit Committee shall have minimum three Directors as members. Two-thirds of the members of audit committee shall be Independent Directors. The Chairman of the Audit Committee shall be an Independent Director .All members of Audit Committee shall have knowledge of financial matters of Company, and at least one member shall have good knowledge of accounting and related financial management expertise. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries; provided that in case the Chairman is unable to attend due to unavoidable reasons, he may nominate any member of the Audit Committee.

The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the Committee. The Audit Committee may also meet without the presence of any executives of the company. The Finance Director, Head of Internal Audit and a representative of the Statutory Auditor may be specifically invited to be present as invitees for the meetings of the Audit Committee as may be decided by the Chairman of the Audit Committee. The Company Secretary shall act as the Secretary to the Audit Committee.

**Role of Audit Committee:** The role of the Audit Committee shall include the following:

- 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.
- Recommending to the Board the fixation of audit fees.
- Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
- Reviewing, with the management, the annual financial statements before submission to the Board for approval, with particular reference to:(a) Matters required to be included in the Directors' Responsibility Statement to be included in the Board's report (b) Changes, if any, in accounting policies and practices and reasons for the same; (c) Major accounting entries involving estimates based on the exercise of judgment by management; (d) Significant adjustments made in the financial statements arising out of audit findings; (e) Compliance with legal requirements relating to financial statements; (f) Disclosure of any related party transactions; and (g) Qualifications in the draft audit report.
- Reviewing, with the management, the quarterly financial statements before submission to the Board for approval.
- Reviewing, with the management, performance of internal auditors and adequacy of the internal control systems.
- Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure, coverage and frequency of internal audit.
- Discussion with internal auditors and/or auditors any significant findings and follow up there on.
- Reviewing the findings of any internal investigations by the internal auditors / auditors / agencies into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board.
- Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to as certain any area of concern.
- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors.
- To review the functioning of the Whistle Blower Mechanism.
- To review the follow up action on the audit observations of the C&AG audit.
- To review the follow up action taken on there commendations of Committee on Public Undertakings (COPU) of the Parliament.
- Provide an open avenue of communication between the independent auditor, internal auditor and the Board of Directors.
- Review all related party transactions in the company. For this purpose, the Audit Committee may designate a member who shall be responsible for reviewing related party transactions.
- Review with the independent auditor the co-ordination of audit efforts to assure completeness of coverage, reduction of redundant efforts, and the effective use of all audit resources.

- Consider and review the following with the independent auditor and the management: (i) The adequacy of internal controls including computerized information (ii) system controls and security, and -Related findings and recommendations of the independent auditor and internal auditor, together with the management responses.
- Consider and review the following with the management, internal auditor and the independent auditor:
  - (i) Significant findings during the year, including the status of previous audit recommendations
  - (ii) Any difficulties encountered during audit work including any restrictions on the scope of activities or access to required information.

**Powers of Audit Committee:** Commensurate with its role, the Audit Committee should be invested by the Board of Directors with sufficient powers, which should include the following:

- To investigate any activity within its terms of reference.
- To seek information on and from any employee.
- To obtain outside legal or other professional advice, subject to the approval of the Board of Directors.
- To secure attendance of outsiders with relevant expertise, if it considers necessary.
- To protect whistle blowers.

**Meeting of Audit Committee:** The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the Audit Committee whichever is greater, but a minimum of two independent members must be present.

**Review of information by Audit Committee:** The Audit Committee shall review the following information:

- Management discussion and analysis of financial condition and results of operations;
- Statement of related party transactions submitted by management;
- Management letters/letters of internal control weaknesses issued by the statutory auditors;
- Internal audit reports relating to internal control weaknesses;
- The appointment and removal of the Chief Internal Auditor shall be placed before the Audit Committee; and Certification / declaration of financial statements by the Chief Executive/Chief Finance Officer.

**(c) Remuneration Committee:**

Each CPSE shall constitute a Remuneration Committee comprising of at least three Directors, all of whom should be part-time Directors (i.e. Nominee Directors or Independent Directors). The Committee should be headed by an Independent Director. CPSE will not be eligible for Performance Related Pay unless the Independent Directors are on its Board. Remuneration Committee will decide the annual bonus/ variable pay pool and policy for its distribution across the executives and non-unionized supervisors, within the prescribed limits.

**(d) Subsidiary Companies:**

At least one Independent Director on the Board of Directors of the holding company shall be a Director on the Board of Directors of its subsidiary company. The Audit Committee of the holding company shall also review the financial statements of its subsidiary company. The minutes of the Board meetings of the subsidiary company shall be placed at the Board meeting of the holding company. The management should periodically bring to the attention of the Board of Directors of the holding company, a statement of all significant transactions and arrangements entered into by its subsidiary company.

*Explanation:* For the purpose of these guidelines, only those subsidiaries whose turnover or net worth is not less than 20% of the turnover or net-worth respectively of the Holding company in the immediate preceding accounting year may be treated as subsidiary companies.

**(e) Disclosures:**

**Transactions:** A statement in summary form of transactions with related parties in the norm al and ordinary course of business shall be placed periodically before the Audit Committee. Details of material individual transactions with related parties, which are not in the normal and ordinary course of business, shall be placed before the Audit Committee. Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the Audit Committee, together with Management's justification for the same.

**Accounting Standards:** 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 in the Corporate Governance Report as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

**Board Disclosures–Risk management:**

- The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework. Procedure will be laid down for internal risk management also.
- The Board should implement policies and procedures which should include:(a) staff responsibilities in relation to fraud prevention and identification (b) responsibility of fraud investigation once a fraud has been identified (c) process of reporting on fraud related matters to management (d) reporting and recording processes to be followed to record allegations of fraud (e) requirements of training to be conducted on fraud prevention and identification.

**Remuneration of Directors:**

- All pecuniary relationship or transactions of the part-time Directors vis-à-vis the company shall be disclosed in the Annual Report.
- Further the following disclosures on the remuneration of Directors shall be made in the section on the Corporate Governance of the Annual Report:(a) All elements of remuneration package of all the directors i.e. salary, benefits, bonuses, stock options, pension, etc. (b) Details of fixed component and performance linked incentives, alongwith the performance criteria (c) Service contracts, notice period, severance fees. (d) Stock option details, if any–and whether issued at a discount as well as the period over which accrued and over which exercisable.

**Management:** As part of the Directors Report or as an addition thereto, a Management Discussion and Analysis Report should form part of the Annual Report. This Management Discussion and Analysis should include discussion on the following matters within the limits set by the company's competitive position: (a) Industry structure and developments, (b) Strength and weakness (c) Opportunities and Threats (d) Segment–wise or product-wise performance (e) Outlook (f) Risks and concerns (g) Internal control systems and their adequacy (h) Discussion on financial performance with respect to operational performance (i) Material developments in Human Resources, Industrial Relations front, including number of people employed. (j) Environmental Protection and Conservation, Technological conservation, Renewable energy developments, Foreign Exchange conservation (k) Corporate social responsibility.

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

*Explanation:* For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the Functional Directors, including all functional heads.

**Report on Corporate Governance:** There shall be a separate section on Corporate Governance in each Annual Report of company, with details of compliance on Corporate Governance.

**Compliance:** The company shall obtain a certificate from either the auditors or practicing Company Secretary regarding compliance of conditions of Corporate Governance as stipulated in these Guidelines and Annexes. The afore said certificate with the Directors' Report, which is sent annually to all the shareholders of the company, should also be included in the Annual Report. Chairman's speech in Annual General Meeting (AGM) should also carry a section on compliance with Corporate Governance guidelines / norms and should form part of the Annual Reports of the concerned CPSE. The grading of CPSEs may be done by DPE on the basis of the compliance with Corporate Governance guidelines/norms.

**Schedule of implementation:** These Guidelines on Corporate Governance are mandatory. The CPSEs shall submit quarterly progress reports, within 15 days from the close of each quarter, in the prescribed format to respective Administrative Ministries / Departments. The Administrative Ministries will consolidate the information obtained from the CPSEs and furnish a comprehensive report to the DPE by 31st May of every financial year on the status of compliance of Corporate Governance Guidelines during the previous financial year by the CPSEs under their jurisdiction. DPE will, from time to time, make suitable modifications to these Guidelines in order to bring the minline with prevailing laws, regulations, acts, etc., DPE may also issue clarifications to the concerned Administrative Ministries/CPSEs on issues relating to the implementation of these Guidelines.

## GUIDELINES ON CORPORATE SOCIAL RESPONSIBILITY AND SUSTAINABILITY FOR CPSEs

### Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises

Prior to the notification of CSR Rules under the Companies Act 2013, DPE Guidelines on CSR and Sustainability issued in December 2012, were applicable to all CPSEs w.e.f. 01.04.2013.

After the enactment of the Companies Ac t2013, all CPSEs shall have to comply with the provisions of the Act and the CSR Rules. Any amendment notified by the Ministry of Corporate Affairs in the CSR Rules, or in Schedule VII of the Act will also be binding on the CPSEs. Along with these, Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises, 2014 have been notified by DPE which shall be applicable to all CPSEs.

In earlier DPE guidelines, CSR and sustainable development were treated as complementary and, therefore, were dealt with together. CSR was seen as an important constituent of the overarching framework of sustainability. The present guidelines of DPE are also intended to rein force the complementarity of CSR and sustainability and to advise the CPSEs not to overlook the larger objective of sustainable development in the conduct of business and in pursuit of CSR agenda.

## Guidelines on Corporate Social Responsibility And Sustainability For Central Public Sector Enterprises w.e.f. 01.04.2014 (Issued by the Govt of India, Ministry of Heavy Industries and Public Enterprises, vide Circular No. F. No. 15(13)/ 2013-DPE(GM), dated 21st October, 2014)[1]

**Background**

The Government of India enacted the Companies Act 2013 in August 2013. Section 135 of the Companies Act 2013 (hereinafter referred to as 'the Act') deals with the subject of Corporate Social Responsibility (CSR). It lays down the qualifying criteria based on net worth, turnover, and net profit for companies which are required to undertake CSR activities and, *inter alia*, specifies the broad modalities of selection, implementation and monitoring of the CSR activities by the Boards of Directors of companies. The activities which may be included by companies in their CSR policies are listed in Schedule VII of the Act. The provisions of Section 135 of the Act and Schedule VII of the Act apply to all companies, including CPSEs.

The Ministry of Corporate Affairs has formulated CSR Rules (hereinafter referred to as the 'CSR Rules'), under the provisions of the Act and issued the same on 27.2.2014. The CSR Rules are applicable to all companies, including CPSEs w.e.f. 1.4.2014.

All CPSEs shall have to comply with the provisions of the Act and the CSR Rules. Any amendment notified by the Ministry of Corporate Affairs in the CSR Rules, or in Schedule VII of the Act will also be binding on the CPSEs.

Prior to the notification of CSR Rules, DPE Guidelines on CSR and Sustainability issued in December 2012, were applicable to CPSEs w.e.f. 01.04.2013. In DPE guidelines, CSR and sustainable development were treated as complementary and, therefore, dealt with together. CSR was seen as an important constituent of the overarching framework of sustainability. The present guidelines of DPE are also intended to reinforce the complementarity of CSR and sustainability and to advise the CPSEs not to overlook the larger objective of sustainable development in the conduct of business and in pursuit of CSR agenda.

## DPE Guidelines on CSR and Sustainability for CPSEs

The Department of Public Enterprises (DPE) has formulated Guidelines on CSR and Sustainability (hereinafter referred to as 'the Guidelines') which are applicable to CPSEs. These Guidelines do not supersede or override any provision of the Companies Act, or Schedule VII of the Act, or the CSR Rules, but will only supplement them. In case of any perceived conflict between the CSR Rules and the Guidelines, the former shall prevail in all circumstances.

In the Guidelines the need for taking sustainability initiatives is emphasised in addition to the requirement of mandatory compliance with the CSR Rules. The Guidelines are aimed at providing an over arching framework of Sustainability within which CSR is firmly embedded.

The CSR policy document of a CPSE should include a vision and mission statement of how the CPSE proposes to comply with the Guidelines. The broad sustainability initiatives which a CSPE intends to undertake should also find mention therein. Since CSR and Sustainability issues are complementary in nature, and both are to be mentioned in the policy document, it may be referred to as 'CSR and Sustainability' policy. The Revised Guidelines applicable to all CPSEs are generally in the nature of guiding principles. The guidelines contain certain additional requirements as mentioned below:

1. It is mandatory for all profit making CPSEs to undertake CSR activities as per the provisions of the Act and the CSR Rules. Even the CPSEs which are not covered under the eligibility criteria based on threshold limits of net-worth, turnover, or net profit as specified by Section 135(1) of the Act, but which made profit in the preceding year, would also be required to take up CSR activities as specified in the Act and the CSR Rules, and such CPSEs would be expected to spend at least 2% of the profit made in the preceding year on CSR activities.

1. *https://dpe.gov.in/sites/default/files/Guidelines_on_CSR_SUS_2014.pdf*

2. All CPSEs must adopt a CSR and Sustainability Policy specific to their company with the approval of the Board of Directors. The philosophy and spirit of CSR and Sustainability must be firm lying rained in the policy and it must be consistent with the CSR provisions of the Act, Schedule VII of the Act, CSR Rules, the Guidelines, and the policy directions issued by the Government from time to time. The CSR and Sustainability policy of a CPSE should serve as the referral document for planning its CSR activities in accordance with Schedule VII of the Act and give a road map for formulation of actionable plans.

3. If the CPSEs feel the necessity of taking up new CSR activities /projects during the course of a year, which are in addition to the CSR activities already incorporated in the CSR policy of the company, the Board's approval of such additional CSR activities would be treated as amendment to the policy.

4. It would be mandatory for all CPSEs which meet the criteria as laid down in Section 135(1) of the Act, to spend at least 2% of the average net profits of the three immediately preceding financial years in pursuance of their CSR activities as stipulate din the Act and the CSR Rules. This stipulated percentage of average net profits is to be spent every year in a manner specified in the Act and CSR Rules.

   In case a company fails to spend such amount, it shall have to specify the reasons for not spending it. However, in case of CPSEs mere reporting and explaining there a sons for not spending this amount in a particular year would not suffice and the unspent CSR amount in a particular year would not lapse. It would instead be carried forward to the next year for utilisation for the purpose for which it was allocated.

5. While selecting CSR activities/projects from the activities listed in Schedule VII of the Act, CPSEs should give priority to the issues which are of foremost concern in the national development agenda, like safe drinking water for all, provision of toilets especially for girls, health and sanitation, education, etc. The main focus of CSR and Sustainability policy of CPSEs should be on sustainable development and inclusive growth, and to address the basic needs of the deprived, under privileged, neglected and weaker sections of the society which comprise of SC, ST, OBCs, minorities, BPL families, old and aged, women / girl child, physically challenged, etc.

6. For CPSEs to fully exploit their core competence and mobilize their resource capabilities in the implementation of CSR activities / projects, they are advised to align their CSR and Sustainability policy with their business policies and strategies to the extent possible, and select such CSR activities/ projects which can be better monitored through in-house expertise.

7. All CPSEs are expected to act in a socially, economically and environmentally sustainable manner at all times. Even in their normal business activities, public sector companies should try to promote sustainable development through sustainability initiatives by conducting business in a manner that is beneficial to both, business and society. They are advised not to lose sight of their social and environmental responsibility and commitment to sustainable development even in activities undertaken in pursuance of their normal course of business. National and global sustainability standards which promote ethical practices, transparency and accountability in business may be referred to as guiding frameworks to plan, implement, monitor and report sustainability initiatives. But the amount spent on sustainability initiatives in the pursuit of sustainable development while conducting normal business activities would not constitute a part of the CSR spend from 2% of profits as stipulated in the Act and the CSR Rules.

8. As a part of their sustainability initiatives CPSEs are expected to give importance to environmental sustainability even in their normal mainstream activities by ensuring that their internal operations and processes promote renewable sources of energy, reduce / re-use / recycle waste material, replenish ground water supply, protect/ conserve/restore the ecosystem, reduce carbon emissions and help in greening the supply chain. CPSEs are expected to be have in a responsible manner by producing

goods and services which are safe and healthy for the consumers and the environment, resource efficient, consumer friendly, and environmentally sustainable throughout their life cycles i.e. from the stage of raw material extraction to production, use / consumption, and final disposal. However, such sustainability initiatives will not be considered as CSR activities as specified in the CSR Rules, and the expenditure incurred there on would also not constitute a part of the CSR spend. Never the less, CPSEs are encouraged to take up such sustainability initiatives from their normal budgetary expenditure as it would demonstrate their commitment to sustainable development.

9. Sustainability initiatives would also include steps taken by CPSEs to promote welfare of employees, especially women, physically challenged, SC/ST/OBC categories, by addressing their concerns of safety, security, professional enrichment and healthy working conditions beyond what is mandated by law. However, expenditure on such sustainability initiatives would not qualify as CSR spend.

10. The philosophy and spirit of CSR and Sustainability should be understood and imbibed by the employees at all levels and get embedded in the core values of the company.

11. CPSEs should extend their reach and oversight to the entire supply chain network to ensure that as far as possible suppliers, vendors, service providers, clients, and partners are also committed to the same principles and standards of corporate social responsibility and sustainability as the company itself. CPSEs are encouraged to initiate and implement measures aimed at `greening' the supply chain.

12. As mentioned in the Act, CPSEs should give preference the 'local area' in selecting the location of their CSR activities. It is desirable that the Board of Directors of CPSEs define the scope of the 'local area' of their commercial units/plants/projects, keeping in view the nature of their commercial operations, the extent of the impact of their operations on society and environment, and the suggestions/demands of the key stakeholders, especially those who are directly impacted by the company's commercial operations/activities. The definition of 'local area' may form part of the CSR policy of the CPSE.

13. After giving due preference to the local area, CPSEs may also under take CSR activities anywhere in the country. The Board of Directors of each CPSE may also decide on an indicative ratio of CSR spend between the local area and outside it, and this may be mentioned in the CSR policy of the CPSE. CPSEs, which by the very nature of their business have no specific geographical area of commercial operations, may take up CSR activities / projects at any location of their choice within the country.

14. As far as possible, CPSEs should take up the CSR activities in project, which entails planning the stages of execution in advance by fixing targets at different milestones, with pre-estimation of quantum of resources required with in the allocated budget, and having a definite times pan for achieving desired outcomes.

15. CPSEs should devise a communication strategy for regular dialogue and consultation with key stakeholders to ascertain their views and suggestions regarding the CSR activities and sustainability initiatives undertaken by the company. However, the ultimate decision in the selection and implementation of CSR activities would be that of the Board of the CPSE.

16. As per the CSR Rules, all companies are required to include an annual report on CSR in their Board's Report. The template/format for reporting CSR activities as provided by CSR Rules Should be strictly adhered to. However, CPSEs shall also have to include in the Board's Report a brief narrative on the action taken for the implementation of the Guidelines so that the stakeholders are informed of not only the CSR activities but also of the sustainability initiatives taken by the CPSEs. CPSEs are further advised to prepare an Annual Sustainability Report, which would go a long way in imparting greater transparency and accountability to the company's operations, apart from improving the brand image.

17. It is desirable that CPSEs get a baseline/need assessment survey done prior to the selection of any CSR activity. It is also desirable that CPSEs should get an impact assessment study done by external

agencies of the CSR activities/ projects undertaken by them. Impact assessment is mandatory for mega projects, the threshold value of which can be determined by the Board of a CPSE and specified in its CSR and Sustainability policy. However, the expenditure incurred on base line survey and impact assessment study should be with in the overall limit of 5% of administrative over heads of CSR spend as provided for under the CSR Rules.

18. Within the provisions of the Act, Schedule VII of the Act, and the CSR Rules, CPSEs are encouraged to take up CSR activities / projects in collaboration with other CPSEs for greater social, economic and environmental impact of their CSR activities/projects.

19. CPSEs which are statutory corporations should also comply with the provisions of the Companies Act, 2013, CSR Rules and the Guidelines.

## Guidelines for CSR expenditure of CPSEs[2]

1. The Government of India, Ministry of Heavy Industries & Public Enterprises Department of Public Enterprises, vide its Circular No. CSR-08/0002/ 2018-Dir (CSR) dated 10th December, 2018. Issued the Guidelines for CSR expenditure of CPSES.

2. One of the recommendations which emerged from the CPSEs Conclave held in April 2018 was related to utilization of CSR funds in a focussed manner towards national priorities by adopting a theme based approach every year. Detailed deliberations on this recommendation were held subsequently by Department of Public Enterprises (DPE) with CPSEs, select Ministries/Departments, NITI Aayog and the Committee of Secretaries. Based on the deliberations, the Competent Authority has approved the following course of actions for undertaking CSR activities by Central Public Sector Enterprises (CPSES):

   (i) A common theme may be identified for each year for undertaking CSR by CPSES.

   (ii) For the current year 2018-19, school education and health care may be taken up as the theme for focussed intervention.

   (iii) CSR expenditure for thematic programme should be around 60% of annual CSR expenditure of CPSES.

   (iv) Aspirational Districts may be given preference.

   (v) The annual theme for the future will be decided by the Competent Authority separately.

3. The Competent Authority has further entrusted to NITI Aayog the responsibility to pilot the programme.

4. Accordingly, the CPSE undertaking CSR activity in Aspirational districts would. (i) designate a senior level functionary as nodal officer to liaise closely with the District Administration of concerned Aspirational district (ii) furnish the details of nodal officer along with the name of selected aspirational district(s) to NITI Aayog, DPE and concerned administrative Ministry/Department of the CPSE (iii) furnish the details of projects funded by CPSE under CSR in an aspirational district to NITI Aayog, DPE and concerned administrative Ministry/Department of CPSE (iv) brief the concerned Central Prabhari Officer of Aspirational District (Joint Secretary/Additional Secretary nominated by GOI for aspirational district), about the CSR project being funded by CPSE.

5. It will be the responsibility of the concerned CPSE to ensure that all the CSR activities being undertaken are in accordance with the relevant provisions of the Companies Act 2013, its Schedules and Rules issued under the said Act and there is no deviation from statutory provisions.

6. These guidelines are in supersession of earlier advisory of DPE dated 1st August 2016 regarding utilisation of 33% of CSR funds by CPSEs towards Sanitation and SBM activities.

*2. https://dpe.gov.in/guidelines-csr-expenditure-cpses.*

7. All the administrative Ministries/Departments are requested to bring these guidelines to the notice of CPSEs under their jurisdiction for necessary action.

## LESSON ROUND-UP

- Legal and regulatory framework of corporate governance in India is mainly covered under the Companies Act, 2013, Listing Regulations, 2015 and SEBI guidelines.
- The Securities and Exchange Board of India (SEBI) is the prime regulatory authority which regulates all aspects of securities market enforces the Securities Contracts (Regulation) Act including the stock exchanges. Companies that are listed on the stock exchanges are required to comply with the Listing Regulations, 2015.
- Corporate Governance' as the application of best management practices compliance of law in true Letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.
- The companies listed with Stock Exchanges have to adhere to the SEBI (LODR) Regulations,2015 in addition to the provisions of the Companies Act or the Act under which they been formed. The banks under governed by the different statutes hence the respective Acts under which they have been incorporated have to comply with that requirement along with the directives of the Regulatory Authorities (like RBI for Banks and IRDA for Insurance).
- The inception of the Corporate Governance norms may for banks may firstly be treated when the RBI accepted and published the Ganguly Committee Recommendations. Since India is also following the best practices as enunciated by the Basel Committee and adopted by the banks in India as per the directions of the RBI, the Corporate Governance Norms as suggested in Basel I, II and III has also been elaborated in the chapter.
- The Corporate Governance norms for insurance companies are governed by the IRDA guidelines.

## GLOSSARY

**Insurance:** A company that calculates the risk of occurrence then determines the cost to replace (pay for) the loss

**Company:** to determine the premium amount. A business that provides coverage, in the form of compensation resulting from loss, damages, injury, treatment or hardship in exchange for premium payments.

**Banking:** "banking company" means a banking company as defined in clause (c) of section 5 of the Banking

**Company:** Regulation Act, 1949.

**NBFC's:** A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances, acquisition of shares/stocks/bonds/ debentures/ securities issued by Government or local authority or the marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lumpsum or in installments by way of contributions or in any other manner, is also a non-banking financial company and is known as Residuary non-banking company.

**CPSEs:** Central Public Sector Enterprises (CPSEs) are those companies in which the direct holding of the Central Government or other CPSEs is 51% or more.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What do you mean by the Corporate Governance? How the governance norms are applicable in the banks.
2. Discuss the salient features of the Ganguly Committee Report applicable to Private Sector Banks.
3. IRDA has issued the guidelines on Corporate Governance Norms for the Insurance Companies. Please mention the salient features of it.
4. Public Sector Under takings also have to adhere to the norms of the Corporate Governance. What guidelines have been issued by the Ministry in this regard?
5. Comment on Corporate Social Responsibility as a part of Corporate Government.
6. DPE has issued the guidelines on Corporate Governance for the CPSEs. Discuss in Brief.

**LIST OF FURTHER READINGS**

- D. P. Mittal's Corporate Governance Board of Directors, Duties and Functions, Publisher: Commercial Law Publishers
- Corporate Governance in Banking and Investor Protection by Belen Diaz Diaz, Samuel O. Idowu and Philip Molyneux
- Handbook on Corporate Governance in Financial Institutions by Collot, Solène
- Department of Public Enterprises, https://dpe.gov.in/dpe-guidelines/corporate-governance
- Corporate Governance For Insurance Companies by Dr.Rajkumar S. Adukia
- Non Banking Financial Companies By Indian Institute of Banking & Finance

# Board Effectiveness/ Building Better Boards

Lesson 3

## KEY CONCEPTS

■ Chairman/CEO ■ Independent Director ■ Board Independence ■ Board Diversity ■ Conflict Management ■ Board Evaluation

## Learning Objectives

**To Understand:**

- Factors affecting/influencing the Board effectiveness of companies.
- Regulatory provisions relating to Board effectiveness
- International framework, provisions of different Corporate Governance codes on Board effectiveness.
- Role, duties, liabilities of Chairman, Board
- Conflict Management and Related Party Transactions
- Indian and Global framework on Board Diversity and Independence
- Best Practices by Corporates

## Lesson Outline

- Factors influencing Board effectiveness
- Composition of Board Structure
- Board Independence
- Lead Independent director
- Role of Chairman of the Board
- Appointment, Resignation and Removal
- Board Evaluation
- Board Diversity
- Conflict Management
- Duties/Responsibilities/Liabilities of Directors
- Code of Conduct/Ethics
- Succession Planning
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- Companies Act, 2013
- SEBI (LODR) Regulations, 2015
- International Corporate Governance Codes
- Additional Corporate Governance norms for NSE Prime companies.

## INTRODUCTION

The institution of board of directors was based on the premise that a group of trustworthy and respectable people should look after the interests of the large number of shareholders who are not directly involved in the management of the company. The position of the board of directors is that of trust as the board is entrusted with the responsibility to act in the best interests of the company.

The contribution of board of directors of companies is critical for ensuring appropriate directions with regard to leadership, vision, strategy, policies, monitoring, supervision, accountability to shareholders and other stakeholders, and to achieving greater levels of performance on a sustained basis as well as adherence to the best practices of corporate governance.

An effective board defines the company's purpose and then sets a strategy to deliver it, shapes its culture and the way it conducts its business. It sets the main trends and factors affecting the long-term success and future viability of the company – for example technological change or environmental impacts – and how these and the company's principal risks and uncertainties have been addressed.

The board should have sound understanding of how value is created over time, key strategies and business models towards a sustainable future. This is not limited to value that is found in the financial statements. An understanding of how value for intangible sources are developed, managed and sustained – for example a highly trained workforce, intellectual property or brand recognition – is increasingly relevant to an understanding of the company's performance and the impact of its activity. These are important considerations for boards when setting corporate strategy.

Boards have a responsibility for the health of the company and need to take a long-term view. This is in contrast to the priorities of some investors, not all of whom will be aligned with the pursuit of success over the long term. An effective board will manage the conflict between short-term interests and the long-term impacts of its decisions; it will assess shareholder and stakeholder interests from the perspective of the long-term sustainable success of the company.

Board Effectiveness may be assessed through various factors including:

1. Board Composition
2. Board Independence
3. Chairman/Board
4. Board Diversity
5. Board Engagement level
6. Appointment process
7. Code of Conduct
8. Conflict management
9. Board Evaluation
10. Succession planning
11. Duties/responsibilities/liabilities

**This lesson proposes to cover aspects under each factor that will impact Board Effectiveness including:**

1. **Regulatory Framework (both Provisions of Companies Act and SEBI (LODR) Regulations**
2. **Prescriptions for NSE Prime Companies***
3. **Best Practices by Companies**
4. **Prescriptions by Proxy Advisory Firms**
5. **International perspective(prescriptions under Different Corporate Governance Codes)**
6. **Reports/outcome of surveys**

## BOARD COMPOSITION

### Regulatory Prescriptions

### (a) Companies Act, 2013

**Minimum and Maximum Number of Directors – Section 149(1)**

Every company shall have a Board of Directors consisting of individuals as Directors and shall have -

(a) a *minimum number of three Directors in the case of a public company, two Directors in the case of a private company, and one director in the case of a One Person Company*; and

(b) a *maximum of fifteen Directors*.

Provided that a company may appoint more than fifteen Directors after passing a special resolution.

Provided further that such class or classes of companies as prescribed under Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014, shall have *at least one woman director.*

Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014

*Women Director:* At least one woman director shall be appointed in every listed company within one year from the commencement of the Act. Every other public company having paid up share capital of ₹ 100 crores or more or turnover of ₹ 300 crores or more as on the last date of audited financial statements, shall appoint at least one woman director within one year from the implementation of the Act.

**At least one Resident Director – Section 149(3)**

Every company shall have *at least one* director *who has stayed in India for a total period of not less than one hundred and eighty-two days during the financial year*:

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

**Listed companies to have independent directors – Section 149(4)**

Every listed public company shall have *at least one-third* of the total number of Directors as independent Directors and the Central Government may prescribe the minimum number of independent Directors in case of any class or classes of public companies.

*Explanation*. – For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

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**(NSE Prime is a framework that prescribes higher standards of Corporate Governance of Listed Companies than those required by Regulations similar to Brazilian Government's Novo Mercado which is special Listing Agreement prescribing higher corporate goveernance standard)*

## (b) Regulation 17 of SEBI (LODR) Regulations, 2015

**Composition of the Board of Director – Regulation 17(1)(a)**

The composition of board of directors of the listed entity shall be as follows:

(a) Board of directors shall have *an optimum combination of executive and non-executive directors with at least one woman director* and *not less than fifty per cent. of the board of directors shall comprise of non-executive directors;*

Provided that the Board of directors of the top 1000 listed entities shall have at least one independent woman director;

**Number of Independent Directors where the Chairperson is a non-executive – Regulation 17(1)(b)**

Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors:

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

***Explanation*:** For the purpose of this clause, the expression "related to any promoter" shall have the following meaning:

(i) if the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;

(ii) if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

**Minimum number of director in certain class of listed companies – Regulation 17(1)(c)**

The board of directors of the top 2000 listed entities shall comprise of not less than six directors.

***Explanation***: The top 1000 and 2000 entities shall be determined on the basis of market capitalisation as at the end of the immediate previous financial year.

**Suggested Board Size as per NSE and Proxy Advisory Guidelines- An Overview**

**(a) Additional requirements for NSE Prime Companies regarding Board Composition**

- The Board of Directors shall consist of a minimum of 8 Directors.
- The Chairperson of the Board of Directors shall not be a Relative of the Managing Director or Chief Executive Officer of the NSE Prime Company.

Where the public shareholding is in excess of 50%, more than half of the Board of Directors shall comprise Independent Directors; and in case of any fractions, the same shall be rounded to the higher number:

- Where the public shareholding is 50 % or less, at least half of the Board of Directors shall comprise Independent Directors; and in case of any fractions, the same shall be rounded to the higher number.
- With effect from July 01, 2025, at least 2 Directors shall be women, with at least one such Woman Director also being an Independent Director.

**(b) Preferable Board Size as per Proxy Advisors Guidelines**

**IiAS**

IiAS prefers a Board size of 6-15 members. Board size should be commensurate with the size and operations of the company. IiAS believes that, given the nature and quantum of work involved, three directors may not be optimal. Their guidelines are therefore aligned with the Kotak Committee threshold of at least 6 directors. On the other hand, consensus on many critical issues may be difficult to achieve if Board size exceeds 15 members.

Key risks of big Board size highlighted by them include:

- Board size may be increased to accommodate family members;
- Large Board size may make consensus building difficult.

**(c) InGovern**

InGovern prefers a Board size of 7-15 members. A Board size outside of this range is considered less effective either due to low diversity of expertise and opinion, and low representation of Independent Directors on key committees or a big Board size of greater than 15 members present the disadvantages of delayed decision making that come along with an uncontrollable size and risk of having majority of promoters and related parties on Board. InGovern too is not in favour of huge Board size.

**(d) SES**

SES prefers a Board size of 6-15 members. If the proposed Board size is outside this range, SES expects that the Company would provide a rationale for the same.

## BOARD INDEPENDENCE

### Regulatory Prescriptions

### (a) Independent Director – Definition

**(i) Companies Act, 2013**

In terms of Section 2(*47*), "independent director" means an independent director referred to in sub-section (6) of section 149.

Section 149(6) provides that an independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

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

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or Directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or Directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives –

(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:

Provided that the relative may hold security or interest in the company of face value not exceeding fifty lakh rupees or two per cent. of the paid-up capital of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed;

(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or Directors, in excess of such amount *as prescribed under Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014* during the two immediately preceding financial years or during the current financial year;

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or Directors of such holding company, for such amount *as prescribed under Rule 3 of the Companies (Appointment and Qualifications of Directors), Rules, 2014* during the two immediately preceding financial years or during the current financial year; or

(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications *as prescribed under Rule 4 of the Companies (Appointment and Qualifications of Directors), Rules, 2014.*

**Rule 4(1)** provides that the following class or classes of companies shall have at least two directors as independent directors -

(i) the Public Companies having *paid up share capital of ten crore rupees or more; or*

(ii) the Public Companies having *turnover of one hundred crore rupees or more; or*

(iii) the Public Companies which have, in *aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees*:

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

*Explanation*. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

**Rule 4(2) states that following classes of unlisted public company shall not be covered under sub-rule (1), namely:-.**

(a) a joint venture;

(b) a wholly owned subsidiary; and

(c) a dormant company as defined under section 455 of the Act.

**(ii) Regulation 16(1)(b) of the SEBI (LODR) Regulations, 2015 states that,** "*independent director*" means a non-executive director, other than a nominee director of the listed entity:

(i) who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;

(ii) who is or was not a promoter of the listed entity or its holding, subsidiary or associate company or member of the promoter group of the listed entity;

(iii) who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;

(iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, during the three immediately preceding financial years or during the current financial year;

(v) none of whose relatives –

(A) is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified;

(B) is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year;

(C) has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the current financial year; or

(D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income:

Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.

(vi) who, neither himself /herself, nor whose relative(s) –

(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company or any company belonging to the promoter group of the listed entity, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed:

Provided that in case of a relative, who is an employee other than key managerial personnel, the restriction under this clause shall not apply for his / her employment.

(B) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of –(1) a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or (2) any legal or a consulting firm that has or had any transaction with the listed entity, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

(C) holds together with his relatives two per cent or more of the total voting power of the listed entity; or

(D) is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;

(E) is a material supplier, service provider or customer or a lessor or lessee of the listed entity;

(vii) who is not less than 21 years of age.

(viii) who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.

## Parameters considered to determine Directors' Independence by Proxy Advisors

### (a) IiAS

IiAS will not treat the following directors as independent:

1. Directors who have cross linkages with each other across multiple Boards (Board interlock).
2. Those who do not satisfy the eligibility criteria laid down in Section 149(6) of the Act and Regulation (16)(1)(b) of the SEBI (LODR) Regulations, 2015.

3. Representatives of large shareholders (holding >2% stake) or lenders, even if they are not appointed on the Board as a nominee. However, former employees of such shareholders who continue to remain on the Board (even after they move on from their employment) may be considered independent. Similarly, directors who were earlier on the Board as nominees may be considered independent once the investor has sold its stake. Retired IAS officers/civil servants will also be considered as independent on the Board of Public Sector Enterprises.

**(b) InGovern**

- IDs should have no professional relationship with the company, and should not receive any fees, apart from sitting fees or any form of commission as determined by the Board for NEDs.
- For companies which have had major governance failures, InGovern does not recommend re-appointment of same IDs.

**(c) SES**

- Independent Director (ID) of Company must not have any pecuniary relationship with the Company, except for Directors' remuneration.

Any ID who had been associated with the Company or Group Company for a tenure of more than 10 years, is reckoned non- independent by SES irrespective of whether he was appointed as such, post the commencement of the Companies Act, 2013 or not

## Indicative definition of Independent Director by International Financial Corporation

"Independent Director" means a Director who has no direct or indirect material relationship with the Company other than membership on the Board and who:

1. Has not been employed by the Company or its Related Parties in the past five years
2. Is not, and is not affiliated with a company that is an advisor or consultant to the Company or its Related Parties
3. Is not affiliated with a significant customer or supplier of the Company or its Related Parties
4. Has no personal service contracts with the Company, its Related Parties, or its senior management
5. Is not affiliated with a non-profit organization that receives significant funding from the Company or its Related Parties
6. Is not employed as an executive of another company where any of the Company's executives serve on that company's board of directors
7. Is not a member of the immediate family of an individual who is, or has been during the past five years, employed by the Company or its Related Parties as an executive officer
8. Is not, nor in the past five years has been, affiliated with or employed by a present or former auditor of the Company or of a Related Party.

Is not a controlling person of the Company (or member of a group of individuals and/or entities that collectively exercise effective control over the Company) or such person's brother, sister, parent, grandparent, child, cousin, aunt, uncle, nephew or niece or a spouse, widow, in-law, heir, legatee and successor of any of the foregoing (or any trust or similar arrangement of which any such persons or a combination thereof are the sole beneficiaries) or the executor, administrator or personal representative of any Person described in this sub-paragraph who is deceased or legally incompetent.

## International Perspectives

### Malaysia - Malaysian Code on Corporate Governance (2021)

*Atleast half of the companies board are comprised of independent directors. Moreover, in case of large companies the independent directors are in majority in the boards.*

### Singapore – Singapore Code of Corporate Governance, 2018

An "independent" director is one who is independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders5 or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement in the best interests of the company.

*Independent directors make up a majority of the Board where the Chairman is not independent.*

Non-executive directors make up a majority of the Board.

### Finland - Finnish Corporate Governance Code, 2020

The board of directors shall evaluate the independence of the directors and report which directors are independent of the company and which are independent of the significant shareholders. The reasoning for determining that a board member is not independent must also be reported (Recommendation 10).

**Independence of the company**

A director is not independent of the company if :

a. the director has an employment relationship or service contract with the company;

b. the director has had an employment relationship or service contract with the company in the last three years, and such employment relationship or service contract has not been temporary;

c. the director receives, or has received during the past year, remuneration that is not insignificant for services that are not connected to the duties of a director, e.g. consulting assignments, from the company or members of the company's operative management;

d. the director belongs to the operative management of another corporation which has or has had during the past year a supplier, customer, or cooperation relationship with the company, and such relationship is or has been significant to the other corporation;

e. the director is, or has been in the past three years, the auditor of the company, a partner or an employee of the present auditor, or a partner or an employee in an audit firm that has been the company's auditor in the past three years; or

f. the director belongs to the operative management of another company whose director is a member of the operative management of the company (interlocking control relationship).

**Independence of major shareholders**

A significant shareholder is a shareholder who holds at least 10% of all company shares or the votes carried by all the shares, or who has the right or obligation to acquire the corresponding number of already issued shares.

A director is not independent of a significant shareholder if

g) the director is a significant shareholder of the company or a director of a significant shareholder, or has a relationship such as referred to in sub-sections a) – b) above with a significant shareholder; or

h) the director exercises direct or indirect control in a significant shareholder or is a director of a significant shareholder, or the director has a relationship such as referred to in sub-sections a) – b) above with a party who exercises direct or indirect control in a significant shareholder.

**Overall evaluation**

In addition to the above-mentioned criteria, the board of directors may, based on an overall evaluation, determine that a director is not independent of the company or a significant shareholder. The following factors, inter alia, shall be taken into account when conducting the overall evaluation of independence:

(a) the director participates in the same performance-related or share-based remuneration scheme as the operative management of the company, which may be of substantial financial significance to the director;

(b) the director has served as a director for more than 10 consecutive years;

(c) a member of the director's family or a private or legal person closely related to the director is subject to circumstances such as described in this recommendation; or

(d) the company is aware of other factors that may compromise the independence of the director and the director's ability to represent all shareholders.

**Rationale**

The duty of the board of directors is to supervise and control the managing director of the company. In order to avoid conflicts of interest, the majority of the directors should not have an interdependent relationship with the company. Although it is recommended that directors hold shares in the company, the majority of directors, consisting of independent directors, shall include at least two directors who are also independent of significant shareholders of the company. Such a composition of the board of directors supports the objective that the board of directors shall act in the interests of the company and all of its shareholders.

*The majority of the directors shall be independent of the company. At least two directors who are independent of the company shall also be independent of the significant shareholders of the company.*

## Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Independent director – a director who is independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders (i.e., holding 1% of voting shares or more) or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement in the best interests of the company. (Refer to Principle 3.2 for a complete definition).

The presence of independent directors in the Board ensures the exercise of independent judgment on corporate affairs and proper oversight of managerial performance, including prevention of conflict of interests and balancing of competing demands of the corporation.

There is increasing global recognition that the presence of independent directors on the Board will help ensure more objective decision-making, particularly in conflict of interest situations.

In addition, experts have recognized that there are varying opinions on the optimal number of independent directors in the Board. However, the ideal number ranges from one third to a substantial majority.

*To promote independent judgment by all board members and the integrity of the governance system, boards should have at least one-third independent directors.*

## Tenure of Independent Director – Critical to Board's Independence

**Tenure of Independent Director**

Section 149(10) provides that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149(11) states that notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

*Explanation*.–For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

Regulation 25(2) of the SEBI (LODR) Regulations, 2015 provides that the maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

## SEBI (LODR) Regulations, 2015

Regulation 25(2) of the SEBI (LODR) Regulations, 2015, provides that the maximum tenure of independent directors shall be in accordance with the Companies Act, 2013 and rules made thereunder, in this regard, from time to time.

## Tenure of Independent Directors and Minimum Attendance Requirements at Board and Committee Meetings for the Re-appointment of Directors as per Proxy Advisors Guidelines

**(i) IiAS**

IiAS will not treat the following directors as independent:

1. For directors who have been on the Board for more than 10 consecutive years. IiAS makes two important distinctions:
   (a) Unlike the Act, which computes tenure beginning 1 April 2014, IiAS will compute tenure on a retrospective basis i.e., from date of first appointment.
   (b) IiAS will apply the 'visa rule' and consider independent directors seeking reappointment as non-independent if they complete a 10-year tenure within six months of the date of their next reappointment.
2. Directors who have been on the Board of the parent/holding/ subsidiary for more than 10 consecutive years.
3. Former executive/non-executive directors who have not had a cooling-off period (complete detachment from the Board, company, and promoter group) for at least 3 years.
4. Former executives who are on the Board along with their previous supervisors, independent of whether these executives have completed a 3-year cooling period.
5. Directors who are simultaneously on the Board of a large number/ percentage of group companies, with a prolonged tenure of >10 years in any of these companies.

As per IiAS, the aggregate three-year attendance of directors should be at least 75%. They state that they make an exception and vote FOR in cases where they believe that the promoter, promoter representative or an executive director plays a critical role in the business or where their presence on the Board either signals the criticality of the business to the group or may result in the company getting critical support from within the group.

**(ii) InGovern**

Independent Director may not serve on the Board for a period of more than 2 consecutive terms of 5 years each. InGovern recommend a vote "Against" the re-appointment of IDs beyond a 10 year aggregate tenure from their date of appointment.

No former independent director should serve in the company in any capacity even if 3 years cooling off period has passed since his / her resignation.

A former NED (Non-independent director) should not be reappointed as an ID even if a 3 year cooling off period has passed.

As per InGovern, directors should attend at least 75% of the Board and/or Committee meetings.

**(iii) SES**

The law states that any term of the ID prior to 1st April, 2014 shall be ignored for the computation of 5 years, indicating that the countdown of first term starts from 1st April, 2014 itself.

In line with this view, SES is of the opinion that the term of an ID who was already an ID as on 31st March, 2014 ('existing IDs') must begin from 1st April, 2014, therefore, the first term cannot exceed 31st March, 2019. Appointment of existing IDs who were appointed post 1st April, 2014 for a term of 5 years whose tenure extends beyond 31st March, 2019 is considered by SES, to be not in accordance with the law. SES would raise such concern in the report. Accordingly, appointment of any ID, who is on the Board of the Company prior to 1st April, 2014 and whose term is extending beyond 31st March 2024, then, again SES would raise similar concern.

SES expects NEDs (other than IDs) to attend at least 50% of the Board meetings, only in such case SES considers a favorable voting recommendation.

Further, the benchmark for IDs and EDs have been set at 75% which is comparatively higher than that of NID NEDs.

SES is of the opinion the presence of IDs in the Board meetings is very vital as it ensures that it is not only Board structure which complies with independence norms, the quorum at the Board meetings also meets independence norm. It only then the agenda items are discussed and passed in the presence of sufficient number of IDs.

Additionally, presence of EDs in the Board meetings is also vital, as they are the link between executive management of the Company with the Board and are required to present to the Board performance of the Company and the future projections/ plans as far as the operations of the Company are concerned.

## International Perspective

28 of the jurisdictions surveyed by OECD set a maximum tenure of an Independent Director from 5 to 15 years (with 8-10 years most common). At the expiration of the tenure, these directors are required or recommended to no longer be regarded as independent (in 21 jurisdictions), or need an explanation regarding their independence (in seven jurisdictions).

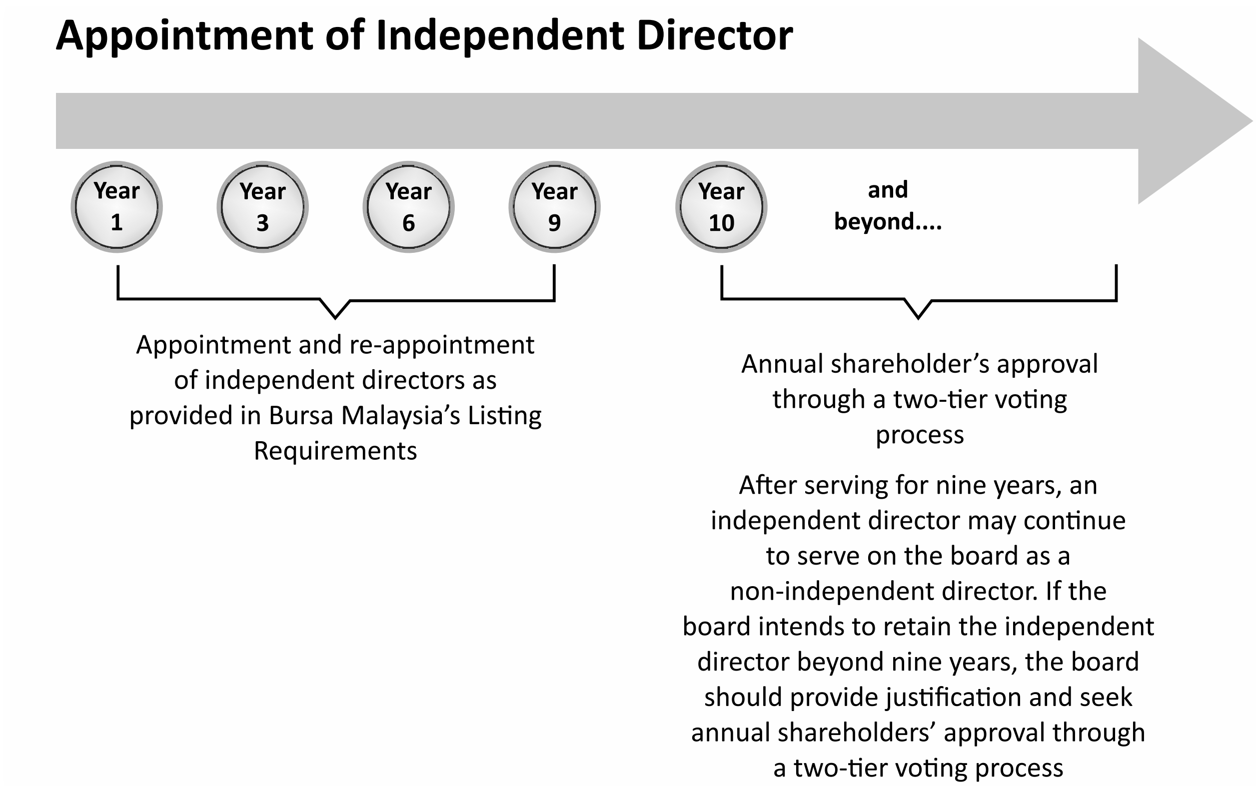
**In Singapore**, effective from January 2022, the SGX Listing Rules require the appointment of independent directors who have served beyond nine years to be subject to a two-tier vote requiring approval by the majority of (i) all shareholders, and (ii) all shareholders excluding shareholders who also serve as directors or the CEO (and their associates).

**Malaysian Code on Corporate Governance 2021**

The tenure of an independent director does not exceed a term limit of nine years. Upon completion of the nine years, an independent director may continue to serve on the board as a non-independent director.

If the board intends to retain an independent director beyond nine years, it should provide justification and seek annual shareholders' approval through a two-tier voting process.

The board has a policy which limits the tenure of its independent directors to nine years without further extension.




**Source: Malaysian Code on Corporate Governance (2021)**

In light of the fact that long tenure of independent directors may exert a debilitating impact on the interests of the stakeholders, as long association of independent directors with the company may erode the objective of the board, in view of this, large corporate houses are not encouraged to retain an independent director for a period of more than nine years. However, to retain an independent director beyond the specified term of nine years, the board should undertake a rigorous review to determine whether the 'independence' of the director has been impaired. Findings from the review should be disclosed to the shareholders for them to make an informed decision.

If the board intends to retain an independent director beyond nine years, it should provide justification and seek annual shareholders' approval through a two-tier voting process.

**Two-tier Voting Process**

For Practice 5.3, companies should use the two-tier voting process in seeking annual shareholders' approval to retain an independent director beyond nine years.

Under the two-tier voting process, shareholders' votes will be cast in the following manner at the same shareholders meeting:

- **Tier 1:** Only the Large Shareholder(s) of the company votes; and
- **Tier 2:** Shareholders other than Large Shareholders votes.

For the purposes of Practice 5.3, Large Shareholder means a person who–

- is entitled to exercise, or control the exercise of, not less than 33% of the voting shares in the company;
- is the largest shareholder of voting shares in the company;
- has the power to appoint or cause to be appointed a majority of the directors of the company; or
- has the power to make or cause to be made, decisions in respect of the business or administration of the company, and to give effect to such decisions or cause them to be given effect to.

The decision for the above resolution is determined based on the vote of Tier 1 and a simple majority of Tier 2. If there is more than one Large Shareholder, a simple majority of votes determine the outcome of the Tier 1 vote.

The resolution is deemed successful if both Tier 1 and Tier 2 votes support the resolution. However, the resolution is deemed to be defeated where the vote between the two tiers differs or where Tier 1 voter(s) abstained from voting.

### Vietnamese Corporate Governance Code of Best Practices, 2019

**Principle 3.4:** The Board's independent directors should serve for a maximum cumulative term of nine years.

**Recommended Practices:**

Service in a board for a long duration may impair a director's ability to act independently and objectively. Hence, the tenure of an independent director is set to a cumulative term of nine years.

After nine years, the independent director should be perpetually barred from re-election as such in the same company, but may continue to qualify for nomination and election as a non-independent director.

## INDEPENDENT DIRECTOR, APPOINTMENT, REAPPOINTMENT AND REMOVAL AS PER COMPANIES ACT, 2013

**Manner of selection of Independent Directors and maintenance of databank of independent directors – Section 150**

(1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent Directors, maintained by any body, institute or association, as may by notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such Directors:

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting

called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as prescribed in **Rule 6** of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

(4) The Central Government may prescribe the manner and procedure of selection of independent Directors who fulfil the qualifications and requirements specified under section 149.

## Appointment of Independent Director

Proviso to Section 152(5) provides that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

***Manner of appointment:- Schedule IV (Code for Independent Directors)***

(1) Appointment process of Independent Directors shall be independent of the company management; while selecting independent Directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.

(2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.

(3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

(4) The appointment of independent Directors shall be formalised through a letter of appointment, which shall set out :

   (a) the term of appointment;

   (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;

   (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;

   (d) provision for Directors and Officers (D and O) insurance, if any;

   (e) the Code of Business Ethics that the company expects its Directors and employees to follow;

   (f) the list of actions that a director should not do while functioning as such in the company; and

   (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.

(5) The terms and conditions of appointment of independent Directors shall be open for inspection at the registered office of the company by any member during normal business hours.

(6) The terms and conditions of appointment of independent Directors shall also be posted on the company's website.

**Re-appointment:**

The re-appointment of independent director shall be on the basis of report of performance evaluation.

**Resignation or removal:**

(1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.

(2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within three months from the date of such resignation or removal, as the case may be.

(3) Where the company fulfils the requirement of independent Directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

## Retirement by Rotation of Independent Directors not applicable on IDs

Section 149(13) provides that the provisions of sub-sections (6) and (7) of section 152 in respect of retirement of Directors by rotation shall not be applicable to appointment of independent Directors

## Appointment of Independent Director – SEBI (LODR) Regulations, 2015

According to Regulation 25(2A) of the SEBI (LODR) Regulations, 2015, the appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made.

Regulation 25(1) states that a person shall not be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.

For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:

(a) use the services of an external agencies, if required;

(b) consider candidates from a wide range of backgrounds, having due regard to diversity; and c. consider the time commitments of the candidates.

## Removal of Independent Director

**Regulation 25(2A) of the SEBI (LODR) Regulations, 2015** states that the appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution.

Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made under sub-regulation (2A).

Provided further that an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

**Regulation 25(6) of the SEBI (LODR) Regulations, 2015** states that an independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than three months from the date of such vacancy;

Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.

## Resigned Independent Director should not be appointed as Whole-time Director – Regulation 25(11)

No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent director.

## Functions, Duties and Liabilities of Independent Director

***Liability of Independent Director- Under the Companies Act, 2013***

Section 149(12) provides that (12) Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

## Under SEBI (LODR) Regulations, 2015

Regulations 25(5) provides that an independent director shall be held liable, only in respect of such acts of omission or commission by the listed entity which had occurred with his /her knowledge, attributable through processes of board of directors, and with his /her consent or connivance or where he /she had not acted diligently with respect to the provisions contained in these regulations.

**Liability of Independent Directors**: Vicarious Prosecution of Independent Director for cheque bounce by company to be quashed when he was not signatory of cheque and only general allegations made in complaint. December 19, 2022 High Court of Delhi *Prakash Chand* December 19, 2022.

**Independent Directors liability check judgements:** In absence of any specific role attributed against him for active participation in the day-to-day affairs of the company and taking all decisions of the company, where he is not signatory to cheque in question vicarious liability could not be fastened. High court of Delhi. 7.01.2020, *Har Sarup Bhasin* vs. *Origo Commodities India*.

## LEAD INDEPENDENT DIRECTOR

### Appointment of Lead Independent Director

Internationally, it is considered a good practice to designate an independent director as a lead independent director or senior independent director. The lead independent director is a highly versatile intermediary between the chair, the board and the board's stakeholders. The lead independent director must keep a keen eye on whether the chair is performing their role to the board's satisfaction without losing objectivity or independence. They monitor the relationship between the chair and the CEO, and ensure that it is a well-functioning working relationship without becoming too close or powerful. The lead independent director also coordinates the activities of other non-employee directors and advises the chairman on issues ranging from the schedule of board meetings to recommending retention of advisors and consultants to the management.

### Role of the lead independent director

- Acts as the principal liaison between the independent directors of the Board and the Chairman of the Board;
- Develops the agenda for and preside at executive sessions of the Board's independent directors;
- Advises the Chairman of the Board as to an appropriate schedule for Board meetings, seeking to ensure that the independent directors can perform their duties responsibly while not interfering with the flow of Company operations;
- Approves with the Chairman of the Board the agenda for Board and Board Committee meetings and the need for special meetings of the Board;
- Advises the Chairman of the Board as to the quality, quantity and timeliness of the information submitted by the Company's management that is necessary or appropriate for the independent directors to effectively and responsibly perform their duties;
- Recommends to the Board the retention of advisors and consultants who report directly to the Board;
- Interviews, along with the chair of the Nominating and Corporate Governance Committee, all Board candidates, and make recommendations to the Nominating and Corporate Governance Committee;
- Assists the Board and Company officers in better ensuring compliance with and implementation of the Governance Guidelines;
- Serves as Chairman of the Board when the Chairman is not present; and
- Serves as a liaison for consultation and communication with shareholders.

## INTERNATIONAL PERSPECTIVE

### Recommendations of the UK Corporate Governance Code, 2018

- The Board should appoint one of the independent non-executive directors as the senior independent director to provide a sounding chair for the Board and serve as an intermediary for other directors and shareholders. Led by the senior independent director, the non-executive directors should meet without the Chair present at least annually to appraise the Chair's performance, and on other occasions as necessary.

## Malaysian Code on Corporate Governance Code, 2021

Where the board appoints a Senior Independent Director (SID), the role of the SID should also be explained in the board charter. This may include the SID acting as–

- a sounding board for the Chairman;
- an intermediary for other directors when necessary; and
- the point of contact for shareholders and other stakeholders.

To ensure independency of the independent directors, the focus is not only on whether a director's background and current activities qualify him or her as independent but also whether the director can act independently of management or not.

As chair of the Nominating Committee, the independent director or a Senior Independent Director shall–

- lead the succession planning and appointment of directors, and oversee the development of a diverse pipeline for board and management succession, including the future Chairman, Executive Directors and CEO; and
- lead the annual review of board effectiveness, ensuring that the performance of each individual director and Chairman of the board are independently assessed.

## Italian Corporate Governance Code, 2020

Non-executive directors and/or independent directors, led by the independent Chairman or other independent director as appropriate, meet regularly without the presence of Management. The chairman of such meetings provides feedback to the Board and/or Chairman as appropriate.

The board of directors appoints an independent director as lead independent director:

(a) if the chair of the board of directors is the chief executive officer or holds significant managerial powers;

(b) if the office of chair is held by the person who controls, also jointly, the company;

(c) in large companies, even in the absence of the conditions indicated in letter a) and b), if requested by the majority of independent directors.

The lead independent director:

(a) collects and coordinates the requests and contributions of non-executive directors and, in particular, of independent ones;

(b) coordinates the meetings of the independent directors.

## Vietnamese Corporate Governance Code of Best Practices, 2019

**Principle 3.5:** The Board should designate a lead director among the independent directors if the Chairman of the Board is not independent, including if the positions of the Chairman of the Board and Chief Executive Officer (CEO) are held by one person.

## Recommended Practices

A suggested mechanism is the appointment of a strong "lead director" among the independent directors and it is also recommended that boards are comprised of majority of independent directors where the Chairman is not independent.

This lead director has sufficient authority to lead the Board in cases where the remaining directors (including the dual Chairman-CEO) have clear conflicts of interest.

## Compliances/declaration by Independent Director

**Compliances required by a person eligible and willing to be appointed as an independent director – Rule 6**

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall **within a period of thirteen months** from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment, apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in sub-rule (2), till he continues to hold the office of an independent director in any company:

Provided that any individual, including an individual not having DIN, may voluntarily apply to the institute for inclusion of his name in the data bank.

(2) Every individual whose name has been so included in the data bank shall file an application for renewal for a further period of one year or five years or for his life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the institute:

Provided that no application for renewal shall be filed by an individual who has paid life-time fees for inclusion of his name in the data bank.

(3) Every independent director shall submit a declaration of compliance of sub-rule (1) and sub-rule (2) to the Board, each time he submits the declaration required under sub-section (7) of section 149 of the Act.

(4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of Two years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

**Provided that an individual shall not be required to pass the online proficiency self-assessment test when he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank,-**

(A) as a director or key managerial personnel, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) body corporate listed on any recognized stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions; or

(d) bodies corporate incorporated outside India having a paid-up share capital of US$ 2 million or more; or

(e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities; or

(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

(i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or

(ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.

(C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development Authority of India or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws :

Provided further that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

Provided also that the following individuals, who are or have been, for at least ten years :–

(A) an advocate of a court; or

(B) in practice as a chartered accountant; or

(C) in practice as a cost accountant; or

(D) in practice as a company secretary, shall not be required to pass the online proficiency self-assessment test.

*Explanation*: For the purposes of this rule,-

(a) the expression "institute" means the 'Indian Institute of Corporate Affairs at Manesar' notified under sub-section (1) of section 150 of the Companies Act, 2013 as the institute for the creation and maintenance of data bank of Independent Directors;

(b) an individual who has obtained a score of not less than fifty percent in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test;

(c) there shall be no limit on the number of attempts an individual may take for passing the online proficiency self-assessment test.

(5) Any individual whose name has been removed from the databank under sub-rule (4), may apply for restoration of his name on payment of fees of one thousand rupees and the institute shall allow such restoration subject to the following conditions, namely :-

(i) his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and

(ii) in case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.

## Declaration by Independent Director – Regulation 25(8)

Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

**Regulation 25(9)** provides that the board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.

## Directors and Officers insurance for Independent Directors– Regulation 25 (10)

The top 1000 listed entities by market capitalization, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.

## High Value Debt List Entity –Regulation 25(12)

A 'high value debt listed entity' shall undertake Directors and Officers insurance (D and O insurance) for all its independent directors for such sum assured and for such risks as may be determined by its board of directors.

## Schedule IV of the Companies Act, 2013- Code for Independent Directors

**I. Guidelines of professional conduct:**

An independent director shall:

(1) uphold ethical standards of integrity and probity;

(2) act objectively and constructively while exercising his duties;

(3) exercise his responsibilities in a bona fide manner in the interest of the company;

(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;

(5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;

(6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;

(7) refrain from any action that would lead to loss of his independence;

(8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;

(9) assist the company in implementing the best corporate governance practices.

**II. Role and functions:**

The Independent Directors shall:

(1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

(4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

(5) safeguard the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine appropriate levels of remuneration of executive Directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive Directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

**III. Duties :**

The independent Directors shall—

(1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;

(2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

(3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

(4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;

(5) strive to attend the general meetings of the company;

(6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

(7) keep themselves well informed about the company and the external environment in which it operates;

(8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

(9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;

(10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

(11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;

(12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;

(13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law

## BOARD EVALUATION

### Review of performance of Non-independent Director

**Regulation 25(4) of the SEBI (LODR) Regulations, 2015** states that the independent directors in the meeting referred in Regulation 25(3) shall, *inter alia*-

(a) review the performance of non-independent directors and the board of directors as a whole;

(b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors;

(c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Evaluation mechanism:

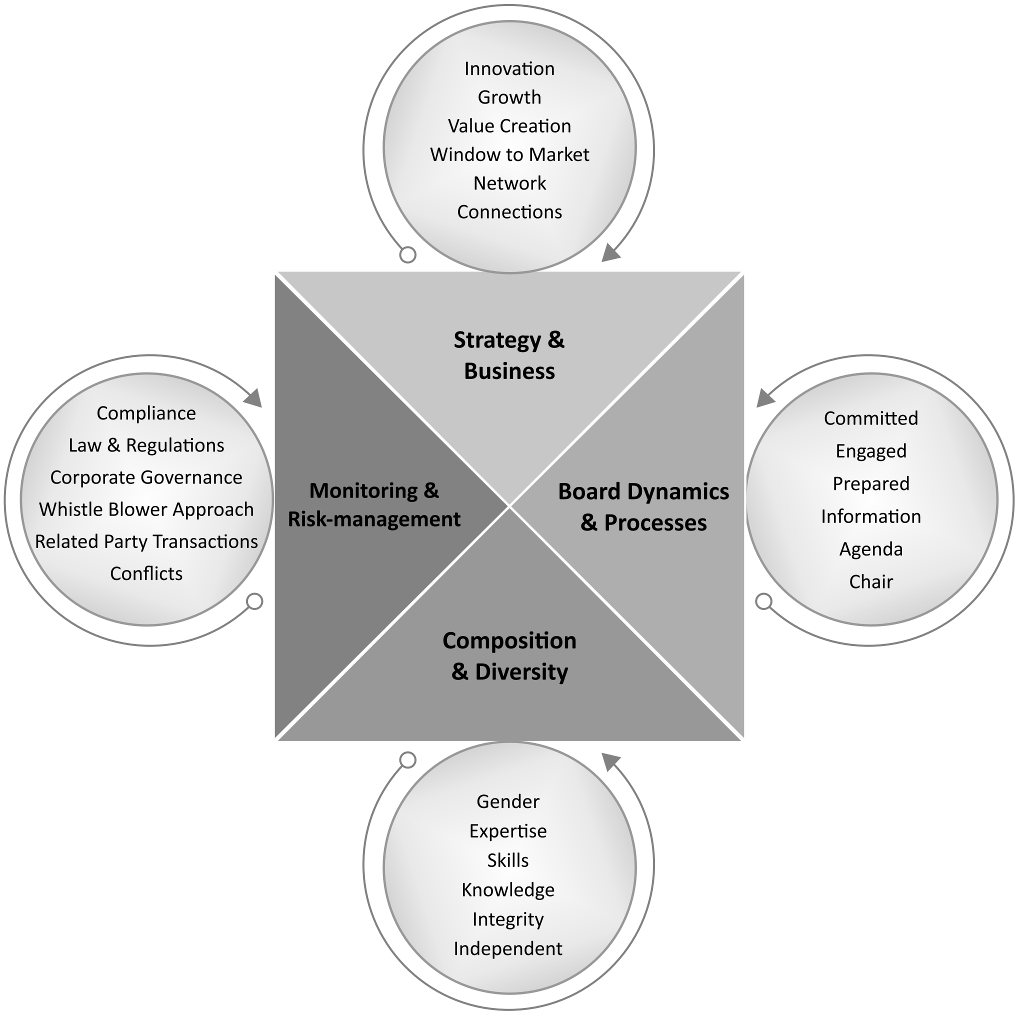
(1) The performance evaluation of independent Directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

"*Note:* The provisions of sub-paragraph (2) and (7) of paragraph II, paragraph IV, paragraph V, clauses (a) and (b) of sub-paragraph (3) of paragraph VII and paragraph VIII shall not apply in the case of a Government company as defined under clause (45) of section 2 of the Companies Act,2013 (18 of 2013), if the requirements in respect of matters specified in these paragraphs are specified by the concerned Ministries or Departments of the Central Government or as the case may be, the State Government and such requirements are complied with by the Government companies.

## Four dimensions to Board Evaluation by OECD

"Four Dimensions" of Board Evaluations –Board Evaluation-Overview of International practices by OECD



## Board Evaluation (Under the Companies Act, 2013)

**1. The Role of the Nominations and Remuneration Committee in performance evaluation of directors**

**Section 178 (2):** The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

**2. Independent Directors' role in performance evaluation of Boards, non-independent directors and Chairperson**

**Schedule IV [Part II (2)] :** Independent directors are required to bring an objective view in the evaluation of the performance of board and management.

**Schedule IV (Part VII) :** The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting. The meeting shall:

(a) review the performance of non-independent directors and the Board as a whole;

(b) review the performance of the Chairperson of the company, taking into account the views of executive

(c) directors and non-executive directors;

(d) assess the quality, quantity and timeliness of flow of information between the company management and

(e) the Board that is necessary for the Board to effectively and reasonably perform their duties.

**3. Performance evaluation of Independent Directors**

**Schedule IV Part V: Re appointment** - The reappointment of the independent directors would be based on their report of performance evaluation.

**Schedule IV Part VIII : Evaluation mechanism -** The performance of the independent directors would have to be done by the entire Board excluding the director to be evaluated. On the basis of the report of performance evaluation, the continuance or extension of the term of appointment of the independent director would be determined.

**4. Inclusion of Performance evaluation in Board' Report**

According to Rule 8 (4) of the Companies (Accounts) Rules, 2014 Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

## Board Evaluation (Under SEBI (LODR) Regulations, 2015)

It also requires Boards to conduct an annual performance evaluation and its disclosure in the annual report through the following provisions:

1. **Regulation 4(2)(f)(ii) (9)** states the Key functions of the board of directors which includes:

   Monitoring and reviewing board of director's evaluation framework.

2. **Regulation 17(10)** mandates that evaluation of independent directors shall be done by the entire board of directors which shall include -

   (a) performance of the directors; and

   (b) fulfilment of the independent criteria as specified in these regulations and their independence from the management.

   In the above evaluation process, the directors who are subject to evaluation shall not participate.

3. **Regulation 19(4) read with Part D of Schedule II** - It provides that the role of Nomination and Remuneration committee shall, inter-alia, include the following:

   (1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees;

   For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:

   a. use the services of an external agency, if required;

   b. consider candidates from a wide range of backgrounds, having due regard to diversity; and

   c. consider the time commitments of the candidates.

   (2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

   (3) devising a policy on diversity of board of directors;

   (4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal;

   (5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors;

   (6) recommend to the board all remuneration, in whatever form, payable to senior management.

4. **Disclosure on Performance evaluation** criteria for independent directors has to be made under head Nomination and Remuneration Committee in the section on the corporate governance of the annual report.

## Performance Evaluation of the Board and Management

Board evaluation is a key means by which boards can recognize and correct corporate governance problems and add real value to their organizations. A properly conducted board evaluation can contribute significantly to performance improvements on organisational; board and individual member level. Board evaluation typically examines the roles of the Board and the entailing responsibilities, and assesses how effectively these are fulfilled by the Board.

The stakeholders and investors are interested to know whether the members of Board are effectively functioning individually and collectively. The Board at many times requires new skills for promptly responding to the dynamic changing business environment. Performance measurement, against the set benchmarks, in the form of Board evaluation has the potential to significantly enhance Board effectiveness, maximize strengths, tackle weaknesses and improve corporate relationships. Annual assessment is a powerful tool to convert good boards into great boards.

Evaluation provides the board and its committees with the opportunity to consider how group culture, cohesiveness, composition, leadership, meetings information processes and governance policies influence performance. Board Evaluation helps to identify areas for potential adjustment and provides an opportunity to remind directors of the importance of group dynamics and effective board and committee processes in fulfilling board and committee responsibilities.

Thus, Board evaluation contributes significantly to improved performance at three levels - organizational, Board and individual Board member level. It also improves the leadership, teamwork, accountability, decision-making, communication and efficiency of the board. A commitment to annual evaluation is powerful change agent.

The Board evaluation sets the standards of performance and improves the culture of collective action by Board. Evaluation also improves teamwork by creating better understating of Board dynamics, board-management relations and thinking as a group within the board. It helps to maximize board/ director contribution by encouraging participation in meetings and highlighting the skill gaps on the Board and those of individual members. Directors demonstrate commitment to improvement, based on the feedback provided on individual and collective skill gaps.

Rule 8(4) of the Companies (Accounts) Rules, 2014 provides that every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

The purposes of the Board evaluation may be enumerated as under:

- Improving the performance of Board towards corporate goals and objectives.
- Assessing the balance of skills, knowledge and experience on the Board.
- Identifying the areas of concern and areas to be focused for improvement.
- Identifying and creating awareness about the role of Directors individually and collectively as Board.
- Building Team work among Board members.
- Effective Coordination between Board and Management.
- Overall growth of the organisation.

## Board Evaluation Framework and Parameters

Boards should understand the framework under which board and committee evaluations are conducted, and take steps to ensure evaluations are carried out effectively. As per the Companies Act 2013 or SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Board evaluation would generally include following:

1. Evaluation of the Board as a whole
2. Evaluation of the Committees
3. Evaluation of Individual Directors
    - Managing Director / Whole time Director / Executive Director
    - Independent Directors

- Non- executive Directors

4. Evaluation of the Chairperson.

## Evaluation of the Board as a whole

The performance of the Board as a whole may be evaluated either from the reviews/ feedback of the directors themselves or by some external source. The Independent Directors at their separate meeting shall also assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties. The evaluation of the performance of the Boards is essentially an assessment of how the Board has performed on following parameters which determines the effectiveness of boards.

- **Board Structure :** its composition, constitution and diversity and that of its Committees, competencies of the members, Board and Committee charters, frequency of meetings, procedures;
- **Dynamics and Functioning of the Board :** annual Board calendar, information availability, interactions and communication with CEO and senior executives, Board agenda, cohesiveness and the quality of participation in Board meetings;
- **Business Strategy Governance:** Board's role in company strategy;
- **Financial Reporting Process, Internal Audit and Internal Controls:** The integrity and the robustness of the financial and other controls regarding abusive related party transactions, vigil mechanism and risk management;
- **Monitoring Role:** Monitoring of policies, strategy implementation and systems;
- Supporting and Advisory Role; and
- The Chairperson's Role.

## Evaluation of the Committees

- The Board is responsible for the evaluation of the performance of the Committees of the Board. The performance of the committees may be evaluated by the Directors, on the basis of the terms of reference of the committee being evaluated. Alternatively, the evaluation may be externally facilitated.

The broad parameters of reviewing the performance of the Committees, inter alia, are:

- Discharge of its functions and duties as per its terms of reference;
- Process and procedures followed for discharging its functions;
- Effectiveness of suggestions and recommendations received;
- Size, structure and expertise of the Committee;
- Conduct of its meetings and procedures followed in this regard; and
- Recommendations made to the Board.

## Evaluation of Individual Director(s)

### (a) Evaluation of Managing Director / Whole time Director / Executive Director

The performance evaluation of Managing Director, Executive Director of the Company may be done by all the directors. External facilitation may also serve as an efficient tool for evaluation. The Code for Independent Directors also provides that Independent Directors should review the performance of non-independent

Directors, which include Managing Director / Whole time Director/Executive Director. The broad parameters for reviewing the performance of Managing Director/Executive Director are:

- Achievement of financial/business targets prescribed by the Board;
- Developing and managing / executing business plans, operational plans, risk management, and
- financial affairs of the organization;
- Display of leadership qualities i.e. correctly anticipating business trends, opportunities, and priorities affecting the Company's prosperity and operations;
- Development of policies, and strategic plans aligned with the vision and mission of Company; and
- which harmoniously balance the needs of shareholders, clients, employees, and other stakeholders;
- Establishment of an effective organization structure to ensure that there is management focus on key functions necessary for the organization to align with its mission; and Managing relationships with the Board, management team, regulators, bankers, industry representatives and other stakeholders.

**(b) Evaluation of Independent Directors:**

The performance evaluation of independent directors should be done by the entire Board of Directors, excluding the director being evaluated. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors. The company should disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.

**Major Factors for Evaluation**

- The quality of the issues that get raised, discussed and debated at the meetings of the Board and its Committees.
- The guidance provided by the Board in the light of changing market conditions and their impact on the organisation.
- The methodology adopted by the Board to solve issues referred to them.
- The effectiveness of the directions provided by the Board on the issues discussed in meetings.

**Parameters:** In addition to the parameters laid down for Directors, which shall be common for evaluation to both Independent and Non- executive directors, an Independent director shall also be evaluated on the following parameters:

- Exercise of objective independent judgment in the best interest of Company;
- Ability to contribute to and monitor corporate governance practice; and
- Adherence to the code of conduct for independent directors;
- Performance of the Board against the benchmark performance set;
- Overall value addition by the discussions taking place at the Board meetings;
- The regularity and quality of participation in the deliberations of the Board and its Committees;
- The answerability of the top management to the Board on performance related matters.

**(c) Evaluation of Non-Executive Directors**

In terms of the Code for Independent Directors, the Independent director(s) on the Board of the Company should evaluate the performance of Non-independent director(s) which include nonexecutive director(s). Peer Review method or external evaluation may also facilitate the purpose of evaluating Non-executive directors. The broad parameters for reviewing the performance of Non-executive Directors are:

- Participation at the Board / Committee meetings;
- Commitment (including guidance provided to senior management outside of Board/ Committee meetings);
- Effective deployment of knowledge and expertise;
- Effective management of relationship with stakeholders;
- Integrity and maintaining of confidentiality;
- Independence of behaviour and judgment; and
- Impact and influence.

## Evaluation of Chairperson of the Board

The performance of the Chairperson is linked to both the functioning of the Board as a whole as well as the performance of each director. The Code for Independent Directors provides that the Independent Directors should review the performance of the Chairperson of the company taking into account the views of the executive directors and non-executive directors.

Therefore, all the directors of the Board of the company thereof contribute in evaluating the performance of the Chairperson of the Board. External agencies may also be involved in evaluating the Chairperson.

The broad parameters for reviewing the performance of Chairperson of the Board are:

- Managing relationship with the members of the Board and management;
- Demonstration of leadership qualities;
- Relationship and communication within the Board;
- Providing ease of raising of issues and concerns by the Board members; and
- Promoting constructive debate and effective decision making at the board;
- Relationship and effectiveness of communication with the shareholders and other stakeholders;
- Promoting shareholder confidence in the Board and;
- Personal attributes i.e. Integrity, Honesty, Knowledge, etc.

## INTERNATIONAL PERSPECTIVES – BOARD EVALUATION

### 1. Malaysia - Malaysian Code on Corporate Governance (2021)

**Practice (6.1)**

The board should undertake a formal and objective annual evaluation to determine the effectiveness of the board, its committees and each individual director. The board should disclose how the assessment was carried out its outcome, actions taken and how it has or will influence board composition.

For Large Companies, the board engages independent experts at least every three years, to facilitate objective and candid board evaluations

**Guidance (G6.1)**

G6.1 An objective and well-managed board evaluation process can lead to substantial improvement in board effectiveness, bringing significant benefits to the company. There are many ways in which board evaluations can be carried out such as through self-assessment, peer review, facilitated by the company secretary or an external facilitated independent board evaluation, with oversight of the entire process and methodology by the Nominating Committee. Given that every board is different and their needs, roles, priorities and capacities vary depending on the company's size and stage in its life cycle, a box-ticking approach to evaluation is ineffective and unacceptable.

Further board evaluations should not focus entirely on historical assessment of directors' performance but also include forward looking considerations, such as mapping current board competencies against those required, to drive the company's future strategies. The board evaluation should also help determine the upskilling or development needs of individual directors or the board, collectively.

A board evaluation which is periodically facilitated by a professional, experienced and independent party will lend greater objectivity to the assessment by providing an unbiased perspective on a director's performance and his ability to contribute effectively to the board.

The annual assessment on individual directors should include an evaluation of their:

- Will and ability to critically challenge and ask the right questions;
- Character and integrity in dealing with potential conflict of interest situations;
- Commitment to serve the company, due diligence and integrity; and
- Confidence to stand up for a point of view.

In disclosing the evaluation carried out on effectiveness of the board, its committees and individual directors, the Nominating Committee should disclose the following information in its CG Report:

- How the evaluation was conducted, the criteria used such as the assessment of fit and properness, contribution and performance, calibre and personality of directors;
- Whether an independent expert was engaged, or was it internally facilitated;
- Key strengths and/or weaknesses that were identified from the evaluation;
- Steps or enhancements proposed to be undertaken to mitigate or address the weaknesses identified; and
- impact of the evaluation on board composition (if any).

Sparse and/or vague disclosures on the evaluation methodology and outcomes should be avoided.

## 2. Italy - Italian Corporate Governance Code 2020

**Principle (XIV)**

The board of directors periodically evaluates, through formalised procedures, its effectiveness and the contribution made by individual directors. The implementation of the board evaluation procedures is supervised by the board itself.

**Recommendations (21 &22)**

21. The board evaluation assesses the size, composition and functioning of the board and its committees. It includes also the board's active involvement in the definition of the company's strategy and in the monitoring

of the management of the company's business as well as the appropriateness of the internal control and risk management system.

22. The board evaluation is conducted at least every three years, before the renewal of the board of directors.

In large companies other than those with concentrated ownership, the board evaluation is conducted on an annual basis and can be diversified according to the term of the board's mandate. In such companies, the board considers whether to appoint an external facilitator for its evaluation at least once every three years.

## 3. Finland - Finnish Corporate Governance Code 2020

**Recommendation (13)**

**Performance Evaluation of the Board of Directors**

The board of directors shall conduct an annual evaluation of its operations and working methods.

**Rationale**

Board work requires a considerable amount of work from the directors. In addition to attending the meetings, a significant part of board work consists of preparing for the meetings, committee work, familiarisation with the company's business operations and operating environment, and monitoring and assessing the operations of the company.

In order to ensure and improve the efficiency and continuity of its work, the board of directors shall make sure that its operations and working methods are evaluated regularly. The evaluation may be carried out in the form of an internal self-evaluation. Using an external evaluator at intervals and to the extent deemed necessary by the company may provide new and more objective perspectives.

The evaluation may focus on, for example, the composition of the board of directors, the organisation and effectiveness of the board of directors as a team, the meeting preparations, cooperation with the managing director, and the competence, special expertise, and efficiency of each director and the board of directors as a whole. The evaluation may also include an assessment on how successfully

The board of directors has operated in relation to the set objectives. It may also be justified to conduct similar evaluations of the committees of the board of directors.

The company has a duty to ensure that the findings of such evaluations are provided, in confidence, to the body in charge of preparing the proposal for the composition of the board of directors as set forth in RECOMMENDATION 7 in so far as the findings may affect the planning of the preparation concerning the composition of the board of directors.

The company shall report the number of board meetings held during the financial period and the meeting attendance of each director.

## 4. Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

The primary responsibilities of the CGNR committee are to: Coordinate an annual evaluation of the Board, directors and committees.

**Principle 5: Ensuring Effective Performance for Board**

The best measure of the Board's effectiveness is through board assessment and remuneration process. The Board should regularly carry out evaluations to appraise its performance as a body, and assess whether it possesses the right mix of backgrounds and competencies, in addition to having a motivated and transparent remuneration for board members.

**Principle (5.1)**

The Board should conduct an annual self-assessment of its performance, including the performance of the Chairman, individual members and committees. Every three years, the assessment should be supported by an external facilitator.

**Recommended Practices (5.1.1, 5.1.2, 5.1.3 & 5.1.4)**

5.1.1 Board assessment helps the directors to thoroughly review their performance and understand their roles and responsibilities.

5.1.2 The periodic review and assessment of the Board's performance as a body, the board committees, the individual directors, and the Chairman show how the afore-mentioned should perform their responsibilities effectively.

5.1.3 In addition, it provides a means to assess a director's attendance at board and committee meetings, participation in boardroom discussions and manner of voting on material issues.

5.1.4 The use of an external facilitator in the assessment process increases the objectivity of the same. The external facilitator can be any independent third party such as, but not limited to, a consulting firm, academic institution or professional organization.

**Principle (5.2)**

The Board should have in place a system that provides, at the minimum, criteria and process to determine the performance of the Board, the individual directors, and its committees. Such a system should allow for a feedback mechanism from the shareholders.

**Recommended Practices (5.2.1, 5.2.2 & 5.2.3)**

5.2.1 Disclosure of the criteria, process and collective results of the assessment ensures transparency and allows shareholders and stakeholders to determine if the directors are performing their responsibilities to the company.

5.2.2 Companies are given the discretion to determine the assessment criteria and process, which should be based on the mandates, functions, roles and responsibilities provided in the Board and Committee Charters.

5.2.3 In establishing the criteria, attention is given to the values, principles and skills required for the company. Normally, the Corporate Governance Nomination and Remuneration Committee *(Principle 4.3)* oversees the evaluation process.

## 5. UK Corporate Governance Code

- There should be a formal and rigorous annual evaluation of the performance of the Board, its committees, the chair and individual directors. The Chair should consider having a regular externally facilitated Board evaluation. In FTSE 350 companies this should happen at least every three years. The external evaluator should be identified in the annual report and a statement be made regarding any other connection it has with the company or individual directors.
- The annual report should describe how the Board evaluation has been conducted by the nomination committee, the nature and extent of an external evaluator's contact with the Board and individual directors, the outcomes and actions taken, and how it has or will influence Board composition.

The **ASX Corporate Governance Council Principles and Recommendations** provides that a listed entity should:

- have and disclose a process for periodically evaluating the performance of the Board, its committees and individual directors; and
- disclose for each reporting period, whether a performance evaluation has been undertaken in accordance with that process during or in respect of that period.

**King III** recommended that an evaluation of the governing body, its committees and its individual members be conducted every year. To provide for sufficient time to appropriately respond to the results of such performance evaluations, the **King IV** Code recommends for a formal evaluation process to be conducted at least every two years. Every alternate year, the governing body should schedule an opportunity for consideration, reflection and discussion of its performance.

## 6. Code of Corporate Governance, the Monetary Authority of Singapore

Provides that there should be a formal annual assessment of the effectiveness of the Board as a whole and that of each of its Board committees and individual directors.

## 7. Corporate Governance Principles for US Listed Companies – 2017

5.7 Boards should disclose mechanisms to ensure there is appropriate board refreshment. Such mechanisms should include a regular and robust evaluation process, as well as an evaluation of policies relating to term limits and/or retirement ages.

**Best Practices by Indian Corporates on Board Evaluation**

**Hindustan Unilever Limited**

Company engages an Independent Consultant for review / development of the Board evaluation process.

**Bharti Airtel Limited**

To ensure confidentiality, the evaluation process for FY 2020-21 was facilitated online by a leading independent consulting firm. The consolidated reports on outcome were submitted by the consulting firm to the Board through the Company Secretary.

**Tech Mahindra Limited**

Board evaluation is done on the basis of various parameters. Gaps if any, identified in case of any particular director, are communicated to the concerned director by the Chairman of the Board.

**AU Small Finance Bank Limited**

The results of the evaluation of concerned individual director performance are recorded in evaluation format wherein the chairperson discusses the results individually with each director and identified gaps are communicated to concerned Director.

**Mindtree Limited**

The NRC and the Board of Directors have appointed an external Independent Agency to carry out the evaluation. The Chairperson of NRC circulates the individual director's evaluation report to the respective directors and discuss the same with them. The gaps and the findings are analyzed by Chairperson of NRC with Board Chairman and Vice Chairman and necessary actions are taken.

## BOARD DIVERSITY

Board diversity matters but concentrating only on gender diversity may not be enough. Social diversity and professional diversity are both important for increasing the diversity of perspectives represented on the Board. Diversity should be looked at in different ways *viz* experience, age, ethnicity, gender, skills, expertise, demographics, etc.

### Gender Diversity

India's attempts to diversify corporate Boards are limited to gender diversity. Gender diversity across Boards and an enhanced representation of women in executive positions continues to require further attention.

As per Credit Suisse Research Institute, female representation on Boards of large Indian companies has increased by 5.9 percentage points from 11.4 per cent in 2015 to 17.3 per cent in 2021. However, it is still significantly below the global average.

## INTERNATIONAL PERSPECTIVE- GENDER DIVERSITY

### 1. Malaysia - Malaysian Code on Corporate Governance (2021)

All boards should comprise at least 30% women directors. Numerous studies have proven the business case for board diversity, in particular the participation of women on boards. If the composition of women on a board is less than 30%, the board should disclose the action it has or will be taking to achieve 30% or more and the timeframe to achieve this. A reasonable timeframe is one that is three years or less.

The board should also review the participation of women in senior management to ensure there is a healthy talent pipeline.

The participation of women in decision-making positions should not be focused on board positions alone but should be broadened to include members of senior management as the same benefits apply. Thus, the board should establish gender diversity policies to support the participation of women on the board as well as senior management.

The SC's review of corporate governance disclosures shows that gender diversity policies and disclosures relating thereto remain poor and vague. Boilerplate and generic statements are often used to describe the board's approach on diversity. Disclosing aspirational statements such as 'achieving a culture of inclusivity', while worthwhile, are unlikely to be effective in improving gender diversity unless they are supported by concrete action numerical targets and a mechanism to track performance against these targets.

### 2. Singapore - Singapore Code of Corporate Governance 2018

**Principle (2)**

There is a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making.

**Provisions (2.2, 2.3, & 2.4)**

2.2 Independent directors make up a majority of the Board where the Chairman is not independent .

2.3 Non-executive directors make up a majority of the Board.

2.4 The Board and board committees are of an appropriate size, and comprise directors who as a group provide the appropriate balance and mix of skills, knowledge, experience, and other aspects of diversity such as gender and age, so as to avoid groupthink and foster constructive debate. The board diversity policy and progress made towards implementing the board diversity policy, including objectives, are disclosed in the company's annual report.

## 3. Italy - Italian Corporate Governance Code 2020

**Principle (VII)**

The company applies diversity criteria, including gender ones, to the composition of the board of directors, ensuring the primary objective of adequate competence and professionalism of its members.

**Recommendation (8)**

8. The company defines the diversity criteria for the composition of the board of directors and the control body and identifies the most suitable tool for their implementation, taking into account its ownership structures.

At least a third of the board of directors and the control body, where the latter is autonomous, is to be comprised of members of the less represented gender.

Companies adopt measures to promote equal treatment and opportunities among genders within the entire organisation, monitoring their specific implementation.

## 4. Finland - Finnish Corporate Governance Code 2020

**Recommendation (9)**

**Diversity of the Board of Directors**

The company shall define and report principles concerning the diversity of the board of directors.

**Rationale**

Diversity of the board of directors supports the company's business operations and development. Diversity of the know-how, experience, and opinions of the directors promotes the ability to have an open-minded approach to innovative ideas and also the ability to support and challenge the company's operative management. Adequate diversity promotes open discussion and independent decision-making. Diversity also promotes good corporate governance, efficient supervision of the company's directors and executives, as well as succession planning.

The company shall define the diversity principles for its own purposes, taking into account the scale of its business operations and the requirements of its development stage. Factors to be taken into account when defining the diversity principles may include, for example, age and gender as well as occupational, educational, and international background. The company shall decide the matters to be incorporated into its diversity principles and the objectives included therein on the basis of its own circumstances.

The preparation of diversity principles is carried out in a manner chosen by the company and can be assigned, for example, to the nomination committee or the shareholders' nomination board. Decisions on the election of directors shall be made in the general meeting.

The company can decide the extent in which the diversity principles are reported. However, the information reported shall always include at least the objectives relating to both genders being represented in the company's board of directors, the means to achieve the objectives, and an account of the progress in achieving the objectives.

The diversity principles are also applied to a possible supervisory board.

## 5. Germany - German Corporate Governance Code

**Principle (3)**

The Management Board stipulates target values for the share of women in the two management levels below the Management Board.

**Recommendation (A.2)**

A.2 When making appointments to executive positions, the Management Boards shall consider diversity.

**Principle (10 &11)**

The Supervisory Board consists of shareholder representatives, and of employee representatives, if applicable. Shareholder representatives are usually elected by the General Meeting. The applicable co-determination acts stipulate – depending on the number of employees and the respective industry sector – if and how many Supervisory Board members must be elected by employees. Shareholder representatives and employee representatives are obliged in equal measure to act in the best interests of the enterprise.

The composition of the Supervisory Board has to ensure that its members collectively possess the knowledge, skills and professional expertise required to properly perform their duties; furthermore, the legal gender quota must be considered.

**Recommendations (C.1, C.2 and C.3)**

C.1 The Supervisory Board shall determine specific objectives regarding its composition, and shall prepare a profile of skills and expertise for the entire Board while taking the principle of diversity into account. The Supervisory Board's skills and expertise profile shall also comprise expertise regarding sustainability issues relevant to the enterprise. Proposals by the Supervisory Board to the General Meeting shall take these objectives into account, while simultaneously aiming at fulfilling the overall profile of required skills and expertise of the Supervisory Board. The implementation status shall be disclosed in the form of a qualification matrix in the Corporate Governance Statement. This statement shall also provide information about what the shareholder representatives on the Supervisory Board regard as the appropriate number of independent Supervisory Board members representing shareholders, and the names of these members.

C.2 An age limit shall be specified for members of the Supervisory Board and disclosed in the Corporate Governance Statement.

C.3 The term of Supervisory Board membership shall be disclosed.

## 6. Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

**Principle (2.1)**

Collectively, the Board should possess a diversified and broad range of views, expertise, skills, and competencies, sufficient to provide effective stewardship and oversight of the company.

**Recommended Practices (2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, 2.1.7 & 2.1.8)**

2.1.1 Board diversity is crucial because it allows the company to take advantage of a plurality of arguments and of a richer and more reliable decision-making process.

2.1.2 The composition of the board of directors must consider diversity of knowledge, experiences, behaviours, cultural aspects, age and gender.

2.1.3 The Board must ensure that the executive management defines and promotes policies that provide equal opportunities for women to access high leadership positions within the organization.

2.1.4 The Board should develop Board skills matrix with a description of the role and capabilities required for Board appointments, including factors such as independence, diversity, age, gender, future succession planning, integrity, skills, expertise, breadth of experience, knowledge about the company's business and industry, and willingness to devote adequate time and effort to Board responsibilities in the context of the existing composition and needs of the Board and its committees.

2.1.5 The Board, with assistance of nomination committee, should select and recommend director nominees for election by shareholders. The nomination committee of the Board should oversee the development and implementation of the formal board nomination process. The Board should disclose the process in appointing new directors, and the criteria used to select new directors.

2.1.6 All shareholders should have the opportunity to nominate candidates to the Board of Directors. The shareholders owning at least 5 (five) percent of company's shares should be provided with a right to propose nominees. The shareholders owning less than 5 (five) percent of company's voting shares should be provided with the opportunity to propose nominees. The deadlines for nominee director proposals, procedures for considering them and including into the agenda should be determined in the Board charter.

2.1.7 An odd number of Board members between five and eleven is recommended. This number may vary according to the company's industry, size, complexity, as well as where it is in its life cycle, and whether what committees need to be created.

2.1.8 The Board should aim to have at least two female members or 30% of female directors to optimize the benefits of gender diversity on board.

## Board Diversity Approach of Regulatory / Other Organizations

On August 6, 2021, the **U.S Securities and Exchange Commission (SEC)** approved a proposal by the Nasdaq Stock Market LLC (Nasdaq), which aims to enhance the corporate Board diversity for Nasdaq-listed companies. This particular measure does not restrict itself to the representation of women in the Boardroom but goes one step further to include at least one director who self-identifies as an under-represented minority or LGBTQ+. However, the proposal is a 'comply-or-explain' provision, requiring companies to provide an explanation if they fail to meet the criterion.

## Corporate Governance Principles for US Listed Companies – 2017

5.1 Boards should be composed of directors having a mix of direct industry expertise and experience and skills relevant to the company's current and future strategy. In addition, a well-composed board should also embody and encourage diversity, including diversity of thought and background.

As per **Australian Institute of Company Directors**, composition of women on ASX 200 Boards (as on November 30, 2021) was 34.2%. Further, 41.8% of new appointments to ASX 200 Boards comprised of women and there are no Boards in the ASX 200 without women.

## Exemplars of Board Diversity – Indian Scenario

**1. Bharti Airtel Limited**

- The Board has 3 Women Directors out of 11 Members.

- The Company has two Women Independent Directors.

**2. HDFC Life Insurance Company Limited**

The Board includes 3 Women Directors (female representation in the Board stands at 27%).

**3. Tata Chemicals Limited**

The Company has two Women Independent Directors.

**4. Tech Mahindra Limited**

The Company has three Women Independent Directors.

**5. Mindtree Limited**

The Company has two Women Independent Directors.

**6. Rallis India Limited**

The Company has two Women Independent Directors.

## Data from Institutional Investor Advisory Services (IIAS) Study

- On 31 March 2022, the NIFTY-500 companies had 4,694 directorships, of which 827 (17.6%) were held by women.
- On 31 March 2022, 48.6% of the NIFTY-500 companies had two or more women directors on their boards. This is a rise from 45% on 31 March 2021, and 44% on 31 March 2020.
- On 31 March 2022, 159 of the NIFTY 500 companies had women representation in excess of 20% of board composition; this is a steady rise from and 146 companies on 31 March 2021and 139 companies on 31 March 2020.
- PSUs continue to fare poorly on gender diversity, given that several of them do not comply with board composition norms prescribed by regulations.
- A closer look at the board composition of the NIFTY-500 index suggests several companies voluntarily aim to build a diverse board, beyond the regulatory requirements.
- Women are now getting a say on board composition and executive remuneration.
- Women chair the board of 22 of the NIFTY 500 companies
- 25 women are CEOs and another 62-hold executive directorships
- Women now chair one in five NRCs and CSR Committees, and one in ten audit committees.
- In aggregate, the NIFTY-500 companies have 2960 committees, for an average of 5.9 committee for each entity. 442 (14.9%) of these are chaired by women and the remainder 2518 by men.
- The average age for women is 58.7 years (56.0 years in 2020) and that of their male colleagues is 62.3 years (61.0) showing that this age gap is slowly narrowing.

## IIAS Report 2023

Women held about 18% of board seats in the BSE 100 on 31 December 2022, of which about 13.6% were held as Independent Directors. While Corporate India has used the regulatory push to increase the number of women on boards, the count has stagnated over the past 24 months.

The conversation for gender diversity needs to change – it is no longer about having one woman on the board, but it must be seen as a share of the board size. In India, board sizes range between 9 and 10 members (median) and having one woman on the board automatically means 10% of the board. For the full effect of gender diversity, it is believed that women must comprise at least 30% of the board. On 31 December 2022, the median board representation of women in the BSE100 was a little over 16%.

## Diversities driving Board Diversity

**(i) Ethnic Diversity**

The discussion that gender and ethnic diversity will improve the key Board role of oversight or monitoring of executive management has been made in many quarters. In contrast to gender diversity, there is a paucity of such knowledge on racial and ethnic diversity.

With the aim of improving the availability of clear, reliable and easily comparable information on the diversity of Boards, the Financial Conduct Authority (FCA) is proposing to amend the Listing Rules to require that in- scope entities publish, in their annual report and accounts:

- a "comply or explain statement" on whether they have achieved the following targets as at a specific reference date;
- at least 40% of the Board are women (including individuals self- identifying as women);
- at least one of the senior Board positions (Chair, CEO, SID or CFO) is held by a woman (including individuals self-identifying as women); and
- at least one member of the Board is from a non-White ethnic minority background (as categorised by the ONS); and
- in a tabular format, numerical data on the gender and ethnic diversity of their Board, senior Board positions (Chair, CEO, SID and CFO) and most senior level of executive management.

**International Perspective**

In response to low ethnic Board diversity in the UK, the Parker Review Committee recommended that each Financial Times Stock Exchange (FTSE) 100 Board should have at least one minority director by 2021.

**Observations of Parker Committee Review Report:**

- 74 FTSE 100 companies had ethnic representation on their Boards (Nov 2020), compared to 52 in January 2020.
- 21 FTSE 100 companies had no ethnic representation on their Boards (Nov 2020) (Plus, three no responses and two unable to provide information).
- By March 2021, a further seven FTSE 100 companies reported that they had appointed a director from a minority ethnic group, showing there is still time to act to meet the 'One by 2021' target.
- FTSE 250 companies will be surveyed by the end of 2021 and have until 2024 to appoint at least one ethnic minority director on their Boards.

**(ii) Competency Diversity**

SEBI (LODR) Regulations, 2015 with the objective of improving transparency have widened the perspective of Board diversity by adding skill diversity as an element of Board composition. As per Schedule V of the SEBI

(LODR) Regulations, 2015 every listed entity should disclose in its annual report, a chart or a matrix setting out the skills/expertise/competence of the Board of directors, specifying:

(a) list of core skills/expertise/competencies identified by the Board of directors as required in the context of its business(es) and sector(s) for it to function effectively, and those actually available with the Board, with effect from financial year ended March 31, 2019; and

(b) names of directors who have such skills/expertise/competence, with effect from financial year ended March 31, 2020.

Building the right Board requires an understanding of director competencies which involves consideration of the directors' experience, skills, attributes and capabilities. Director competencies encompass two distinct areas: Technical Competencies and Behavioural Competencies.

| | |
|---|---|
| **Technical Competencies** | (i) Accounting and Legal Skills.<br>(ii) Industry Knowledge.<br>(iii) Experience in Strategic Planning and Corporate Governance. |
| **Behavioral Competencies** | (i) Ability to positively influence people and situations.<br>(ii) Ability to assimilate and synthesise complex information.<br>(iii) Time availability.<br>(iv) Honesty and Integrity.<br>(v) High Ethical Standards. |

### International Perspective

As per **UK Guidance on Board Effectiveness** the skill matrices that map the existing skillset against that required to execute strategy and meet future challenges can be an effective way of identifying skills gaps. They are a useful tool for role evaluation and succession planning.

The **Corporate Governance Principles and Recommendations by ASX Corporate Governance Council** recommends that a listed entity should have and disclose a Board skills matrix setting out the mix of skills that the Board currently has or is looking to achieve in its membership. A Board "Skills Matrix" is a tool that can help the Board identify any gaps in its collective skills that should be addressed by providing professional development to existing directors or taking on new directors. It can also assist the Board in its succession planning.

## DUTIES / RESPONSIBILITIES / LIABILITIES OF DIRECTORS

### Duties of Directors

**Section 166** provides that -

(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

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

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

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

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

## DIRECTOR RESPONSIBILITIES

### Director to Intimate Director Identification Number – Section 156

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

### Number of Directorship – Section 165

### Maximum number of directorship – Section 165(1)

No person, after the commencement of this Act, shall hold office as a director, including any alternate Directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

*Explanation I* – For reckoning the limit of public companies in which a person can be appointed as director, Directorship in private companies that are either holding or subsidiary company of a public company shall be included.

*Explanation II* — For reckoning the limit of Directorships of twenty companies, the Directorship in a dormant company shall not be included.

### Reduction in number of directorship – Section 165(2)

Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as Directors.

### Surrender of directorship in excess of permissible numbers -Section 165(3)

Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,—

(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;

(b) resign his office as director in the other remaining companies; and

(c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.

## Effect of despatch of resignation letter by the director – Section 165(4)

Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.

## After despatch of resignation letter, number of directorship to be kept within permissible limits– Section 165(5)

No such person shall act as director in more than the specified number of companies,—

(a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or

(b) after the expiry of one year from the commencement of this Act, whichever is earlier.

## Penalty for exceeding the number of directorship – Section 165(6)

If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.

## Disclosure of Interest by Director – Section 184

**Disclosure of interest by new director at first meeting of the board and thereafter at the first meeting of board in every financial year – Section 184(1)**

Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

**Disclosure of interest by director at board meeting in which he is interested – Section 184(2)**

Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

**Non-disclosure of interest by the director at board meeting in which he is interested - Section 184(3)**

A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, **shall be voidable at the option of the company**.

**Penalty for non-disclosure of interest – Section 184(4)**

If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be liable to a penalty of one lakh rupees.

### Interest of Director in any contract – Section 185 (5)

Nothing in this section—

(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;

(b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the Directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.

## VACATION OF OFFICE OF DIRECTOR

### Vacation of office of director - Section 167(1)

The office of a director shall become vacant in case—

(a) he incurs any of the disqualifications specified in section 164;

Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

### 17.2. Occupying the office of director when knowing its vacant -Section 167(2)

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

### Filling up of the vacant position of director -Section 167(3)

Where all the Directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in the general meeting.

### Private company may provide other grounds - Section 167(4)

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

## ROLE/DUTIES RESPONSIBILITY – INTERNATIONAL PERSPECTIVE

### Malaysia - Malaysian Code on Corporate Governance (2021)

All directors should objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company. All directors must act with integrity, lead by example, keep abreast of his responsibilities as a director and of the conduct, business activities and development of the company.

### Italy - Italian Corporate Governance Code 2020

I. The board of directors leads the company by pursuing its sustainable success.

II. The board of directors defines the strategies of the company and the group it heads in accordance with principle I and monitors its implementation.

III. The board of directors defines the corporate governance system that is most functional for carrying out the company's business and pursuing its strategies, taking into account the flexibility offered by the legal framework. If necessary, the board of directors evaluates and promotes the appropriate changes and submit them to the shareholders' meeting when such changes are necessarily subject to the shareholders' vote.

IV. The board of directors promotes dialogue with shareholders and other stakeholders which are relevant for the company, in the most appropriate way.

**Recommendations**

**1. The board of directors:**

a) reviews and approves the business plan of the company and the group it heads, also on the basis of matters that are relevant for the long-term value generation. That analysis is carried out with the possible support of a committee whose composition and functions are defined by the board of directors;

b) periodically monitors the implementation of the business plan and assesses the general course of the business, comparing the results achieved with those planned;

c) defines the nature and level of risk compatible with the company's strategic objectives, including all the elements that can be relevant for the company's sustainable success;

d) defines the corporate governance system of the company and the structure of the group it heads, and assesses the adequacy of the company's organisational, administrative and accounting structure and of its strategically important subsidiaries, with particular reference to the internal control and risk management system;

e) approves transactions of the company and its subsidiaries that have a significant impact on the company's strategies, profitability, assets and liabilities or financial position; to this end, it establishes the general criteria for identifying significant transactions;

f) on proposal of the chair in agreement with the chief executive officer, adopts a procedure for the internal and external management of documents and information concerning the company, with particular reference to inside information, in order to ensure the correct management of corporate information.

**2. If deemed necessary for the effectiveness of the company's corporate governance system, the board of directors develops specific proposals to be submitted to the shareholders' meeting on the following issues:**

a) choice and characteristics of the corporate model (traditional, "one-tier", "two-tier");

b) size, composition and appointment of the board of directors and term of office of its members;

c) structure of the shares' administrative and property rights,

d) percentages established for the exercise of the prerogatives set up to safeguard minority shareholders.

In particular, if the board of directors intends to propose to the shareholders' meeting the introduction of increased voting rights (so-called "voto maggiorato"), it provides adequate reasons in the report that will be submitted to the shareholders prior to their annual meeting. The report indicates the expected effects on the company's ownership and control structure and its future strategies. In the same report, the board discloses the decision-making process followed for the definition of such a proposal and any dissenting opinions voiced within the board.

3. Upon proposal of the chair in agreement with the chief executive officer, the board of directors adopts and describes in the corporate governance report a policy for managing dialogue with the generality of shareholders, taking into account the engagement policies adopted by institutional investors and asset managers.

The chair ensures that the board of directors is in any case informed, within the first suitable meeting, of the development and the significant contents of the dialogue that has taken place with all the shareholders.

The board of directors defines the rules and procedures for its functioning, ensuring an efficient flow of information to directors.

The board of directors ensures an adequate division of its functions and establishes board committees with preliminary, propositional and consultative functions.

The board of directors appoints an independent director as lead independent director:

a) if the chair of the board of directors is the chief executive officer or holds significant managerial powers;

b) if the office of chair is held by the person who controls, also jointly, the company;

c) in large companies, even in the absence of the conditions indicated in letter a) and b), if requested by the majority of independent directors.

The board of directors sets up internal committees with preliminary, propositional and consultative functions regarding appointments, remuneration and control and risks. These functions can be either assigned to the three board committees recommended by the Code or distributed in a different manner or even combined in a single committee. In any case, the company ensures an adequate disclosure on the tasks and activities carried out by each of the assigned functions, as well as an adequate composition of each committee.

The functions of one or more committees can even be assigned to the board of directors, under the coordination of the chair.

The board of directors defines the tasks of the committees and their composition, favouring the competence and experience of their members and avoiding, in large companies, an excessive concentration of offices.

Each committee is coordinated by a chair who informs the board of directors about the committee's activities at the first useful board meeting.

The chair of the committee may invite the chair of the board of directors, the chief executive officer, the other directors and, by informing the chief executive officer, the managers of the corporate functions that are competent on the matters of the committee meeting, to individual committee's meetings. The members of the control body can attend the meetings of each committee.

Board committees can have access to the information and the corporate functions that are necessary for the performance of their duties. Board committees have adequate financial resources and can avail themselves of external consultants according to the conditions set forth by the board of directors.

The board of directors, upon proposal of the chair, provides for the appointment and dismissal of the board secretary and defines his or her professional requirements and attributes in the board's internal rules.

The board secretary supports the activities of the chair and provides impartial assistance and advice to the board of directors on all aspects relevant to the proper functioning of the corporate governance system.

In companies other than those with concentrated ownership, the board of directors:

- sets forth guidelines on board composition deemed optimal before its renewal, considering the outcome of the board evaluation;
- requires anyone submitting a slate with a number of candidates that is higher than half the number of members to be elected to provide adequate information on the compliance of the slate with the board guidelines mentioned above, and with the board diversity criteria set forth in principle VII and recommendation 8. In such cases, the slate also identifies its candidate for the chairmanship of the board, whose appointment is conducted according to the company's bylaws. All the information mentioned in this paragraph are disclosed in the documentation attached to the slate during its filing process.

In large companies, the board of directors:

- elaborates, with the support of the nomination committee, a plan for the succession of the chief executive officer and executive directors by identifying, at least, the procedures to be followed in the event of an early termination of office;
- ascertains the existence of appropriate procedures for the succession of the top management.

## Finland - Finnish Corporate Governance Code, 2020

The board of directors shall see to the administration of the company and the appropriate organisation of its operations. The board of directors consists of directors appointed by the general meeting. The number of directors depends on the provisions of the company's articles of association and the general meeting's decisions and varies from one company to another. The boards of directors of Finnish listed companies usually consist of three to ten directors. The boards of directors of a majority of Finnish listed companies consist exclusively of directors who are not members of the company's operative management (non-executive directors).

The board of directors has an extensive general competence. The competence of the board of directors generally covers all matters that are not within the general meeting's powers or part of the general competence of the managing director. It is the duty of the board of directors to ensure that the company is duly organised and that the board of directors is kept up to date with the development of the company's circumstances and financial situation. The board of directors is responsible for the appropriate arrangement of the control of the company accounts and finances.

The most essential tasks of the board of directors include appointing and discharging the managing director, deciding on the terms of the managing director's contract, such as the remuneration within the framework of the valid remuneration policy presented to the general meeting, as well as defining the company's strategy and monitoring its implementation. Furthermore, the most important business decisions, such as mergers and acquisitions, major contracts, investments, and financing arrangements fall under the general competence of the board of directors.

The Limited Liability Companies Act does not contain detailed provisions on the role of the chair of the board of directors, and the duties of chair of the board of directors can therefore vary from one company to another. The chair is responsible for ensuring that the board of directors convenes when necessary and that the decisions taken by the board of directors are documented. In other respects, the role or powers of the chair do not differ from those of the other directors under the Limited Liability Companies Act. In practice, however, the role of the chair of the board of directors is often considerably more extensive than that of the other directors in a listed company. The chair of the board of directors is responsible for the organisation of the work of the board of directors. The chair assists the managing director in his/her work and often represents the company in relation to important stakeholders. Depending on the company, the role of the chair can be particularly important, especially in strategically significant business transactions. The board of directors appoints the chair from amongst its members, unless the articles of association stipulate otherwise or a decision to the contrary is made when appointing the board of directors.

The board of directors can increase its efficiency by forming smaller compositions, committees, to take charge of certain specific tasks of the board of directors. The committees have no formal legal status or independent decision-making powers, and their role is to provide support in the preparation of the decision-making. The responsibility for the decisions remains with the board of directors even if the matter has been delegated to a committee. The most common committees in listed companies are the audit committee, remuneration committee, and nomination committee, which are discussed in more detail in the Recommendation Section III of the Corporate Governance Code. In addition, the board of directors can also set up ad-hoc committees, for example, for the purpose of preparing for a major business transaction or in the event of conflicts of interest.

The board of directors has the power to appoint and discharge the managing director, who shall see to the daily administration of the company in accordance with the instructions and orders given by the board of directors. In listed companies, the managing director is responsible for the company's operative activities. In addition to the daily administrative tasks, the decisions of the board of directors are often based on the managing director's proposals, and the managing director is also responsible for their implementation. In practice, it is the managing director who organises the company's operations, negotiates and concludes major business arrangements, and represents the company. Pursuant to the Limited Liability Companies Act, the managing director shall see to it that the accounts of the company are in compliance with the law and that its financial administration has been arranged in a reliable manner.

### Vietnam - Vietnamese Corporate Governance Code of Best Practices, 2019

The functions of the lead director include, among others, the following:

- Serves as an intermediary between the Chairman and the other directors when necessary;
- Convenes and chairs meetings of the nonexecutive directors; and
- Contributes to the performance evaluation of the Chairman, as required.

Board members must perform their duties based on technical knowledge, with full objectivity and without the influence of any personal or professional relationships. They must create and preserve value for the organization as a whole, within the appropriate legal and ethical guidelines.

Board members who are conflicted on a particular matter must refrain from participating in the discussion and the decision on that specific issue. Board members who feel they can no longer maintain an appropriate level of objectivity in discharging their duties due to improper pressure or influence, should resign from the board if they cannot otherwise mitigate the issue.

Independent, non-conflicted directors should be identified and their duties with regard to RPTs formalized in a committee charter. These directors should support implementation of the RPT policy, review and (dis) approval processes and have close interactions with the internal audit function and the external auditor who provide RPT assurance.

The Board of Directors should establish an internal audit function that provides objective assurance and consulting activity designed to add value and improve an organization's operations.

## RESIGNATION OF DIRECTOR

### Resignation by director – Section 168(1)

A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of Directors laid in the immediately following general meeting by the company:

Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

### Effective date of resignation – Section 168(2)

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

### Appointment of director by promoter or Central Government – Section 168(3)

Where all the Directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in general meeting.

## REMOVAL OF DIRECTORS

### Removal of director - Section 169(1)

A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:

Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:

Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of Directors according to the principle of proportional representation.

### Special notice for removal / appointment - Section 169 (2)

A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

### Copy of special notice to be sent to the director concerned - Section 169 (3)

On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

### Representation of director - Section 169 (4)

Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

### Appointment of another director - Section 169 (5)

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

### Tenure of the new director appointed in lieu of outgoing director - Section 169 (6)

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

### Casual vacancy - Section 169 (7)

If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

### Compensation to director - Section 169 (8)

Nothing in this section shall be taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

## SEPARATION OF ROLE OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER

**Chairman:** Good boards are created by good chairmen. The chairman creates the conditions for overall board and individual director effectiveness. The chairman should demonstrate the highest standards of integrity and probity, and set clear expectations concerning the company's culture, values and behaviours, and the style and tone of board discussions. The chairman, with the help of the executive directors and the company secretary, sets the agenda for the board's deliberations.

The Companies Act, 2013 does not legally recognize chairman of a company. They are elected by the board to take the chair at a particular meeting. Boards are not bound to continue with the same chairman for successive meetings. In law, all directors have broadly equal responsibilities and chairmen are no more equal than any other board member.

Thus, under the law, chairman or chairperson is not legal position but a momentary position in meetings. 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's role includes:**

- demonstrating ethical leadership;
- setting a board agenda which is primarily focused on strategy, performance, value creation and accountability, and ensuring that issues relevant to these areas are reserved for board decision;
- ensuring a timely flow of high-quality supporting information; regularly considering succession planning and the composition of the board etc.

**Chief Executive Officer (CEO):**

The Board appoints the CEO based on the criterion of his capability and competence to manage the company effectively. As per Section 2(18) of the Companies Act, 2013, "Chief Executive Officer" means an officer of a company, who has been designated as such by it. His main responsibilities include developing and implementing high-level strategies, making major corporate decisions, managing the overall operations and resources of a company, and acting as the main point of communication between the board of directors and the corporate operations. He is involved with every aspect of the company's performance. The CEO is supported and advised by a skilled board and CEO is ultimately accountable to the board for his actions. The most important skill of a CEO is to think strategically.

**Separation of Role:** 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 there is less accountability. A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power.

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

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

## Provisions under Companies Act, 2013

First proviso to Section 203(1) of the Companies Act, 2013 provides for the separation of role of Chairman and Chief Executive Officer subject to conditions thereunder. It specifies that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

(a) the articles of such a company provide otherwise;

(b) the company does not carry multiple businesses.

This proviso does not apply to public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such businesses. For the purposes of this, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

According to the Report on 'Indian Boards: Structure and Breadth' by IiAS, as on December 31, 2020, 286 of the NIFTY 500 companies had Non-Executive Chairpersons, of which 249 companies had Chairpersons not related to the Managing Director or CEO of the company.

Further, as per the said report an area that needs attention is appointing women as Chairpersons of the Board. Only 21 companies out of the NIFTY 500 companies had a female Chairperson in 2020, despite the increase in women directorships over the years.

## Chairperson Emeritus

There is a growing trend among Indian companies to appoint a Chairperson Emeritus. This title usually goes to the company's founders or an individual who has been in the company for a longish period and contributed significantly to its growth. The Chairperson Emeritus is not recognized in the Companies Act, but some are permanent invitees to the company's Board meeting without having the authority to vote at such meetings.

As per the Report on 'Indian Boards: Structure and Breadth' by IiAS, as on December 31, 2020, 14 of the NIFTY 500 companies had a Chairperson Emeritus.

**Chairman Emeritus as per Proxy Advisors Guidelines IiAS**

There is a steady increase in the number of individuals getting appointed as Chairpersons Emeritus. With the separation of the role of Chairperson and CEO, IiAS expects these appointments to increase in the future. Taking this into consideration, IiAS has, for the first time included a discussion on their appointment and compensation.

IiAS expects a Chairperson Emeritus to play a mentorship role in the company and do not encourage them to be a part of the Board or any of the Board committees. Their being on the Board might result in two power centres and ambiguity regarding the chain of command.

**SES**

Certain companies designate a senior member who generally is an Ex- Director or former Chairman of their Board as 'Chairman Emeritus' which is a designation used to indicate respect for his contribution. However, in some cases, the person to be appointed as Chairman Emeritus is not a director on the Board, but he may be privy to the Board discussions. SES understands that while on one hand, his experience and knowledge will benefit the Company, since this is not a legally recognized position, there is no accountability on the person so appointed under the law. SES in such case will consider the appointment on case to case basis, based on the profile of the person who is proposed to be appointed so.

## INTERNATIONAL PERSPECTIVE

### Malaysia - Malaysian Code on Corporate Governance (2021)

Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

**Practice (1.2, 1.3 & 1.4)**

1.2 A Chairman of the board who is responsible for instilling good corporate governance practices, leadership and effectiveness of the board is appointed.

1.3 The positions of Chairman and Chief Executive Officer (CEO) are held by different individuals.

1.4 The Chairman of the board should not be a member of the Audit Committee, Nomination Committee or Remuneration Committee.

**Guidance (G1.2, G1.3, G1.4 & G1.6 )**

G1.2 Key responsibilities of the Chairman include–

- providing leadership for the board so that the board can perform its responsibilities effectively;

- leading the board in the adoption and implementation of good corporate governance practices in the company.
- setting the board agenda and ensuring that directors receive complete and accurate information in a timely manner;
- leading board meetings and discussions;
- encouraging active participation and allowing dissenting views to be freely expressed;
- managing the interface between board and management; and
- ensuring appropriate steps are taken to provide effective communication with stakeholders and that their views are communicated to the board as a whole.

Where the CEO or executive directors form part of the board, the non-executive directors are encouraged to meet among themselves at least annually to discuss among others strategic, governance and operational issues.

The SC has also found prolonged vacancy in the position of Chairman in several boards of listed companies, and for some, the chairperson of the board meeting is appointed at each meeting and the role is assumed by different directors. Such prolonged vacancy and inconsistency in the leadership of the board is against the principles of good corporate governance. The Chairman plays a critical role and one should be appointed to ensure there is accountability on the execution of the Chairman's role and the role of the board.

G1.3 Separation of the positions of the Chairman and CEO promotes accountability and facilitates the division of responsibilities between them. In this regard, no one individual can influence the board's discussions and decision-making. The responsibilities of the Chairman should include leading the board in its collective oversight of management, while the CEO focuses on the business and day-to-day management of the company. This division should be clearly defined in the board charter.

G1.4 Having the same person assume the positions of Chairman of the board, and Chairman of the Audit Committee, Nomination Committee or Remuneration Committee gives rise to the risk of self-review and may impair the objectivity of the Chairman and the board when deliberating on the observations and recommendations put forth by the board committees. Thus, the Chairman of the board should not be involved in these committees to ensure there is check and balance as well as objective review by the board.

G1.6 The Chairman should set the board meeting agenda, and ensure adequate time is allocated for discussion of issues tabled to the board for deliberation. Directors should receive information and materials required for the meeting at least five business days in advance of the board meeting. All directors should ensure that the minutes of meetings accurately reflect the deliberations and decisions of the board, including any dissenting views and if any director had abstained from voting or deliberating on a particular matter.

The Chairman should also ensure that board committee meetings are not combined with the main board meeting. It has come to the SC's attention that certain companies have convened both the board meeting and the audit committee meeting together and thereafter prepared the minutes separately to give the impression that the meetings were held at different times.

Board committee meetings should be conducted separately from the board meeting to enable objective and independent discussion during the meeting. Particularly the Audit Committee under the Listing Requirements, must comprise non-executive directors, majority of whom are independent. Further, to form a quorum of an Audit Committee meeting, the majority of members present must be independent directors. The latter requirement may not be met, if the Audit Committee meeting is combined with the main board meeting, where there may executive directors present.

## Singapore - Singapore Code of Corporate Governance 2018

**Principle (3)**

There is a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making.

**Provisions (3.1,3.2 & 3.3 )**

3.1 The Chairman and the Chief Executive Officer ("CEO") are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making.

3.2 The Board establishes and sets out in writing the division of responsibilities between the Chairman and the CEO.

3.3 The Board has a lead independent director to provide leadership in situations where the Chairman is conflicted, and especially when the Chairman is not independent. The lead independent director is available to shareholders where they have concerns and for which contact through the normal channels of communication with the Chairman or Management are inappropriate or inadequate.

## Italy - Italian Corporate Governance Code 2020

**Principle (X)**

The chair of the board of directors plays a *liaison* role between executive and non-executive directors and ensures the effective functioning of the board.

**Recommendations (12 & 34)**

12. The chair of the board of directors, with the help of the board secretary, ensures that:

    a) the pre-meeting information and the complementary information provided during the meeting are suitable to allow directors to act in an informed manner;

    b) the activity of the board committees with preliminary, propositional and consultative functions is coordinated with the activity of the board of directors;

    c) in agreement with the chief executive officer, the managers of the company and those of the companies of the group it heads, who are competent on the issues concerned, participate in the relevant board meetings to provide appropriate insights on the items on the agenda, also upon request of one or more directors;

    d) all the members of the board of directors and control body can take part, after the appointment and during the mandate, in initiatives aimed at providing them with adequate knowledge of the industry in which the company operates, the company dynamics and their evolution, also in relation to the company's sustainable success. Such initiatives also cover the risk management issues as well as any relevant part of the regulatory and self-regulatory framework;

    e) to provide for the adequacy and transparency of the board review, with the support of the nomination committee.

34. The chief executive officer:

    a) identifies the main business risks, considering the characteristics of the activities carried out by the company and its subsidiaries, and periodically submit them to the examination of the board of directors;

b) implements the guidelines defined by the board of directors, providing for the design, implementation and management of the internal control and risk management system and constantly verifying its adequacy and effectiveness, as well as adapting it to the dynamics of the operating conditions and the legislative and regulatory landscape;

c) can entrust the internal audit with the tasks of carrying out specific controls on defined operational areas and on compliance with internal rules and procedures in the implementation of company transactions. Such requests are contextually conveyed to the chair of the board of directors, to the chair of the control and risk committee and to the chair of the control body;

d) reports promptly to the control and risk committee on problems and critical issues that emerged in the performance of his or her activity or of which he or she nevertheless has information so that the committee can take appropriate actions.

### Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

The Board should designate a lead director among the independent directors if the Chairman of the Board is not independent, including if the positions of the Chairman of the Board and Chief Executive Officer (CEO) are held by one person.

The Chairman of the Board and the CEO are separate persons to ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making. It is also recommended that the Chairman is an independent director.

In cases where the Chairman is not independent and where the roles of Chair and CEO are combined, putting in place proper mechanisms ensures independent views and perspectives. More importantly, it avoids the abuse of power and authority, and potential conflict of interest.

A suggested mechanism is the appointment of a strong "lead director" among the independent directors and it is also recommended that boards are comprised of majority of independent directors where the Chairman is not independent.

This lead director has sufficient authority to lead the Board in cases where the remaining directors (including the dual Chairman-CEO) have clear conflicts of interest.

**King III** recommends that the Chairperson should be an independent non- executive director. The Chairperson should not also be the CEO. While the Chairperson is required to retain an objective viewpoint of the affairs of the company, the CEO is often required to become intimately involved in developing and executing management plans for the company.

As per **UK Corporate Governance Code, 2018** the roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the Board, major shareholders should be consulted ahead of appointment. The Board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website.

The **King report on Governance for South Africa 2009 (King III)** and the **UK Corporate Governance Code** require a clear division between the position and role of the Chairman and the CEO. In most instances it is a requirement that the chairman should be an independent director, and that the chairman should not also be the chief executive of the company.

**International Corporate Governance Network (ICGN)** also encourages a separation of the CEO/chair role. As a corollary, ICGN recognizes there are many cases in which the CEO and the chair may be a combined role, and this is something that may get addressed by appointing a lead independent director to balance things out. So the principles advocate the presence of a lead independent director to complement the Board.

**Corporate Governance Principles for US Listed Companies – 2017**

4.2 There are two common structures for independent board leadership in the U.S.:

1) an independent chairperson; or

2) a lead independent director. Some investor signatories believe that independent board leadership requires an independent chairperson, while others believe a credible independent lead director also achieves this objective.

4.3 The role of the independent board leader should be clearly defined and sufficiently robust to ensure effective and constructive leadership. The responsibilities of the independent board leader and the executive chairperson (if present) should be agreed upon by the board, clearly established in writing and disclosed to shareholders. Further, boards should periodically review the structure and explain how, in their view, the division of responsibilities between the two roles is intended to maintain the integrity of the oversight function of the board.

## Role of Chairman – Insights from Deloitte's Report on "Board Effectiveness and the Chair of The Future: Five Fundamental Forces that Define the Modern Chair's Role" Published In 2022

This report presents the reality, aspirations, and advice expressed by more than 300 chairs. It was collated from Deloitte's research into the chair of the future in Australia, Belgium, Canada, China, East Africa (Kenya 3and Uganda), Germany, India, Ireland, Italy, Japan, New Zealand, the Netherlands, South Africa, the United Kingdom, and the United States. These board chairs, who represent major listed companies and significant private, sometimes family-owned firms, provided their insight into fundamental questions such as: What will the "chair of the future" look like? What skills, capabilities, and experiences will be required to be a successful chair? And how should chairs oversee management as their organizations face these manifold challenges?

The report identifies five fundamental forces that define the modern Chair's role:

- Organizational governance needs more chair input
- Society expects more from business
- Climate change forces business to respond
- Crisis leadership is becoming the norm
- Board operations call for digital enhancement and agility.

❖ **Organizational governance needs more chair input**

As traditional roles evolve, chairs can encourage new thinking and help foster innovation. Chairs should:

- Serve as stewards of the organization
- Help accelerate strategic initiatives
- Scan the horizon for risks
- Cultivate talent and culture
- Support and challenge the CEO.

❖ **Society expects more from business**

Chairs recognize they play a key role in driving the company-society relationship and effecting positive change through environmental, social, and governance (ESG) strategies and stakeholder engagement. As this responsibility deepens in the years to come, chairs should work harder to:

- Bring societal concerns to the board
- Drive stakeholder engagement
- Integrate ESG into business strategy
- Promote ESG-aligned performance frameworks
- Debate the profitability and sustainability equation.

❖ **Climate change forces business to respond**

All chairs agreed on the importance of educating the board on the climate challenge. This, of course, involves devoting time to reading and self-study, but chairs also find value in inviting climate specialists to the board to raise climate fluency levels. There's less consensus on whether boards should add a climate specialist or establish a specialist committee. For example, while threequarters of Italian chairs surveyed note their organization has an ESG committee, some chairs from other countries say the board should explore climate issues together. Regardless of structure, most chairs coalesced around these necessary tasks:

1. Encourage and if necessary 'cajole' management. The Chairman's role is to support, cajole, keep people honest, to give encouragement and to push through the right behaviours.
2. Connect Climate change to strategy. Chairs agreed they must help their companies understand that climate change is an integral part of business strategy. Climate change puts whole survival of the company at risk, yet many view a climate change strategy as a key business opportunity.
3. Bringing stakeholders along: Chairs of the future will likely become frontline climate ambassadors between company and its stakeholders.

❖ **Crisis leadership is becoming the norm**

To support agility, chairs say they are holding shorter but more frequent meetings and enabling members to attend virtually, to fit those additional meetings into their schedules. And they have also intensified the number and cadence of communications with the CEO and had greater access to the senior management team. Looking ahead, the chair of an organization based in India expects boards to resolve smaller issues by having more frequent virtual meetings. Chairs also emphasized their role in preparing their boards and companies for uncertain futures, for example, by leading discussions on scenario planning. Companies that managed to enable business continuity during the pandemic also took decisive measures to reconfigure their business models, accelerating digital transformation. And organizations that started their digital journey years earlier had an easier time pivoting.

❖ **Board operations call for digital enhancement and agility**

Chairs expect to capture what is effective from both options by adopting a hybrid model of virtual and in-person board meetings. For example, chairs may use virtual meetings to discuss ongoing board business, such as monitoring progress, financial reporting, and risks. In-person meetings, meanwhile, may be devoted to topics involving the direction of the organization, such as strategy, climate, and technology; important workforce matters such as diversity, equity, and inclusion; and executive pay. To make board and committee meetings as effective as possible, chairs are constantly exploring how prereads and other materials can be deployed to help streamline agendas. Whatever the mix ultimately looks like, chairs agreed they must strive to:

**The report also highlighted the** following eight Leading practices for being a Board Chair and five for becoming the Chair, assembled from the collective wisdom of the chairs who participated;

## Leading practices for being a Board Chair

- Build relationships. Create bonds with the board, management, stakeholders, and, especially, with the CEO, while also maintaining the independence of thought.
- Prioritize for the long term. Don't sweat the small stuff. Understand and focus on what really matters.
- Understand the business. Chairs may struggle if they don't know the many facets of the business, its operations, people, competitive landscape, and culture.
- Lead on purpose and values. Chairs must make tough and, at times, unpopular decisions in the long-term interest of the reputation of their organizations.
- Be a learning leader. Confronted with many unknowns, chairs must be comfortable asking for help, continuing to learn and must lead a "learning board."
- Nurture a broader skill set. Technical skills matter, but so do emotional intelligence and the ability to draw out the best in others.
- Embrace diversity. Diversity in all its forms drives productive discussion and helps prevent groupthink.
- Be a good listener. Adding value to the organization requires listening to those around you, especially when opinions vary, to allow views to be fully explored before drawing a consensus.

## Five Factors for becoming a Chair

- *Be careful not to overcommit*. Given the demands of serving as chair, think seriously about the number of board appointments you accept.
- *Be realistic*. This is a prestigious position, but one that carries great responsibility. Be prepared to roll up your sleeves and work hard.
- *Build your pathway*. Most chairs have held other board positions prior to taking the leadership role.
- *Manage the transition from CEO to chair*. If you have stepped up from CEO to chair, the transition, particularly of your mindset, can be challenging, especially for first-time chairs.
- *Find a mentor*: Chairs are willing to support each other. Find someone who has already experienced the challenges to help you embrace your first chair role with confidence.

## Deloitte's "Chair of the future – India perspective" Published in September 2022

Thirty Five Chairs of Indian corporations with an almost equal mix of executive and non-executive Chairs were interviewed.

The Chairs that we interacted with, spoke about various factors that will impact and reshape how Boards of the future will look. Chairs believe that one of the biggest changes to Board governance over the next few years will be in Board composition. Boards of the future will be younger, non-traditional, diverse, and much more agile. Boards of the future will be designed on the basis of "what you know" and not "who do you know".

❖ **Demand for digital understanding will shape Board compositions and operations**

Boards of the future will demand that a majority, if not all, directors understand operations through a digital lens and also have a few specialist "digital directors" on the Board. Boards of the future will need to be digital native, just as the Boards currently are required to be finance literate.

- **Supporters of the sustainability agenda**

  Sustainability and social issues are rising on the Board agenda, and the questions from shareholders on Environment, Social and Governance (ESG) matters are gaining prominence. Boards need to have a clear oversight on the notion of sustainability and long-term value creation. They should be able to ask questions around the organisation's ability to transition to lower carbon initiatives, the removal of waste from supply chains, the climate impact on and of the business, and its social and community impact across the value chain and supply systems, amongst others.

- **Diversity continues to be a challenge**

  Designing a Board should be like multiple algorithms arranged together, so that you are able to address a wide array of problems and challenges. The Board must have multiple and diverse skills with people coming in from different backgrounds. It is extremely important to think through the competency of the people you need on the Board. Boards must be diverse in age, gender, knowledge, and background. We need to actively seek and place women on Boards, and not just to meet the regulatory mandate.

- **Boards to get younger**

  It is important to listen to younger voices and challenge the status quo. To engage better with the youth, Board members should have an open state of mind and be in a position to relate with any age group.

- **Performance and not personality driven Boards**

  Historically, Board positions were generally taken up by professionals from accounting and law backgrounds, and by ex-bureaucrats, academicians, and retired CXOs. The selection processes have been largely informal, relying on mutual connections and network of the leadership and/or the promoter group. Headhunting firms were not actively engaged in finding Board members. This is gradually changing, as Boards get a more contemporary makeover and new agenda items arise on the Board's table. Professional networks and skills, both within and outside the country, will need to be tapped into.

- **Digital, data, cyber, and technology**

  The demand for digital skills on the Board is rising, apropos to the appearance of technology investments and digital strategy on the Board's agenda. Over the next decade, technology and digital will continue to keep a high mindshare on Boards, along with the rising risk factors around cyber and data security. Technology and data specific risk and compliance matters will find a permanent spot on the agendas for the future Boards.

- **The elephant in the room gets a slot on the agenda - Environment, Social and Governance (ESG)**

  To tackle climate change, and other ESG issues, a long-term, outward looking focus will be required at the Board and executive level. This will expect Boards to look beyond the quarterly and annual performance and review the risks from a climate, environmental, and social standpoint, which may impact the sustainability of the organisation. Chairs will have to ensure that these subjects get the due attention of the Board, and the right questions are asked of the management on their ESG strategy.

- **Risk and compliance will continue to keep their mindshare**

  Boards must move towards strategic risk management, aligned with the risk appetite of the organisation, while evaluating key business decisions. Boards will now be looking at mechanisms to provide early warning indicators towards emerging external, macro, and systemic risks. Crisis management and business continuity will emerge as topics that Boards of the future will be concerned about, as questions on business sustainability are raised.

❖ **Future of work, workplace, and workforce**

Workforce strategies such as maintaining employee health, wellness, and rights have become critical components of business strategies, and thus, are emerging to be crucial on the Board agenda. A focus on diversity across the workforce—and in the Boardroom—in addition to an inclusive culture, is critical for achieving equity as an outcome. Boards are constantly focussing on matters of diversity and inclusion at the organisational, executive, and the Board levels.

As per IiAS report Titled "Corporate Governance Scores increasing Expectations" published in March 2023, the number of companies in the BSE 100 that have separated the two roles has only been increasing - from 57% in 2019 to 69% in 2022. Of these 69 companies, just 4 companies have Chairpersons that are related to the Executive Vice-Chairperson and / or the Managing Director.

### Directors Training, Development and Familiarisation

The company concerned shall undertake training programme for its new Board members (Functional, Government, Nominee and Independent) in the business model of the company including risk profile of the business of company, responsibility of respective Directors and the manner in which such responsibilities are to be discharged. They shall also be imparted training on Corporate Governance, model code of business ethics and conduct applicable for the respective Directors.

Regulation 4(2)(f)(iii)(4) of SEBI (LODR) Regulations, 2015 states that the board of directors shall encourage continuing directors training to ensure that the members of board of directors are kept up to date.

## BOARD EFFECTIVENESS AND THE ROLE OF COMPANY SECRETARY

A Company Secretary acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities. A Company Secretary is a close confidante of the board and commands confidence of individual directors so as to ensure that the culture of independence is promoted at the board and committee meetings and at the level of individual directors.

As per Section 2(24) of the Companies Act, 2013, "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

Under Section 2(60) of the Companies Act, 2013, the company secretary has also been included in the category of the officer of the company and shall be considered to be in default in complying with any provisions of the Companies Act, 2013.

**Company Secretary:**

- acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities
- plays a key role in ensuring that the Board procedures are followed and regularly reviewed
- provides the Board with guidance as to its duties, responsibilities and powers under various laws, rules and regulations
- acts as a compliance officer as well as an in-house legal counsel to advise the Board and the functional
- departments of the company on various corporate, business, economic and tax laws
- is an important member of the corporate management team and acts as conscience keeper of the company.

The Companies Act, 2013 confers a special status to Company Secretary as the key managerial personnel and has bracketed him along with Managing Director (MD) or Chief Executive Officer (CEO) or Manager, Whole-time director(s) and Chief Financial Officer (CFO).

According to Section 203(1) of the Companies Act, 2013, read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, it is mandatory for every listed company and every other public company having a paid up share capital of ten crore rupees or more to appoint a whole time Key Managerial Personnel (KMP) including a whole time Company Secretary. Also a company other than a company covered above which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.

The company secretaries have also been empowered as secretarial auditors under section 204 of the Companies Act, 2013. The Company Secretaries are recognised as advisors to the Board on the affairs of the Company and all matters to ensure good Corporate Governance by the Companies Act itself. They are also required to guide the Board of its own role, responsibilities and duties.

Regulation 6(1) of SEBI (LODR) Regulations, 2015 also provides that every listed entity shall appoint a qualified company secretary as the compliance officer.

In order to enhance effectiveness of board functioning, the company secretary should report to the chairman on all board governance matters. The company secretary should ensure the presentation of high-quality information to the board and its committees. The company secretary can also add value by fulfilling, or procuring the fulfilment of, other requirements of the Code on behalf of the chairman, in particular director induction and development. This should be in a manner that is appropriate to the particular director, and which has the objective of enhancing that director's effectiveness in the board or board committees, consistent with the results of the board's evaluation processes. The chairman and the company secretary should periodically review whether the board and the company's other governance processes, for example board and committee evaluation, are fit for purpose, and consider any improvements or initiatives that could strengthen the governance of the company. The company secretary's effectiveness can be enhanced by his or her ability to build relationships of mutual trust with the chairman, the senior independent director and the non-executive directors, while maintaining the confidence of executive director colleagues.

## INTERNATIONAL PERSPECTIVE

### Malaysia - Malaysian Code on Corporate Governance (2021)

The responsibility of the company secretary has evolved from merely advising on administrative matters to advising boards on governance matters. The company secretary through the Chairman, plays an important role in good governance by helping the board and its committees function effectively and in accordance with their terms of reference and best practices.

The roles and responsibilities of a company secretary include, but are not limited to the following:

- Manage all board and committee meeting logistics, attend and record minutes of all board and committee meetings and facilitate board communications;
- Advise the board on its roles and responsibilities;
- Facilitate the orientation of new directors and assist in director training and development;
- Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;
- Manage processes pertaining to the annual shareholder meeting;

- Monitor corporate governance developments and assist the board in applying corporate governance practices to meet the board's needs and stakeholders' expectations; and
- Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

A suitably qualified company secretary possesses the knowledge and experience to carry out his functions. These may include knowledge in company and securities law, finance, governance and other areas of compliance such as the listing requirements. The company secretary should undertake continuous professional development.

## Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

**Corporate Secretary**

Corporate Secretary - a senior management position in a public company. The corporate secretary plays an essential role in a company's governance and administration by providing critical support to enable the Board of Directors and other key governing bodies of the company to perform their duties and responsibilities. This position has a wide range of responsibilities that cover the four main areas: Governance, Advice, Communication and Compliance.

The Board shall appoint a professionally qualified Corporate Secretary who is accountable directly to the Board of Directors on all matters to do with the proper functioning of the Board.

**Recommended Practices:**

The modern Corporate Secretary is normally a senior management position of the company and is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions.

The Corporate Secretary typically would act as a bridge for information, communication, advice, and arbitration between the board and management. The Corporate Secretary would also act as a bridge between the company and its shareholders and stakeholders, however in big companies this is the job of an "investor relations officer".

The roles and responsibilities of a Corporate Secretary include, but are not limited to the following:

a. Manage all board and committee meeting logistics, attend and record;

b. Minutes of all board and committee meetings and facilitate board communications;

c. Advise the board and board committees on its roles and responsibilities;

d. Facilitate the orientation of new directors and assist in director training and development;

e. Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;

f. Manage processes pertaining to the annual shareholder meeting;

g. Monitor corporate governance developments and assist the board in applying governance practices to meet the board's needs and stakeholders' expectations; and

h. Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

To carry out his/her role effectively, a corporate secretary needs to act with the highest integrity and independence in protecting the interests of the company, its shareholders, and others with a legitimate interest in the company's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the company operates as well as of the laws, rules, and regulations that govern its activities. The

Corporate Secretary should undertake continuous professional development and maintain neutrality and objectivity in supporting the Board and relevant bodies in its work.

## SUCCESSION PLANNING

With about 2/3rd of companies in the S&P BSE 500 index (considered as a broad-market index) classified as family-owned businesses, they form the largest chunk of companies in India. CEO succession is a sensitive and crucial topic in these companies where multiple generations of the family have managed the business in the past, and continue to do so even now. A large proportion of these companies are still family-run and have not separated ownership from management.

Succession planning is a strategy for identifying and developing future leaders. Succession plans are used to address the inevitable changes that occur when directors resign, retire or die. Attention to succession planning can help ensure the board includes directors with a balanced level of institutional knowledge and fresh perspectives.

A well-prepared board should develop a succession plan that provides guidance on identifying and sourcing potential board members who can fulfil key requirements. Succession planning is an ongoing process of identifying, assessing and developing people to ensure the continuity of the Board. It is most important that boards of directors are prepared for resignation and/or retirement of its members. The board should continually ensure that it has the right set of skills, talents, and attributes represented.

Succession planning for the Board includes succession and renewal for the Board as a whole and the Board's leadership positions. The key to getting succession planning right is maintaining an ongoing and dynamic process. The nomination and remuneration committee should review the skills required, identify the gaps, develop transparent appointment criteria and inform succession planning. The nomination and remuneration committee should periodically assess whether the desired outcome has been achieved, and propose changes to the process as necessary.

Executive directors may be recruited from external sources, but companies should also develop internal talent and capability. Initiatives might include middle management development programmes, facilitating engagement from time to time with non-executive directors, and partnering and mentoring schemes.

**Some leading practices for board succession planning are:**

- Using a skills matrix to proactively shape board composition that incorporates strategic direction and opportunities, regulatory and industry developments, challenges, and transformation
- Conducting robust annual performance evaluations, including facilitation by an independent third party
- Establishing and enhancing written director qualification standards that align with the company's business and corporate strategy, and including these standards in corporate governance policies and bylaws as appropriate
- Reviewing evolving committee and board leadership needs, including the time commitments required
- Considering director election results and engagement by investors regarding board composition, independence, leadership and diversity
- Prioritizing an independent mindset on boards, through board diversity, to foster debate, challenge norms and invigorate board oversight processes and strategy development
- Making sure mentoring and development opportunities are available for incoming directors.

**Under Companies Act. 2013:** There is no specific provision of succession planning under the Companies Act, 2013. It is usually included in terms of reference of Nomination and Remuneration Committee.

**SEBI (LODR) Regulations, 2015:** Regulation 4(2) (f)(ii)(3) of states that key functions of the board of directors are

Selecting, compensating, monitoring and, when necessary, replacing key managerial personnel and overseeing succession planning.

## INTERNATIONAL PERSPECTIVE

### Malaysia - Malaysian Code on Corporate Governance (2021)

As chair of the Nominating Committee, the independent director or a Senior Independent Director shall lead the succession planning and appointment of directors, and oversee the development of a diverse pipeline for board and management succession, including the future Chairman, Executive Directors and CEO.

### Singapore - Singapore Code of Corporate Governance 2018

**Provision (4.1)**

4.1 The Board establishes a Nominating Committee ("NC") to make recommendations to the Board on relevant matters relating to:

(a) the review of succession plans for directors, in particular the appointment and/or replacement of the Chairman, the CEO and key management personnel;

### Italy - Italian Corporate Governance Code 2020

19. The board of directors entrusts the nomination committee to support it on:

a) the development, updating and implementation of succession plan for the chief executive officer and the other executive directors.

### Germany - German Corporate Governance Code

**Recommendation (B.2)**

B.2 Together with the Management Board, the Supervisory Board shall ensure that there is long-term succession planning. The approach shall be described in the Corporate Governance Statement.

### Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

**Principle (1.4)**

The Board should be responsible for ensuring and adopting an effective succession planning program for directors, CEO and key executive management positions to ensure growth and a continued increase in the shareholders' value.

**Recommended Practices (1.4.1, 1.4.2 & 2.1.4)**

1.4.1 The transfer of company leadership to highly competent and qualified individuals is the goal of succession planning. It is the Board's responsibility to implement a process to appoint competent, professional, honest and highly motivated management officers who can add value to the company.

1.4.2 A good succession plan is linked to the documented roles and responsibilities for each position, and should start in objectively identifying the key knowledge, skills, and abilities required for the position.

2.1.4 The Board should develop Board skills matrix with a description of the role and capabilities required for Board appointments, including factors such as independence, diversity, age, gender, future succession planning, integrity, skills, expertise, breadth of experience, knowledge about the company's business and industry, and willingness to devote adequate time and effort to Board responsibilities in the context of the existing composition and needs of the Board and its committees.

## CONFLICT OF INTEREST

- The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- Senior management shall make disclosures to the board of directors relating to all material, financial and commercial transactions, where they have personal interest that may have a potential conflict with the interest of the listed entity at large.
- There shall be adequate disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large.

## RELATED PARTY TRANSACTIONS (RPTS)

### Meaning of Related Party Transactions

***Under Companies Act, 2013***

In terms of Section 2(*76*) "related party", with reference to a company, means—

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

**Provided** that nothing in sub-clauses (*vi*) and (*vii*) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is–

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(C) an investing company or the venturer of the company;";

*Explanation*.– For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(ix) such other person as may be prescribed;

### Meaning of Related Party Transactions under SEBI (LODR) Regulations, 2015

In terms of Regulation 2(1)(zc) "related party transaction" means a transaction involving a transfer of resources, services or obligations between:

(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or

(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that the following shall not be a related party transaction:

(a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:

   i. payment of dividend;

   ii. subdivision or consolidation of securities;

   iii. issuance of securities by way of a rights issue or a bonus issue; and

   iv. buy-back of securities.

(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the Board:

Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

## Company not to engage with Related Party Transactions (RPTs) - Section 188(1)

Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions exceeding such sums, as prescribed in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, shall be entered into except with the prior approval of the company by a resolution:

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party;

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis:

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

*Explanation*. –In this sub-section,–

(a) the expression "office or place of profit" means any office or place–

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

## Contract or Arrangement with a Related Party – Rule 15

A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

(1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-

(a) the name of the related party and nature of relationship;

(b) the nature, duration of the contract and particulars of the contract or arrangement;

(c) the material terms of the contract or arrangement including the value, if any;

(d) any advance paid or received for the contract or arrangement, if any;

(e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;

(f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and

(g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-

(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into,-

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mention below-

(i) sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188:

(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percenter more of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;

(iii) leasing of property any kind amounting to ten percent or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188:

(iv) availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

*Explanation*.- It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

(b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188.

(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

*Explanation*.- (1) The turnover or net worth referred in the above sub-rules shall be computed on the basis of the audited financial statement of the preceding financial year.

(2) In case of wholly owned subsidiary, the resolution is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:-

(a) name of the related party;

(b) name of the director or key managerial personnel who is related, if any;

(c) nature of relationship;

(d) nature, material terms, monetary value and particulars of the contract or arrangements;

(e) any other information relevant or important for the members to take a decision on the proposed resolution.

## RPTs to be in the Board's Report – Section 188(2)

Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

## RPTs if not ratified by the shareholders is voidable at the option of the Board - Section 188(3)

Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board or, as the case may be, of the shareholders and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the Directors concerned shall indemnify the company against any loss incurred by it.

## Company may proceed against a director who entered into RPT in contravention – Section 188(4)

Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

## Director liable for penalty – Section 188(5)

Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—

(i) in case of listed company, be liable to a penalty of twenty-five lakh rupees; and

(ii) in case of any other company, be liable to a penalty of five lakh rupees.

## Related Party Transactions

**Related Party Transactions – Regulation 23 of Under the SEBI (LODR) Regulations, 2015**

(1) The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every three years and updated accordingly:

Provided that a transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand crore or ten per cent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower.

(1A) Notwithstanding the above, with effect from July 01, 2019 a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

(2) All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity:

Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.

Provided further that:

(a) the audit committee of a listed entity shall define “material modifications” and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;

(b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;

(c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;

(d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

*Explanation*: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the audit committee of the listed subsidiary shall suffice.

(3) Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely-

(a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;

(b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;

(c) the omnibus approval shall specify:

(i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into,

(ii) the indicative base price / current contracted price and the formula for variation in the price if any; and

(iii) such other conditions as the audit committee may deem fit:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

(d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.

(e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year:

(4) All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2) shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:

Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

*Explanation*: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.

Provided further that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;

(5) The provisions of sub-regulations (2), (3) and (4) shall not be applicable in the following cases:

(a) transactions entered into between two government companies;

(b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

(c) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

*Explanation.* - For the purpose of clause (a), "government company(ies)" means Government company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

(6) The provisions of this regulation shall be applicable to all prospective transactions.

(7) All existing material related party contracts or arrangements entered into prior to the date of notification of these regulations and which may continue beyond such date shall be placed for approval of the shareholders in the first General Meeting subsequent to notification of these regulations.

(8) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website:

Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year:

Provided further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results:

Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023.

## INTERNATIONAL PERSPECTIVE

### Finland - Finnish Corporate Governance Code 2020

**Decision Making and Conflict of Interest Regulations**

It is vital to identify related party transactions, because legislation requires that the company's board of directors decide on agreements and other legal acts to be carried out with related parties that are not part of the company's ordinary course of business and that are not implemented under arms-length terms. Related party transactions that are part of the ordinary course of business and are implemented under arms-length terms do not require a decision of the board of directors under the Limited Liability Companies Act.

The decision making of the board of directors must also take provisions on conflicts of interest into account, because board members cannot participate in deciding a matter concerning themselves. Board members also have a conflict of interest and cannot participate in decisions concerning a transaction with one of their related parties if that transaction is not part of the company's ordinary course of business or is not implemented under arms-length terms.

When the general meeting decides on a related party transaction due to the board having deferred the decision to the general meeting or due to the articles of association assigning the decision to the general meeting, the decision-making process must take into account that the Limited Liability Companies Act expressly lists transactions that are not subject to the conflict of interest provisions relating to shareholders' related party transactions. Such transactions include, for example, transactions with fully-owned subsidiaries and resolutions of the general meeting concerning the remuneration of the board of directors.

## Germany - German Corporate Governance Code

**Principle 20**

The members of the Management Board and Supervisory Board are bound to observe the enterprise's best interests. In all their decisions, they must neither pursue personal interests nor exploit for themselves business opportunities to which the enterprise is entitled. Management Board members are subject to comprehensive non-compete clauses throughout the duration of their appointment.

**Recommendations:**

Each member of the Supervisory Board shall inform the Chair of the Supervisory Board of any conflicts of interest without undue delay. In its report, the Supervisory Board shall inform the General Meeting of any conflicts of interest that have arisen and how they were addressed. Material conflicts of interest involving a member of the Supervisory Board that are not merely temporary shall result in the termination of that member's Supervisory Board mandate.

Each Management Board member shall disclose conflicts of interest to the Chair of the Supervisory Board and to the Chair or Spokesperson of the Management Board without undue delay and shall inform the other members of the Management Board.

Members of the Management Board shall only assume sideline activities, especially Supervisory Board mandates outside the enterprise, with the approval of the Supervisory Board.

## Vietnam - Vietnamese Corporate Governance Code of Best Practices 2019

Conflict of Interest – means a situation that has or has the potential to undermine the impartiality of a person because of a clash of personal self-interest and professional or public interest, or in this case also the company's interests. The self-interest may be pursued at the expense of the company's interests.

In corporate governance, a conflict of interest refers to a situation where directors, senior managers, shareholders, employees or others have a direct and competing interest which actually or potentially or may be perceived to be in conflict with the person's duties towards the company and its shareholders collectively.

The presence of independent directors in the Board ensures the exercise of independent judgment on corporate affairs and proper oversight of managerial performance, including prevention of conflict of interests and balancing of competing demands of the corporation.

There is increasing global recognition that the presence of independent directors on the Board will help ensure more objective decision-making, particularly in conflict of interest situations.

In cases where the Chairman is not independent and where the roles of Chair and CEO are combined, putting in place proper mechanisms ensures independent views and perspectives. More importantly, it avoids the abuse of power and authority, and potential conflict of interest.

**Principle 9.5:** Related-party transactions (RPTs) should be approved and conducted in a manner that ensures proper management of conflict of interest and protects the interest of the company and its shareholders.

## ROLE OF DIRECTOR'S IN PREVENTION OF INSIDER TRADING

Section 194 and 195 which were relating to the 'Prohibition on Forward dealing in securities by director or key managerial personnel' and 'Prohibition on insider trading of securities' respectively has been omitted from the Companies Act, 2013.

The SEBI (Prohibition of Insider Trading) Regulations, 2015 (Insider Regulations) is relevant here to mention.

### Meaning of Insider – Regulation 2(1)(g)

**"Insider"** means any person who is: (i) a connected person; or (ii) in possession of or having access to unpublished price sensitive information.

### Meaning of unpublished price sensitive information - Regulations 2(1)(n)

**"Unpublished price sensitive information"**, means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel.

### Communication or procurement of unpublished price sensitive information - Regulation 3

(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

(2A) The board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8. Explanation – For the purpose of illustration, the term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

(2B) Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

(3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–

(i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;

(ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.

(4) For purposes of sub-regulation (3), the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

(5) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

(6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.

### Trading when in possession of unpublished price sensitive information – Regulation 4

(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

*Explanation* –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

(i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision; Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.

(v) in the case of non-individual insiders: –

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

(3) The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

## Trading Plans – Regulation 5

(1) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

(2) Such trading plan shall:–

(i) not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan;

(ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;

(iii) entail trading for a period of not less than twelve months;

(iv) not entail overlap of any period for which another trading plan is already in existence;

(v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and

(vi) not entail trading in securities for market abuse.

(3) The compliance officer shall review the trading plan to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan. Provided further that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.

(4) The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan. Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

(5) Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

## Code of Fair Disclosure -Regulation 8

(1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

(2) Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

## Code of Conduct – Regulation 9

(1) **The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct** with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

*Explanation* – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

(2) The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner. Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.

(3) Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

(4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:-

(i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;

(ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;

(iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;

(iv) Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;

(v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.

## Institutional Mechanism for Prevention of Insider trading – Regulation 9A

(1) **The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls** to ensure compliance with the requirements given in these regulations to prevent insider trading.

(2) **The internal controls shall include** the following:

(a) all employees who have access to unpublished price sensitive information are identified as designated person;

(b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;

(c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;

(d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;

(e) all other relevant requirements specified under these regulations shall be complied with;

(f) periodic process review to evaluate effectiveness of such internal controls.

(3) The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with regulation 9 and sub-regulations (1) and (2) of this regulation.

(4) The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.

(5) Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.

(6) The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.

(7) If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

## GUIDANCE ON BOARD EFFECTIVENESS (ISSUED BY FRC, UK- JULY 2018)

The primary purpose of the Guidance on Board Effectiveness (the Guidance) is to stimulate boards' thinking on how they can carry out their role and encourage them to focus on continually improving their effectiveness. The Guidance on Board Effectiveness is includes commentary on areas such as culture, relations with the workforce and wider shareholders and diversity. It also incorporates new sections on the workings of board committees, notably the remuneration committee. Helpfully, the Guidance includes questions for boards to ask themselves or, in some cases, to ask management, about effectiveness in key areas.

The Guidance is not mandatory and is not prescriptive. It contains suggestions of good practice to support directors and their advisors in applying the Code.

The Guidance also includes some of the procedural aspects of governance and is intended to act as a reminder to boards and their support teams that good practice and procedure should continue to be followed. The tools and techniques for board effectiveness are suggested in the Guidance to assist companies in applying the Principles of good corporate governance.

## BOARD EFFECTIVENESS INDICATOR

***Sample questions which can be used as a quick check for board effectiveness in any organization.***

***Are the majority of your board members independent from the organization?***

- Do you have a set of required competencies articulated for your board (and committees), and do your current board members as a whole display the entire set of required competencies?
- Do you have a board manual that articulates terms of reference for the board, board committees, individual directors, and the code of conduct? Does it have a forward list of topics for the year?
- Does at least one member of the board have extensive experience in the industry of your organization?
- Does each director get a comprehensive orientation on the business of the organization and meet key senior staff before the first board meeting?
- Are directors offered continuing education in governance or a program of director certification?
- Does each director display a keen interest or passion in the undertaking of the organization?
- Do directors regularly attend both board and committee meetings?

- Are directors encouraged and supported when asking difficult or awkward questions of management?
- Does the Chairman solicit views from each director specifically?
- Does the Chairman ask board members to refrain from expressing their personal views at the outset of a discussion?
- Does the Chair manage the timing of the board meetings to ensure there is sufficient time for discussion after each topic addressed by management?
- Does the board regularly have outside experts attend to present on specific topics?
- Does the board have an in-camera meeting both before and after each board meeting?
- Does the board retain an independent consultant to help evaluate director and board performance?
- At the beginning of a board meeting, do the committee chairs have an opportunity to summarize (verbally or in writing) the issues addressed and decisions taken at prior committee meetings?
- Does the board have an effective system to provide board members with timely, relevant and reliable financial and strategic information about the organization?
- Does the board review the risk identification and management system of the organization?
- Does the board approve the business plan and major expenditures?
- Does the board work with the CEO and senior staff to develop and review the strategic plan?

**LESSON ROUND-UP**

- The Board of Directors plays a pivotal role in ensuring good governance. The contribution of directors on the Board is critical to the way a corporate conducts itself.
- Responsibilities of Board - to establish an organizational vision and mission, giving strategic direction and advice, overseeing strategy implementation and performance, developing and evaluating the CEO, to ensure the organization has sufficient and appropriate human resources, ensuring effective stakeholder relations, risk mitigation, procuring resources.
- The board functions on the principle of majority or unanimity. A decision is taken on record if it is accepted by the majority or all of the directors. A single director cannot take a decision.
- Executive director or ED is a common post in many organisations, but the Companies Act, 2013 does not define the phrase.
- Non-executive directors do not get involved in the day-to-day running of the business.
- Independent directors are known to bring an objective view in board deliberations. They also ensure that there is no dominance of one individual or special interest group or the stifling of healthy debate. They act as the guardians of the interest of all shareholders and stakeholders, especially in the areas of potential conflict Board composition is one of the most important determinants of board effectiveness.
- A board should have a mix of inside/Independent Directors with a variety of experience and core competence if it is to be effective in setting policies and strategies and for judging the management's performance objectively.
- The effectiveness of the board depends largely on the leadership skills, capabilities and commitment to corporate governance practices of each individual director.

- The Chairman's primary responsibility is for leading the Board and ensuring its effectiveness.
- Induction and continuous training of Directors is of utmost importance to keep them updated with latest happenings in the company and major developments that impact the company.
- A formal evaluation of the board and of the individual directors is one potentially effective way to respond to the demand for greater board accountability and effectiveness.
- An effective board evaluation requires the right combination of timing, content, process, and individuals.

## GLOSSARY

- **Globalization:** Globalization implies the opening of local and nationalistic perspectives to a broader outlook of an interconnected and interdependent world with free transfer of capital, goods, and services across national frontiers. However, it does not include unhindered movement of labour and, as suggested by some economists, may hurt smaller or fragile economies if applied indiscriminately.
- **Accountability:** The obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property.
- **Corporate Citizen:** The legal status of a corporation in the jurisdiction in which it was incorporated.
- **Familiarization Programmes:** The Familiarization Programmes are aimed to familiarize the independent directors with the company, their roles responsibilities in the company, nature of industry in which the company operates and business model of the company by imparting suitable training sessions.

## TEST YOURSELF

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)*

1. Mr. Dutta is the Chairman and CEO of ABC Ltd. Mr. Ramesh, Company Secretary of ABC Ltd. is of the opinion that the role of Chairman and CEO be separated. Should the role of Chairman and CEO be separated?
2. ABC Ltd. is a FMCG company. You as a company Secretary are required to prepare a draft of valid questions for the purpose of Board evaluation.
3. Write Short Notes on –
   (a) Board Composition
   (b) Training of Directors
   (c) Board Charter
   (d) Lead Independent Director
   (e) Board Evaluation

## LIST OF FURTHER READINGS

- Board Effectiveness: What Works Best, 2nd Edition by Price Waterhouse Coopers
- Diversity and Inclusion Matters: Tactics and Tools to Inspire Equity and Game-Changing Performance by Jason Thompson
- Towards Managing Diversity by Dr. Deepak Dogara
- Leading Global Diversity, Equity, and Inclusion: A Guide for Systemic Change in Multinational Organizations by Rohini Anand
- HBR's 10 Must Reads on Diversity (with bonus article "Making Differences Matter: A New Paradigm for Managing Diversity" By David A. Thomas and Robin J. Ely
- Bloomsbury Guide for Independent Directors Company Law, SEBI Guidelines, Corporate Governance By Sanjiv Agarwal,Ankita Agarwal Edition July 2020
- Guide for Independent Directors by Dr. Suneel Maggo
- Guide to Independent Directors by Vinod Kothari & Sikha Bansal
- Are Independent Directors Really Independent? - A Cross Jurisdictional Analysis by Kumar Sheetal
- Corporate Conflict Management: Concepts and Skills by Omiko and Nelson

## OTHER REFERENCES


- Malaysian Code on Corporate Governance (2021), file:///C:/Users/USER/Downloads/malaysian_code_2021_english.pdf
- The UK Corporate Governance Code 2018, https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf
- Italian Corporate Governance Code 2020, file:///C:/Users/USER/Downloads/2020code_eng.pdf
- Finnish Corporate Governance Code 2020, https://www.ecgi.global/sites/default/files/codes/documents/corporate-governance-code-2020.pdf
- Vietnamese Corporate Governance Code of Best Practices 2019, file:///C:/Users/USER/Downloads/vietnam_cg_code_of_best_practices_v1.0_english.pdf
- Singapore Code of Corporate Governance 2018, https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Corporate-Governance-of-Listed-Companies/Code-of-Corporate-Governance-6-Aug-2018.pdf
- ASX Corporate Governance Council, https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf

# Board Processes through Secretarial Standards

Lesson 4

## KEY CONCEPTS

■ Agenda ■ Minutes ■ Quorum ■ Timestamp ■ Electronic Mode ■ Secretarial Auditor ■ Minutes Book ■ Secure Computer System

## Learning Objectives

**To understand:**

- Board Processes like Convening a Meeting
- Frequency of Meetings
- Quorum
- Attendance at Meetings
- Passing of Resolution by Circulation
- Minutes, Preservation of Minutes and other Records
- Disclosures through Secretarial Standard-1.

## Lesson Outline

- Introduction
- SS-1: Meetings of the Board of Directors
- Board processes through Secretarial Standards
- Convening a Meeting
- Frequency of Meetings
- Quorum
- Attendance at Meetings
- Chairman
- Passing of Resolution by Circulation
- Minutes
- Preservation of Minutes and other Records
- Disclosures
- Meeting through Video Conferencing
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- Section 118(10), 134(5)(f), 173, 175 of the Companies Act, 2013.
- Clause 65, 70 and 72 of Table F of the Companies Act, 2013.
- SS-1: Meetings of the Board of Directors.
- Rule 3, 5, 6, 9 and 17 of the Companies (Meeting of Board and its Powers) Rules, 2014.
- Rule 35(6) of the Companies (Incorporation) Rules, 2014.
- Rule 25(1)(b)(i) of the Companies (Management and Administration) Rules, 2014.
- Regulation 4(1), 4(2), 17(2), 17(7), 18(2)(9), 19(3A) and 29 of SEBI (LODR) Regulations 2015.
- Para 2 of Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015.

## INTRODUCTION

There have been significant developments with regard to conduct of board meetings in the Companies Act 2013. The use of electronic mode for sending notice of meetings, passing of resolution by circulation and other areas have been allowed. The Act has permitted directors to participate in board meetings through video conferencing or other audio visual means.

One significant development with regard to conduct of board meetings is observance of secretarial standards. Secretarial Standards are a codified set of good governance practices which seek to integrate, harmonize and standardise the diverse secretarial practices followed by companies with respect to conduct of Meetings and play indispensable role in enhancing the corporate culture and governance across the organisations.

> According to Section 118 (10) of the Companies Act 2013, every company shall observe secretarial standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India and approved as such by the Central Government.

In order to ensure high corporate governance standards, the Ministry of Corporate Affairs (MCA) has accorded its approval to the following Secretarial Standards ("SS") specified by the Institute of Company Secretaries of India namely –

(i) SS-1: Meetings of the Board of Directors and;

(ii) SS-2: General Meetings

The Secretarial Standards were notified by the Institute of Company Secretaries of India in the Official Gazette and were effective from July 1, 2015. In 2024, the ICSI has issued the Revised Secretarial Standards which has been approved by the Central Government under Section 118(10) of the Companies Act, 2013 and were effective from April 1st, 2024. The ICSI has also issued Guidance Note based on the revised SS-1 effective from April 1st, 2024.

Prior to the promulgation of the Companies Act, 2013, the secretarial standards were recommendatory in nature. With the historical moment of launching the Secretarial Standards by the MCA has marked a new era of healthy secretarial practices among corporates.

### Applicability of SS-1

In terms of sub-section (10) of Section 118 of the Act, every company is required to observe SS-1.

Section 118(10) of the Companies Act, 2013 provides that every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved as such by the Central Government.

SS-1 is thus applicable to the Meetings of the Board of all companies incorporated under the Act, including private and small companies, **except** One Person Companies (OPC) having only one Director on its Board and such other class or classes of companies which are exempted by the Central Government through Notification. However, where the OPC have more than one director in its Board, the SS-1 shall be applicable on that OPC also.

MCA Notification No. G.S.R. 466(E) dated 5th June, 2015 **exempts** companies licensed under Section 8 of the Companies Act, 2013 from the applicability of Section 118 of the Act, as a whole except that Minutes of Meetings of such a company may be recorded within thirty days of the conclusion of every Meeting where the Articles of Association provide for confirmation of Minutes by circulation. As such, SS-1 is not applicable to companies licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof. Such companies may voluntarily comply with SS-1.

However, Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings.

Further, MCA vide its Notifications No. G.S.R. 584(E) dated 13th June, 2017 modified the above cited Notification dated 5th June, 2015 to place a restriction that such exemptions shall be applicable to a Section 8 company which has not committed a default in filing its Financial Statements or Annual Return with the Registrar of Companies.

## Applicability to companies governed under Special Acts

SS-1 is also applicable to Banking Companies, Insurance Companies, Companies engaged in generation or supply of electricity, and Companies governed by any Special Acts, if incorporated under the Act. However, if the provisions of these Special Acts such as the Banking Regulation Act, 1949, the Insurance Act, 1938, etc. applicable to these companies are inconsistent with SS-1, then the provisions of such Special Acts shall prevail.

## Applicability to Meetings of the Committees

SS-1 is also applicable to the Meetings of Committee(s) of the Board constituted in compliance with the requirements of the Act. At present, the Act provides for the constitution of following committees of the Board:

(a) Audit Committee;

(b) Nomination and Remuneration Committee;

(c) Corporate Social Responsibility (CSR) Committee;

(d) Stakeholders Relationship Committee.

In case any other committee of the Board is constituted voluntarily or pursuant to any other statute or regulations etc., the company may comply with SS-1 with respect to meetings of such committee(s) as a good governance practice.

***Illustration:***

**Housing Development Finance Corporation Limited**

The Board has formulated various committees such as Investment Committee, Fraud Monitoring Committee, IT Strategy Committee, Derivatives Committee etc. comprising of directors and senior management to monitor alignment with the vision and mission of the HDFC.

## Applicability of provisions relating to Independent Directors

All the provisions in SS-1 relating to Independent Directors are required to be complied with by companies which are not statutorily required to appoint "Independent Directors" but have done so voluntarily.

## Effect of subsequent changes in the Act

SS-1 is in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, a particular Standard or any part thereof becomes inconsistent with the Act, the provisions of the Act shall prevail from the date of change or such date as the change to the Act specifies in this respect. Moreover if any stipulation contained in SS-1 is derived from any provision of law or rule and if such provision is declared inapplicable to any class of companies, such stipulation shall not apply to such class of companies.

## Non-applicability of Section 118(10)

**Specified IFSC Public Company**

The MCA vide Notification dated 4th January, 2017 has notified that Section 118(10) shall not apply on the Specified IFSC Public/Private Company.

**What is Specified IFSC Public Company?**

According to explanation to Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act 2005 read with the Special Economic Zones Rules, 2006.

**What is Specified IFSC private company?**

A private company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006.

**SUMMARY OF APPLICABILITY / NON-APPLICABILITY OF SS-1**

| **APPLICABLE to all Meetings of Board of following companies** | **NON-APPLICABLE to all meetings of Board of following companies** |
|---|---|
| Private Limited Companies | Specified IFSC Public Company |
| Public Limited Companies | Specified IFSC Private Company |
| One Person Company (where OPC is having **more than one director)** | One Person Company (where the OPC is having **only one director**) |
| Companies incorporate under Special Acts. If provisions of SS-1 are inconsistence with the provisions of such Special Act, then the provisions of the Special Acts shall prevail. | Such class of companies which are exempted by the Central Government through Notification. |

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| SS-1 also applies on all Committee Meetings of the Board, whether mandatory as per the Companies Act, 2013 or SEBI (LODR) Regulations, 2015 or non-mandatory. | Companies incorporated under Section 8 of the Companies Act, 2013 (or incorporate under Section 25 of the erstwhile Companies Act, 1956), provided such companies have not defaulted in filing Annual Returns with the Registrar. |
| Companies voluntarily appointing Independent Directors shall also comply with the provisions of SS-1 relating to Independent Director. | |

## SS-1: Meetings of the Board of Directors

Decisions relating to the policy and operations of the company are arrived at meetings of the Board held periodically. Meetings of the Board enable discussions on matters placed before them and facilitate decision making based on collective judgment of the Board. The fundamental principles with respect to Board Meetings are laid down in the Act.

SS-1 facilitates compliance with these principles by endeavouring to provide further clarity where there is ambiguity and establishing benchmark standards to harmonise prevalent diverse practices. For the benefit of companies, SS-1 provides necessary flexibility in many cases viz. with respect to calling Meeting at shorter notice, transacting any other business not contained in the agenda and passing of Resolutions by circulation. Complying with SS-1 ensures a reliable Board process which protects the interests of the company and its stakeholders.

Companies follow diverse secretarial practices which have evolved over a period of time through varied usages and as a response to differing business cultures. With a view to integrate, harmonise and standardise such practices, the ICSI has formulated Secretarial Standards. The objective of such standards is to make certain uniform corporate practice, procedures and dealings relating to conduct of board meetings. Further, the Secretarial Standards has also clarified certain provisions of the Act, where the law was either silent or ambiguous. However, these standards do not overstep or modify the law in any way.

SS-1 requires Company Secretary to oversee the vital process of recording and facilitating implementation of the decisions of the Board. Where there is no Company Secretary in the company or in the absence of the Company Secretary, any Director or other Key Managerial Personnel (KMP) or any other person authorised by the Board for this purpose may discharge such of the functions of the Company Secretary as given in SS-1.

The SS-1 seeks to ensure that a healthy and transparent procedure is followed for convening a board meeting. It contains the detailed practices and procedures with regard to conduct of board meetings in companies.

## Key Definitions

The following terms are used in this Standard with the meaning specified:

**“Calendar Year”** means calendar year as per Gregorian calendar i.e. a period of one year which begins on 1st January and ends on 31st December.

**“Electronic Mode”** in relation to Meetings means Meetings through video conferencing or other audio-visual means. “Video conferencing or other audio-visual means” means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

**“National Holiday”** means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.

**“Secured Computer System”** means computer hardware, software, and procedure that-

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

**“Timestamp”** means the current time of an event that is recorded by a Secured Computer System and is used to describe the time that is printed to a file or other location to help keep track of when data is added, removed, sent or received.

## Board processes through Secretarial Standards (SS-1)

### 1. Convening of a Meeting

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| **Authority** [**Para 1.1** ] | Any Director of a company may, at any time, summon a Meeting of the Board, and the Company Secretary or where there is no Company Secretary, any person authorised by the Board in this behalf, on the requisition of a Director, shall convene a Meeting of the Board, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, **unless otherwise provided in the Articles.** [Para 1.1.1]<br><br>The Chairman may, unless dissented to or objected by the majority of Directors present at a Meeting at which a Quorum is present, adjourn the Meeting **for any reason**, at any stage of the Meeting. [Para 1.1.2] |

**Notes:**

In case an oral requisition is received from a Director for convening a Meeting and a written requisition does not follow, such requisition should be put in writing forthwith by the Company Secretary or the person authorised by the Board in this behalf, and placed before the Chairman/Managing Director/ Whole-time Director, as the case may be, with a copy to the Director concerned who has requisitioned such Meeting.

Upon consultation by the Company Secretary or the person authorised by the Board in this behalf, if the Chairman/ Managing Director/Whole-time Director, as the case may be, refuses to convene the Meeting as requisitioned,the Company Secretary or the person authorised by the Board in this behalf, should act in accordance with the provisions of the Articles in this regard.

In case the Articles are silent, the Company Secretary or the person authorised by the Board in this behalf cannotconvene a Meeting requisitioned by the Director and he should communicate the same to the Director concerned.In any case, the Director may, on his own, convene a Meeting.

The authority to summon a meeting of the Board vest with the directors only. The Company Secretary cannot summon a Meeting on his own, unless authorised by the Board of Directors or the Articles to do so.

Adjournment of a Meeting otherwise than for want of Quorum may be necessitated for paucity of time to complete the Agenda or for any other reason viz. curfew, earthquakes or other events of force majeure etc.

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| **Day, Time, Place, Mode and Serial Number of Meeting [Para 1.2]** | Every Meeting shall have a serial number. [Para 1.2.1] A Meeting may be convened at any time and place, on any day. [Para 1.2.2]<br><br>(Notice of the Meeting shall clearly mention a venue, whether registered office or otherwise, to be the venue of the Meeting and all the recordings of the proceedings of the Meeting, if conducted through Electronic Mode, shall be deemed to be made at such place.)<br><br>Any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business. [Para 1.2.3] |

**Notes:**

**Numbering of meetings:** While numbering serially, the company may choose to follow its existing system of numbering, if any, or any new system of numbering, which should be distinct and enable ease of reference and/ or cross reference. The company should follow a uniform and consistent system.

**For example:** 1/ 2020, 2/2020 and so on... and in next year 1/2021, 2/2021 and so on. Alternatively continuous serially numbering across years viz: 120th Meeting, 121st Meeting and so on... Further the serial number of the original and adjourned meeting should be same, viz: Original meeting No. is 12th Meeting, the serial number of the adjourned Meeting should be 12th Meeting (Adjourned).

**Board Meeting on Public Holiday:** The Board Meeting may be convened on any day including the public holiday, unless the Articles provide otherwise. Sub–section (4) of Section 174 of the Act prohibits holding of Board Meetings adjourned for want of Quorum on National Holidays. However, law is not specifically prohibiting the original meeting to be held on a National Holiday.

**Adjourned Meeting:** Unless the Articles of the company provide otherwise, a Meeting adjourned for want of Quorum should be held on the same day at the same time and same place in the next week. If that day happens to be a National Holiday, then such adjourned Meeting should be held on the next succeeding day which is not a National Holiday at the same time and place, unless the Articles of the company provide otherwise. A notice in regard to the adjourned Meeting should be given to all the Directors.

**Time of Meeting:** A Meeting may be held at any time. However, this should be practically construed to mean a convenient time. As detailed deliberations are expected to take place in Board Meetings, it is desirable to have Meetings during working hours, though the Meeting may continue beyond working hours.

***Illustration***

A Meeting is convened on 8th August at 4:00 p.m. at the Registered Office of the company. On that day, the required Quorum is not present. In the absence of any provisions to the contrary in the Articles, the Meeting is automatically adjourned to the same day in the next week, i.e. 15th August, at the same time and place. However, since 15th August is a National Holiday, the adjourned Meeting should be held on 16th August.

**Venue of Meeting:** A Meeting may be held at the Registered Office of the company or at any other place, including a remote place. A Meeting may be held in India or abroad. In case the Articles provide for a specific place or city in which the Meetings should be held, the Meetings should be held only at that place or city. If a Meeting of the Board is held elsewhere, contrary to such clause in the Articles, none of the decisions taken by the Board at such Meeting can be put into operation in any manner.

**Coincidental physical presence of Directors:** A mere coincidental physical presence of all Directors at one place cannot constitute a Meeting.

**Meeting conducted through Electronic Mode:** With respect to every meeting conducted through electronic mode the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place. [Rule 3(6) of the Companies (Meetings of Board and its Powers) Rules, 2014.

Participation of a Director in a Meeting via telephone or tele-conferencing or any other Mode which does not conform to the requirements of the relevant provisions of the Act cannot be considered as participation of a Director through Electronic Mode. If due to any technical issue emerged during the Meeting held through Electronic Mode, a Director chooses to participate through telephone or tele-conferencing for remaining Meeting, then such participation cannot be considered as participation of a Director through Electronic Mode and his presence should not be counted for the purpose of quorum.

**Communication by a Director of his intention to participate through Electronic Mode:** If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf. [Rule 3(3)(d) of the Companies (Meetings of Board and its Powers) Rules, 2014].

A Director cannot participate in a Board Meeting through Electronic Mode from his end, since it is necessary for the company to take due and reasonable care to safeguard the integrity of the Meeting held through Electronic Mode by ensuring sufficient security and identification procedures.

**Participation by all Directors through Electronic Mode:** All the Directors may participate in a Meeting through Electronic Mode. In such a case, at least one person, who may either be the Chairman or the Company Secretary or in the absence of the Company Secretary, any other person duly authorised in this behalf by the Chairman, should be physically present at the scheduled venue of the Meeting given in the Notice to enable proper recording, to safeguard the integrity of the Meeting and to fulfil other requirements of law in this regard.

**Meetings of the Committee and the Board on the same day:** There are no restrictions on Meetings of Committees and of the Board being held on the same day, provided reasonable time gap is kept between the two Meetings.

**Meetings of Audit Committee of Board and Board of Directors to consider the Financial Statements:** In case of equity listed companies, the gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information. [Schedule B to SEBI (Prohibition of Insider Trading) Regulations, 2015.

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| **Notice [Para 1.3]** | Notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means. [Para 1.3.1]<br><br>Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board for the purpose. [Para 1.3.2] |

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The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting.
The Notice shall specify the serial number, day, date, time and full address of the venue of the Meeting. [Para 1.3.3]
The Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information. [Para 1.3.4]
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Provisions under the Companies Act, 2013
Rule 3 (3)(e) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year:
Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.
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The Notice of a Meeting shall be given even if Meetings are held on pre- determined dates or at pre-determined intervals. [Para 1.3.5]
Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period. [Para 1.3.6]
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Notes:
A Meeting of the Board should be called by giving a Notice in writing to every Director [Sub–section (3) of Section 173 read with Rule 3(3)(a) of the Companies (Meetings of Board and its Powers) Rules, 2014].
“Electronic mail” means the message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable [Definition in Rule 2(1)(g) of Companies (Specification of Definitions Details) Rules, 2014].
Where an Alternate Director has been appointed, Notice should also be given to the Original Director at the same time when Notice is given to such Alternate Director.
Like other Directors on the Board, the Original Director should have knowledge of the developments and decisions taken at the Meetings of the Board. Therefore, Notice, Agenda and Notes on Agenda should also be sent to the Original Director for his information.
Notice-where to send: The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director. Notice of the Meeting should be sent to the Directors at their address registered with the company [Sub-section (3) of Section 173 of the Act read with Rule 3(3) (a) of the Companies (Meetings of Board and its Powers) Rules, 2014].
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***Illustration:***

The Articles of Association of XYZ Ltd. provides that all Notices of the Meetings of the Board and Committees thereof shall be sent to all the members of the Board/ Committees by e-mail or through speed post or registered post with acknowledgment. Accordingly, the company is sending Notices through speed post to all Directors.

However, Mr. A, Independent Director on the Board of XYZ Ltd. requested the company to send all such Notices to him through courier at his office.

Since, Mr. A has specified a particular means of delivery of Notice, the company should send Notice of the Meetings through such means to him.

**Notice Period:** In line with sub–section (3) of Section 173 of the Act, the requirement is to send seven days' Notice and not seven clear days' Notice. Thus, for the purpose of computing the period of seven days, the date of the Meeting should be excluded but the date of Notice need not be excluded.

Section 173(3) of the Act provides that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting:

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

**Notice period in the Articles:** The company may prescribe a longer Notice period through its Articles, in which case the Articles should be complied with. However, **the statutory Notice period of seven days cannot be reduced by the company through its Articles**. The only exception to this is situations where the Articles provide for giving Notice at a shorter period of time to transact urgent business in terms of paragraph 1.3.11 of SS-1. In case the company sends the Notice by speed post or by registered post, an additional two days shall be added for the service of Notice.

**Notice for adjourned Meeting:** Notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

Notice of a Meeting adjourned for want of Quorum or otherwise should be given to all Directors. This includes Directors who did not attend the Meeting on the originally convened date.

If the date of the Meeting adjourned otherwise than for want of Quorum is decided at the Meeting itself, the Notice should be given forthwith. If the date of the Meeting so adjourned is not decided at the Meeting, the Notice should be given not less than seven days before such adjourned Meeting.

This is also applicable to Meetings held through Electronic Mode.

**Provisions under the SEBI (LODR) Regulations, 2015**

**Prior Intimations – Regulation 29**

(1) The listed entity shall give **prior intimation of at least two working days in advance, excluding the date of the intimation and date of the meeting to stock exchange** about the meeting of the board of directors in which any of the following proposals is due to be considered:

   (a) financial results viz. quarterly, half yearly, or annual, as the case may be;

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| | (b) proposal for buyback of securities;<br>(c) proposal for voluntary delisting by the listed entity from the stock exchange(s);<br>(d) fund raising by way of issue of securities (excluding security receipts, securitized debt instruments or money market instruments regulated by the Reserve Bank of India), through further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price:<br>Provided further that intimation for determination of issue price in a qualified institutions placement is not required if such placement is done in accordance with the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.<br>Provided that intimation shall also be given in case of any annual general meeting or extraordinary general meeting or postal ballot that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.<br>(e) declaration/ recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend;<br>(f) the proposal for declaration of bonus securities.<br>(g) any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof;<br>(h) any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.<br>(2) The intimation required under sub-regulation (1) shall mention the date of such meeting of board of directors. |
| **Agenda and Notes on Agenda [Para 1.3]** | The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of theMeeting, unless the Articles prescribe a longer period. [Para 1.3.7]<br>Each item of business requiring approval at the Meeting shall be supported by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed. [Para 1.3.8]<br>Each item of business to be taken up at the Meeting shall be serially numbered. [Para 1.3.9]<br>Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting. [Para 1.3.10]<br>To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, if at least one Independent Director, ifany, shall be present at such Meeting. [Para 1.3.11] |

**Notes:**

Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

**"Unpublished Price Sensitive Information"** means any information, relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

i. financial results;

ii. dividends;

iii. change in capital structure;

iv. mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

v. changes in key managerial personnel; and

vi. material events in accordance with the listing agreement.

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.

Where approval by means of a Resolution is required, the draft of such Resolution shall be either set out in the note or placed at the Meeting. However, any other decision taken at the Meeting may also be recorded in the Minutes in the form of Resolution. Specimen agenda and items and business. The items of business that are required by the Act or any other applicable law to be considered at a Meeting of the Board shall be placed before the Board at its Meeting. An illustrative list of such items is given at **Annexure 'A'.**

There are certain items which shall be placed before the Board at its first Meeting. An illustrative list thereof is given at **Annexure 'B'.**

**Supplementary Notes** on any of the Agenda Items may be circulated at or prior to the Meeting but shall be taken up with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

***Illustration***

*Assume there are 9 Directors and 5 have given their general consent at the beginning of the financial year to give Notes on items of Agenda which are in the nature of UPSI at shorter Notice. If 1 new Director is appointed, consent from the new Director to circulate Agenda items which are in the nature of UPSI at a shorter Notice may be obtained individually.*

*If this Director gives his consent, no fresh consent from the Board would be needed. In case, this Director dissents or does not give his consent, fresh consent should be taken from the Board.*

**2. Frequency of Meetings [Para 2]**

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| **Meetings of the Board [Para 2.1]** | The company shall hold at least four Meetings of its Board in each Calendar Year with a maximum interval of one hundred and twenty days between any two consecutive Meetings. [Para 2.1] |
| **Meetings of the Committees [Para 2.2]** | Committees shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board. [Para 2.2]<br>**Provisions under the SEBI (LODR) Regulations, 2015**<br>**Regulation 18(2)(a): The audit committee shall meet at least four times in a year** and not more than one hundred and twenty days shall elapse between two meetings.<br>**Regulation 19(3A): The nomination and remuneration committee shall meet at least once in a year**. |
| **Meeting of Independent Directors [Para 2.3]** | Meeting of Independent Directors Where a company is required to appoint Independent Directors under the Act, such Independent Directors shall hold at least one Meeting in a financial year without attendance of Non-Independent Directors and members of management. |

**Notes:**

**Provisions under the Companies Act, 2013**

**Section 173(1)** provides that every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

**Section 173(5)** provides that a One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

**Provisions under the SEBI (LODR) Regulations, 2015**

**Regulation 17(2)** provides that the board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.

The Meeting shall be held to review the performance of Non-Independent Directors and the Board as a whole; to review the performance of the Chairman and to assess the quality, quantity and timeliness of flow of information between the company management and the Board and its members that is necessary for the Board to effectively and reasonably perform their duties.

The Company Secretary, wherever appointed, shall facilitate convening and holding of such Meeting, if so desired by the Independent Directors.

***Illustration:***

*If a company is incorporated on 15th June, the first Meeting should be held within thirty days i.e. latestby 14th July. if the meeting is held say on 10th July, then the next Meeting should be held within 120 days from 10th July.*

3. **Quorum [Para 3]**

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| **General Provisions [Para 3]** | Quorum shall be present throughout the Meeting. [Para 3.1]<br><br>Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.<br><br>**Provisions under the Companies Act, 2013**<br><br>Rule 3(5)(b) of the Companies (Meetings of Board and its Powers) Rules, 2014, with respect to Meetings through Electronic Mode, requires the Chairman to ensure that the required Quorum is present throughout the Meeting.<br><br>**Provisions under SEBI (LODR) Regulations, 2015**<br><br>**Regulations 17(2A):** The quorum for every meeting of the board of directors of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director.<br><br>*Explanation I* – For removal of doubts, it is clarified that the participation of the directors by video conferencing or by other audio-visual means shall also be counted for the purposes of such quorum.<br><br>*Explanation II* - The top 1000 and 2000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.<br><br>A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclose of this interest. [Para 3.2]<br><br>For this purpose, a Director shall be treated as interested in a contract or arrangement entered into or proposed to be entered into by the company:<br><br>(a) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or<br><br>(b) with a firm or other entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.<br><br>If the item of business is a related party transaction, then he shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.<br><br>Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law. [ Para 3.3] |
| **Meetings of the Board [Para 3.4]** | The Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher. [Para 3.4.1]<br><br>Where the Quorum requirement provided in the Articles is higher than one third of the total strength, the company shall conform to such higher requirement. |

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Where the number of Directors is reduced below the minimum fixed by the Articles, no business shall be transacted unless the number is first made up by the remaining Director(s) or through a General Meeting. [Para 3.4.2]
Illustration
If, out of a total strength of fifteen Directors as fixed by the company in GeneralMeeting, four places are vacant, then the actual strength of the Board for the purpose of computing the Quorum should be eleven and not fifteen.
Provisions under the Companies Act, 2013
Quorum for Meetings of Board -Section 174
(1) The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two Directors, whichever is higher, and the participation of the Directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.
(2) The continuing Directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing Directors or director may act for the purpose of increasing the number of Directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
(3) Where at any time the number of interested Directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of Directors who are not interested Directors and present at the meeting, being not less than two, shall be the quorum during such time.
(4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.
Explanation. – For the purposes of this section,–
(i) any fraction of a number shall be rounded off as one;
(ii) “total strength” shall not include Directors whose places are vacant.
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<tr>
<td>Meetings of Committees [Para 3.5]</td>
<td>
Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum. [Para 3.5]
Regulations framed under any other law may contain provisions for the Quorum of a Committee and such stipulations shall be followed.
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**4. Attendance at Meetings [Para 4]**

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| **Attendance Register [Para 4.1]** | Every company shall maintain attendance register for the Meetings of the Board and Meetings of the Committee. [Para 4.1.1] |

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**Provisions under the Companies Act, 2013**

Clause 65 of Table F states that every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

The attendance register shall contain the following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names and signatures of the Directors, the Company Secretary and also of persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode. [ Para 4.1.2]

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes. [Para 4.1.3]

The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.[Para 4.1.4]

The attendance register is open for inspection by the Directors. Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.[Para 4.1.5]

The attendance register shall be preserved for a period of at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board. [Para 4.1.6]

The attendance register shall be in the custody of the Company Secretary.[Para 4.1.7]

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**Notes:**

The pages of the attendance register shall be serially numbered.

If an attendance register is maintained in loose-leaf form, it shall be bound periodically, atleast once in every three years.

In case of Directors participating through Electronic Mode, the Chairman shall confirm the attendance of such Directors.

Where there is no Company Secretary, the attendance register shall be in the custody of any other person authorised by the Board for this purpose.

***Illustration***

*In case the attendance register contains the attendance record of a Meeting held on 5th May, 2010 as the firstentry and 18th March, 2015 as the last entry, the attendance register should be preserved at least up to 31st March, 2023 i.e. for eight financial years from 31st March, 2015 since the last entry therein is 18th March, 2015.*

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**Leave of absence [Para 4.2]**

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Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting. [Para 4.2]

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**Notes:** The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board.

**5. Chairman [Para 5]**

<table>
<tr><td>Meetings of the Board [Para 5.1]</td><td>The Chairman of the company shall be the Chairman of the Board. If the company does not have a Chairman, the Directors may elect one of themselves to be the Chairman of the Board. [Para 5.1.1]<br><br>Provisions under the Companies Act, 2013<br><br>Clause 70 of Table F:<br><br>(i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.<br><br>(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.<br><br>The Chairman of the Board shall conduct the Meetings of the Board. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conductthe Meeting, unless otherwise provided in the Articles. [Para 5.1.2]</td></tr>
<tr><td colspan="2">Notes:<br><br>If the Chairman is interested in an item of business, he shall entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted. However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.<br><br>If the item of business is a related party transaction, the Chairman shall not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such item.</td></tr>
<tr><td>Meetings of Committees [Para 5.2]</td><td>A member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been soelected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles. [Para 5.2]<br><br>Provisions under the Companies Act, 2013<br><br>Clause 72 of Table F:<br><br>(i) A committee may elect a Chairperson of its meetings.<br><br>(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.</td></tr>
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6. **Passing of Resolution by Circulation [Para 6]**

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| **Authority [Para 6.1]** | The Chairman of the Board or in his absence, the Managing Director or in their absence, any Director other than an Interested Director, shall decide, before the draft Resolution is circulated to all the Directors, whether the approval of the Board for a particular business shall be obtained by means of a Resolution by circulation. [Para 6.1.1]<br><br>Where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the Resolution for consideration at a Meeting of the Board. [Para 6.1.2] |

**Notes:**

An illustrative list of items which shall be placed before the Board at its Meeting and shall not be passed by circulation is given at **Annexure A**.

Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

***Illustration:***

*A company has 9 Directors, out of which say, 3 Directors are interested in the Resolution. In such a case, for the purpose of reckoning the 1/3rd stipulation as above, the total number of Directors should be taken as 9 and not 6 (9-3 Interested Directors). Thus, if 3 Directors (1/3rd of 9), (which number may include Interested Directors), require the Resolution under circulation to be decided at a Meeting, the Resolution by circulation should not be proceeded with. However, this does not mean that Interested Directors shall be entitled to participate and vote when the said item of business is taken up at a Meeting of the Board.*

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| **Procedure [Para 6.2]** | A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day. [Para 6.2.1]<br><br>The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means. [Para 6.2.2]<br><br>Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the details of the proposal, relevant material facts that enable the Directors to understand the meaning, scope and implications of the proposal, the nature of concern or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond. [Para 6.2.3] |

**Notes:**

The draft of the Resolution and the necessary papers shall be sent to the postal address or e-mail address registered by the Director with the company or in the absence of such details or any change thereto, any of the addresses appearing in the Director Identification Number (DIN) registration of the Director.

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| **Approval [Para 6.3]** | The Resolution is passed when it is approved by a majority of the Directors entitledto vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decidedat a Meeting. [Para 6.3.1]<br>The Resolution, if passed, shall be deemed to have been passed on the earlier of:<br>(a) the last date specified for signifying assent or dissent by the Directors, or<br>(b) the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total numberof Directors; and shall be effective from that date, if no other effective date isspecified in such Resolution. [Para 6.3.2] |

**Notes:**

An Interested Director shall not be entitled to vote. For this purpose, a Director shall be treated as interested in a contract or arrangement entered or proposed to be entered into by the company: (a) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or (c) with a firm orother entity, if such Director is a partner, owner or Member, as the case may be, of that firm or other entity.

Directors shall signify their assent or dissent by signing the Resolution to be passed by circulation or by e-mail orany other electronic means.

In case the Director does not respond on or before the last date specified for signifying assent or dissent, it shall be presumed that the Director has abstained from voting.

If the approval of the majority of Directors entitled to vote is not received by the last date specified for receipt of such approval, the Resolution shall be considered as not passed.

***Illustration:***

If, out of the Board strength of 10 Directors, 6 Directors communicate their assent, the Resolution shall not beconsidered as passed until the stipulated last date has expired, or, if ahead of the said date, 2 more Directors have also signified their assent/dissent so that the possibility of 1/3rd asking for a physical Meeting is no longer possible.

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| **Recording [Para 6.4]** | Resolutions passed by circulation shall be noted at a subsequent Meeting of the Board and the text thereof with dissent or abstention, if any, shall be recorded in the Minutes of such Meeting.[Para 6.4] |
| **Validity [Para 6.5]** | Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened Meeting of the Board.<br>This shall not dispense with the requirement for the Board to meet at the specified frequency. |

**7. Minutes [Para 7]**

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| **Maintenance of Minutes [Para 7.1]** | Minutes shall be recorded in books maintained for that purpose. [Para 7.1.1]<br>A distinct Minutes Book shall be maintained for Meetings of the Board and each ofits Committees. [Para 7.1.2] |

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| | A company may maintain its Minutes in physical or in electronic form. [Para 7.1.3]<br>The pages of the Minutes Books shall be consecutively numbered. [Para 7.1.4]<br>Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner. [Para 7.1.5]<br>Minutes Books, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company. [Para 7.1.6]<br>Minutes Books shall be kept at the Registered Office of the company or at such other place as may be approved by the Board. [Para 7.1.7] |
| **Notes:**<br>Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp. | |
| **General Contents of Minutes [Para 7.2.1]** | Minutes shall state, at the beginning the serial number and type of the Meeting, name of the company, day, date, venue and time of commencement of the Meeting. [Para 7.2.1.1]<br>Minutes shall record the names of the Directors present physically or through Electronic Mode, the Company Secretary who is in attendance at the Meeting and Invitees, if any, including Invitees for specific items. [Para 7.2.1.2]<br>Minutes shall contain a record of all appointments made at the Meeting. [Para 7.2.1.3] |
| **Notes:**<br>In respect of a Meeting adjourned for want of Quorum, a statement to that effect by the Chairman or in his absence, by any other Director present at the Meeting shall be recorded in the Minutes.<br>The names of the Directors shall be listed in alphabetical order or in any other logical manner, but in either case starting with the name of the person in the Chair. | |
| **Specific Contents of Minutes [Para 7.2.2]** | Minutes shall *inter alia* contain:<br>(a) The name(s) of Directors present and their mode of attendance, if through Electronic Mode.<br>(b) In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.<br>(c) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.<br>(d) Record of election, if any, of the Chairman of the Meeting.<br>(e) Record of presence of Quorum.<br>(f) The names of Directors who sought and were granted leave of absence.<br>(g) Noting of the Minutes of the preceding Meeting.<br>(h) Noting the Minutes of the Meetings of the Committees.<br>(i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any. |

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| | (j) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of a related party transaction such director was not present in the meeting during discussions and voting on such item.<br>(k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.<br>(l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.<br>(m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.<br>(n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice.<br>(o) Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.<br>(p) The time of commencement and conclusion of the Meeting. [Para 7.2.2.1]<br>Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned. [Para 7.2.2.2] |
| **Recording of Minutes [Para 7.3]** | Minutes shall contain a fair and correct summary of the proceedings of the Meeting. [Para 7.3.1]<br>Minutes shall be written in clear, concise and plain language. [Para 7.3.2]<br>Wherever the decision of the Board is based on any unsigned documents including reports or notes or presentations tabled or presented at the Meeting, which were not part of the Notes on Agenda and are referred to in the Minutes, shall be identified by initialling of such documents by the Company Secretary or the Chairman. [Para 7.3.3]<br>Where any earlier Resolution(s) or decision is superseded or modified, Minutes shall contain a specific reference to such earlier Resolution(s) or decision or state that the Resolution is in supersession of all earlier Resolutions passed in that regard. [Para 7.3.4]<br>Minutes of the preceding Meeting shall be noted at a Meeting of the Board held immediately following the date of entry of such Minutes in the Minutes Book. [Para 7.3.5]<br>***Illustration:***<br>A Board Meeting was held on 1st July 2020 and the next Board Meeting is scheduled to be held on 25th July 2020.<br>If the minutes of the first Board Meeting are entered in the minutes books before the date of next Board Meeting i.e. 25th July, 2020, the same should be placed for noting thereat. If the minutes are yet to be entered in the minutes books, the same should be placed at the subsequent Board Meeting following the entry of minutes in the minutes books. |

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| **Finalisation of Minutes [Para 7.4]** | Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee, as on the date of the Meeting, for their comments. [Para 7.4]<br><br>***Illustration:***<br>*If the Meeting is held and concluded on 1st September, 2015, the Minutes should be circulated latest by 15th September, 2015 and the receipt of the same by the Directors thereafter would be in compliance.* |
| **Entry in the Minutes Book [Para 7.5]** | Minutes shall be entered in the Minutes Book within thirty days from the date of conclusion of the Meeting. [Para 7.5.1]<br><br>The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary. [Para 7.5.2]<br><br>Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent Meeting at which the Minutes are noted by the Board and the fact of such alteration shall be recorded in the Minutes of such subsequent Meeting. [Para 7.5.3] |
| **Signing and Dating of Minutes [Para 7.6]** | Minutes of the Meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the Chairman of the next Meeting. [Para 7.6.1]<br><br>The Chairman shall initial each page of the Minutes, sign the last page and append to such signature the date on which and the place where he has signed the Minutes. [Para 7.6.2]<br><br>Minutes, once signed by the Chairman, shall not be altered, save as mentioned in this Standard. [Para 7.6.3]<br><br>Within fifteen days of signing of the Minutes, a copy of the said signed Minutes, certified by the Company Secretary or where there is no Company Secretary by any Director authorised by the Board, shall be circulated to all the Directors, as on the date of the Meeting and appointed thereafter, except to those Directors who have waived their right to receive the same either in writing or such waiver is recorded in the Minutes. [Para 7.6.4] |
| **Inspection and Extracts of Minutes [Para 7.7.]** | The Minutes of Meetings of the Board and any Committee thereof can be inspected by the Directors. [Para 7.7.1]<br><br>Extracts of the Minutes shall be given only after the Minutes have been duly entered in the Minutes Book. However, certified copies of any Resolution passed at a Meeting may be issued even earlier, if the text of that Resolution had been placed at the Meeting. [Para 7.7.2] |
| **Notes:**<br><br>A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship. | |

A Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

| Case Law |
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| *Usha Martin Telematics Ltd.* v. *Registrar of Companies High Court Of Calcutta*, *C.R.R. 494 OF 2019*, in this matter it was held that typographical/inadvertent error in recording of minutes, which is rectified subsequently cannot be termed as an offence, far less an offence under provisions of Companies Act. |

**8. Preservation of Minutes and other Records [Para 8]**

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| **Preservation of Minutes andother Records [Para 8]** | Minutes of all Meetings shall be preserved permanently in physical or in electronicform with Timestamp. [Para 8.1]<br><br>**Provisions under the Companies Act, 2013**<br><br>**Rule 15 of the Companies (Management and Administration) Rules, 2014** provides a period of eight years for preservation of register of debenture-holders or any other security holders and annual return.<br><br>Office copies of Notices, Agenda, Notes on Agenda and other related papers shall be preserved in good order in physical or in electronic form for as long as they remain current or for eight financial years, whichever is later and may be destroyed thereafter with the approval of the Board. [Para 8.2]<br><br>Minutes Books shall be in the custody of the Company Secretary. [Para 8.3] |

**Notes:**

Where, under a scheme of arrangement, a company has been merged or amalgamated with another company, Minutes of all Meetings of the transferor company, as handed over to the transferee company, shall be preservedpermanently by the transferee company, notwithstanding that the transferor company might have been dissolved.

**9. Disclosures:**

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| **Disclosures [Para 9]** | The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards. [Para 9]<br><br>**Provisions under the Companies Act, 2013**<br><br>**Section 134(5)(f)** provides that the Directors' Responsibility Statement shall state that the Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.<br><br>Disclosures by a Director of his Interest – Rule 9 the Companies (Meetings of Board and its Powers) Rules, 2014<br><br>(1) Every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in Form MBP 1. |

(2) It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice.

(3) All notices shall be kept at the registered office and such notices shall be preserved for a period of eight years from the end of the financial year to which it relates and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

**Disclosure Provisions under the SEBI (LODR) Regulations, 2015**

**Principles governing disclosures and obligations – Regulation 4(1)**

(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:

(a) Information shall be prepared and disclosed in accordance with applicable standards of accounting and financial disclosure.

(b) The listed entity shall implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and shall also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

(c) The listed entity shall refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.

(d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

(f) Channels for disseminating information shall provide for equal, timely and cost efficient access to relevant information by investors.

(g) The listed entity shall abide by all the provisions of the applicable laws including the securities laws and also such other guidelines as may be issued from time to time by the Board and the recognised stock exchange(s) in this regard and as may be applicable.

(h) The listed entity shall make the specified disclosures and follow its obligations in letter and spirit taking into consideration the interest of all stakeholders.

(i) Filings, reports, statements, documents and information which are event based or are filed periodically shall contain relevant information.

(j) Periodic filings, reports, statements, documents and information reports shall contain information that shall enable investors to track the performance of a listed entity over regular intervals of time and shall provide sufficient information to enable investors to assess the current status of a listed entity.

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| | **Disclosure of information – Regulation 4(2)(f)(i)**<br>(1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.<br>(2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making. |

**Some Good Practices in Convening Board Meetings**

**Maintaining Annual Calendar:** An Annual calendar that schedules the Board and committee meetings and accordingly dates by which action required is accomplished is an effective planner for the year. The planner schedules in advance the events so that both the providers of inputs and receivers of inputs can plan their work systematically.

**Directors' Time Commitment:** Directors typically should allocate at least as much time for preparationas for the board meeting itself. With strategy retreats or "away days," travel, reading, meeting preparationtime, and attendance at *ad hoc* and committee meetings, directors usually spend three or four days per month for a single, non-executive director position. The time spent to prepare for audit committee meetings is normally longer than that for most other board meetings. Directors should always evaluate the demands on their time before allowing themselves to be considered for an appointment. Directors should disclose any other board or external appointment to the nomination committee before their appointment, and regularly update the board after appointment.

## ANNEXURE 'A' [REFER PARA 1.3.8]

Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting

**General Business Items**

- Noting Minutes of Meetings of Audit Committee and other Committees.
- Approving financial statements and the Board's Report.
- Considering the Compliance Certificate to ensure compliance with the provisions of all the laws applicable to the company.
- Specifying list of laws applicable specifically to the company.
- Appointment of Secretarial Auditors and Internal Auditors.

**Specific Items**

- Borrowing money otherwise than by issue of debentures.
- Investing the funds of the company.
- Granting loans or giving guarantee or providing security in respect of loans.
- Making political contributions.
- Making calls on shareholders in respect of money unpaid on their shares.

- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of Key Managerial Personnel.
- Appointment of a person as a Managing Director / Manager in more than one company.
- In case of a public company, the appointment of Director(s) in casual vacancy subject to the provisions in the Articles of the company.
- According sanction for related party transactions which are not in the ordinary course of business or which are not on arm's length basis.
- Sale of subsidiaries.
- Purchase and Sale of material tangible/intangible assets not in the ordinary course of business.
- Approve Payment to Director for loss of office.
- Items arising out of separate Meeting of the Independent Directors if so decided by the Independent Directors.

**Corporate Actions**

- Authorise Buy-Back of securities.
- Issue of securities, including debentures, whether in or outside India.
- Approving amalgamation, merger or reconstruction.
- Diversify the business.
- Takeover another company or acquiring controlling or substantial stake in another company.

**Additional list of items in case of listed companies**

- Approving Annual operating plans and budgets.
- Capital budgets and any updates.
- Information on remuneration of Key Managerial Personnel.
- Show cause, demand, prosecution notices and penalty notices which are materially important.
- Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
- Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
- Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
- Details of any joint venture or collaboration agreement.
- Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
- Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
- Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
- Non-compliance of any regulatory, statutory or listing requirements and shareholder services such as non- payment of dividend, delay in share transfer etc.

## ANNEXURE 'B' (PARA 1.3.8)

**Illustrative list of items of business for the Agenda for the First Meeting of the Board of the company**

1. To appoint the Chairman of the Meeting.
2. To note the Certificate of Incorporation of the company, issued by the Registrar of Companies.
3. To take note of the Memorandum and Articles of Association of the company, as registered.
4. To note the situation of the Registered Office of the company and ratify the registered document of the title of the premises of the registered office in the name of the company or a Notarised copy of lease / rent agreement in the name of the company.
5. To note the first Directors of the company.
6. To read and record the Notices of disclosure of interest given by the Directors.
7. To consider appointment of Additional Directors.
8. To consider appointment of the Chairman of the Board.
9. To consider appointment of the first Auditors.
10. To adopt the Common Seal of the company, if any.
11. To appoint Bankers and to open bank accounts of the company.
12. To authorise printing of share certificates and correspondence with the depositories, if any.
13. To authorise the issue of share certificates to the subscribers to the Memorandum and Articles of Association of the company.
14. To approve and ratify preliminary expenses and preliminary agreements.
15. To approve the appointment of the Key Managerial Personnel, if applicable and other senior officers.

## MEETING THROUGH VIDEO CONFERENCING

Section 173(2) of Companies Act, 2013 read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

Provided further that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso.

**The Complete process for conducting of Board Meeting through video conferencing is prescribed under Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with Secretarial Standard-1.**

**Rule 3 of The Companies (Meetings of Board and its Powers) Rules, 2014**

**Meetings of Board Through Video Conferencing or Other Audio Visual Means**

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

1. Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.

2. The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care –

   (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;

   (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;

   (c) to record proceedings and prepare the minutes of the meeting;

   (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;

   (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and

   (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

   Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

3. (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub- section (3) of section 173 of the Act.

   (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.

   (c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.

   (d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

   (e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year. Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person."

(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

4. At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-

   (a) name;

   (b) the location from where he is participating;

   (c) that he has received the agenda and all the relevant material for the meeting; and

   (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b).

5. (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

   *Explanation.-* A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

   (b) The Chairperson shall ensure that the required quorum is present throughout the meeting.

6. With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting 1[Omitted], shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

7. The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

8. (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

   (b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.

9. If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

10. From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

11. (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority "and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule (12)".

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

12. (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

*Explanation.*- For the purposes of this rule, “video conferencing or other audio visual means” means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

## LESSON ROUND-UP

- According to Section 118 (10) of the Companies Act 2013, every company shall observe secretarial standards with respect to General and Board meetings specified by the Institute of Company Secretaries of India and approved as such by the Central Government.
- The Ministry of Corporate Affairs (MCA) has accorded its approval to the Secretarial Standards (“SS”) specified by the Institute of Company Secretaries of India.
- The Secretarial Standards were notified by the Institute of Company Secretaries of India in the Official Gazette and were effective from July 1, 2015. The SS-1 was revised and the revised SS-1 came into effect from 1st October, 2017.
- SS-1 facilitates compliance with these principles by endeavouring to provide further clarity where there is ambiguity and establishing benchmark standards to harmonise prevalent diverse practices.
- SS-1 requires Company Secretary to oversee the vital process of recording and facilitating implementation of the decisions of the Board.
- SS-1 is applicable to the Meetings of Board of Directors of all companies incorporated under the Act.
- SS-1 provides for some of the best standard practices to be followed for conduct of meetings by the companies.

## GLOSSARY

**Electronic Mode:** In relation to Meetings means Meetings through video conferencing or other audio-visual means. “Video conferencing or other audiovisual means” means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

**Secretarial Auditor:** Means a Company Secretary in Practice or a firm of Company Secretary(ies) in Practice appointed in pursuance of the Act to conduct the secretarial audit of the company.

**Maintenance:** Means keeping of registers and records either in physical or electronic form, as may be permitted under any law for the time being in force, and includes the making of appropriate entries therein, the authentication of such entries and the preservation of such physical or electronic records.

**Minutes Book:** Means a Book maintained in physical or in electronic form for the purpose of recording of Minutes.

**Secured Computer System:** Means computer hardware, software, and procedure that –

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. As a company secretary can you explain what is the frequency of meetings as per Secretarial Standard 1.
2. Companies follow diverse secretarial practices. In the light of this statement explain the importance of Secretarial Standards.
3. What are the Secretarial Standards specified in respect of Notice and Notes on Agenda?
4. Can you explain the following:
    a) General Content of Minutes
    b) Specific Content of minutes
5. Is there any role of Secretarial Standards in enhancing corporate governance practices of the Board of Directors? Explain.

**LIST OF FURTHER READINGS**

- The Companies Act, Bare Act
- Secretarial Standard - I
- Guidance Note on Meetings of the Board of Directors
- Chartered Secretary

**OTHER REFERENCES**

- www.mca.gov.in/content/mca/global/en/act-rules/ebooks/rules.html
- www.icsi.edu/media/webmodules/GN_on_meetings_of_BoD_3122020.pdf

# Board Committees

Lesson 5

## KEY CONCEPTS

■ Audit Committee ■ Nomination and Remuneration Committee ■ Stakeholders Relationship Committee ■ CSR Committee ■ Risk Management Committee ■ Regulatory Compliance and Government Affairs Committee

## Learning Objectives

**To understand:**

- Rationale for Board Committees
- Management through board
- Committees and the constitution
- Scope of various Committees
- Various board committees

## Lesson Outline

- Introduction
- Regulatory Framework
- Need for Committees
- Rationale behind Board Committees
- Committee Management
- Selection of Committee Members
- Appointment of Committee Chairman
- Mandatory Committees of the Board
  - Audit Committee
  - Nomination and Remuneration Committee
  - Stakeholders Relationship Committee
  - CSR Committee
  - Risk Management Committee
  - Vigil Mechanism
- Non-Mandatory Committees and its Examples
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

A committee of the board is a small working group identified by the board, consisting primarily of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some specified work. Members of the committee are expected to have expertise in the specified field.

Regulation 2(1)(g) of the SEBI (LODR) Regulations, 2015 states that "Committee" shall mean committee of board of directors or any other committee so constituted. Regulation 4(2)(f)(iii)(11) states that when committees of the board of directors are established, their mandate, composition and working procedures shall be well defined and disclosed by the board of directors.

Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention.

However, the Board of Directors is ultimately responsible for the acts of the committee. Board is responsible for defining the committee role and structure. The structure of a board and the planning of the board's work are key elements to effective governance. Establishing committees is one way of managing the work of the board, thereby strengthening the board's governance role. Boards should regularly review its own structure and performance and whether it has the right committee structure and an appropriate scheme of delegation from the board.

## NEED FOR COMMITTEES

With increasing business complexities and time commitment of Board members, constituting committees has become inevitable for organization of any significant size.

The Companies Act, 2013 and SEBI (LODR) Regulations, 2015 have provided a very robust regulatory framework to emphasize that effectiveness of Board Committees as key to an effective Board.

Committees keep the number of participants manageable; in larger groups, either many people do not get to speak or discussion gets quite lengthy. Committees can be set up for a specific purpose or to deal with general issues such as 'development'. They can be established on a short-term or temporary basis, or they can be formed as a permanent body for ongoing work.

A Board can either delegate some of its powers to the committee, enabling it to act directly, or can require the recommendations of the committee to be approved by the Board. The Board will normally depend heavily on the findings and recommendations of its committees, although final decisions to accept or reject these recommendations will be made by the Board.

Committees need clear goals, objectives, and terms of reference in order to function efficiently, and Boards should ensure that these are developed before establishing the committee. Many committees have been known to work outside their intended purpose due to a lack of precise objectives.

**Committees thus have an important role -**

- to strengthen the governance arrangements of the company and support the Board in the achievement of the strategic objectives of the company ;
- to strengthen the role of the Board in strategic decision making and supports the role of non-executive
- directors in challenging executive management actions;
- to maximise the value of the input from non-executive directors, given their limited time commitment;
- to support the Board in fulfilling its role, given the nature and magnitude of the agenda.

## RATIONALE BEHIND BOARD COMMITTEES

- To improve Board effectiveness and efficiency.
- Minor details need to be evaluated/ analysed to arrive at a logical conclusion. This requires body having expertise in subject matter, a Board Committee shall in such cases assist the Board and give well considered recommendations to the Board. e.g. Audit Committee go through minor details of internal audit reports which is not possible and give suitable recommendations, this is not possible for entire Board to consider.
- Insulate Board from potential undue influence of controlling shareholders and managers.
- Committees prepare groundwork for decision making and submit their recommendations to the Board for decision making.
- Enables better management of Board's time and allows in-depth scrutiny of proposals.
- Establishing committees is one way of managing the work of the Board and strengthening the Board's governance role.

## COMMITTEE MANAGEMENT

- Committees function in accordance with the terms of reference established by the board.
- Committees may be standing committees; or ad-hoc committees that cease when the activities are completed.
- Standing committees should be included in the articles or bylaws.
- Committees recommend policy for approval by the entire board.
- Committees make full use of board members' expertise, time and commitment, and ensure diversity of opinions on the board.
- They do not supplant responsibility of each board member; they operate at the board level and not the staff level.
- Minutes should be recorded for all Committee meetings and final minutes are required to be placed before the Board.

**Table F of Schedule I of the Companies Act, 2013 provides that Articles of Association of a company limited by shares shall contain the following:**

71 (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

72 (i) A committee may elect a Chairperson of its meetings.

(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

73 (i) A committee may meet and adjourn as it thinks fit.

(ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.

74 All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such Directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

75 Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

## SELECTION OF COMMITTEE MEMBERS

Specific committee members may be appointed by either the Board or the committee Chairman. Area of knowledge and expertise domain and time commitment of the Board member should be considered as the criteria for the selection on any specific committee. The committee members should be selected with following questions in mind:

What tasks are the committee responsible for and who among the members possess the skills and experience needed to complete those tasks. Every effort should be made to match the needs and requirements of the committee and the skills, knowledge and interests of prospective committee members.

It is very important that members have a clear view of the committee's goals and the chairman should have flair to utilize the committee member's knowledge exponentially well to achieve those goals.

## APPOINTMENT OF COMMITTEE CHAIRMAN

The Board may appoint the committee chairman or the committee members can choose/elect the chairman. The committee chairman is the key to an effective committee, he sets the tone, pace and strategies of the committees' functioning, hence chairman selected should have motivational and leadership skills and time commitment expected of him.

In seeking an effective chairman, most important things are knowledge and experience relevant to the work of the committee, proven leadership and behavioral skills that will be essential if the committee is to work effectively. The role of committee chairman requires extra work, time for communication with committee members and senior management so that he remains informed about the developments and a willingness to resolve conflicts among members.

The committee chairman co-ordinates work and establishes an environment of thoughtful deliberation. The chairman is expected to stimulate the members and help the group use all the abilities and experiences its members possess and new skills that they develop as they work together. The committee's goal must be aligned to achieve the objectives of the organization as a whole. The committee chairman will be responsible for preparing agendas for the meetings, assigning responsibilities to committee members and doing some of the follow-up to make sure that the assigned work is being done by members.

**Para 72 of Table F of Schedule I of the Companies Act, 2013 provides that –**

(i) A committee may elect a Chairperson of its meetings.

(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.

## Meetings of the Committee

**Para 5.2. of the SS-1** provides that a member of the Committee appointed by the Board or elected by the Committee as Chairman of the Committee, in accordance with the Act or any other law or the Articles, shall conduct the Meetings of the Committee. If no Chairman has been so elected or if the elected Chairman is unable to attend the Meeting, the Committee shall elect one of its members present to chair and conduct the Meeting of the Committee, unless otherwise provided in the Articles.

## MANDATORY COMMITTEES

| *As per Companies Act, 2013* | *As per SEBI (LODR) Regulations, 2015* |
|---|---|
| Audit Committee | Audit Committee |
| Nomination and Remuneration committee | Nomination and Remuneration committee |
| Stakeholders Relationship Committee | Stakeholders Relationship Committee |
| Corporate Social Responsibility Committee | Risk Management Committee |

## AUDIT COMMITTEE

**As per the provisions of the Companies Act, 2013**

### Constitution of Audit Committee – Section 177(1)

Section 177(1) read with Rule 6 of the Companies the Companies (Meetings of Board and its Powers) Rules, 2014 and Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the Board of Directors of following class of companies shall constitute an Audit Committee:

- Every listed public company; and
- Every unlisted public company, whose:
- Paid up share capital is ten crore rupees or more; or
- Turnover of one hundred crore rupees or more; or
- Aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees

### Minimum Number of Director in Audit Committee – Section 177(2)

The Audit Committee shall consist of a **minimum of three Directors with independent Directors forming a majority**. Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

### Functions of Audit Committee – Section 177(4)

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—

(i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

(ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;

(iii) examination of the financial statement and the auditors' report thereon;

(iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed;

Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

(v) scrutiny of inter-corporate loans and investments;

(vi) valuation of undertakings or assets of the company, wherever it is necessary;

(vii) evaluation of internal financial controls and risk management systems;

(viii) monitoring the end use of funds raised through public offers and related matters.

## Internal Control System - Section 177(5)

The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.

## Investigation – Section 177(6)

The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.

## Auditors and KMPs have right to be heard, but no right to vote – Section 177(7)

The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.

## Disclosure of Composition of Audit Committee in Board's Report – Section 177(8)

The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

## PROVISIONS OF THE SEBI (LODR) REGULATIONS, 2015

**Constitution of Audit Committee – Regulation 18(1)**

Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

(a) The audit committee shall have minimum three directors as members.

(b) At least two-thirds of the members of audit committee shall be independent directors and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.

(c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

*Explanation (1)*.- For the purpose of this regulation, "financially literate" shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

*Explanation (2)*.- For the purpose of this regulation , a member shall be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(d) The chairperson of the audit committee shall be an independent director and he /she shall be present at Annual general meeting to answer shareholder queries.

(e) The Company Secretary shall act as the secretary to the audit committee.

(f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee:

Provided that occasionally the audit committee may meet without the presence of any executives of the listed entity.

## Meetings of the Audit Committee – Regulation 18(2)

The listed entity shall conduct the meetings of the audit committee in the following manner:

(a) The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.

(b) The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater, with at least two independent directors.

(c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

## Role of the Audit Committee – Regulation 18(3)

The role of the audit committee and the information to be reviewed by the audit committee shall be as specified in **Part C of Schedule II.** Regulation 18(3) is placed below:

**A. The role of the audit committee shall include the following:**

(1) oversight of the listed entity's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;

(2) recommendation for appointment, remuneration and terms of appointment of auditors of the listed entity;

(3) approval of payment to statutory auditors for any other services rendered by the statutory auditors;

(4) reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

(a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;

(b) changes, if any, in accounting policies and practices and reasons for the same;

(c) major accounting entries involving estimates based on the exercise of judgment by management;

(d) significant adjustments made in the financial statements arising out of audit findings;

(e) compliance with listing and other legal requirements relating to financial statements;

(f) disclosure of any related party transactions;

(g) modified opinion(s) in the draft audit report;

(5) reviewing, with the management, the quarterly financial statements before submission to the board for approval;

(6) reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public issue or rights issue or preferential issue or qualified institutions placement, and making appropriate recommendations to the board to take up steps in this matter;

(7) reviewing and monitoring the auditor's independence and performance, and effectiveness of audit process;

(8) approval or any subsequent modification of transactions of the listed entity with related parties;

(9) scrutiny of inter-corporate loans and investments;

(10) valuation of undertakings or assets of the listed entity, wherever it is necessary;

(11) evaluation of internal financial controls and risk management systems;

(12) reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;

(13) reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;

(14) discussion with internal auditors of any significant findings and follow up there on;

(15) 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;

(16) discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;

(17) 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;

(18) to review the functioning of the whistle blower mechanism;

(19) approval of appointment of chief financial officer after assessing the qualifications, experience and background, etc. of the candidate;

(20) Carrying out any other function as is mentioned in the terms of reference of the audit committee.

(21) reviewing the utilization of loans and/ or advances from/investment by the holding company in the subsidiary exceeding rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower including existing loans / advances / investments existing as on the date of coming into force of this provision.

(22) consider and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation etc., on the listed entity and its shareholders.

**B. The audit committee shall mandatorily review the following information:**

(1) management discussion and analysis of financial condition and results of operations;

(2) management letters / letters of internal control weaknesses issued by the statutory auditors;

(3) internal audit reports relating to internal control weaknesses; and

(4) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.

(5) statement of deviations:

(a) quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s) in terms of Regulation 32(1).

(b) annual statement of funds utilized for purposes other than those stated in the offer document/ prospectus/notice in terms of Regulation 32(7).

## NOMINATION AND REMUNERATION COMMITTEE

**AS PER THE PROVISIONS OF THE COMPANIES ACT, 2013**

**Nomination and Remuneration Committee and Stakeholders Relationship Committee – Section 178**

**Constitution of Nomination and Remuneration Committee – Section 178(1)**

Section 178(1) read with Rule 6 of the Companies the Companies (Meetings of Board and its Powers) Rules, 2014 and Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the Board of Directors of following class of companies shall constitute Nomination and Remuneration Committee, consisting of three or more non-executive Directors out of which not less than one-half shall be independent directors:

- Every listed public company; and
- Every unlisted public company, whose:
- Paid up share capital is ten crore rupees or more; or
- Turnover of one hundred crore rupees or more; or
- Aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

### Identification of persons to become Director -Section 178(2)

The Nomination and Remuneration Committee shall identify persons who are qualified to become Directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall specify the manner for effective evaluation of performance of Board, its committees and individual Directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance.

### Eligibility Criteria for appointment of Director – Section 178(3)

The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the Directors, key managerial personnel and other employees.

### Remuneration to Directors and KMPs – Section 178(4)

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

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate Directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to Directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals:

Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.

### Chairman to attend General Meetings – Section 178(7)

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

## PROVISIONS OF THE SEBI (LODR) REGULATIONS, 2015

### Constitution of Nomination and Remuneration Committee – Regulation 19(1)

The board of directors shall constitute the nomination and remuneration committee as follows:

(a) the committee shall comprise of at least three directors ;

(b) all directors of the committee shall be non-executive directors; and

(c) at least two-thirds of the directors shall be independent directors.

### Chairperson – Regulation 19(2)

The Chairperson of the nomination and remuneration committee shall be an independent director:

Provided that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

### Quorum – Regulation 19(2A)

The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.

### Chairperson to be present at the Annual General Meeting – Regulation 19(3)

The Chairperson of the nomination and remuneration committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries.

### Number of Meetings: Regulation 19(3A)

The nomination and remuneration committee shall meet at least once in a year.

### Role of the nomination and remuneration committee – Regulation 19(4)

The role of the nomination and remuneration committee shall be as specified as in Part D of the Schedule II. Regulation 19(4), 20(4) and 21(4) is as under:

### Role of committee shall, *inter-alia*, include the following:

(1) formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the board of directors a policy relating to, the remuneration of the directors, key managerial personnel and other employees.

(1A) For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:

a. use the services of an external agencies, if required;

b. consider candidates from a wide range of backgrounds, having due regard to diversity; and

c. consider the time commitments of the candidates.

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(3) devising a policy on diversity of board of directors;

(4) identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the board of directors their appointment and removal.

(5) whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors.

(6) recommend to the board, all remuneration, in whatever form, payable to senior management.

## STAKEHOLDERS RELATIONSHIP COMMITTEE

**As per the Provisions of the Companies Act, 2013**

### Constitution of Stakeholders Relationship Committee – Section 178(5)

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

### Resolving the Grievances – Section 178(6)

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

### Chairman to attend General Meetings - Section 178(7)

The chairperson of the **Stakeholders Relationship Committee** or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

### Penalty for Contravention - Section 178(8)

In case of any contravention of the provisions of section 177 and this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees.

Provided that inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

*Explanation*.—The expression "senior management'' means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive Directors, including the functional heads.

## PROVISIONS OF THE SEBI (LODR) REGULATIONS, 2015

### Stakeholders Relationship Committee – Regulation 20

### Constitution of Stakeholders Relationship Committee – Regulation 20(1)

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

### Chairperson – Regulation 20(2)

The chairperson of this committee shall be a non-executive director.

### Composition – Regulation 20 (2A)

At least three directors, with at least one being an independent director, shall be members of the Committee and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Stakeholders Relationship Committee shall comprise of independent directors.

### Chairperson to be present at the Annual General Meetings – Regulation 20(3)

The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.

### Number of Meetings – Regulation 20(3A)

The stakeholders relationship committee shall meet at least once in a year.

The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II (Regulation 20) is as under:

(1) Resolving the grievances of the security holders of the listed entity including complaints related to transfer/transmission of shares, non-receipt of annual report, non-receipt of declared dividends, issue of new/duplicate certificates, general meetings etc.

(2) Review of measures taken for effective exercise of voting rights by shareholders.

(3) Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

(4) Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

## CORPORATE SOCIAL RESPONSIBILITY COMMITTEE (CSR COMMITTEE)

**As per the Provisions of the Companies Act, 2013**

### Constitution of CSR Committee – Section 135(1)

Every company having-

- net worth of rupees five hundred crore or more, or
- turnover of rupees one thousand crore or more, or
- a net profit of rupees five crore or more during the immediately preceding financial year

shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more Directors.

> Section 149(4) states that every listed public company shall have at least one-third of the total number of Directors as independent Directors and the Central Government may prescribe the minimum number of independent Directors in case of any class or classes of public companies.
>
> *Explanation.*– For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

**Rule 3** of the Companies (Corporate Social Responsibility Policy) Rules, 2014 provides that every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (I) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance .with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.

## CSR Committee - Rule 5 of the Companies (Corporate Social Responsibility Policy) Rules, 2014

(1) The companies mentioned in the rule 3 shall constitute CSR Committee as under.-

(i) a company covered under subsection (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;

(ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

(iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

(2) The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR Policy, which shall include the following, namely:-

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;

(d) monitoring and reporting mechanism for the projects or programmes; and

(e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

## Disclosure of Composition of CSR Committee – Section 135(2)

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

## CSR Policy – Section 135(3)

The Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

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

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

## Exemption from constituting CSR Committee – Section 135(9)

Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

## RISK MANAGEMENT COMMITTEE

**As per the Provisions of the SEBI (LODR) Regulations, 2015**

### Constitution of Risk Management Committee – Regulation 21(1)

(1) The board of directors shall constitute a Risk Management Committee.

### Number of Members – Regulation 21(2)

The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.

### Chairperson of Risk Management Committee – Regulation 21(3)

The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

### Number of Meetings – Regulation 21(3A)

The risk management committee shall meet at least **twice** in a year.

### Quorum – Regulation 21(3B)

The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is higher, including at least one member of the board of directors in attendance.

### Gap between two meetings – Regulation 21(3C)

The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than two hundred and ten days shall elapse between any two consecutive meetings.

### Board to decide the Role and Responsibility – Regulation 21(4)

The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security:

Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in **Part D of Schedule II.**

### Applicability – Regulation 21(5)

The provisions of this regulation shall be applicable to:

i. the top 1000 listed entities; and,

ii. a 'high value debt listed entity'.

### Power of Risk Management Committee – Regulation 21(6)

The Risk Management Committee shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Role of Risk Management Committee specified in Schedule II is as under:

**PART D of SCHEDULE II [SEBI (LODR) Regulations, 2015]**

**ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE)**

**C. Risk Management Committee**

The role of the committee shall, *inter alia,* include the following:

(1) To formulate a detailed risk management policy which shall include:

(a) A framework for identification of internal and external risks specifically faced by the listed entity, in particular including financial, operational, sectoral, sustainability (particularly, ESG related risks), information, cyber security risks or any other risk as may be determined by the Committee.

(b) Measures for risk mitigation including systems and processes for internal control of identified risks.

(c) Business continuity plan.

(2) To ensure that appropriate methodology, processes and systems are in place to monitor and evaluate risks associated with the business of the Company;

(3) To monitor and oversee implementation of the risk management policy, including evaluating the adequacy of risk management systems;

(4) To periodically review the risk management policy, at least once in two years, including by considering the changing industry dynamics and evolving complexity;

(5) To keep the board of directors informed about the nature and content of its discussions, recommendations and actions to be taken;

(6) The appointment, removal and terms of remuneration of the Chief Risk Officer (if any) shall be subject to review by the Risk Management Committee.

The Risk Management Committee shall coordinate its activities with other committees, in instances where there is any overlap with activities of such committees, as per the framework laid down by the board of directors.

## NON-MANDATORY COMMITTEES

In addition to the Committees of the Board mandated by the Companies Act, 2013 or SEBI (LODR) Regulations, 2015, Companies may also constitute other Committees to oversee a specific objective or project. The nomenclature, composition and role of such Committees will vary, depending upon the specific objectives and nature of business of the company. A few examples of such Committees prevalent in the corporate sector in India and abroad are given below:

| ***Sl. No*** | ***Non-Mandatory Committees of Companies (Based on Annual Reports of 2021-2022)*** |
|---|---|
| **1** | **ESG Committee / ESG and Diversity Equity Inclusion Committee** |
| | **HCL Technologies**<br>1. In alignment to the sustainable strategy of the company, which is based on the concepts of ACT, PACT and IMPACT, the Board of the company committed to focus on ESG and recently reconstituted the Board's Diversity Committee (created in April 2016) to become the ESG and Diversity Equity Inclusion Committee. |

<table>
<tr><th>Sl. No</th><th>Non-Mandatory Committees of Companies<br>(Based on Annual Reports of 2021-2022)</th></tr>
<tr><td></td><td>2. To provide thrust on sustainability, the company has also hired a Global Head of Sustainability during the FY 2021-22.<br>3. Using the lens of risk and responsibility, HCL has defined 12 material topics and created a set of 100 performance metrics aligned with global ESG standards and guidelines to monitor the progress in these 12 dimensions.<br>The 12 material topics are:<br><table><tr><td>E</td><td>1. Climate Change<br>2. Eco Efficiency</td></tr><tr><td>S</td><td>3. Human Capital<br>4. Local Hiring<br>5. Diversity and Inclusion<br>6. Talent Attraction and Retention<br>7. Work Environment<br>8. Citizenship</td></tr><tr><td>G</td><td>9. IT Security, Data Protection, and System Availability<br>10.Sustainable Impact on Clients<br>11.Sustainable Procurement<br>12. Governance and Ethics</td></tr></table></td></tr>
<tr><td></td><td>Bharati Airtel Limited<br>The company is deeply conscious of its responsibility to the environment and its obligation to the society at large. Keeping these vital points in view, the company has constituted a Board appointed ESG Committee to sharpen the focus towards its Environmental and Sustainability agenda.</td></tr>
<tr><td></td><td>Infosys<br>The ESG Committee was constituted by the Board with effect from April 14, 2021, to discharge its oversight responsibility on matters related to organization-wide ESG initiatives, priorities, and leading ESG practices. The ESG Committee reports to the Board and meets every quarter to review progress on the ESG ambitions articulated in our ESG Vision 2030.</td></tr>
<tr><td>2</td><td>Safety / Environment, Health and Safety Committee</td></tr>
<tr><td></td><td>Asian Paints<br>Three safety committees have been constituted by the company at different levels, i.e., Departments / Section Safety Committee, Apex Safety Committee and Safety Council. The mentioned committees promote workers' and management participation to ensure safety at work.</td></tr>
</table>

| Sl. No | *Non-Mandatory Committees of Companies (Based on Annual Reports of 2021-2022)* |
|---|---|
| | **L&T (Larsen & Toubro)**<br>1. The company gives utmost importance to safety and well-being of its workmen engaged in all the contracts as it has the culture of 'Mission Zero Harm' goal.<br>2. The company has constituted Safety Committee in all its manufacturing locations and project sites comprising of senior management representatives, as well as union members. These committees facilitate specific safety objectives, in line with the Company's 'Mission Zero Harm' goal.<br>3. In the collective bargaining agreement, specific clauses related to health and safety are incorporated as well. In addition, workers have a Safety Ambassador at sites who helps them to raise safety issues directly and in turn, the Ambassador communicates good health and safety practices to workers. |
| | **Britannia Industries Limited**<br>Developing and maintaining "Zero Accident Culture" is at the core of the company's EHS Policy. Various safety initiatives and programs are implemented to achieve this objective. |
| | **Bharati Airtel Limited**<br>The safety charter of Bharati Airtel Limited, 'Airtel Suraksha Programme' is designed to institutionalise workplace safety standards and protocols for all our employees, contractors and visitors. Further, the company has established health and safety committees at central and local level for all major circle offices headed by the senior management with representation from employees and workers. |
| | **Tata Motors Limited**<br>The Safety, Health and Sustainability Committee reviews the Company's performance on SHS aspects, including ESG and oversees the implementation of relevant policies and strategies.<br>The Safety, Health and Sustainability (SHS) Committee of Board is an apex review body, which reviews performances once in four months, followed by BU Head led SHE Council which reviews every month. |
| | **Divi's Laboratories Limited**<br>The company has Safety Committee. |
| **3** | **Information Security Steering Committee** |
| | **Bharati Airtel Limited**<br>The Information Security Steering Committee at Airtel establishes a Security Incidence Response Team, with representation from different businesses, to respond to any security incident. In case employees observe any suspicious security activity, they are also required to report at SIRT@airtel.com. |
| **4** | **Strategic Investment Committee** |
| | **Mahindra & Mahindra**<br>Pursuant to Regulation 25(7) of the Listing Regulations, the Company imparted various familiarization programmes for its Directors including review of Investments of the Company by Strategic Investment Committee. |

| Sl. No | Non-Mandatory Committees of Companies (Based on Annual Reports of 2021-2022) |
|---|---|
| 5. | **Ethics Committee** |
| | **Titan Company Limited**<br>The Ethics Committee and the Committee on Prevention of Sexual Harassment (POSH) work closely with the Board Ethics Committee and obtains inputs and feedback for improvement from time to time. |
| 6 | **Other Committees** |
| | **Power Grid Corporation**<br>The company has the following committees- Committee of Directors for New Businesses, Committee of Directors on compliance to Government of India (GoI) Directives on procurement and national missions, Committee on Award of Contracts etc. |

Thus, on observing the scenario of various non-standing committees of the companies discussed above, it may be opined that corporate sector is leaving no stone unturned in ensuring holistic corporate governance in the organisations. Along with mandatory committees, the presence of various non-mandatory committees and their crucial roles in strengthening the essential dimensions of a business organisation, such as ESG, safety, prevention of sexual harassments etc. is a metaphor of espousing the tenets of best governance practices by the corporate sector.

## CONCLUSION

It is the board committees that ensures enforcement of corporate governance in the companies. A robust board of a company can contribute substantially in fostering best governance practices by ensuring compliance to various pertinent laws and regulations, resource management, accomplishment of organisational goals, holistic development of the human capital, prevent harassment of the workforce, embracing of ESG initiatives and so on and so forth. In view of this, various board committees both mandatory and non-mandatory holds massive importance.

However, the size of the board committees and its composition also matters a lot in ensuring corporate governance that is the board members need to possess requisite expertise and experience in dealing with the matters of the concerned board committee and sufficient number of board members should be there in the committee to steer the process efficiently.

Stakeholders both external as well as internal look up to the boards and their committees when it comes to safeguarding of their interests, sustainability and growth of a company, prevention of malpractices, betterment of the workforce, enforcement of safety measures at work stations etc. In view of this, board committees' needs to discharge their professional obligations impeccably.

### LESSON ROUND-UP

- A Board Committee is a small working group identified by the Board, consisting of Board members for the purpose of supporting the Board's work.
- To enable better and more focused attention on the affairs of the Corporation, the board delegates particular matters to committees of the board set up for the purpose.
- Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required.

- Committees prepare the ground work for decision-making and report at the subsequent Board meeting.
- Audit committee is one of the main pillars of the corporate governance mechanism in any company. The committee is charged with the principal oversight of financial reporting and disclosures and enhance the confidence in the integrity of the company's financial reporting and disclosure and aims to the internal control processes and procedures and the risk management systems.
- Greater specialization and intricacies of modern board work is one of the reasons for increased use of board committees.
- **Mandatory committees** under Companies Act 2013 are Audit Committee, Nomination and Remuneration Committee, stakeholders Relationship committee, CSR Committee.
- **Nomination and Remuneration Committee:** Nomination and Remuneration Committee as the name suggests is constituted by a company is to determine the qualification and remuneration packages of executive directors/ chief executive officers.
- **Risk Management Committee:** A business is exposed to various kind of risk such as strategic risk, data security risk, fiduciary risk, credit risk, liquidity risk, reputational risk, environmental risk, competition risk, fraud risk, technological risk etc. A risk management Committee's role is to assist the Board in establishing risk management policy, overseeing and monitoring its implementation.
- **Other committees**: Corporate Governance Committee, Compliance Committee, Risk Management Committee, Ethics Committee, Strategies Committee, Capital Expenditure (Capex) Committee, etc.
- **Corporate Governance Committee:** A company may constitute this committee to develop and recommend the board a set of corporate governance guidelines applicable to the company, implement policies and processes relating to corporate governance principles, to review, periodically, the corporate governance guidelines of the company.
- **Corporate Compliance Committee:** The primary objective of the Compliance Committee is to review, oversee, and monitor the Company's compliance with applicable legal and regulatory requirements, its policies, programs, and procedures to ensure compliance with relevant laws, its Code of Conduct, and other relevant standards.

## GLOSSARY

**Audit Committee:** An audit committee is a group of selected members of a company's board of directors whose responsibilities include helping auditors remain independent of management. Most audit committees are made up of three to five or sometimes as many as seven directors who are not a part of company management.

**Corporate Social Responsibility Committee:** The Corporate Social Responsibility Committee is appointed by the Board of Directors to promote a culture that emphasizes and sets high standards for corporate social responsibility and reviews corporate performance against those standards.

**Independent Director:** An independent director (also sometimes known as an outside director) is a director (member) of a board of directors who does not have a material or pecuniary relationship with company or related persons, except sitting fees.

**Asset-Liability Committee (ALCO):** An asset-liability committee (ALCO), also known as surplus management, is a supervisory group that coordinates the management of assets and liabilities with a goal of earning adequate returns. By managing a company's assets and liabilities, executives are able to influence net earnings, which may translate into increased stock prices.

## TEST YOURSELF

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)*

1. As a Company Secretary, advise your client company, about the need and advantages of Committee Management?
2. Explain in detail the constitution of nomination and remuneration committee?
3. Whether the constitution of Risk Management Committee is mandatory? Explain the importance of constitution of Risk Management Committee?
4. Discuss in detail about Audit Committee.
5. What is the role of the Chairman of the (i) Audit Committee; and (ii) Board of Directors?

## LIST OF FURTHER READINGS

- Board Committees Handbook by Sue Lawrence
- Effective Guide to Corporate Board Committees
- Corporate Governance in India by Jayati Sarkar and Subrata Sarkar
- Corporate Boards, Committees and Policies under Companies Act

## OTHER REFERENCES

- https://www.hindalco.com/upload/pdf/hindalco-integrated-annual-report-2021-22.pdf
- https://www.bharatpetroleum.in//pdf/OurFinancial/BPCL%20Annual%20Report_Final_05-08-22.pdf
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# Building Better Boards

Lesson 6

***This Lesson has been merged with***
***Lesson 3***
***Board Effectiveness / Building Better Boards***

# Concept of Governance in Professional Managed Company & Promoters Driven Company

Lesson 7

## KEY CONCEPTS

■ Family Managed Business ■ Professionally Managed Business ■ Independent Directors and Women Directors ■ Corporate Social Responsibility ■ Audit Committee

## Learning Objectives

**To understand:**

- Concept of family and professionally managed businesses.
- Governance structure of family and professionally managed businesses.

## Lesson Outline

- Introduction
- Learnings from studies and surveys
- Family Businesses in Germany and Japan which are known for its longevity
- Governance of Promoter Driven vs Professionally Managed Companies
- Case Studies- Metamorphosis of Promoters to Professionally Driven Companies
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

India enjoys a rich and glorious history of family-owned business. A family business may be company, partnership firm, HUF or any other form of business owned, controlled and operated by members of a family. In India the majority of businesses are controlled by families.

Family businesses are the major form of enterprise in India and across the world, viz. Corporation houses like Aditya Birla Group, Bajaj Auto, Eicher Motors, Emami, GMR Infrastructure, Godrej Group, GVK Power & Infrastrcture, HCL Technologies, Hero Moto Corp., Marico, Reliance Industries, Tata Group, are some of the family owned companies in India. Arcelor Mittal, Berskire Hathway, BMW, Cargill, Comcast, Continental, Ford Motor, Hyundai, Koch Industries, LG, Maersk, News Corporations, Peugeot, Roche, Samsung, Volkswagen, Walmart, are companies owned / controlled by family. Several studies indicate that family business carry the weight of economic wealth creation in all economies.

Most family businesses do not survive beyond two or three generations. One of the main reasons for the short life span of family businesses is due to the lack of governance mechanisms in the family. With better family governance, business development reaches next level and ensures continuity of the business across generations. Strong governance measures in a family owned business can effectively act as a prevention mechanism against a lot of tensions that may arise between family members at a later stage. It is also imperative for family businesses to adopt effective corporate governance measures in order to give tough competition to other players in the global market.

The most glaring characteristic of a family owned business is that all the key managerial positions in such businesses are held by family members. Non-family members may of course be employees of the company, but the decision-making power usually vests with the members of the family. Professionalisation of a family business is of supreme importance for its long-term sustainability. In absence of professionalism, a family business may get frequently weighed down with conflicts due to lack of clarity and systematic work processes, role confusion and informal organisation structure. Poor accountability and improper operations control severely interrupts efficiency of business. The business also fails to attract and retain good external talent.

Family businesses are generally operated with the ethos of “Family First”. Business decisions are taken while keeping the family’s wellbeing in focus. With changing preferences of the next-generation successors, it is possible to balance the family’s philosophy, culture and personal needs with business performance, profit and transparency. However, a visible change can be observed in the family businesses in India. Old family business houses are changing to “professionally managed” companies. The younger successors have a broad vision and global aspirations. They prefer working with modern management techniques, build competent teams, and create transparent systems and processes. Instead of getting stalled in family conflicts, disputes, and non-productive practices, the younger generation prefers to create a professional work culture.

Further, family values also get ingrained in organisation values. In an organisation, the values are decided by a group of people running a firm over a period of time but in a family business, the family value also gets transferred to the organisation. Further the way a family business is managed is very relevant from a country perspective and is based on that respective country’s culture and values.

Certain provisions of Corporate Governance in a Family Owned Companies have been incorporated in the Companies Act, 2013 such as:

i) **Independent Directors and Women Directors** : To build up the transparency and accountability of the Board of Directors, the Act now requires at least 1/3rd of the total directors of a listed company to be Independent Directors and have no material or pecuniary relationship with the company or related persons. Unlisted Public companies with paid up share capital of Rs. 10 Crores or more; turnover of Rs. 100 crore or more; aggregate outstanding loans, debentures, and deposits, of Rs. 50 crore or more are statutorily required to have at least 2 directors as Independent Directors.

To ensure diversity on the board, all listed companies and non-listed public companies having paid up share capital more than Rs.100 Crores or more and turn over exceeding Rs.300 Crores or more are required to have atleast one woman director on the board.

ii) **Corporate Social Responsibility** : Every company having net worth of Rs. 500 Crores or more, turnover exceeding Rs. 1000 Crores or net profit of more than Rs. 5 Crore is required to constitute a Corporate Social Responsibility Committee under Section 135 of the Companies Act, 2013 constituting 3 or more directors with at least 1 Independent Director to formulate policies and recommend activities that the company may undertake for promotion of education, gender equality, health, poverty eradication, environment, employment etc. Again, this measure puts responsibility on the company for the social wellbeing not just of its workforce, but also makes it publicly accountable.

iii) **Audit Committee** : The Act provides for the setting up of an Audit Committee comprising of at least 3 directors by all listed companies, majority of which have to be independent directors. The members of such a committee have to be persons who can read and understand financial statements and the task entrusted to such a committee is recommending remuneration and appointments of auditors and reviewing their independence.

iv) **Nomination and Remuneration Committee** : The Nomination and Remuneration committee shall comprise of 3 or more non-executive directors out of which at least half shall be Independent Directors. Such committee shall identify persons qualified to become directors of the company and make recommendations to the board of directors regarding their appointment and approval.

v) **Serious Fraud Investigation Office** : Section 211 of the Act provides for the establishment of a Serious Fraud Investigation Office to look into the affairs of the company and investigate incidences of fraud upon receipt of report of the Registrar or inspector or generally in the public interest or request from any Department of Central or State Government.

***Some Unique challenges/ Governance issues of family businesses:***

i) Managing the diverse opinions of family members in the business, solving internal issues and disputes, etc., is a challenge.

ii) Investors – both shareholders and creditors – may look with distrust on family-controlled companies, because of the risk that the controlling family may abuse the rights of other shareholders. So investors shall scrutinize such companies with care before taking the plunge and investing.

iii) There are also challenges of multiple stakeholders for the leadership position. Very often, there is lack of communication between the incumbent and incoming generations. The incumbents do not know how to handle the succession challenge, while the incoming generation does not know how to raise it. The families should choose their most competent member(s) to manage the business, disregarding age, gender or bloodline. However, post-succession role of the incumbent is not often planned leading to complications.

iv) Hiring external staff which may perceive that career advancement, freedom and decision-making are solely the purview of family.

v) Although ownership and management succession are the key concerns of a large number of business families, they do not devote enough attention to the process involved. Succession dilemma is also closely related to the family policy on entry of new generation, retirement of incumbents and mechanisms for resolving conflicts. Entry of new members from the family depends also on the ‘space’ available in the organization, which in turn depends on the success of the business. The younger generation may face difficulties in proving themselves to the former generation.

- Change in mind-set: Differing views between the older generation and the newer generation.
- Lack of Competitiveness: Another source of challenge is in the nature of competitiveness. For instance, when the Indian economy was opened up in 1991, most Indian companies, of which a huge majority were family owned, were put under competitive pressures for the first time. Many firms, particularly those that grew under government protection did not have a strategy to respond and took it as a threat rather than opportunity for a variety of reasons. This created huge tensions in business families, sometimes leading to division of assets.

## LEARNINGS FROM STUDIES AND SURVEYS

To comprehend the corporate governance scenario prevailing in family businesses across the globe, research surveys conducted by various renowned organisations have been studied. The coverage and outcome of the surveys are as under:

**i) 2022 Family Business Benchmark by KPMG**

KPMG conducted a survey titled- **"2022 Family Business Benchmark"** comprising of 253,552 Family business entities from eleven metropolitan regions in Germany to comprehend their governance scenario. The study revealed that the family businesses with regard to their financial position, cash flow and financial performance as well as their management and governance structures. On other parameters, the following facts were revealed:

a) Family-owned business strategy aims for longevity, independence and security: They hold higher proportions of cash than non-family businesses, have comparatively high equity ratios, and own a large portion of their fixed assets themselves. They are also keener to invest than non-family businesses.

b) Family-owned businesses generate higher turnover and are more profitable than non-family-owned businesses on average, as measured by their capital.

c) In 74 percent of the family businesses studied, the shares are concentrated in one shareholder or a family of shareholders. 78 percent of family businesses are run by at least one family shareholder.

d) Family businesses are more often run by women (8.7 percent) than non-family businesses (7.7 percent). Non-family businesses, on the other hand, have a higher share of mixed management (approx. 28 percent versus 20 percent in family businesses).

e) All metropolitan areas have a very high proportion of family-owned businesses (approximately 90 percent) that provide up to 80 percent of jobs.

**ii) The 2021 EY and University of St. Gallen Family Business Index**

The 2021 EY and University of St. Gallen Family Business Index which is based on a global ranking of 500 family-owned businesses according to their revenues reveals the largest family-owned firms are vital to the health of the global economy.

The largest 500 family businesses generate US$7.28 trillion in revenue and employ 24.1 million people. Together they constitute the third largest economic contribution in the world by revenue. In some cases, generations and generations of family members have played a part in guiding the business over the course of decades and even centuries.

The oldest family business on the Index, Japan's Takenaka Corporation, has been in business for more than 400 years. Meanwhile, more than half of the German businesses on the Index are over 100 years old.

The 500 largest family businesses have 4,418 board seats in total with 1,041 held by family members. Of those, 17% are female and 83% male. The share of companies with female family members on boards is 31% and is on par with global industry benchmarks. The average family business board member is 61 years old, but the next generation is on its way. One in five businesses on the Index have a next generation member (aged 40 or younger) on the board or in the management team. This represents a major opportunity for boards to diversify and extend their talent pool.

The next generation can bring professional expertise, valuable technology and digital capability, and insights into the current generation of consumers and employees. Generational attitudes differ on sustainability, for example. Gen Z and Millennials are more likely than older generations to favour sustainable lifestyles and share information about sustainable products with peers. A good proportion of the family businesses on the Index are reporting formal ESG metrics. 53% (264) reported at least once on the GRI Sustainability Disclosure Database.

Fifty-one percent of those companies come from EMEIA (Europe, Middle East, India and Africa), followed by 30% from the Americas and 19% from Asia-Pacific. The US is the country with the highest number (42) of family companies that contributed to the GRI database.

Privately owned family enterprises using ESG metrics to manage but not report on their businesses are missing an opportunity to attract talent, win customers and grow future revenues.

**iii) PwC's Family Business Survey 2023**

PwC's Family Business Survey 2023. Trust has been—and remains—a vital competitive advantage that sets family businesses apart from other companies. This year's survey of 2,043 family business owners in 82 territories uses a model developed by Sandra J. Sucher, a Harvard Business School professor of management and the author, with Shalene Gupta, of *The Power of Trust*, to assess whether family businesses are doing the right things in today's world to build trust.

The model identifies four pillars of trust: **competence** (is the company good at what it does?), **motive** (whose interests is the company serving?), **means** (is the company using fair means to achieve its goals?) and **impact** (what is the tangible impact the company has, as opposed to the impact it claims to have?). The way the respondents answered questions based on these pillars reveal a disconnect between traditional views about trust and their impact on how family businesses operate today. They also highlight where and how family businesses will need to transform to ensure their legacy.

The survey revealed that the notion of how to build trust in business is changing—fundamentally and rapidly. For everyone—including customers and employees—issues like environmental, social and governance (ESG) and diversity, equity and inclusion (DEI) have become litmus tests for trustworthiness. Due to powerful demographic shifts, most of today's customers and employees hail from generations—millennials and gen Z—whose values differ from those of baby boomers. Family businesses, which for years have relied on a trust premium, built up over generations, have been slow to get the message.

The survey revealed many businesses are not taking actions that is required to build trust.

59% do not communicate their purpose externally

84% do not take public stance on important issues

85% do not have clear and communicated ESG strategy

79% do not have purpose statement/commitment that advances DEI

Further PWC's *'Global NextGen Survey 2022'* of family business leaders-in-waiting showed that they are following their parents' lead and prioritising growth over ESG as a means to safeguard their legacy.

**iv) India-State of family Business Report: Centre for Family Business and entrepreneurship, S.P.Jain Institute of Management and Research.**

In the mentioned study, 350 family businesses were surveyed across 50 cities pan-India, out of which 35 were large enterprises; 70 medium enterprises; 140 small enterprises and 105 micro enterprises.

The study reveals that the top family challenges faced include: Lack of a clear successor/succession plan; lack of clearly defined and/or written roles and responsibilities for all family managers, including women; lack of a conflict resolution mechanism within the family business; lack of a retirement age for the senior generation and a roadmap for the next generation's induction into a leadership role; and lack of a family constitution.

The study further reveals that reasons for not "letting go" to the next-gen include lack of interest of the next gen; lack of capability of next-gen; family conflicts and no unanimously accepted leader. The most important reason cited for not letting go and handing over the business to next-gen is Lack of interest of the next-gen.

While these family businesses are governed by clear values and a code of conduct, there seems to be lesser attention paid to critical aspects such as family governance and succession planning. This is manifested in succession timing being not clearly defined despite there being an intent to hand over the business to the next-gen member, and a reluctance to let go due to the perceived inability of the next generation or their lack of interest in the business.

**v) India Business Survey Report 2022 by Deloitte-Survey specific to family-owned businesses-Highlights**

**a) To strive for effective governance structure**

Family-owned businesses are required to strive for effective governance structures within the family and ensure greater harmony amongst family members about the values, vision, and purpose of the business. As different generations get involved in it, a well designed governance structure helps settle conflicts and create a healthy equilibrium between tradition and innovation.

**b) To establish effective conflict Resolution Mechanism**

More than half of the survey respondents enumerated that a formal family constitution including will, entry and exit provisions, and conflict resolution mechanisms were of utmost importance. Such a constitution helped promote open and transparent communication and settle conflicts. The second priority was to hold regular family meetings to align with the culture, values, vision, and direction of the family business. The regular cadence helped build communication skills, increased transparency, and ensured greater harmony amongst family members.

**c) Succession plan in terms of ownership and management**

It is an essential part of family governance, as its absence can lead to power struggles and conflicts, which are detrimental to the performance of the business. Succession planning involves engaging the next generation of leaders in business decision making and setting performance expectations. This must be combined with leadership development programmes that can improve the chosen leader's success chances and ensure business continuity.

**d) Many Businesses are being managed by Non-Family Leaders**

More than half of the respondents revealed that their business is being managed by a non-family leader, even though the ownership was with the family (including the next generation in the family).

This displayed the confidence of appointing an outsider as a leader and the realisation that it is the need of the hour, as the business expanded. For a few of these, a non-family leader acted as a 'bridge leader' who helped develop the business and prepare young family members for leadership roles. On the other hand, one-fifth respondents preferred handing over both ownership and management to the next generation. A very small proportion of the respondents from family-run businesses agreed to transferring ownership to a non-family member.

**e) Over two-third respondents have a formal leadership development programme for the next generation**

Over two-third respondents revealed that their organisation has a formal leadership development programme for the next generation (Chart 13). These programmes helped families pass on their rich knowledge and heritage to the next generation and motivated them to learn about business. The older generation shared their experiences with the next generation to develop the skills for managing a family business. Some respondents revealed that no formal programme existed, but the next generation was continuously exposed to different business leadership aspects, or they were considering developing one at the earliest

**f) Independent Directors on the Board**

Along with family governance, we wanted to understand if the governance of the Board was unbiased. Most family businesses tend to rely on internal experiences and judgments, but the presence of an external professional helps explore the benefits of having an outside influence with clearly defined roles on the Board. Most respondents revealed that they have external professionals as part of the Board.

One-fifth respondents indicated that they did not have external professionals but hired advisors who supported the Board members consisting of family members. These advisors helped promote effective business governance, succession planning, mentor the next generation, resolve conflicts and unexpected family issues, and make strategic decisions. For more details, please refer the following link:

*https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/in-India-Business-Survey-noexp.pdf*

## FAMILY BUSINESSES IN GERMANY AND JAPAN WHICH ARE KNOWN FOR ITS LONGEVITY

**A) Family businesses in Germany**

The oldest family businesses – that is, those owned for the longest period of time by one or more affiliated families and continually in operation – are The Coatinc Company Holding GmbH in Siegen that was founded in 1502, William Prym Holding GmbH in Stolberg (1530) and Freiherr von Poschinger Glasmanufaktur e. K. in Frauenau (1568). Nine of the oldest German family businesses have been in family hands for more than 400 years, according to extensive research conducted by the Foundation for Family Businesses.

**B) Japanese Secret of Family business longevity**

The world's oldest family business, the Nishiyama Onsen Keiunkan, is a hot springs hotel founded in 705 AD and has been passed down through the family for 52 generations (including adopted heirs) for 1,300 years. Another of the oldest companies in the world is Sudo Honke, the oldest sake brewery in Japan. It was founded in 1141 and run by the 55th generation of the Sudo family.

## THE CONCEPT OF 'IE' IN JAPANESE FAMILY BUSINESSES

Translating to family or home, 'ie' represents a group of people who share a home and an economic and social life. A continuing unit of people, a group, a clan. In the case of the Japanese culture the 'ie' is more corporation than family, in that the business comes first, and the primary objective above all, is to survive and prosper. The 'ie' needs to last forever, because if it doesn't, the family doesn't either.

The head of the 'ie' chooses their successor, at times overlooking their own children if they deem them less capable – it's about the survival of the tribe at all costs, no questions asked. The adoptee takes on the family name and once succession occurs will become the head of the 'ie' with full control. All other family members have been conditioned to support the head for the greater good whether they are bloodline, or not.

This strategy is being used by huge companies such as Suzuki. The current CEO Osamu Suzuki, is the fourth adopted son to take this role. Suzuki overlooked his own biological child and named his successor as Hirotaka Ono. Other famous companies using this approach include Canon, Kikkoman and Toyota.

## GOVERNANCE OF PROMOTER DRIVEN VS PROFESSIONALLY MANAGED COMPANIES

It is well understood from surveys and examples that the sustenance of family businesses is not possible unless it follows good governance practices. In this context to comprehend the scenario of governance structure in professionally and promoters driven companies, a sample of six companies affiliated to Telecommunication, Automobile, FMCG, Hotels, Paperboards, Packaging, Agri-Business, Information Technology and Construction sectors have been considered to comprehend their governance structure on the following parameters:

1. Chairman's Independence
2. Separation of Ownership and management
3. Promoters Holding
4. Succession planning
5. Business Continuity Plans
6. Sustainability Focused Approach
7. Conflict Management

The companies randomly selected for the study are- Bharti Airtel, Bajaj Auto, Tata Motors, ITC , HDFC and L&T. From the companies selected, Bharti Airtel, Bajaj Auto and Tata Motors are Family Business organisations and ITC, HDFC and L&T are Professionally Management organisations.

## GOVERNANCE STRUCTURE

| ***Parameters for comparison*** | ***Family Business*** | | | ***Professionally Managed Business*** | | |
|---|---|---|---|---|---|---|
| | ***Bharti Airtel*** | ***Bajaj Auto*** | ***Tata Motors*** | ***ITC*** | ***HDFC*** | ***L&T*** |
| Chairman's Independence | Chairman is Executive Director (Non-promoter) | Chairman is non-executive (Promoter) | Chairman is non-executive (Non-promoter) | Chairman is Executive Director | Part Time Chairman and Independent Director | Chairman is non-executive |
| Separation of role of Chairman and Managing Director/ CEO | Yes, the role is separate. | Yes, the role is separate | - | No, the role is not separate. | Yes, the role is separate | Yes, the role is separate |

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| Promoter holdings (%) | 55.02% | 54.98% | 45.81% | NIL | 25.63% | NIL |
| Public Holdings (%) | 44.93% | 45.02% | 54.19% | 100% | 74.37% | 100% |
| Age of the Enterprise (Date of Incorporation) | 07/07/1995 | 30/04/2007 | 01/09/1945 | 24/08/1910 | 30/08/1994 | 07/02/1946 |
| Succession planning | ● The Company has a robust succession planning framework in place for the Board and top critical positions including its Senior Management.<br>● The Board of Directors, HR & Nomination Committee and Apex Talent Council are entrusted with overseeing and monitoring talent management and succession planning initiatives at the Company.<br>91% Succession rate for middle and top level management. | ● Pursuant to regulation 17(4) of the SEBI Listing Regulations, the framework of succession planning for the Board and senior management is placed before the Board for its review. During the year under review, the Board of the Company satisfied itself that plans are in place for orderly succession of such appointments. | ● The Nomination and Remuneration Committee works with the Board on the leadership succession plan to ensure orderly succession in appointments to the Board and in the senior management.<br>● The Company strives to maintain an appropriate balance of skills and experience, within the organization and the Board, in an endeavor to introduce new perspectives, whilst maintaining experience and continuity. | ● Company's Succession Planning processes have contributed to helping employees realise their potential, craft their careers while recognising their strengths and areas of development and ensuring a sound workforce planning system. | ● The Nomination and Remuneration Committee ('NRC') and the Board of Directors ("the Board"), review succession planning and transitions at the Board and Senior Management levels.<br>● The Board composition and the desired skill sets/ areas of expertise at the Board level are continuously reviewed and vacancies, if any, are reviewed in advance through a systematic due diligence process. | ● The organisation has a robust process of building its talent pipeline which helps to feed in succession planning.<br>● The process starts with the Development Centre (DC) where high performing employees get assessed on defined competencies at four different levels in the organisation.<br>● The process identifies competency gaps which are developed with specific |

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| | | | | | ● Succession planning at Senior Management levels, including business and assurance functions, is continuously reviewed to ensure continuity and depth of leadership at two levels below the Managing Director.<br>● Successors are identified prior to the Senior Management positions falling vacant, to ensure a smooth and seamless transition. | Individual Development Plans (IDP's) and competency programs organised for these levels. This helps the organisation to have a pool of leaders at every level who are "Competency Ready" |
| Business Continuity Plans | ● Yes, Airtel does have business continuity and disaster management plan in place.<br>● Airtel has proactively implemented business continuity plan and effectively enabled work from home facility for all the employees by providing necessary IT infrastructure and network security. | ● During the year under review, a revised risk management policy/ framework was adopted by the Board. This framework, inter alia, includes Business Continuity Plan. | - | ● Yes, ITC has a Business Continuity and Disaster Management Plan designed to address the threat of disruptions to business activities or processes. | ● The Internal Audit Department independently reviews as well as evaluates the quality and comprehensiveness of Bank's disaster recovery and business continuity plans and also carries out management self-assessment of adequacy of the Bank's internal financial | ● The Company has established emergency preparedness plans at each project site to deal with the emergency situations.<br>● It also provides response procedures for preventing and mitigating the hazard & risk and environmental impacts |

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| | ● Regulatory team along with legal and networks keeps a close watch on compliances with regulations and laws and ensures the operations of the Company are within the prescribed framework, and have also implemented business continuity plan wherever required. | | | | controls and operating effectiveness of such controls in terms of Sarbanes Oxley (SOX) Act and Companies Act, 2013. | arising from emergency situations including the provision for first aid.<br>● In the event of any occurrence of an emergency, the same shall be investigated and appropriate preventive measures would be initiated to avoid recurrence in future.<br>● Relevant information and training related to emergency preparedness and response shall be provided to the interested parties.<br>● The duties and responsibilities of all the workers are being communicated periodically. |
| Board Level ESG/ Sustainability Committee | ● In order to drive its long-term sustainability vision, Airtel has Board ESG Committee which provides strategic guidance and decision making on ESG and | - | ● The Safety, Health and Sustainability (SHS) Committee reviews the Company's performance on SHS aspects, | ● The company has CSR and Sustainability Committee.<br>● The CSR and Sustainability Committee of the Board, reviews | ● The CSR and ESG Committee of the Board oversees the Bank's sustainability and climate change initiatives. | ● CSR and Sustainability Committee is responsible for sustainability related issues |

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| | is responsible for review and approval of ESG strategy, goals and targets. | | including ESG and oversees the implementation of relevant policies and strategies | and oversees implementation of the Sustainability Policies of the Company on an annual basis.<br>● The role of the CSR Committee of the Board, under the nomenclature 'CSR and Sustainability Committee', is inter alia, to review, monitor and provide strategic direction to the Company's CSR and sustainability practices towards fulfilling its triple bottom line objectives. | ● The Board level committee is guided by the ESG apex committee. The ESG apex committee that comprises of key representatives from the senior management, oversees sustainability reporting initiatives, climate change disclosures, internal projects to ensure reduction of our overall emissions and tracks its progress on ESG, to achieve industry leadership.<br>● This Committee is further supported by ESG action sub-committees which includes Product Responsibility Sub-committee, which looks at ESG risks (including climate risks) in the existing portfolio and ESG linked opportunities; the Environment Sub-committee which oversees the environmental impact from our operations | |

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| | | | | | and Social and Governance Sub-committee which works on workplace policies and governance initiatives.<br><br>The Group Head for Corporate Social Responsibility (CSR) & ESG updates the CSR & ESG committee of the Board, every quarter on the Bank's sustainability (ESG) initiatives and progress on ESG actionables and chairs the ESG apex committee. The ESG apex committee governs and reviews the progress of the three action committees that drive the ESG agenda (including climate change) at the Bank.<br><br>The Product Responsibility sub-committee, examines Environmental & Social (E&S) risks in our operations, including climate risks, | |

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| | | | | | while finding new business opportunities in the E&S arena. The Environment subcommittee comprises of representatives from the Administration, Infrastructure and IT teams at the Bank, sets targets and identifies opportunities for improvement in areas of emissions, energy, water, and waste. This committee will continue to drive the Bank's path towards achieving carbon neutrality. The Bank has a dedicated ESG vertical that works in conjunction with several internal and external stakeholders, to drive the ESG agenda. | |
| % of Independent Directors to total number of Directors | ● % of Independent Directors to total number of Directors.<br>● As on March 31, 2022, the Board comprised | ● 50% of Independent Directors to total number of Directors.<br>● As on 31 March 2022, the Board | ● 50% of Independent Directors to total number of Directors.<br>● During FY 2021-22 the Board | ● 50% of Independent Directors to total number of Directors.<br>● The present strength of the Board is | ● 72% of Independent Directors to total number of Directors. | ● 44% of Independent Directors to total number of Directors.<br>● As on 12th May, 2022, the Board |

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| | 11 members, including a Chairman, a Managing Director & CEO, 3 Non-Executive Non-Independent Directors and 6 Independent Directors out of which two are woman Independent Directors. | consisted of 14 directors, of whom three were executive (including the managing director), seven were non-executive as well as independent (including two women independent directors) and four were non-executive and non-independent. | comprised of 8 Directors, out of which 7 Directors (87.50%) are Non-Executive Directors. The Company has a Non-Executive Chairman and 4 Independent Directors ('IDs'), including 2 Women IDs, which comprises half of the total strength of the Board. | 16, comprising the Chairman & 3 other Executive Directors, 8 Non-Executive Independent Directors, of which 2 are Women Directors, and 4 other Non-Executive Directors. | | comprised the Group Chairman, the Chief Executive Officer & Managing Director, 7 Executive Directors, 1 Non-Executive Director (representing a financial institution) and 8 Independent Directors, including one Independent Woman Director |
| Vision/mission, strategies linked to ESG | ● The company's Vision is to be a globally renowned Environmentally conscious, Socially responsible and Governance led Company by implementing leading ESG practices and transparent reporting. | - | ● Given the global challenge of 'Climate change', as responsible corporates, Tata Motors has outlined its Sustainability strategy and a definitive action plan towards Net Zero.<br>● E-mobility and usage of 100% renewable energy will be the initial key steps towards carbon footprint reduction. | ● To achieve its Sustainability 2.0 vision, the Company continues to strengthen its management approach which is guided by a comprehen-sive set of Sustainability Policies that are being implemented across the organisation. | ● The Bank has been reporting to the Carbon Disclosure Project (CDP) on its climate change strategy, risks, opportunities, and emissions.<br>● From the perspective of climate risk assessment, the Bank will assess the priority of physical and transition risks in the near to medium term.<br>● Some of the critical parameters to consider would be GHG | ● The Company is committed to Energy Transition & Sustainability goals by setting targets to become Water neutral by 2035 and Carbon neutral by 2040.<br>● Its ESG roadmap is aligned with the 5-year strategic plan - 'Lakshya 2026' with a commitment to climate leadership, water stewardship, circular |

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| | | | | | emissions, air pollutants and climate transition risk pathways both at the sector and borrower level. | economy, green supply chain, biodiversity, and green offerings. The Company views the transition to Green Energy as an opportunity.<br>● Opportunities like Green Hydrogen, Clean Energy Technology, and Offshore Wind have been identified as new growth avenues. |
| Stakeholders engagement level | ● Company's stakeholder Engagement framework outlines an approach to engage and work with its stakeholders and is applicable to all its operating entities and functions across the corporate and regional levels. | - | ● The Company continuously engage with its stakeholders to understand and resolve their concerns through effective stakeholder management framework. | ● The Company is strengthening the mechanisms of engagement with key stakeholders, identification of material sustainability issues and progressively monitoring and mitigating the impacts along the value chain of each Business. | ● The Bank engage with its stakeholders to understand and respond to their expectations and concerns. This provides valuable insights that help the Bank shape its priorities and strategy.<br>● The Bank has a well-defined process to identify and prioritise our major stakeholders, based on their involvement with and value to the organisation. | ● The Company is working on several initiatives with its partners across the value chain for inclusive development<br>● The company is able to manage risks and opportunities proactively and set clear goals to deliver long term shared value by engaging with key stakeholders through regular dialogues. |

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| | | | | ● In line with the Board approved policy on stakeholder engagement, ITC has evolved structured framework for engaging with its stakeholders and fostering enduring relationships with each one of them. ITC's engagement approach is anchored on the principles of materiality, completeness and responsiveness. | | |
| Conflict Resolution | ● Yes, Airtel has put in place stringent procedures and safeguards to avoid any conflicts of interest involving members of the Board and other employees.<br>● Bharti Airtel Code of Conduct covers guidelines related to Conflict of Interest. It is applicable to all Board of Directors and employees. It provides guidelines for avoiding any conflict of interest, both actual or apparent, and the mechanism to report any such | ● Pursuant to regulation 26(5) of the SEBI Listing Regulations, senior management has made periodical disclosures to the Board relating to all material financial and commercial transactions, where they had (or were deemed to have had) personal interest that might have been in potential conflict with the interest of | ● Pursuant to Regulation 26(5) of the SEBI Listing Regulations, all members of senior management have confirmed that there are no material, financial and commercial transactions wherein they have a personal interest that may have a potential conflict with the interest of the Company at large. | ● Yes, the ITC Code of Conduct requires the Directors, senior management and employees to avoid situations in which their personal interests could conflict with the interests of the Company.<br>● Further, the Directors of the Company are required to disclose to the Board, on an annual basis, whether they, directly | ● The Bank has separated the Risk, Control and Compliance functions from the Business functions in order to create a strong culture of checks and balances and to eliminate any possible conflict of interest between revenue generation and risk management and control. | ● The Company has processes on management of conflict of interests involving members of the Board which may arise due to Directors joining the Boards of other companies and even conflicts which would take place during the course of normal business activities. |

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| | situations that may give rise to a potential conflict.<br>● Airtel's Policy on Related Party Transactions intends to ensure that proper reporting, approval and disclosure processes are in place for all transactions between the Company and related parties.<br>● The Policy disallows the concerned or interested Director to participate in any discussion or approve contracts or arrangements with related parties, to avoid potential conflicts of interest. | the Company. There was only one case involving a member of the senior management. In this instance, the disclosure was discussed, reviewed and found in order by the Board. | | or indirectly or on behalf of third parties, have material interest in any transaction or matter directly affecting the Company. | | ● The process allows the Directors to recuse themselves from the discussions pertaining to the conflict of interest. The Directors have to exercise their respon-sibilities in a bonafide manner in the interest of the Company, should not allow any extraneous consider-ations that may vitiate their exercise of objective independent judgment in the para-mount interest of the Com-pany and not abuse their position to the detriment of the Compa-ny for the purpose of gaining direct or indirect personal advantage.<br>● Any conflict of interest arising with the Board Members needs to be reported to the Chairman of the Audit Committee/ Chairman of the Board. |

## Analysis and Findings*

On conducting an exploratory study of the governance structure of the companies considered for the study, the following observations are made:

1) **Chairman's Independence**: As it is a widely accepted fact that shareholders attach higher value to the quality of corporate governance structures, and this is true especially in case of pubic listed companies which is marked by broad base of shareholders and some of them hold relatively diversified investment portfolios. In view of this, it is imperative to have independence of Chairman.

   On observing the facts of the given companies, it may be inferred that in majority of the companies the Chairman have fairly high magnitude of independence, except ITC where Chairman is Executive Director. Thus, it may be opined that family based companies are relatively better placed when it comes to in this regard, since in case of Bharti Airtel the Chairman though Executive Director is a Non-Promoter and in case of Tata Motors, the Chairman is Non-Executive as well as a Non-Promoter. However, in case of Bajaj Auto, the Chairman though Non-Executive is Promoter of the company.

   With reference to the professionally managed company and on analysing the overall scenario of Chairman's independence, it may be stated that HDFC's scenario of Chairman's independence is optimum.

2) **Separation of Ownership and management:** On perusing the scenario of separation of ownership and management of the six companies, it is observed that leaving Tata Motors, as no information in this regard could be retrieved, four companies out of the balance five companies are having separation in the role of chairman and management. In case of ITC, there is absence of separation of the role of chairman and management, which may be a matter of concern in view of the size and scale of operations of the company and being a mammoth conglomerate.

3) **Promoters Holding:** On observing the data of promoters holding of the companies considered for the study, it can be stated that ITC and L&T are completely democratic organisations, as their 100% holding likes with the public. So ITC despite being laggard in two parameters i.e., Chairman's independence and separation of ownership and management, it has prodigious performance in promoters holding.

   In case of HDFC, the promoters holding is quite less, i.e., 25.63%, whereas in case of Bharti Airtel it is highest, i.e., 55.02%. Bajaj Auto registers the second highest promoters holding at 54.98% and Tata Motors at 45.81%. Thus, family managed businesses have higher percentage of promoters holding. Now at this juncture it is of paramount academic and research interests to explore the impact of promoters holding on the three key financial variables of the companies, i.e., PBDIT Margin, PBIT Margin and Net Profit Margin. In this regard, Net Profit Margin of the companies have been taken into consideration.

   To conduct the analysis the data of the above mentioned variables have been considered for the period of 2018 – 22. Regression analysis have been applied to decipher the impact of promoters holding on PBDIT Margin, PBIT Margin and Net Profit Margin

   The data pertaining to promoters holding, PBDIT Margin, PBIT Margin and Net Profit Margin of the companies is provided in table 1 below:

*For information only.

**Table 1**

**Promoters Holding and Key Financial Variables***

| ***Bharti Airtel*** | | | | |
|---|---|---|---|---|
| ***Years*** | ***Promoters Holding (%)*** | ***PBDIT Margin (%)*** | ***PBIT Margin (%)*** | ***Net Profit Margin (%)*** |
| 2018 | 67.14 | 33.61 | 9.3 | 0.14 |
| 2019 | 67.14 | 30.07 | -0.4 | -3.76 |
| 2020 | 58.98 | 41.19 | 3.65 | -66.43 |
| 2021 | 56.23 | 47.21 | 13.01 | -39.17 |
| 2022 | 55.93 | 51.68 | 16.87 | -5.13 |
| ***Bajaj Auto*** | | | | |
| ***Years*** | ***Promoters Holding (%)*** | ***PBDIT Margin (%)*** | ***PBIT Margin (%)*** | ***Net Profit Margin (%)*** |
| | | | | |
| 2018 | 49.3 | 24.36 | 23.11 | 16.16 |
| 2019 | 49.3 | 21.92 | 21.04 | 15.45 |
| 2020 | 53.52 | 22.82 | 22 | 17.04 |
| 2021 | 53.7 | 22.36 | 21.43 | 16.41 |
| 2022 | 53.73 | 19.51 | 18.7 | 15.14 |
| ***Tata Motors*** | | | | |
| ***Years*** | ***Promoters Holding (%)*** | ***PBDIT Margin (%)*** | ***PBIT Margin (%)*** | ***Net Profit Margin (%)*** |
| 2018 | 36.37 | 8.27 | 2.99 | -1.75 |
| 2019 | 37.27 | 10.82 | 6.35 | 2.91 |
| 2020 | 42.39 | 1.66 | -6.01 | -16.59 |
| 2021 | 46.41 | 6.21 | 0.47 | -7.93 |
| 2022 | 46.4 | 4.56 | 0.84 | -2.94 |
| ***HDFC*** | | | | |
| ***Years*** | ***Promoters Holding (%)*** | ***Net Interest Margin (%)*** | ***Operating Profit Margin (%)*** | ***Net Profit Margin (%)*** |
| 2018 | 25.66 | 3.76 | 2.82 | 21.79 |
| 2019 | 26.54 | 3.87 | 3.48 | 21.29 |
| 2020 | 26.18 | 3.67 | 2.6 | 22.86 |

*For information only.*

| | | | | |
|---|---|---|---|---|
| 2021 | 26 | 3.71 | 4.89 | 25.74 |
| 2022 | 25.8 | 3.48 | 5.83 | 28.93 |

The outcome and inferences of the regression analysis of the aforesaid data is provided in table 2:

**Table 2**

**Outcome and Inferences***

| ***Bharti Airtel*** | | | | |
|---|---|---|---|---|
| ***S. No.*** | ***Basis of Analysis*** | ***Multiple R (Correlation Coefficient)*** | ***R Square (Coefficient of Determination*** | ***Inferences*** |
| 1 | Promoters Shareholding and PBDIT Margin | **0.97** | **0.94** | From the correlation coefficient value and coefficient of determination values, it may be inferred that promoters shareholding has exerted a positive impact on Profits before Depreciation, Interest and Tax (PBDIT) of the company.<br>Since the R-Square value or Coefficient of Determination is very high, i.e., 0.94, thereby indicating that 94% of the dependent variable PBDIT has been explained by the independent variable promoters holding.<br>In light of the aforesaid statement, it may be stated that promoters of Bharti Airtel have been proficient in discharging of their obligations in the capacity of board members. |
| 2 | Promoters Shareholding and PBIT Margin | **0.97** | **0.94** | Same scenario is prevailing for PBIT margin too, i.e., promoters shareholding and PBIT margin exhibit a strong correlation (0.97) and high coefficient of determination (0.94), thereby indicating that 94% of the dependent variable that is PBIT margin is explained by the independent variable that is promoters holding.<br>It may be opined that Bharti Airtel's Board though family based, as promoters have high stakes, it has displayed a prodigious growth in PBIT. |
| 3 | Promoters Shareholding and Net Profit Margin | **0.34** | **0.12** | On observing the impact of promoters holding on the net profit margin it may be stated that promoters holding has not proved to be as effective as PBDIT and PBIT Margins, since both correlation coefficient and coefficient of determination values, i.e., 0.34 and 0.12 respectively are extremely low. |

**For information only.*

| | | | | |
|---|---|---|---|---|
| | | | | In other words, it may be concluded that promoters have failed to carry on the momentum created at PBDIT and PBIT levels to the Net Profit of the company.<br><br>Since net profit is the remainder left after taking into consideration all the operating and non-operating expenses, operating and non-operating incomes, interest and taxes, in view of this, it may be stated that the business knowledge/ acumen, expertise and experience of the promoters might have fall short when it comes to steering the business to its crucial and last leg of the yearly business journey, that is net profits.<br><br>May be the level of business knowledge and expertise required to make the business sustainable in terms of net profits is lacking in the promoters. |
| ***Bajaj Auto*** | | | | |
| ***S. No.*** | ***Basis of Analysis*** | ***Multiple R (Correlation Coefficient)*** | ***R Square (Coefficient of Determination*** | ***Inferences*** |
| 1 | Promoters Shareholding and PBDIT Margin | **0.15** | **0.023** | From the values of correlation coefficient (0.15) and coefficient of determination (0.023) it may be presumed that promoters holding or family business structure have not delivered the desired business results.<br><br>Moreover, the meagre value of coefficient of determination at 0.023 is a metaphor of poor strategic business decisions by the board. |
| 2 | Promoters Shareholding and PBIT Margin | **0.14** | **0.021** | On perusing the impact of promoters holding on PBIT margin, it may be construed that family business concept have not succeeded to a great extent for Bajaj Auto. Both correlation coefficient (0.14) and coefficient of determination (0.021) are abysmal, implying that the promoters might have lacked on the vital attributes of pragmatism, planning, intelligence, strategy etc. |
| 3 | Promoters Shareholding and Net Profit Margin | **0.39** | **0.16** | Similar scenario is being observed in case of net profit margin, i.e., significant promoters holding have not exerted a positive impact on the net profit of the company. In view of this, it may be opined that promoters may be lacking requisite business acumen and expertise. |

| *Tata Motors* | | | | |
|---|---|---|---|---|
| ***S. No.*** | ***Basis of Analysis*** | ***Multiple R (Correlation Coefficient)*** | ***R Square (Coefficient of Determination*** | ***Inferences*** |
| 1 | Promoters Shareholding and PBDIT Margin | **0.58** | **0.34** | High promoters holding to some extent have created an impact on PBDIT to some extent only, as evident from the correlation coefficient which is 0.58 and coefficient of determination is 0.34.<br>Hence, it may be stated that by reducing the promoters holding, if the company would have inducted board members from outside who are having in-depth knowledge of the automobile sector and its dynamics, probably the results might have been different. |
| 2 | Promoters Shareholding and PBIT Margin | **0.43** | **0.19** | The story remains same in case of PBIT too, as both correlation coefficient and coefficient of determination are quite low. |
| 3 | Promoters Shareholding and Net Profit Margin | **0.38** | **0.14** | From the coefficient of correlation and coefficient of determination values it may be mentioned that lack of requisite practical insights about the automobile sector at macro level and key business processes at micro level. |
| *HDFC* | | | | |
| ***S. No.*** | ***Basis of Analysis*** | ***Multiple R (Correlation Coefficient)*** | ***R Square (Coefficient of Determination*** | ***Inferences*** |
| 1 | Promoters holding and Net Interest Margin | **0.92** | **0.85** | The magical effect of professionally managed company can be observed from regression analysis results of promoters holding and net interest margin.<br>HDFC Bank has relatively less promoters holding in comparison to the other companies and probably this holding structure has enabled the bank to achieve high net interest margin. |
| 2 | Promoters holding and Operating Profit Margin | **0.74** | **0.55** | Looking at operating profit margin it may be stated that HDFC's professionally managed structure has delivered fruits of financial prosperity. |
| 3 | Promoters holding and Net Profit Margin | **0.95** | **0.91** | From the coefficient of correlation value 0.95 and coefficient of determination value at 0.91, it can be said without an iota of doubt that the bank is deriving the benefits of the blend of business knowledge, expertise and experience of the non-promoter board members. |

4) **Succession Planning:** On observing the succession planning scenario of all the six companies considered for the study, it is heartening to note that all the companies have robust succession planning in place. For instance, in case of Bharti Airtel though a family managed business has instituted strong succession planning that is its board of directors, HR & Nomination committee are entrusted with overseeing and monitoring talent management and succession planning initiatives of the company.

   On the other hand, HDFC a professional managed company too has espoused robust succession planning as manifested from the fact that its Nomination and Remuneration Committee and the Board of Directors review succession planning and transitions at the board and senior management levels.

5) **Business Continuity Plan**: From the study it is evident that the companies are aware of the significance of having business continuity plan. Companies have taken several measures indicating that they are geared up for business continuity plan. Measures like disaster management, work from home facility for employees, adoption of risk management framework, efficient internal audit department, preparedness level at each project site etc. all creates an optimism among the stakeholders that the corporate world has the requisite preparation to surmount varied degree of challenges and ensure survival of the business.

6) **Sustainability Focused Approach:** On observing the performance of the company in terms of sustainability oriented approach, it is interesting to note that the companies have embraced various measures like constitution of ESG committee; Safety, Health and Sustainability Committee and CSR and Sustainability for strengthening sustainability of the organisation. The mentioned committees provide strategic guidance and decision making, reviewing and overseeing of implementation of sustainability policies on annual basis etc. thereby, ensuring sustainability of the companies.

7) **Conflict Management:** Conflict management is manifested in the approaches of the companies considered for the study. Code of conduct, periodical disclosure by senior management to the board relating to all material financial and commercial transactions pursuant to Regulation 17(4) of the SEBI Listing Regulations, continuous review of the succession planning and transitions at the board and senior management levels, focusing on board composition with reference to skill sets required / areas of expertise etc. indicates robust conflict management in the companies considered for the study.

## Marico Limited - A case study in professionalizing of the board

Marico Limited is one of India's leading companies in the fast-moving consumer goods (FMCG) and skin care businesses, founded by Harsh Mariwala. Harsh Mariwala joined his family-owned commodities trading business before eventually founding Marico in 1990 – completing a transformation of a traditional trading business into a leading consumer products and services company.

Mariwala turned the family-owned company into one that is now perceived by the market to be a well-managed, professionally run company. In 2014, Mariwala, who was till then, the Chairperson and Managing Director of the company, inducted a professional MD on the board – Saugata Gupta. He proceeded to then make his role non-executive – he would no longer look after the day-to-day operations, instead allowing a team of professionals to run the company. He would remain the chairperson of the company.

Mariwala's son Rishabh spent three years at Kaya, the beauty-salon business of the company, and then left to start a venture of his own in 2011. His daughter, Rajvi, left the company after two years and is now a canine behaviorist. His children are no longer part of the management or the board.

Mariwala has stated that he intends to make himself redundant in the company over time. By making an investment in professional leadership and staying away from day-to-day management, he has sought to demonstrate to the market that the interests of the promoter group are aligned with those of other stakeholders.

Marico's case is an excellent example of the promoter handing over the leadership to a professional and distancing themselves from day-to-day operations.

### Godrej Group - Clear responsibilities for next generation promoters

The Godrej group is a large Indian conglomerate operating in the consumer products, real estate, consumer durables and animal feed businesses among others. Adi Godrej is a third-generation promoter and the current chairperson of Godrej Industries Limited, while his brother Nadir is the Managing Director for the same company. His cousin, Jamshyd Godrej is the chairperson of Godrej and Boyce, the consumer durables arm of the group.

Adi Godrej has ensured that the companies are run by a combination of family members and industry professionals. The group had appointed a facilitator in the past to oversee succession planning in the group. Family members seeking to enter the businesses in management roles are required to be well qualified.

Adi Godrej has three children, of which his eldest daughter, Tanya Dubash, his daughter, is an Executive Director of Godrej Industries Limited and the Chief Brand Officer for the group. She oversees the group's branding efforts and is also Chairperson of Godrej Nature's Basket, the gourmet retail arm of the company.

Nisaba Godrej, his second daughter is the Executive Chairperson of Godrej Consumer Products Limited, the home and personal care products division. Previously, she led the innovation strategy at the group company – Godrej Industries Limited. She was also involved with Godrej Agrovet Limited, the agribusiness arm of the company. Vivek Gambhir, a professional, serves as MD at Godrej Consumer Products Limited.

Pirojsha Godrej, Adi Godrej's son, looks after the real estate business. He has served as Managing Director and Chairperson at Godrej Properties since 2012. Effective April 2017, he serves as Executive Chairperson at the same company, while handing over the MD role to Mohit Malhotra, a professional who joined the company in 2010.

The succession plan has ensured that there are specific and clearly defined roles for the next generation based on individual strengths.

## WAY FORWARD

No doubt there may be many limitations of a family driven businesses but it is to be noted that family businesses make up for an astonishing 79 percent of India's GDP. Even under times of volatility and uncertainty, family businesses have displayed conviction and resilience. However, it is essential for them to adopt new-age techniques and competencies to grow in today's fast-paced world. Family businesses play a pivotal role in the Indian economy through their contributions to the country's business growth and stability.

With 111 publicly-traded family-run companies valued at USD 839 billion, India is home to the third-largest number of family businesses globally. One might struggle to fully comprehend why family businesses need to be treated in a way different from any other corporate company, but it is essential to understand that family businesses are more often than not built on unwavering values and principles. It can be argued that these values and principles are what enable family-run businesses to sail through troubled waters through meaningful internal and external collaborations.

Family businesses are rooted in trust, integrity, kinship, and brotherhood, which extends to their employees as well. Data shows that 78 percent of family businesses have gone out of their way to retain their existing staff in the face of adversity. Family-run companies tend to be resilient under volatile conditions considering that they do not rely solely on external entities for their capital.

Thus, it may be opined that despite professionally driven companies are making rapid growth, family run companies are also doing quite well. However, in the era of globalisation marked by cut throat competition both at global and national levels, companies may espouse the trajectory of professionalism for enhancing business growth.

## LESSON ROUND UP

- India enjoys a rich and glorious history of family-owned business. A family business may be company, partnership firm, HUF or any other form of business owned, controlled and operated by members of a family. In India the majority of businesses are controlled by families.
- Most family businesses do not survive beyond two or three generations. One of the main reasons for the short life span of family businesses is due to the lack of governance mechanisms in the family. With better family governance, business development reaches next level and ensures continuity of the business across generations.
- To build up the transparency and accountability of the Board of Directors, the Act now requires at least 1/3rd of the total directors of a listed company to be Independent Directors and have no material or pecuniary relationship with the company or related persons.

## GLOSSARY

**Family assembly:** A formal gathering of family members to discuss business and family issues. This meeting, usually held once or twice a year, is generally open to all members of the extended family.

**Family constitution:** A set of documents that record the family's values, hopes and goals as well as a framework for how to achieve them. The constitution provides guidance on the activities of the family, the business, the enterprise, the family office and more.

**Family council:** A formal governing body that represents the family. It makes decisions on issues that overlap the family and the business and makes recommendations on behalf of the family to the board.

**Family enterprise:** The various businesses and shared investments, including real estate, owned jointly by family members. A family usually begins with a single legacy business and then, over generations, diversifies into other investments, often selling their family business.

**Family governance:** Agreements and shared activities that organize the family to remain aligned in support of their ventures and investments through multiple generations.

**Family office:** A private wealth management advisory firm that serves ultra-high-net-worth families. A single-family office serves one family. Multifamily offices serve multiple families. Family offices can also manage non-financial issues, such as travel and household arrangements.

**Family values:** In a family business context, these are statements of what the family and their company stand for and believe. Families typically uncover and enshrine family values over time. Documenting and distributing the values to all stakeholders creates behavioral guides for decisions, brand development and family development. Some families create separate statements of family values and business values.

**Independent directors/board members**: Members of the board of directors or board of advisers who are not family members, company employees, advisers or consultants paid by the company, or close associates of the CEO or other key stakeholders.

**Stewardship**: The careful and responsible management of something entrusted to one's care; an attitude that one's inheritance should be preserved and passed on to others, rather than used up.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. How corporate governance differs in family and professionally driven businesses?
2. Does India is witnessing a metamorphosis from family run to professionally run businesses? Elucidate with suitable examples.
3. How the phenomena of globalisation has impacted the growth of family run businesses in India?

**LIST OF FURTHER READINGS**

- Harvard Business Review Family Business Handbook: How to Build and Sustain a Successful, Enduring Enterprise (HBR Handbooks) by Josh Baron
- The Family Business: A Parable about Stepping Into the Life You Were Made For by Geoff Peters
- The Ultimate Family Business Survival Guide by Priyanka Gupta Zielinski
- Family Business for Next Generation Leaders : To Build Business Beyond Generations by Abirami Duraisamy

**OTHER REFERENCES**

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- https://trendlyne.com/equity/share-holding/1362/TATAMOTORS/31-03-2022/tata-motors-ltd/
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# Board Disclosures and Website Disclosures

Lesson 8

## KEY CONCEPTS

■ Board Disclosures ■ Website Disclosures

## Learning Objectives

**To understand:**

- Significance of transparency
- Coverage of Annual Report
- Management Discussion and Analysis
- Corporate Governance Report and its coverage
- Board's Report and disclosures under Board's Report
- Secretarial Standard on Report of the Board of Directors (SS-4)
- Website disclosures

## Lesson Outline

- Introduction
- Annual Report
- Board's Report
- Disclosure in Board's Report pursuant to Companies Act, 2013
- Website Disclosure
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

## INTRODUCTION

Transparency is a pivotal feature in the market based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis, which can help attract capital and maintain confidence in the capital markets.

Adequate disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental and ethical standards, and companies' relationships with the communities in which they operate. Disclosures are made both through the print media and the electronic media. Today corporates have to disclose mandatorily under various legislations such as:

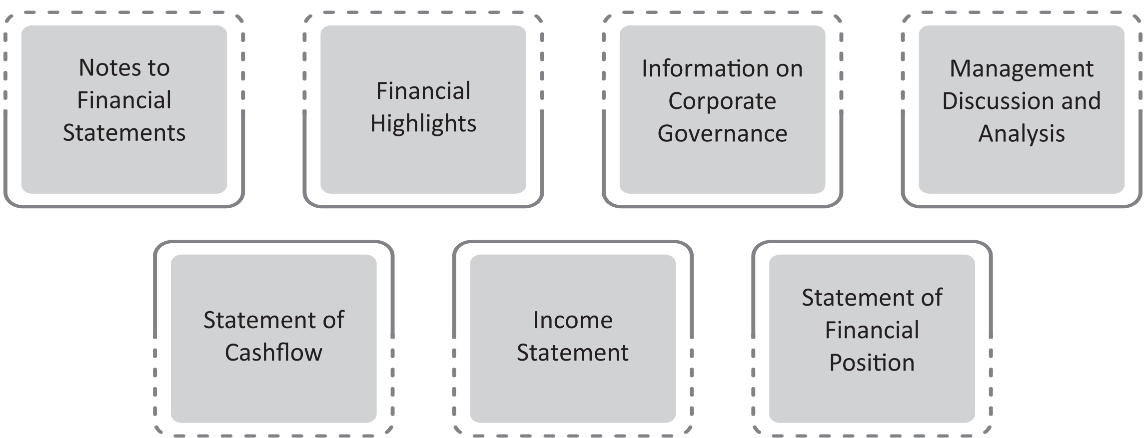
- Disclosures under the Companies Act, 2013 and Rules made thereunder;
- SEBI (LODR) Regulations, 2015 and other regulations applicable for Listed Companies;
- Secretarial Standard on Board's Report-SS4 (Recommendatory);
- Disclosure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and rules made thereunder;
- Disclosures under other applicable Acts.

The various forms of disclosures required on the part of a corporate board is discussed as under:

## 1. ANNUAL REPORT

The annual report is a comprehensive report provided by most public companies to disclose their corporate activities over the past year. The report is typically issued to shareholders and other stakeholders who use it to evaluate the firm's performance including both operating and financial highlights.

**Components to Annual Report**




An annual report is interactive in nature to its shareholders. It generally starts with the board's message to shareholders in form of dedicated report. Their message intends to brief the shareholders about the key performance angles of the current year. It also demonstrates the growth prospects relative to its industry landscape in order to get shareholders' attention to the company's potential for excellence.

Annual reports also give an account of corporate activities, legal highlights and corporate governance arena. In addition, the management discussion and analysis report emphasizes management commentary on risks and concerns of the business.

Financial statements give financial details of the current year and the past year by showcasing year-on-year comparisons easier for a shareholder. In addition, the notes to financial statements describe the technical anomalies and assumptions taken in preparing the financial statements.

The annual report also present changes in accounting policies, financial disclosure, capital projects, and other information/disclosures relevant to shareholders.

As per Regulation 34 of the SEBI (LODR), Regulations, 2015, the listed entity shall submit to the stock exchange and publish on its website-

(a) A copy of the annual report sent to the shareholders along with the notice of the annual general meeting not later than the day of commencement of dispatch to its shareholders;

(b) In the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the annual general meeting.

Such annual report shall contain the following:

(a) Audited financial statements i.e. balance sheet, profit and loss account etc, and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable;

(b) Consolidated financial statements audited by its statutory auditors;

(c) Cash flow statement presented only under the indirect method as prescribed in Accounting Standard-3 or Indian Accounting Standard 7, as applicable, specified in Section 133 of the Companies Act, 2013 read with relevant rules framed thereunder or as specified by the Institute of Chartered Accountants of India, whichever is applicable;

(d) Directors Report;

(e) Management discussion and analysis report - either as a part of directors report or addition thereto;

(f) For the top one thousand listed entities based on market capitalization, a Business Responsibility and Sustainability Report on the environmental, social and governance disclosures, in the format as may be specified by the Board from time to time.

In this regard, SEBI through its Circular dated July 12, 2023 (Circular No.SEBI/HO/CFD/CFD-SEC-2/P/CIR/2023/122) came out with BRSR Core and Updated BRSR. The Circular mentioned that listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the guide path specified in the following table :

| Financial Year | Applicability of BRSR Core to top listed entities (by market capitalization) |
|---|---|
| 2023 – 24 | Top 150 listed entities |
| 2024 – 25 | Top 250 listed entities |
| 2025 – 26 | Top 500 listed entities |
| 2026 – 27 | Top 1000 listed entities |

The assurance of the Business Responsibility and Sustainability Report Core shall be obtained, in the manner as may be specified by the Board from time to time.

Provided further that the listed entities shall also make disclosures and obtain assurance as per the Business Responsibility and Sustainability Report Core for their value chain, in the manner as may be specified by the Board from time to time.

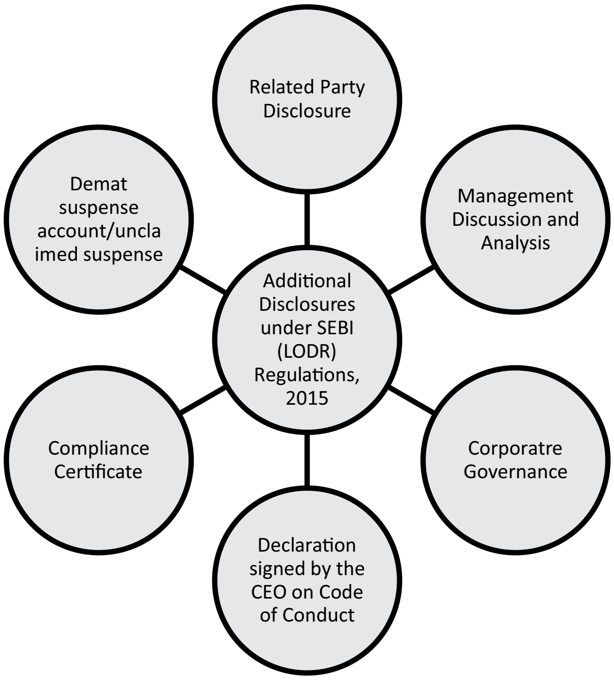
Provided further that the remaining listed entities, including the entities which have listed their specified securities on the SME Exchange, may voluntarily disclose the Business Responsibility and Sustainability Report or may voluntarily obtain the assurance of the Business Responsibility and Sustainability Report Core, for themselves or for their value chain, as the case may be.

Explanation-1: For the purpose of this clause:

(i) Business Responsibility and Sustainability Report Core shall comprise of such key performance indicators as may be specified by the Board from time to time;

(ii) "value chain" for the listed entities shall be specified by the Board from time to time.

Further it is provided that the annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of SEBI (LODR) Regulations, 2015.




As per SEBI (LODR) Regulations, 2015, the annual report shall contain the following additional disclosures:

**A. Related Party Disclosure:**

1. The listed entity which has listed its non-convertible securities shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".

2. The disclosure requirements shall be as follows:

| ***Sr. No.*** | ***In the accounts of*** | ***Disclosures of amounts at the year end and the maximum amount of loans/ advances/ Investments outstanding during the year.*** |
|---|---|---|
| 1 | Holding Company | • Loans and advances in the nature of loans to subsidiaries by name and amount.<br>• Loans and advances in the nature of loans to associates by name and amount. |

| | | |
|---|---|---|
| | | • Loans and advances in the nature of loans to firms/ companies in which directors are interested by name and amount. |
| 2 | Subsidiary | Same disclosures as applicable to the parent company in the accounts of subsidiary company. |
| 3 | Holding Company | Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan. |

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

2A. Disclosures of transactions of the listed entity with any person or entity belonging to the promoter/ promoter group which hold(s) 10% or more shareholding in the listed entity, in the format prescribed in the relevant accounting standards for annual results.

3. The above disclosures shall not be applicable to listed banks.

**B. Management Discussion and Analysis:**

1. This section shall include discussion on the following matters within the limits set by the listed entity's competitive position:

    (a) Industry structure and developments;

    (b) Opportunities and Threats;

    (c) Segment–wise or product-wise performance;

    (d) Outlook;

    (e) Risks and concerns;

    (f) Internal control systems and their adequacy;

    (g) Discussion on financial performance with respect to operational performance;

    (h) Material developments in Human Resources / Industrial Relations front, including number of people employed;

    (i) Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:

        (i) Debtors Turnover

        (ii) Inventory Turnover

        (iii) Interest Coverage Ratio

        (iv) Current Ratio

        (v) Debt Equity Ratio

        (vi) Operating Profit Margin (%)

        (vii) Net Profit Margin (%)

    or sector-specific equivalent ratios, as applicable.

(j) Details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.

2. Disclosure of Accounting Treatment:

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

**C. Corporate Governance Report**

The following disclosures shall be made in the section on the corporate governance of the annual report.

(1) A brief statement on listed entity's philosophy on code of governance.

(2) Board of Directors:

(a) composition and category of directors (e.g. promoter, executive, non-executive, independent non- executive, nominee director - institution represented and whether as lender or as equity investor);

(b) attendance of each director at the meeting of the board of directors and the last annual general meeting;

(c) number of other board of directors or committees in which a directors is a member or chairperson, and with effect from the Annual Report for the year ended 31st March 2019, including separately the names of the listed entities where the person is a director and the category of directorship;

(d) number of meetings of the board of directors held and dates on which held;

(e) disclosure of relationships between directors inter-se;

(f) number of shares and convertible instruments held by non- executive directors;

(g) web link where details of familiarisation programmes imparted to independent directors is disclosed;

(h) A chart or a matrix setting out the skills/expertise/competence of the board of directors specifying the following:

(i) With effect from the financial year ending March 31, 2019, the list of core skills/expertise/competencies identified by the board of directors as required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board; and

(ii) With effect from the financial year ended March 31, 2020, the names of directors who have such skills / expertise/ competence.

(i) confirmation that in the opinion of the board, the independent directors fulfill the conditions specified in these regulations and are independent of the management;

(j) detailed reasons for the resignation of an independent director who resigns before the expiry of his/ her tenure along with a confirmation by such director that there are no other material reasons other than those provided.

(3) Audit Committee:

(a) brief description of terms of reference;

(b) composition, name of members and chairperson;

(c) meetings and attendance during the year.

(4) Nomination and Remuneration Committee:

(a) brief description of terms of reference;

(b) composition, name of members and chairperson;

(c) meeting and attendance during the year;

(d) performance evaluation criteria for independent directors.

(5) Stakeholders' Relationship Committee:

(a) name of the non-executive director heading the committee;

(b) name and designation of the compliance officer;

(c) number of shareholders' complaints received during the financial year;

(d) number of complaints not solved to the satisfaction of shareholders;

(e) number of pending complaints.

(5A) Risk Management Committee:

(a) brief description of terms of reference;

(b) composition, name of members and chairperson;

(c) meetings and attendance during the year;

(5B) Senior management:

Particulars of senior management including the changes therein since the close of the previous financial year.

(6) Remuneration of Directors:

(a) all pecuniary relationship or transactions of the non-executive directors vis-a-vis the listed entity shall be disclosed in the annual report;

(b) criteria of making payments to non-executive directors. Alternatively, this may be disseminated on the listed entity's website and reference drawn thereto in the annual report;

(c) disclosures with respect to remuneration: in addition to disclosures required under the Companies Act, 2013, the following disclosures shall be made:

(i) all elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc;

(ii) details of fixed component and performance linked incentives, along with the performance criteria;

(iii) service contracts, notice period, severance fees;

(iv) stock option details, if any and whether issued at a discount as well as the period over which accrued and over which exercisable.

(7) General body meetings:

(a) location and time, where last three annual general meetings held;

(b) whether any special resolutions passed in the previous three annual general meetings;

(c) whether any special resolution passed last year through postal ballot – details of voting pattern;

(d) person who conducted the postal ballot exercise;

(e) whether any special resolution is proposed to be conducted through postal ballot;

(f) procedure for postal ballot.

(8) Means of communication:

(a) quarterly results;

(b) newspapers wherein results normally published;

(c) any website, where displayed;

(d) whether it also displays official news releases; and

(e) presentations made to institutional investors or to the analysts.

(9) General shareholder information:

(a) annual general meeting - date, time and venue;

(b) financial year;

(c) dividend payment date;

(d) the name and address of each stock exchange(s) at which the listed entity's securities are listed and a confirmation about payment of annual listing fee to each of such stock exchange(s);

(e) stock code;

(f) market price data- high, low during each month in last financial year;

(g) performance in comparison to broad-based indices such as BSE Sensex, CRISIL Index etc;

(h) in case the securities are suspended from trading, the directors report shall explain the reason thereof;

(i) registrar to an issue and share transfer agents;

(j) share transfer system;

(k) distribution of shareholding;

(l) dematerialization of shares and liquidity;

(m) outstanding Global Depository Receipts or American Depository Receipts or warrants or any convertible instruments, conversion date and likely impact on equity;

(n) commodity price risk or foreign exchange risk and hedging activities;

(o) plant locations;

(p) address for correspondence.

(q) list of all credit ratings obtained by the entity along with any revisions thereto during the relevant financial year, for all debt instruments of such entity or any fixed deposit programme or any scheme or proposal of the listed entity involving mobilization of funds, whether in India or abroad.

(10) Other Disclosures:

(a) disclosures on materially significant related party transactions that may have potential conflict with the interests of listed entity at large;

(b) details of non-compliance by the listed entity, penalties, strictures imposed on the listed entity by stock exchange(s) or the board or any statutory authority, on any matter related to capital markets, during the last three years;

(c) details of establishment of vigil mechanism/ whistle blower policy, and affirmation that no personnel has been denied access to the audit committee;

(d) details of compliance with mandatory requirements and adoption of the non-mandatory requirements;

(e) web link where policy for determining 'material' subsidiaries is disclosed;

(f) web link where policy on dealing with related party transactions is disclosed;

(g) disclosure of commodity price risks and commodity hedging activities;

(h) details of utilization of funds raised through preferential allotment or qualified institutions placement as specified under Regulation 32 (7A);

(i) a certificate from a Company Secretary in practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/Ministry of Corporate Affairs or any such statutory authority;

(j) where the board had not accepted any recommendation of any committee of the board which is mandatorily required, in the relevant financial year, the same to be disclosed along with reasons thereof: Provided that the clause shall only apply where recommendation of / submission by the committee is required for the approval of the Board of Directors and shall not apply where prior approval of the relevant committee is required for undertaking any transaction under these Regulations;

(k) total fees for all services paid by the listed entity and its subsidiaries, on a consolidated basis, to the statutory auditor and all entities in the network firm/network entity of which the statutory auditor is a part;

(l) disclosures in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

  (a) number of complaints filed during the financial year

  (b) number of complaints disposed of during the financial year

  (c) number of complaints pending as on end of the financial year

(m) disclosure by listed entity and its subsidiaries of 'Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount'. Provided that this requirement shall be applicable to all listed entities except for listed banks.

(11) Non-compliance of any requirement of corporate governance report of sub-paras (2) to (10) above, with reasons thereof shall be disclosed.

(12) The corporate governance report shall also disclose the extent to which the discretionary requirements as specified in Part E of Schedule II have been adopted.

(13) The disclosures of the compliance with corporate governance requirements specified in regulation 17 to 27 and clauses (b) to (i) of sub-regulation (2) of regulation 46 shall be made in the section on corporate governance of the annual report.

**D. Declaration signed by the chief executive officer stating that the members of Board of Directors and senior management personnel have affirmed compliance with the code of conduct of board of directors and senior management.**

**E. Compliance certificate from either the auditors or practicing Company Secretaries regarding compliance of conditions of corporate governance shall be annexed with the directors' report.**

**F. Disclosures with respect to demat suspense account/ unclaimed suspense account**

The listed entity shall disclose the following details in its annual report, as long as there are shares in the demat suspense account or unclaimed suspense account, as applicable :

(a) aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year;

(b) number of shareholders who approached listed entity for transfer of shares from suspense account during the year;

(c) number of shareholders to whom shares were transferred from suspense account during the year;

(d) aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year;

(e) that the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares.

**G. Disclosure of certain types of agreements binding listed entities**

(1) Information disclosed under clause 5A of paragraph A of Part A of Schedule III of these regulations.

## Statement of deviation(s) or variation(s)

As per Regulation 32 of SEBI (LODR) Regulations, 2015, The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc:

(a) indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilisation of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilisation of funds.

The statement(s) shall be continued to be given till such time the issue proceeds have been fully utilised or the purpose for which these proceeds were raised has been achieved and shall be placed before the audit committee for review and after such review, shall be submitted to the stock exchange(s).

The listed entity shall furnish an explanation for such variation in the directors' report in the Annual Report.

The listed entity shall prepare an annual statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice, certified by the statutory auditors of the listed entity, and place it before the audit committee till such time the full money raised through the issue has been fully utilized.

Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public issue or rights issue or preferential issue or qualified institutions placement, the listed entity shall submit to the stock exchange(s) any comments or report received from the monitoring agency within forty-five days from the end of each quarter.

Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of public issue or rights issue or preferential issue or qualified institutions placement, the monitoring report of such agency shall be placed before the audit committee on a quarterly basis, promptly upon its receipt.

*Explanation* — For the purpose of sub-regulations (6) and (7), "monitoring agency" shall mean the monitoring agency as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Where an entity has raised funds through preferential allotment or qualified institutions placement, the listed entity shall disclose every year, the utilization of such funds during that year in its Annual Report until such funds are fully utilized.

### Documents & Information to shareholders

According to Regulation 36 of SEBI (LODR) the listed entity shall send the annual report in the following manner to the shareholders:

(a) Soft copies of full annual report to all those shareholder(s) who have registered their email address(es) either with the listed entity or with any depository.

(b) Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013 or rules made thereunder to those shareholder(s) who have not so registered;

(c) Hard copies of full annual reports to those shareholders, who request for the same.

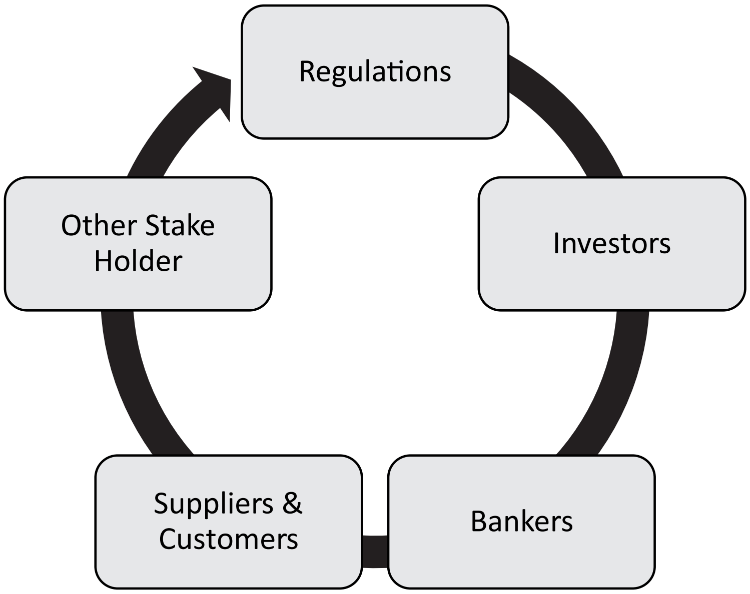
The listed entity shall send annual report to the holders of securities, not less than twenty-one days before the annual general meeting.

## 2. BOARD'S REPORT

The Board's Report is the most important means of communication by the Board of Directors of a company with its shareholders. It is a comprehensive document which serves to inform the shareholders about the performance and various other aspects of the company, its major policies, relevant changes in management, future programmes of expansion, modernization and diversification, capitalization or reserves, etc. The Board's Report enables not only the shareholders but also the lenders, bankers, government and the public to make an appraisal of the company's performance and provides an insight into the future growth and profitability of the company.

The Companies Act, 2013 is based on enhanced disclosures and transparency. The Board's Report is a document, preparation of which requires thorough understanding of the subject. The Act requires the Board of Directors to disclose on various parameters including the risk management, board evaluation, implementation of Corporate Social Responsibility, a statement of declaration given by independent directors. The Secretarial Audit Report is also required to be annexed to the Board's Report.

It is mandatory for the Board of Directors of every company to present financial statement to the shareholders along with its report, known as the "Board's Report" at every annual general meeting. Apart from giving a complete review of the performance of the company for the year under report, material changes till the date of the report, the report highlights the significance of various national and international developments which can have an impact on the business and indicates the future strategy of the company. The Board's Report enables shareholders, lenders, bankers, government, prospective investors, all the stakeholders and the public to make an appraisal of the company's performance and reflects the level of corporate governance in the company.




**Practical Issues**

The Board's Report is prepared by Secretarial Department under the supervision and guidance of Company Secretary. It is of utmost importance for Company Secretary of a company that when new financial year begins, he sends to all branches of business, finance, accounts etc.

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A detailed **"To Do List"** that these branches of business must follow during the financial year. It should also consist of instruction that as and when any significant event or happening takes place that potentially has bearing on company's business, operations, future viability, profits etc, it must be reported forthwith. This will enable to make timely disclosure within 24 hours, if the event is covered u/r 30 of SEBI (LODR), 2015. Else, a noting will go to the AGM folder for reference when the Annual Report is being finalized.

Getting regular inputs and collecting them in AGM folder is important for ensuring preparation of an exhaustive and complete Board's Report without missing any reportable event. Every CS should inculcate the habit and remember that preparation of Annual Report / Board's Report is an ongoing project throughout the year. When the year is about to close or soon thereafter, a reminder should also go.

The matters to be included in the Board's Report have been specified in Section 134 of the Companies Act, 2013 and Rule 8 of the Companies (Accounts) Rules, 2014. Apart from this, under Sections 67, 92, 129, 131, 135,

149, 160, 168, 177, 178, 188, 197, 204 of the Companies Act, 2013, relevant information has to be disclosed in the Board's Report. The Board's Report of companies whose shares are listed on a stock exchange must include additional information as specified in the SEBI (LODR) Regulations, 2015.

## DISCLOSURE IN BOARD'S REPORT PURSUANT TO COMPANIES ACT, 2013

| | | |
|---|---|---|
| Disclosures under Section 134(3) | Issue of Equity Shares with differential rights under Section 43 r\w Rule 4 of the Companies (Share Capital & Debentures) Rules, 2014 | Issue of Sweat Equity Shares under Section 54 r\w Rule 8 of the Companies (Share Capital &. Debentures) Rules, 2014 |
| Details of Employees Stock Option Scheme- Section 62(l)(b) r\w Rule 12(9) of the Companies (Share Capital & Debentures) Rules, 2014 | Restrictions on purchase by company or giving of loans by it for under Section 67 r\w Rule 16 of the Companies (Share Capital & Debentures) Rules, 2014 | Disclosures pertaining to Consolidated Financial Statements under Section 129 |
| Voluntary revision of Financial Statements or Board's Report - Section 131(1) | Corporate Social Responsibility — Section 135 | Appointment/ Re-Appointments of an Independent Director - Section 149(10) |
| Resignation of Director- Section 168(1) | Composition of Audit Committee - Section 177(8} | Details of Vigil Mechanism - Section 177(10) |
| Policy relating to the remuneration for the directors, key managerial personnel and other employees - Section 178(4) | Related party transactions- Section 188(2) | Disclosures pertaining to remuneration of directors and employees - Section 197(12) |
| Remuneration received by MD Remuneration received by MD and WTD from holding or subsidiary companies - Section 197(14) | Secretarial Audit Report — Section 204(1) | |

### Secretarial Standard on Report of the Board of Directors" (SS-4)

The "Secretarial Standard on Report of the Board of Directors" (SS-4), formulated by the Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) and issued by the Council of the ICSI, has been effective from 1st October, 2018. Adherence to SS-4 is recommendatory. SS-4 prescribes a set of principles for making disclosures in the Report of the Board of Directors of a company and matters related thereto. SS-4 is in conformity with the provisions of the Companies Act, 2013. This Standard is in conformity with the provisions of the Act. However, if due to subsequent changes in the Act, any part of this Standard becomes inconsistent with the Act, the provisions of the Act shall prevail.

For example, SS-4 provides that even if no amount is proposed to be transferred to reserves, or if no dividend has been recommended by the Board, a statement to that effect should be included in the Board's Report. The purpose of this requirement is to ensure the inclusion of certain important information that should be presented to the stakeholders in a single document.

The lesson sets out the explanations, procedures and practical aspects in respect of the provisions contained in SS-4 to facilitate compliance thereof by the stakeholders.

In addition to the disclosure requirements prescribed in this Standard, some sector specific Regulations/ Guidelines may require additional disclosures to be made in the Board's Report/Annual Report of companies operating in specific sectors such as Public Sector Undertakings (PSUs), Insurance Companies, Non-Banking Financial Companies, Housing Finance Companies etc. Hence, such companies should make requisite disclosures in accordance with applicable sector specific Regulations/Guidelines in its Board's Report/Annual Report.

## Disclosures under Section 134(3)

Section 134 of the Act enjoins upon the Board a responsibility to make out its report to the shareholders and attach the said report to financial statements laid before the shareholders at the annual general meeting, in pursuance of Section 129 of the Act.

The Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

In terms of Sub-section (3) of Section 134, the Board's Report shall include:

**(a)** **The web address,** if any, where annual return referred to in sub-section (3) of section 92 has been placed;

**(b)** **Number of meetings of the Board:** Board's Report should contain total number of Board Meetings held during the year;

> *According to SS-4, the number and dates of meetings of the Board held during the year shall be disclosed in the Report.*

**(c)** **Directors' Responsibility Statement:** Section 134(5) of the Act specifically provides that the Directors' Responsibility Statement shall set out the following affirmations:

(i) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(ii) 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;

(iii) 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;

(iv) the directors had prepared the annual accounts on a going concern basis; and

(v) 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 are adequate and were operating effectively; and

(vi) The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

*Explanation* – The term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

> In the matter of Cambridge Technology Enterprises Ltd., CA NO. 59/621A/HDB/2016, NCLT-Hyderabad, it was held that where company did not follow accounting standards in preparation of annual account as stated in Director's Responsibility statement, hence, violated provision of section 217, on company's application, compounding was allowed subject to payment of compounding fees.

**(ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government:**

- Nature of Fraud with description;
- Approximate Amount involved;
- Parties involved, if remedial action not taken; and
- Remedial action taken.

The auditor shall report the matter related to details of frauds under sub-section (12) of section 143 to the Central Government involving an amount of Rupees One Crore or above.

**(d) A statement on declaration given by independent directors under sub-section (6) of section 149:** Every Independent Director shall give a declaration that he meets the criteria of independence laid down in sub- section (6) of section 149, which is to be given by him at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director. The Board's Report should contain a statement to the effect that the independent directors have given such a declaration.

> **SS-4 provides that Board's Report should include a statement to the effect:**
>
> (a) that necessary declaration with respect to independence has been received from all the Independent Directors of the company;
>
> (b) that the Independent Directors have complied with the Code for Independent Directors prescribed in Schedule IV to the Act.

**(e) Company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178:** The Board' Report of companies which are required to constitute Nomination and Remuneration Committee shall include:

- criteria for determining qualifications,
- positive attributes and independence of a director, and
- recommend to the Board a policy relating to the remuneration of directors, Key Managerial Personnel and other employees.

Section 178(4) provides that the Nomination and Remuneration Committee shall formulate and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees. Such policy shall ensure that –

(a) the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;

(b) relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

(c) remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.

Such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's Report.

***Exceptions:***

Government companies are given certain exemptions from the contents of the Board's report vide notification G.S.R. 463 (E) dated 05.06.2015. Clause (e) of sub-section (3) of section 134 which deals with policy of appointment and remuneration of directors does not apply to such companies. Further, clause (p) dealing with formal evaluation of performance of board or its committees does not apply if the directors are evaluated by the evaluation methodology used by the Department or Ministry of State or Central Government, as the case may be, which is administratively in charge of the company.

In case of an unlisted public/private company which is licensed to operate by RBI or SEBI or IRDA from the International Financial Services Centre located in an approved multi services SEZ set-up under the SEZ Act, sub-section (3) of this section will be applicable with modification such that if any information listed in this sub-section is provided in the financial statement, the company may not include such information in the report of the Board of Directors (Notification No. GSR 8(E), dated 4-1-2017).

**(f) Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made –**

- **Auditor's report under section 143:** Clause (h) of Section 143(3) provides that the auditor's report shall state any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.

- **Cost Audit Report under section 148:** Section 148(5) of the Act and Rule 6 of the Companies (Cost Records and Audit) Rules, 2014 provides that the rights, duties and obligations applicable to the Auditor under Chapter X of the Act shall mutatis mutandis apply to a cost auditor appointed under Section 148 of the Act. It also provides that the cost auditor shall submit his report to the Board of Directors of the company. The cost auditor's report shall also state any qualification, reservation or adverse remark relating to the maintenance of cost accounts and other matters connected therewith.

- Secretarial Audit Report under Section 204(3): Section 204(3) of the Act provides that the Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the Company Secretary in practice in his secretarial audit report. Thus, the Board should state detailed explanation in its Board's Report for all the observations and qualifications given by the Secretarial auditor in his secretarial audit report including the reasons for such material deviations and reasons that led to such deviations.

**(g)** **Particulars of loans, guarantees or investments under section 186**: The particulars of loans given, guarantees provided or investments in securities and acquisition made during the year under section 186 of the Act should be attached to the Board's Report.

**(h)** **Particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form**; The Report of the Board shall contain the details of contracts or arrangements entered with Related Parties as referred to in Section 188 (1) in Form AOC-2 pursuant to Rule 8(2) of Companies (Accounts) Rules, 2014.

**(i)** **The state of the company's affairs**: Information and data which are usually considered pertinent and necessary for the purpose of a proper appreciation of the state of affairs of a company relating to the period for which the financial statements have been prepared must be disclosed in the report. Relevant changes which have occurred, as compared to the position as stated in the previous year's Board's Report which have a material bearing on the performance of the company should be indicated in the Board's Report.

The figures of the previous year relating to achievement of targets of production and sales should also be given in the Board's Report to facilitate comparison and the reasons for any substantial deviation there from should be explained in brief.

**(j)** **The amounts, if any, which it proposes to carry to any reserves**: A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. If no amount is proposed to be transferred to reserves, a statement to that effect shall be included.

***Illustration:***

If no amount is transferred to the Reserves, the following statement be included in the Report:

"The Board of Directors of your company, has decided not to transfer any amount to the Reserves for the year under review."

**(k)** **The amount, if any, which it recommends should be paid by way of dividend**: The Board's Report shall disclose the amount per share and the percentage which the Board recommends to be paid as dividend under section 123 of the Act.

According to SS-4, following should be disclosed in the Board's Report:

a. The amount and the percentage of interim dividend declared, if any, during the year.

b. The total amount of dividend for the year.

c. A statement on compliance with the Dividend Distribution Policy, if applicable, and the reasons for deviation and the rationale for additional parameters considered, if any.

d. Payment of dividend from reserves.

In case no dividend has been recommended by the Board, a statement to that effect shall be made in Board's Report as good governance practice.

**(l)** Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report: The Board's Report should include material changes and commitments, if any, affecting the financial position of the company and occurring between the date of balance sheet and the date of the report. The Directors' Report should, therefore, contain material changes pertaining to post-financial statement events impacting the operations and performance of the Company.

**(m)** The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as prescribed:

Rule 8(3) of the Companies (Accounts) Rules, 2014, prescribes the following details:

**A. Conservation of energy**

(i) the steps taken or impact on conservation of energy;

(ii) the steps taken by the company for utilising alternate sources of energy;

(iii) the capital investment on energy conservation equipment.

**B. Technology absorption**

(i) the efforts made towards technology absorption;

(ii) the benefits derived like product improvement, cost reduction, product development or import substitution;

(iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year):

(a) the details of technology imported;

(b) the year of import;

(c) whether the technology been fully absorbed;

(d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and

(iv) the expenditure incurred on Research and Development.

**C. Foreign exchange earnings and Outgo: The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.**

***Exemptions:***

The requirement of furnishing information and details under Rule 8(3) of the Companies (Accounts) Rules, 2014 shall not apply to a Government company engaged in producing defence equipment.

***Illustration:***

If there are no such disclosures applicable to a company, a statement should be disclosed inthe Report as under:

"Disclosures pertaining to conservation of energy, technology absorption, foreign exchange earnings and outgo, are not applicable to your company during the year under review."

**(n)** **A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company**: The company should provide about the overall risk management framework of the company, whether it has constituted risk management committee, the risk management policy of the company, the possible risks and steps taken to mitigate those risks in this section.

**(o)** **Details about the policy developed and implemented by the company on Corporate Social**

**Responsibility initiatives taken during the year**: Section 135(4) of the Act provides that the Board of every company having net worth of Rs. 500 Crores or more or turnover of Rs. 1,000 Crores or more or net profit of Rs. 5 Crores or more during the immediately preceding financial year shall disclose contents of Corporate Social Policy in its report and also place it on the company's website.

Further, Section 135(2) requires that the composition of the CSR Committee shall be disclosed in the Board's Report.

The Board of every company referred to in Section 135 (1) of the Companies Act, 2013, shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

However, if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

**Preparation of CSR Report**

It is mandatory to include an Annual Report on CSR in the prescribed format, in the Board's report of the Company The report containing the details of CSR Activities undertaken by the company and contents of CSR policy shall be made available on Company's website.

- **Directors Report:**

  The Company shall annex with its Board Report an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced Prior To 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

- **In case of a Foreign Company:**

  The Balance sheet filed u/s 381(1) (b) of the Companies Act, 2013 shall contain an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced prior to 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

**Impact Assessment for big CSR projects**

- Companies with average CSR obligation of 10 Crore or more in the three immediately preceding financial years shall undertake impact assessment through an independent agency for projects of Rs.1 crore or more which have been completed not less than 1 year before undertaking the impact study.
- The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or ` 50 Lakh, whichever is less.

**(p)** Board evaluation: Section 134 of the Act read with Rule 8(4) of the Companies (Accounts) Rules, 2014 provides that every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made.

***Exceptions:***

1. In case Government company - clause [e) of Sub-section [3) of Section 134 shall not apply.- Notification dated 5th June, 2015.
2. In case of Government company- clause [p) of Sub-section [3) of Section 134 shall not apply, in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology- Notification dated 5th June, 2015.

In case of Specified IFSC Public Company/Specified IFSC Private Company- In Sub-section [3) of section 134, following proviso shall be inserted as per Notification Dated 4th January, 2017.

"if any information listed in this sub-section is provided in the financial statement the company may not include such information in the report of the Board of Directors'.

**(o)** Such other matters as prescribed: -

Rule 8(5) of the Companies (Accounts) Rules, 2014, prescribes that the Board's Report shall also include following matters -

(i) The financial summary or highlights;

The financial summary and highlights thereof should be accompanied by the macro-economic, geo-political, financial, industry specific as well as any company specific information affecting the business of the company and the market in which it operates, along with the industry performance vis-à-vis the company's performance.

In case the company has commenced any new business or discontinued/sold or disposed off any of its existing businesses or hived off any segment or division during the year, the Report shall disclose the details of the same highlighting the key focus areas.

(ii) The change in the nature of business, if any;

(iii) The details of directors or key managerial personnel who were appointed or have resigned during the year;

A statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year;

**As per SS-4, the disclosure shall include the following:**

(a) names of the persons who have been appointed / ceased to be Directors and/or Key Managerial Personnel of the company:

  (i) during the year;

  (ii) after the end of the year and up to the date of the Report;

(b) mode of such appointment/cessation;

(c) names of the Directors retiring by rotation at the ensuing annual general meeting and whether or not they offer themselves for re-appointment.

*Explanation*.-For the purposes of this clause, the expression "proficiency" means the proficiency of the independent director as ascertained from the online proficiency self-assessment test conducted by the institute notified under sub-section (1) of section 150.

(iv) The names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;

(v) The details relating to deposits, covered under Chapter V of the Act,-

(a) accepted during the year;

(b) remained unpaid or unclaimed as at the end of the year;

(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved–

- at the beginning of the year;
- maximum during the year;
- at the end of the year.

(vi) The details of deposits which are not in compliance with the requirements of Chapter V of the Act;

(vii) The details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;

(viii) The details in respect of adequacy of internal financial controls with reference to the financial statements;

(ix) A disclosure, as to whether maintenance of cost records as specified by the Central Government under sub- section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained;

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;

(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year;

(xii) the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

Where disclosures referred to in sub-section (3) of Section 134 of the Companies Act,2013 have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's Report.

Further, where the policy referred to in clause (e) or clause (o) of sub-section (3) of Section 134 of the Companies Act,2013 is made available on company's website, if any, it shall be sufficient compliance of the requirements under such clauses if the salient features of the policy and any change therein are specified in brief in the Board's Report and the web-address is indicated therein at which the complete policy is available.

**Rule 8 of the Companies (Accounts) Rules, 2014 shall not apply to One Person Company or Small Company.**

The Central Government has been empowered to prescribe an abridged Board's report, for the purpose of compliance with section 134 of the Companies Act, 2013 by One Person Company or Small Company.

## Abridged Board Report for OPC and Small Company

Rule 8A of the Companies (Accounts) Rules, 2014, prescribes the Matters to be included in Board's Report for One Person Company and Small Company.

1. The Board's Report of One Person Company and Small Company shall be prepared based on the stand alone financial statement of the company, which shall be in abridged form and contain the following:-

   (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed;

   (b) number of meetings of the Board;

   (c) Directors' Responsibility Statement as referred to in sub-section (5) of section 134;

   (d) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;

   (e) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report;

   (f) the state of the company's affairs;

   (g) the financial summary or highlights;

   (h) material changes from the date of closure of the financial year in the nature of business and their effect on the financial position of the company;

   (i) the details of directors who were appointed or have resigned during the year;

   (j) the details or significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future.

2. The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

## Disclosures pertaining to Issue of Equity Shares with differential rights

Section 43 of the Act provides that a company limited by shares can issue equity shares with differential rights as to dividend, voting or otherwise in accordance with rules prescribed under Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014.

Rule 4(4) of the Companies (Share Capital and Debentures) Rules, 2014, provides that the Board of Directors shall, *inter alia*, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights as to dividend, voting or otherwise was completed, the following details, namely:-

(a) total number of shares allotted with differential rights;

(b) details of the differential rights relating to voting rights and dividends;

(c) percentage of shares with differential rights to the total post-issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting rights shall carry to the total voting rights of the aggregate equity share capital;

(d) price at which such shares have been issued;

(e) particulars of promoters, directors or key managerial personnel to whom such shares are issued;

(f) change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;

(g) diluted Earnings Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;

(h) pre and post issue shareholding pattern along with voting rights shall be in the format specified as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

## Disclosures pertaining to Issue of Sweat Equity Shares

Section 54(1)(d) of the Act provides that where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by the SEBI and if they are not so listed, the sweat equity shares are issued in accordance with Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014.

In terms of Rule 8 of Companies (Share Capital and Debentures) Rules, 2014, the Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

(a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;

(b) the reasons or justification for the issue;

(c) the class of shares under which sweat equity shares are intended to be issued;

(d) the total number of shares to be issued as sweat equity;

(e) the class or classes of directors or employees to whom such equity shares are to be issued;

(f) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;

(g) the time period of association of such person with the company;

(h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;

(i) the price at which the sweat equity shares are proposed to be issued;

(j) the consideration including consideration other than cash, if any to be received for the sweat equity;

(k) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

(l) a statement to the effect that the company shall conform to the applicable accounting standards; and

(m) diluted Earning Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.

## Disclosures of Details of Employees Stock Option Scheme - Section 62(1)(b)

Section 62(1)(b) of the Act read with Rule 12(9) of the Companies (Share Capital and Debentures) Rules, 2014 provides that the Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

(a) options granted;

(b) options vested;

(c) options exercised;

(d) the total number of shares arising as a result of exercise of option;

(e) options lapsed;

(f) the exercise price;

(g) variation of terms of options;

(h) money realized by exercise of options;

(i) total number of options in force;

(j) employee wise details of options granted to:

  (i) key managerial personnel;

  (ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year;

  (iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.

## Disclosures pertaining to Restrictions on purchase by company or giving of loans by it for purchase of its shares – Section 67

Proviso to Section 67(3) read with Rule 16(4) of Companies (Share Capital and Debentures) Rules, 2014 provides that where the voting rights are not exercised directly by the employees in respect of shares to which the scheme for provision of money for purchase of or subscription for shares by employees or by trustees for the benefit of employees relates, the Board of Directors shall, inter alia, disclose in the Board's Report for the relevant financial year the following details, namely:-

(a) the names of the employees who have not exercised the voting rights directly;

(b) the reasons for not voting directly;

(c) the name of the person who is exercising such voting rights;

(d) the number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;

(e) the date of the general meeting in which such voting power was exercised;

(f) the resolutions on which votes have been cast by persons holding such voting power;

(g) the percentage of such voting power to the total voting power on each resolution;

(h) whether the votes were cast in favour of or against the resolution.

## Disclosures pertaining to Consolidated Financial Statements

Rule 8(1) of the Companies (Accounts) Rules, 2014 specifies that the Board's Report:

- shall be prepared on the basis of standalone financial statements of the company; and
- shall report on the highlights of performance of subsidiaries, associates and joint venture companies

and their contribution to the overall performance of the company during the period under report.

Proviso to Section 129(3) read with Rule 5 of the Companies (Accounts) Rules, 2014 states that the company shall also attach along with its financial statement a separate statement containing the salient features of the financial statements of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures in Form AOC-1.

Now having discussed about the Board Disclosures, the ensuing paragraphs focus on Website Disclosure.

## WEBSITE DISCLOSURE

Companies Act, 2013 does not mandates companies to have an active website, but SEBI (LODR) Regulations, 2015 requires the listed entity shall maintain a functional website containing the basic information about the listed entity.

As per Regulation 46 of the SEBI (LODR) Regulation,2015, the listed entity shall disseminate the following information under a separate section on its website :

(a) details of its business;

(b) terms and conditions of appointment of independent directors;

(c) composition of various committees of board of directors;

(d) code of conduct of board of directors and senior management personnel;

(e) details of establishment of vigil mechanism/ Whistle Blower policy;

(f) criteria of making payments to non-executive directors, if the same has not been disclosed in annual report;

(g) policy on dealing with related party transactions;

(h) policy for determining 'material' subsidiaries;

(i) details of familiarization programmes imparted to independent directors including the following details:-

  (i) number of programmes attended by independent directors (during the year and on a cumulative basis till date);

  (ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date); and

  (iii) other relevant details.

(j) the email address for grievance redressal and other relevant details;

(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

(l) financial information including:

  (i) notice of meeting of the board of directors where financial results shall be discussed;

  (ii) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;

  (iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc.

(m) shareholding pattern;

(n) details of agreements entered into with the media companies and/or their associates, etc;

(o) schedule of analyst or institutional investor meet at least two working days in advance (excluding the date of the intimation and the date of the meet) and presentations made by the listed entity to analysts or institutional investors;

*Explanation:* For the purpose of this clause 'meet' shall mean group meetings or group conference calls conducted physically or through digital means;

(oa) Audio or video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means, simultaneously with submission to the recognized stock exchange(s), in the following manner:

(i) the presentation and the audio/video recordings shall be promptly made available on the website and in any case, before the next trading day or within twenty-four hours from the conclusion of such calls, whichever is earlier;

(ii) the transcripts of such calls shall be made available on the website within five working days of the conclusion of such calls: Provided that—

a. The information under sub-clause (i) shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.

b. The information under sub-clause (ii) shall be hosted on the website of the listed entity and preserved in accordance with clause (a) of regulation 9.

The requirement for disclosure(s) of audio/video recordings and transcript shall be voluntary with effect from April 01, 2021 and mandatory with effect from April 01, 2022;

(p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;

(q) items in sub-regulation (1) of regulation 47;

(r) With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings;

(s) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter- alia consider accounts of that financial year;

Provided that, a listed entity, which has a subsidiary incorporated outside India—

(i) where such subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such subsidiary is placed on the website of the listed entity;

(ii) where such subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed entity may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website;

(t) secretarial compliance report as per sub-regulation (2) of regulation 24A of these regulations;

(u) disclosure of the policy for determination of materiality of events or information required under clause (ii), sub-regulation (4) of regulation 30 of these regulations;

(v) disclosure of contact details of key managerial personnel who are authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) as required under subregulation (5) of regulation 30 of these regulations;

(w) disclosures under sub-regulation (8) of regulation 30 of these regulations;

(x) statements of deviation(s) or variation(s) as specified in regulation 32 of these regulations;

(y) dividend distribution policy by listed entities based on market capitalization as specified in sub-regulation (1) of regulation 43A;

(z) annual return as provided under section 92 of the Companies Act, 2013 and the rules made thereunder.

The listed entity shall ensure that the contents of the website are correct and shall update any change in the content of its website within two working days from the date of such change in content.

**Items required to be hosted on website as per Regulation 62 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.**

(a) details of its business;

(aa) composition of the Board;

(b) financial information including:

 (i) notice of meeting of the board of directors where financial results shall be discussed;

 (ii) financial results, on the conclusion of the meeting of the board of directors where the financial results were approved;

 (iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;

(c) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;

(d) email address for grievance redressal and other relevant details;

(e) name of the debenture trustees with full contact details;

(f) the information, report, notices, call letters, circulars, proceedings, etc. concerning non-convertible redeemable preference shares or non-convertible debt securities;

(g) all information and reports including compliance reports filed by the listed entity;

(h) information with respect to the following:

 (i) default by issuer to pay interest or redemption amount;

 (ii) failure to create a charge on the assets;

(i) all credit ratings obtained by the entity for all its listed non-convertible securities, updated immediately upon any revision in the ratings;

(j) statements of deviation(s) or variation(s) as specified in sub-regulation (7) and sub-regulation (7A) of regulation 52 of these regulations;

(k) annual return as provided under section 92 of the Companies Act, 2013 and the rules made thereunder.

The listed entities to whom regulations 15 to regulation 27 are applicable shall also make the following additional disclosures on their website:

(a) composition of the various committees of the board of directors;

(b) terms and conditions of appointment of independent directors;

(c) code of conduct of the board of directors and senior management personnel;

(d) details of establishment of vigil mechanism/ whistle blower policy;

(e) criteria of making payments to non-executive directors, if the same has not been disclosed in the annual report;

(f) secretarial compliance report as per sub-regulation (2) of regulation 24A of these regulations;

(g) policy on dealing with related party transactions;

(h) policy for determining 'material' subsidiaries;

(i) details of familiarization programmes imparted to independent directors including the following details:-

   (i) number of programmes attended by the independent directors (during the year and on a cumulative basis till date),

   (ii) number of hours spent by the independent directors in such programmes (during the year and on cumulative basis till date), and

   (iii) other relevant details.

The listed entity shall update any change in the content of its website within two working days from the date of such change in content.

It is important that the listed entity ensures the contents of the website are correct and updated at any given point of time.

## Disclosures under Companies Act, 2013 & Rules made thereunder

**1. Information Pertaining to Registered Office [Section 12(3)(c)]**

Every Company must get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail id and website address, if any, printed on its letterheads, business letters, billheads, letter papers and in all its notices and other official publications.

**2. Change of Object for raising money through Prospectus [Section 13(8)(i)]**

A company which has raised money by issuing prospectus and has still some unutilized amount of the money so raised shall not change its objects for which it raised money through the prospectus unless a special resolution is passed by the company through postal ballot. The details in respect of such a resolution as prescribed shall be published on the Website of the company, if any, indicating therein the justification for such change.

**3. Unpaid Dividends [Section 124(2)]**

A company after transferring the amount of unpaid dividends to a separate bank account of "Unpaid Dividend Account" will have to prepare a statement containing the shareholder's names, their last known addresses, and the unpaid dividend to be paid to them and place it on the company's Website, if any.

Capital Reconciliation Audit Report to be submitted to stock exchanges on quarterly basis, in Any Other

Information Section, should contain the amount of Unpaid Dividend transferred to Investor Education and Protection Fund during the quarter under report.

4. **Corporate Social Responsibility [Section 135(4)(a)]**

The Board of every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year, shall after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed under Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014.

5. **Placing of financial statements and other documents of a listed company on the website [Section 136(1)]**

A listed company shall also place its financial statements including consolidated financial statements, if any, auditor's report and all other documents required by law to be attached thereto, on its website, which is maintained by or on behalf of the company. Every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of its subsidiary on its website, if any.

Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary") –

(a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;

(b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.

6. **Vigil Mechanism in Audit Committee for Listed Companies and other Prescribed Companies [Proviso to Section 177(10)]**

Section 177(9) of the Act, pertaining to setting up of vigil mechanism which shall provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's Report.

7. **Nomination and Remuneration Policy**

The Nomination and Remuneration Committee shall formulate the criteria and policy for determining qualifications, positive attributes and independence of a director.

Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's Report. [Proviso to Section 178(4)].

8. **Compromises, Arrangements and Amalgamation [Proviso to Section 230(3)]**

A notice of meeting ordered by the Tribunal for the purpose of Compromise and Arrangements must be served upon the Creditors or class of Creditors, Shareholders or Debenture holders and other members. Such notice should also be published on the Website of the Company, if any.

**9. Code for Independent Directors [Schedule IV]**

The terms and conditions of appointment of independent directors shall also be posted on company's website.

**10. Notice of candidature of a person for directorship [Rule 13(2) of the companies (Appointment and Qualification of Directors) Rules, 2014]**

The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office by placing notice of such candidature or intention on the website of the company, if any.

**11. Notice of resignation of director [Rule 15 of the Companies (Appointment and Qualification of Directors) Rules, 2014]**

The Company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.

**12. Form and particulars of advertisement or circulars [Rule 4(3) of the Companies (Acceptance of Deposits) Rules, 2014]**

Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.

**13. Variation of terms of contracts referred to in the prospectus or objects for which prospectus was issued [Rule 7(3) of the Companies (Prospectus and Allotment of Securities) Rules, 2014]**

The notice shall also be placed on the website of the company, if any.

**14. Other compliances for conversion of section 8 companies to any other kind [Rule 22(1)(b) of the Companies (Incorporation) Rules, 2014]**

The Company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice in Form No. INC. 19, shall be sent forthwith to the Regional Director and the said notice shall be published on the website of the company, if any, and as may be notified or directed by the Central Government.

**15. Change of objects for which money is raised through prospectus [Rule 32(3) of the Companies (Incorporation) Rules, 2014]**

Where there is change of objects for which money is raised through prospectus, a notice shall also be placed on the website of the company, if any pertaining to the same.

**16. Closure of register of members or debenture holders or other security holders [Rule 10(1) of the Companies (Management and Administration) Rules, 2014]**

A company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice and in such manner, as may be specified by Securities and Exchange Board of India, if such company is a listed company or intends to get its securities listed, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.

**17. Notice of meeting [Rule 18(3)(ix) of the Companies (Management and Administration) Rules, 2014]**

The notice of the general meeting of the company shall be placed on the website of the Company, if any and on the website as may be notified by the Central Government.

**18. Voting through electronic means [Rule 20(4)(ii) of the Companies (Management and Administration) Rules, 2014]**

The notice of voting through electronic means shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members.

**19. Voting through Electronic Means [Rule 20(4)(xvi) of the Companies (Management and Administration) Rules, 2014]**

The results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman :

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

**20. Procedure to be followed for conducting business through postal ballot [Rule 22(4) of the Companies (Management and Administration) Rules, 2014]**

The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

**21. Postal Ballot [Rule 22(13) of the Companies (Management and Administration) Rules, 2014]**

The results of the poll shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

**22. Special notice [Rule 23(4) of the Companies (Management and Administration) Rules, 2014]**

Where it is not practicable to give the notice in the same manner as the company gives it notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.

**LESSON ROUND-UP**

- **Website Disclosures for Companies that Conduct Online Business**

  For companies that conduct online business, the following must be disclosed on the website:

  – Name of the Company

  – Registered Office Address

  – Company Identification Number (CIN)

- Telephone Number
- Fax Number, if any
- Email address
- Contact person in case of any grievances or queries on the landing page of the website.

- **Website Disclosures for Private Companies**
  - The Notice of the General Meeting must be placed on the website.
  - Details of unpaid dividends, including names and last known addresses of the shareholders, must be disclosed.
  - Details of the Corporate Social Responsibility (CSR) must be published on the website.
  - Separated Audited accounts with respect to each subsidiary must be published on the website.
  - If a director resigns, the same information must be published within 30 days of the director's resignation.

- **Website Disclosures for Public Companies**

  In addition to the mandatory disclosures for the private company, a public company must also publish the following:
  - The notice of "Change of objects for which money is raised through prospectus" under Rule 32 of Chapter II – Companies (Incorporation) Rules 2014 must be published on the website.
  - A copy of the circular inviting deposits from the public must be on the website of the company.
  - Information about the closure of the register of members or debenture holders or other security holders.
  - Notice of the postal ballot.
  - Results of the postal ballot along with the scrutiniser's report must be published.
  - Details of the establishment of the Vigil Mechanism must also be disclosed on the website.
  - Terms of Appointment of Independent Directors must also be published on the website.

- **Website Disclosures for Listed Companies**

  A listed company is compulsorily required to have a functional website. The following details must also be mentioned on the website:
  - Particulars of the business activities.
  - Terms of Appointment of Independent Directors must also be published on the website.
  - Particulars of the structure of the various committees of the Board of Directors.
  - Code of Conduct of Senior Management and Board of Directors.
  - A policy with regards to related party transactions.
  - Details of the establishment of the Vigil Mechanism and Whistle Blower Policy.
  - Email of Grievance Redressal Mechanism and other relevant information.
  - Shareholding Pattern.

– Designated Officials who can handle investor grievances.

– All other information about notices, taxes, agreements, and financial information.

## GLOSSARY

**Related-Party Transaction:** The term related-party transaction refers to a deal or arrangement made between two parties who are joined by a pre-existing business relationship or common interest. Companies often seek business deals with parties with whom they are familiar or have a common interest.

**Clause 54:** The issuer Company agrees to maintain a functional website containing basic information about the Company e.g. details of its business, financial information, shareholding pattern, compliance with corporate governance, contact information of the designated officials of the Company who are responsible for assisting and handling investor grievances, details of agreements entered into with the media Companies and/or their associates, etc.

**Code of Conduct - Clause 49(II)(E)/ Code of Fair Disclosure**: The Board shall lay down a code of conduct for all Board members and Senior Management of the Company. The code of conduct shall be posted on the website of the Company.

**Whistle Blower Policy - Clause 49(II)(F)**: The Company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the Company's code of conduct or ethics policy. The details of establishment of such mechanism shall be disclosed by the Company on its website and in the Board's report.

**Material Subsidiaries - Clause 49(V)(D):** The Company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the Company's website and a web link thereto shall be provided in the Annual Report.

**Related Party Transactions - Clause 49(VIII)(A)(2)**The Company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report.

**Remuneration of Directors – Clause 49(VIII)(C)(3):** The Company shall publish its criteria of making payments to Non-Executive Directors in its annual report. Alternatively, this may be put up on the Company's website and reference drawn thereto in the annual report.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What is the purpose of disclosure in corporate governance?
2. How board and website disclosures creates confidence among the stakeholders?
3. What are the components of board disclosures?
4. What are the components of website disclosures?

## LIST OF FURTHER READINGS

- https://cleartax.in/s/website-disclosures-companies-act-2013
- https://taxguru.in/company-law/disclosures-board-report-companies-act-2013.html

- https://www.srcc.edu/system/files/155-192%20Article-8.pdf
- https://unctad.org/system/files/official-document/iteteb20063_en.pdf
- https://www.researchgate.net/publication/228122765_Determinants_of_Corporate_Governance_Disclosures_Evidence_from_Companies_in_Northern_India/link/570e199308aed31341d1377e/download

# Data Governance

Lesson 9

## KEY CONCEPTS

■ Data Governance ■ Data Management ■ Business Value of Data Governance ■ Data Governance Quality Index ■ Top-down method ■ Bottom-up method

## Learning Objectives

**To understand:**

- Genesis of data governance
- Meaning of data governance
- Difference between data governance and data management
- Principles of data governance
- Sector wise data governance scenario of selected sectors.

## Lesson Outline

- Introduction
- Importance of Data Governance
- Data Governance Challenges
- Difference between Data Governance and Data Management
- Implementing an Effective Data Governance Framework
- Data Governance at government level- The Indian Scenario
- Sector-wise Data Governance Scenario
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

Data governance is everything one do to ensure data is secure, private, accurate, available, and usable. It includes the actions people must take, the processes they must follow, and the technology that supports them throughout the data life cycle.

Data governance (DG) is the process of managing the availability, usability, integrity and security of the data in enterprise systems, based on internal data standards and policies that also control data usage. Effective data governance ensures that data is consistent and trustworthy and doesn't get misused. It's increasingly critical as organizations face new data privacy regulations and rely more and more on data analytics to help optimize operations and drive business decision-making.

A well-designed data governance program typically includes a governance team, a steering committee that acts as the governing body, and a group of data stewards. They work together to create the standards and policies for governing data, as well as implementation and enforcement procedures that are primarily carried out by the data stewards. Ideally, executives and other representatives from an organization's business operations take part, in addition to the IT and data management teams. While data governance is a core component of an overall data management strategy, organizations need to focus on the expected business benefits of a governance program for it to be successful and independent.

Having a brief discussion on data governance, it is imperative to comprehend its genesis. Initially , data governance was strictly considered an IT function focused on data cataloging that was rarely, if ever, seen or used by the business. Next came digital transformation and the big data passion. Organizations realized they could extract value from all of the various data sets they were creating. This became Data Governance 2.0, which ushered in principles to propel modern, data-driven business. This approach embraces collaboration, dismantles organizational silos and spreads accountability across more roles.

In 2018, there was a "global reckoning on data governance," as the Wall Street Journal put it. Massive data breaches at organizations in numerous sectors resulted in serious reputational damage and declining market values for top brands such as Equifax, Facebook, Marriott and Yahoo.

Data governance can be divided into following:

i) Organizing: Identifying all the data sources and getting all the data in one place.

ii) Securing — Ensuring that the data is compliant with data privacy regulations and internal company policies.

iii) Managing and presenting data — After the requisite data is collated, its style of presentation to the team members of the organisation needs to be pondered.

iv) Using methods and technologies — Like modern data governance platforms.

## DATA GOVERNANCE PRINCIPLES

The data governance principles espoused globally are as under:

1. **Maintaining the Integrity of the Data:** A principle of the highest importance is integrity. It depends on the entity using your data whether or not it is being used in the appropriate manner. Data integrity is maintained if their means and goals are ethical. In all decisions about the data, the participants must be honest and forthcoming. This can include decisions about actions, impacts, constraints, etc.

2. **Transparency:** In every case where data is used, proper transparency must always be maintained. To use data, as well as whose data is being used, all parties must understand how it is being utilized. Whenever there is a decision about usage or control, it must be communicated effectively to all parties involved. This will prevent any potential conflict in the future.

3. **Accountability and Ownership of the Data:** The ownership of the data must be defined. Appropriate procedures should be followed for defining access rights. Data governance applies to any data that is used across functions. As a result, data governance defines all decisions, processes, and controls related to data, i.e., its accountability.

4. **Data Audit:** Audits are permitted on every piece of data used. Any decision, control, and process about data that relates to data governance can be audited. Therefore, they must contain documentation proving compliance.

5. **Standardization of Data**: A company's data is used by many teams. In this case, the data in one format might not be compatible with another. It is imperative that specific guidelines and rules be defined in order to standardize data. In addition to these, there are rules for data definition, accessibility, security, and privacy.

6. **Change Management:** There may be some discrepancies in the data that require a change. As a result, there is always a risk of tainting the data. Therefore, data governance ensures proper change management activities, whether proactive or reactive. The data will include reference values, metadata, master data, and its use and structure.

7. **Stewardship:** The principle of stewardship should be adhered to. Accountability goes hand in hand with responsibility. It is essential to appoint a data steward in any organization. All rules and regulations must be followed by the data steward. This holds true for groups of stewards as well. It is their responsibility to ensure that the data is stored and used appropriately. It is their responsibility to always follow the best practices when managing data.

## IMPORTANCE OF DATA GOVERNANCE

In the "information era" rapidly evolving technologies, and cutting-edge analytics and where massive amounts of data are used every day to drive critical business processes and decisions, data governance plays a vital role in every organization. From setting data management rules and regulations to measuring data quality and defining data interpretation processes, the benefits of following data management best practices are essential for forming proper business planning methods, and accounting approaches, and limiting operational risk. The importance of data governance may be covered under the following points:

1. **Better Analysis** – Because data governance enhances data quality and find ability, analysts can find, understand, and analyze data more quickly and compliantly.

2. **Easily Defined Goals** – Data governance sets out a clear method to achieve business goals.

3. **Consistent Compliance** – Data governance helps data users stay compliant with regulations, reducing the risk of fees and reputational damage.

4. **Improved Data Management** – Governance minimizes duplicative efforts, which boosts operational efficiency.

5. **Standardized Systems and Data Policies** – Standardizing systems and policies across the organization instills users with ethics and awareness.

6. **Improved Data Quality** – As a business implements data governance, data quality will improve. This leads to more accurate business processes and higher customer trust.

Thus from the aforesaid point, it is evident data governance is indispensable for an organisation. Data governance is key to an organization because it steers a healthy culture with minimal chances of inaccurate, slow data. Processing data without a data governance framework makes it cumbersome for data teams to leverage data integrity and reliability.

Data governance is essential to a business because it fast-tracks an organization's trustworthiness and transparency while helping teams make responsive, data-driven decisions to benefit the company. Please refer the data governance framework provided in exhibit 1.

**Exhibit 1**

**Data Governance Framework**


*Source: Imperva*

## DATA GOVERNANCE CHALLENGES

### 1. Understanding the business value of data governance

Organizations are constantly generating data. The sheer volume of data in modern organizations requires digital transformation initiatives to manipulate and serve up that data. Business managers reflexively see value in, say, getting data a half-day faster, but they don't reflexively see value in getting data that is well understood and properly controlled, with guardrails. One of the key data governance challenges lies in demonstrating to them that the extra half-day of speed doesn't ultimately buy them anything if they don't have data quality or an idea of where that data is being sourced.

Understanding the business value is especially challenging in older, established organizations that are adopting digital transformation more slowly. However, an advantage of implementing digital transformation is the ability to share relevant data with entities like employees, customers and vendors. This data democratization holds potential for moving the business forward, but it relies heavily on having the guardrails of data governance in place.

One solution has been the emergence of the chief data officer (CDO). This role started as a data-focused, right-hand person working for the chief information officer (CIO). With time, the CDO has risen to peer status with the CIO, and is tasked with making sure that the organization's thirst for data is quenched efficiently. That entails rolling out an architecture and a data platform that enforces data governance and keeps it top-of-mind.

The analytics group can also reinforce the business value of data governance. Often, this group is affected the most by low-quality, misunderstood, or misused data, as they are frequently charged with delivering insights, upon which crucial decisions are made.

## 2. Perception of IT owns the data

In the early days, many organizations relegated data governance to IT, thinking it was a matter of putting rules in place and restricting access to data. But data governance was rarely prioritized, and didn't survive IT budget cuts because it was not treated as having real business value.

One of the related data governance challenges is the widely held belief that IT owns the data and is consequently responsible for its governance. Much of data governance is an effort to clarify who really owns data. The idea that IT owns data — and, therefore, data governance — is an obstacle to digital transformation. In any decision about data, the first consideration is the business perspective, with IT enabling that decision afterwards. To better illustrate, consider the role of the database administrator (DBA). DBAs own the database, but they don't own the data itself. Their remit is limited to administering the vehicle that holds the data.

IT should not be making decisions about implementing solutions that affect data without talking to the business about the impact of those solutions. That would be going backwards, in an unsustainable process.

So, to achieve success, smart organizations have moved data governance back into the business, started showing stakeholders the risk of not having it, and started demonstrating value it can bring to an organization. They've also started defining data ownership, which sits with the managers in the business organization. A large utility in the European Union successfully made this shift, and realized savings of 30% on external data management costs, 50% reduction in data discovery time and 8 million Euros in business impact saved in first 18 months. It's not a matter of who owns Oracle data or who owns SQL Server data; it's a matter of sales owning sales data, marketing owning marketing data and so forth.

To overcome this data governance challenge, a best practice would be to appoint a data steward who works with a DBA to provide access to that data. That ensures that you're neither giving people random access to data nor fighting logjams with DBAs.

## 3. Limited or misallocated resources

Once the C-suite sees that data governance is important, the business is driving governance and IT is responding, the next data governance challenge becomes limited resources and misallocated resources. Whom will you get to take on the new roles of Data Owner and Data Steward?

Ideally, when data governance is up to full speed and full scale, those roles are filled by dedicated employees. Designating a data owner isn't as difficult because it means having a senior-level decision maker make a few more decisions. But finding a data steward is trickier.

The shortage of skills is a big obstacle to achieving ROI in data governance, so most organizations try to train somebody with tribal knowledge to be data steward. As most organizations start out, the role of data steward is a part-time job staffed by somebody on the business side who frequently works with data. On the IT side, it's usually a data architect or data analyst with additional, part-time responsibilities. Business analysts and business intelligence (BI) specialists are good candidates for data stewards because they're familiar with the data and with the technical folks on the team.

The company's road map and plan should ensure that, once it is demonstrating the ROI of data governance, it should start to dedicate people to these roles. Large organizations further down the road may have eight to 10 dedicated data stewards who cross the lines of business.

For organizations without the resources to have full time data stewards, one solution is to use consultants;

not IT consultants or outsourced developers, but data governance professionals from specialty firms. Some consulting firms are building practices around data governance experts who can fill those roles. At a small scale and for a limited period of time, it's a great way to achieve early success.

## 4. Siloed data

In many ways, siloed data happens because of different approaches to data operations and versions of technology. One of the things that most companies avoid whenever they modernize is figuring out how to migrate their systems holding legacy data. Those systems still do the job, and ripping and replacing them is prohibitive. Additionally, if the concerned officials don't know what that legacy data contains is, then it's less of an expense to try to solve the problem through downstream integration.

For example, traditional relational databases replace a lot of what was on the mainframe. They speed up transaction processing but require highly structured data. So, what needs to be done with all the new, unstructured data like video and social media? One can put it into NoSQL databases, but that creates a new silo, so people may turn instead to hybrid databases that offer the best of both worlds in one database.

Data silos are a natural phenomenon. Think of them from a business perspective. Often, the business itself is siloed, and the people focused on transactions don't communicate with those focused on strategy. Breaking out of those silos is key to further leveraging the data an organization produces.

One solution is to collect all of the information about the different types of data on different technologies for different uses by different parts of the business. With the right data governance tools, you can connect the metadata of different data types and see it in a uniform fashion. One can then map the architecture of the infrastructure and keep it updated more dynamically than if someone else tried to capture it in static documentation. One can replace the documentation by collecting it from the database instance itself, then bring it into an environment where the concerned person can analyze it and make it useful.

Metadata management is fundamental to successfully operationalizing data governance. Business users, of course, do not care whether the data resides on Oracle, SQL Server, Mongo DB or any other platform. They only want to understand how the data flows through their business and the point at which it comes to them.

## 5. Poor data quality and lack of trust in data

Data quality is a data governance challenge because poor quality leads to lack of trust, which leads to lack of use and lack of strategic results. If teams don't think they can trust the data they are using to make crucial decisions, it leads to data becoming more of an obstacle than an aid to strategic decision-making.

Even if one understand how poor the data is, he / she can still get good results by making adjustments to account for poor data quality. An important aspect of data governance is identifying where there is poor data quality and so that it may be looked into.

At the technical level, these are examples of poor data quality:

- For a particular field in the customer database, 75% of entries are blank.
- Over time, a vendor table accumulates thousands of duplicate rows.
- To test an application, someone generated hundreds of dummy records and forgot to delete them afterwards.

As part of data governance, one solution is to use data intelligence tools to establish metrics and thresholds for data quality and to monitor them. One can also put in place feedback loops so users can report poor-quality data to be cleaned for future use. When one make his / her efforts to provide transparency on available data the business users can decide whether they're comfortable enough with the level of quality to rely on the data.

### 6. Poor data context

Pay attention also to the data governance challenge on the other side of the coin: data context. Poor data quality leads to lack of trust, but lack of trust does not necessarily mean that you have poor data quality. It may mean that users aren't easily able to see what the data really means. Suppose a dataset is labeled "Final sales." Does that mean "Gross sales" or "Net sales?" Or a batch of records are presented as sales opportunities, but they are in fact actually marketing-qualified leads (MQL).

These examples are not a data problem; it's a perception problem. The solution is the same feedback loop described above, so that users can communicate questions and doubts about data and one can provide full context.

### 7. Lack of data control

To return to the relationship between IT and data, organizations that are good at IT but not at data governance generally have too much of the wrong kind of control. Fears about defending the attack surface or protecting the trade secrets leads to shutting out the people who can get the greatest value from the data.

One of the goals of data governance is to avoid turning away the people who will make the most of the organization's data. It's not an exercise in saying "no," but an effort to position oneself to say "yes" with confidence. If one have true control over the data, with the context and understanding that comes from data governance, then one can achieve the right level of control.

Reflexively, companies turn to measures like securing the desktop, the databases and user identities. While those are steps on the right path, one can't apply them effectively across data sources if there is lack of understanding on the data landscape.  Data governance tools help a person to map out what each data asset is for, and what they should and shouldn't be for.

## DIFFERENCE BETWEEN DATA GOVERNANCE AND DATA MANAGEMENT

| ***S. No.*** | ***Basis of Difference*** | ***Data Governance*** | ***Data Management*** |
|---|---|---|---|
| 1 | Definition | Data governance is the process of ensuring that the business rules for data are established and followed. | Data management is the process of making sure that all data is captured, managed, used, and disposed of properly. |
| 2 | Scope | Data governance is a process that ensures the quality of data and the data management process. | The scope of data management is to ensure that all data have been collected, stored, and managed in such a way that it can be accessed by authorized users. |
| 3 | Benefits | Data governance helps organizations to be more efficient in their operations by providing a framework for managing data. The benefits of data governance are that it ensures consistency in project deliverables and reduces errors related to using out-of-date or incorrect information. | Data management provides many benefits to organizations. It improves efficiency, accuracy, and security of data. It also minimizes the risk of human error when handling large amounts of information. |

| S. No. | Basis of Difference | Data Governance | Data Management |
|---|---|---|---|
| 4 | Challenges | There are some challenges when it comes to data governance. One challenge is that it can be hard to know where you should start your data governance process. Another challenge is that there can be some resistance from employees who don't want their work interrupted by new rules and regulations or who are not familiar with how the new system works. | There are many challenges that come with data management. One of the most common problems is that there is no one set standard for how data should be organized and stored. Another issue is that it can be difficult to find information when it needs to be retrieved from various sources and locations. |
| 5 | Best practices | There are many best practices of data governance. The first one is the proper classification of data, which means using metadata to identify what kind of data it is, who owns it and what its purpose will be. Another best practice is the use of access control lists to grant or deny access to certain people or groups. | Data management best practices include good file naming conventions, ensuring high quality of data, proper labelling, secure data storage, defining backup plans, and improving data security. |
| 6 | Technology | Technology can be used to help with data governance in a number of ways. For example, it can be used to automate processes like records management or to monitor user activity across systems. It can also be used to improve the effectiveness of current processes by automating manual tasks or providing insights into how the business operates. | Data can be managed in a more organized way with the use of various tools and techniques. Some of these tools are- Database Management Systems, Data Mining Tools, Data Visualization Tools and Big Data Technologies. |

## IMPLEMENTING AN EFFECTIVE DATA GOVERNANCE FRAMEWORK

The most common objective of data governance is the standardization of data definitions across an enterprise or organization. Other goals and objectives depend on the focus of a particular data governance program. Within the commonly accepted data governance framework, one should determine principles that make sense for the environment.

Every organization is guided by certain business drivers — key factors or processes that are critical to the continued success of the business. Your organization's unique business drivers  dictate what data needs to be carefully controlled, and to what extent, in your data governance strategy. For example, one of a healthcare organization's business drivers may be to ensure the privacy of patient-related data assets, requiring that sensitive data be securely managed as it flows through the business to ensure compliance with relevant government and industry regulations. At the same time, patient data must be readily accessible to a patient's healthcare providers. These requirements inform the provider's data governance strategy, becoming the basis of its data governance framework.

A well-planned data governance framework covers strategic, tactical, and operational roles and responsibilities. It ensures data is trusted, well-documented, and easy to find within your organization, and that it's also kept secure, compliant, and confidential.

Some of the most important advantages the framework provides include:

- A consistent view of — and business glossary for — data, while allowing appropriate flexibility for the needs of individual business units
- A plan that ensures data quality, accuracy, completeness, and consistency
- An advanced ability to understand the location of all data related to critical entities, making data assets discoverable, usable, and easier to connect with business outcomes — in other words, ensuring
- A "single version of the truth" that keeps critical business entities aligned across the enterprise
- Well-defined methodologies and best practices for data assets and data management that can be applied across the organization
- Easily accessible data that's kept secure, compliant, and confidential according to the demands of legal or regulatory requirements

The three pillars of data governance framework are as under:

i) **Governance including all data assets**: Everything from dashboards and code to data science models is a data asset. The data governance framework should take into account all data assets, i.e., data and analytics governance.

ii) **A practitioner-led, bottom-up approach:** As the number of data users and consumers keeps rising, making a few people (data stewards or engineers) accountable for data governance isn't a sustainable approach. A decentralized, bottom-up data governance framework that makes every data creator responsible for data governance is the way forward.

An example of a decentralized, community-led approach is the data mesh. The data mesh design proposes a federated computational governance model, where every organization is a federation of business domains. Domain owners fully manage the data they create. However, each domain still follows a set of global (or federal) rules on data definitions, standards, processes, and discovery.

At this juncture, it will be of substantial academic interest to comprehend the traditional approaches of data governance framework at length.

**i) The top-down method: Focus on data control**

This is the centralized approach to data governance. It relies on a small team of data professionals who employ well-defined methodologies and well-known best practices. This means data modelling and governance are prioritized. Only later is the data made more broadly available to the rest of the organization for analytics.

However, this approach creates a massive scalability issue. In this framework, there's a clear distinction between data providers (typically IT) and data consumers (typically business units). Only data providers are empowered to have any sort of control over the data.

In the past, this was less of an issue because there was a smaller amount of data to be governed, and fewer teams that needed access to it. But today, these small teams of data producers can't cope with the demand from data consumers. It's now a business necessity to have clean, complete, and uncompromised data available to everyone who needs it, whenever they need it. There are simply too many business users making too many requests for these teams to keep serving as gatekeepers.

**ii) The bottom-up method: Focus on data access**

Conversely, the bottom-up method allows for much more agility when managing data. While the top-down method starts with data modelling and governance, the bottom-up approach starts with raw data. After the raw data is ingested, structures on top of the data can be created (referred to as "schema on read"), and data quality controls, security rules, and policies can be implemented.

This framework, popularized with the advent of big data, is more scalable than the centralized approach. That said, it creates a new set of data issues. Because data governance isn't implemented until later in the process, and because anyone can enter data, it's harder to establish control. And as we already discussed, lack of data governance can lead to increased regulatory risk, a loss of stakeholder trust in the organization's data, and a higher cost of data management for a sprawling mess of data assets.

What we need is a modern approach to a data governance framework — one that balances access and control. We need to establish control early on in the process without sacrificing the ability for users and subject matter experts to become data owners and curators.

**iii) Governance practices embedded within daily workflows:** Data governance has always been associated with compliance, control, and risk mitigation. However, it is a business function that can support strategic decision-making by ensuring that everyone has access to accurate, relevant, high-quality, and trustworthy data. That's why it cannot be an afterthought. Instead, it should be embedded within the daily workflows of data practitioners.

## Steps Involved in creating Data Governance Framework

i) Revisiting the definition of data governance: Data governance is an ever-evolving project, which is why it is required to revisit and question the idea of data governance before getting to formulating a framework.

While revisiting the definition of data governance, the following questions needs to be focused on-

a) What is the purpose of data governance?

b) Does it cover all data assets across the organization?

c) Does governance also foster organization-wide data sharing and collaboration?

ii) Identification and defining the data domains: Since the data governance framework should cover all data assets, the next step is to identify and standardize data domains across the organization. One can have domains like finance, marketing, sales, etc. corresponding to each function generating data. In this regard, the following questions to be looked into-

a) Which are the important data domains in an organisation?

b) What data is generated?

c) Where is that data currently?

d) Who consumes / uses the data?

iii) Identifying domain data owners and consumers: A key tenet of modern data governance is shared responsibility for data. So, each domain creating data is responsible for managing it and ensuring its security, integrity, and privacy. That's why the next step is to assign data owners to each domain and understand its data consumption pattern to ensure that the right people have access to the data they need.

In this section, the following questions are relevant-

a) Who is creating data within each domain?

b) Who is consuming that data and how? What do their daily workflows look like?

c) What are the current dependencies to get access to domain data?

iv) Validating and documenting of everything pertaining to the data: By this stage, one must have a clear idea of data flow within the organization. The next step is to standardize data domain definitions, data flow rules and workflows, access policies, and more by documenting everything.

The documentation should address the following:

a) Where does data originate from?

b) What does it mean?

c) How does it flow through your organization?

d) Does it help domains meet their goals?

e) Does it support your organization's business outcomes?

v) Conducting data security and risk assessments for each domain: The last step is to set up processes to conduct frequent data security and risk assessments for each domain. That's because enabling data governance is a journey, rather than a one-time project implementation. This step involves the following questions-

a) What are the existing data access policies and security checks for data from each domain?

b) Who is allowed to access what data and why?

c) Do these policies mitigate risks without creating data discovery, access, and collaboration bottlenecks?

## DATA GOVERNANCE AT GOVERNMENT LEVEL- THE INDIAN SCENARIO

Administrative data forms the backbone of decentralized evidence-based decision making in the Government of India. With emerging international evidence of the vital role played by data as an enabler in driving public policy across its lifecycle, the Central and State Governments have paid significant attention to their data systems over the past two decades. Management Information Systems (MIS) and dashboards have been developed for most government schemes and programs. To disseminate this information more widely, Open Data initiatives have also been undertaken. Recently, attempts have also been made to foster data exchange across Ministries/Departments via the Prayas Dashboard at Prime Minister's Office and the Output-Outcome Monitoring Dashboard at Development Monitoring & Evaluation Office (DMEO), NITI Aayog.

In this context, a comprehensive review of present data preparedness levels of all Ministries/Departments was required to chart way forward and suggest measures for improvement. Against this background, the Data Governance Quality Index (DGQI) exercise was initiated with the objective of assessing data preparedness of M/Ds on a standardized framework to drive healthy competition among them and promote cooperative peer learning from best practices.

Several existing data maturity models were studied to develop DGQI's methodology. Three key steps of data preparedness were identified: (a)Data Strategy to lay down systemic guidelines, (b) Data Systems to ensure smooth processes of data generation, management and its use and (c) Data driven Outcomes where data is utilized and widely shared by institutions to drive decision making.

While DGQI 1.0 focused on only data systems pillar, DGQI 2.0 aims to assess data preparedness levels of Ministries/Departments across the three pillars.

## Genesis of Data Governance

Data collection and warehousing started as early as 1881 when the first Census was conducted in India. After Independence, National Sample Survey Organization was established in 1950 and Central Statistical Organization in 1951. Data collected through large scale surveys by these organisations, and the administrative data collected by Ministries and the state Governments led to data-driven decision-making in the Central and the State Governments. Scheme-level information generated and collated at various levels i.e., village, block, district and state levels, assisted programme implementation. However, the whole exercise was done manually on formats individually developed under each scheme and overall scheme progress was mostly tracked inputs (fund releases and budget utilization).

MIS systems and digital data storage facilities became all pervasive in the last two decades. Gradually, activities and outputs started to get monitored. With digitization of data, advent of new techniques and ever-increasing importance of data in public policy, the need for even better management of data was recognized. In order to further India's vision towards Open Government and Open Data initiative, National Data Sharing & Accessibility Policy was adopted and data.gov.in was launched to provide all relevant data from Government at single place for wider public use. Many schemes also migrated to dashboard based and basic analytics-driven systems which make complex information available to decision makers in simple charts and figures. Intra-government exchange and integration of data is now being facilitated using ICT platforms such as DISHA, Prayas and Output- Outcome Monitoring Framework (OOMF).

## Current Scenario of Data Governance

As of now, an internal Management Information Systems (MIS) is developed for most government programmes, which provides required information regarding coverage and outputs of the programme, e.g., HMIS for National Health Mission which tracks information uploaded by the States/UTs which enables planning, management, and decision-making based on grading of facilities and various health indicators at block, district, state as well as national level. Such programme MIS typically have capabilities to generate standardized analytical reports on the basis of data collected. Further, Ministry of Statistics and Programme Implementation (MoSPI), through Twenty Point Programme (TPP-2006) and Infrastructure and Project Monitoring Division (IPMD) monitors key infrastructure projects within the Government.

The Government also launched Digital India programme in 2015 to ensure digital availability of government services to citizens. This Programme is being managed by National e-Governance Division (NeGD). NeGD provides project development and programme management support to e-governance related measures taken by Ministries. Some of the State Governments also present the work done by their various departments through dashboard based analytical systems (e.g. Pratibimba by Govt. of Karnataka). These measures have ushered in a new era of accountability.

Overall, it is clear from the background above that governments in India have been quite proactive in ensuring adoption of newer technologies in data management and thereby improving programme outputs and outcomes. However, there still remains lot more to be done with reference to data governance, especially with respect to programme monitoring and management.

Given the above, it is imperative that a comprehensive review of data preparedness is conducted for government data systems for scheme management and decision support information systems. Development Monitoring and Evaluation Office (DMEO), an attached office of NITI Aayog, has developed DGQI toolkit to enable a comprehensive self-assessment of data preparedness levels to come up with Data Governance Quality Index (DGQI) for the government agencies at the central and state level.

## Objectives of Data Governance Quality Index (DGQI)

The intent of the DGQI is to enable Ministries/ Departments and state departments to assess themselves at various levels of data maturity on the basis of a standardized framework, which in turn would facilitate deepening of digitization in the Government of India.

It is hoped that in the long run, DGQI will help in laying the foundation of more integrated monitoring systems, for e.g., a single, online, API-integrable 'Overarching Dashboard' kind of monitoring system of all the CS/ CSS schemes of all M/Ds, ultimately leading to a state-of-the-art data-driven decision making.

The objectives are as follows:

- To enable review and assessment of data preparedness of the data/ MIS systems of the Ministries/ Departments on objective parameters of a standardized framework.
- To prepare a self-assessment diagnostic tool that will enable the M/Ds to internally contemplate the need for improving data systems.
- To enable the commissioning agencies to conduct a comparative assessment of data preparedness and source best practices in IT systems which can enable improved cross-learning between the participating agencies.

## Methodology of DGQI

Under the realm of the overall approach, six key themes have been identified under data systems pillar covered by the Data Governance Quality Index:

1. **Data Generation**: Data generation measures the ability of the respective ministries/departments to efficiently generate useful data in the course of their programme implementation. It covers areas related to the level of digitization, frequency and granularity of data generation. It also assesses if mobile phones, location tracking and GIS mapping is used to authenticate the generated data.
2. **Data Quality**: Data Quality covers processes of scientifically and statistically evaluating data in order to determine whether they meet quality benchmarks. The key areas covered under this theme relate to profiling of data, data quality assessment processes (for e.g. data pipeline design, well defined data schema etc.), data cleaning, use of latest technologies and mobile phones in the process.
3. **Use of Technology**: This theme assesses if emerging technologies are being utilized to improve data robustness. It assesses if MIS of ministries/departments have linkages with PFMS for ensuring transparency and Jan-Dhan, Aadhar and Mobile [JAM-trinity (if applicable)] for delivering last mile services. It also explored if other data sources such as remote sensing or social media data is utilized in addition to data collected by ministries/departments to get a nuanced understanding. Finally, it also measures if emerging technologies like block chain, big data analytics, machine learning, artificial intelligence, IoT are being used to collect data or to draw analytical insights from it.
4. **Data Analysis, Use and Dissemination**: One of the core themes, it covers if the collected data is being analyzed and used for evidence creation and decision making. Given the present context, it gauges whether ministries/departments are undertaking basic cross-sectional analyses only or regression and predictive analysis as well. The use of dashboards for visualization of data is also checked to ensure that information is disseminated in a user-friendly manner. It also assesses if other social media

platforms are also being increasingly used for information dissemination and whether websites have features to support multi-lingual interfaces and are GIGW compliant.

5. **Data Security and HR Capacity**: While data security requires an in-depth analysis in itself, the same is briefly captured in the index also to reflect its importance. It assesses if anti-virus updates and internal audit systems are in place to ensure data is not corrupted or prone to threats. These were identified to be the minimum requirements expected to be met and are not meant to be exhaustive in nature. To look at HR capacity, the existence of dedicated data quality teams has been considered. Again, this is by no means an exhaustive measure of capacity development but was adopted as the starting point.

6. **Case Studies**: The present questionnaire for this theme focuses on scheme-level MIS. Any intervention done at the Ministry/ Department level or any innovative approach that may not be captured in the structured questions of the tool can be highlighted through best practices. These best practices can be provided as case studies. This theme is expected to help unlock the hidden potential not only in terms of enhanced decision making through inter-ministerial collaboration but also by opening doors for learning from challenges faced and the solutions devised by peer ministries.

## National Data Governance Policy

To unleash innovation and research by start-ups and academia, the Union Budget 2023-24 mentioned about National Data Governance Policy to enable access to "anonymised data" to unfetter innovation by startups and academia. The current draft Data Protection Bill 2022 published by MeitY (Ministry of Electronics and Information Technology) does not cover non personal data. The mentioned document sought to set up an India Data Management Office (IDMO) under the Digital India Corporation and frame certain guidelines for sharing of non-personal data by private entities. The concept of sharing non-personal data is different from Personal Data Protection Bill, 2022 which was designed with online personal privacy in mind. A suitable framework will allow non-personal data to be equitably utilized by start-ups and academic institutions in the country to bolster research and innovation.

As part of the policy, the Indian government will also build the India Datasets program, which will consist of non-personal and anonymised datasets from Government entities that have collected data from Indian citizens or those in India. Private entities will be encouraged to share such data, according to the policy.

## SECTOR-WISE DATA GOVERNANCE SCENARIO

In this section, data governance of selected sectors has been studied to comprehend various dimensions of data governance prevailing in those sectors. The sectors considered for the study are as under:

1. Banking
2. Automobile
3. Energy
4. Hospitality
5. Information Technology (IT).
6. Telecom
7. E-Commerce

## 1. Banking Sector

In banking, data governance is about meeting both regulatory and internal requirements. Banks in particular need to derive value from data for both the innovation and modernization of their operations as well as for continued compliance and ethical management of the data they work with.

Today's economic landscape requires most if not all industries to enhance their data-driven capabilities in the market to maintain a competitive edge. The banking sector is no exception. The introduction of data governance models in banking gives banks the resources they need to upgrade their current procedures and policies to improve their data protection mechanisms. Through following ways data governance provides value in the banking sector.

i) **Regulatory compliance:** It is a requirement for banks to keep all the data they have secure, based on a variety of federal and state compliance regulations. Regulatory requirements continue to pressure the banking industry to get data governance under control as the consequences of data violations become more costly. With the right data governance plan in place, banks always know exactly what data they have access to. They also always know where data is located, which ensures they can enforce the right controls — even during complicated projects like cloud migrations.

   Awareness of the location of data, the regulations it is liable to and the correct approach to protection is key for successful cloud migration and other digital transformation projects. Data governance provides pertinent tagging to ensure banks satisfy regulatory requirements with the correct access and security controls.

ii) **Cost cutting:** Manual data management is tedious, inefficient and expensive. The responsibility of manual data management is often placed at the doorstep of IT teams, which means financial institutions frequently foot the costs of maintaining active IT teams.

   Data governance relieves the manual burdens of discovering, granting access to and implementing security to data through centralizing technologies, effectively ending the need for multiple costly third-party systems and sprawling IT teams. The self-service capabilities of many data governance tools ensure that organizations maintain secure data access without incurring unnecessary costs.

iii) **Market insights:** The financial sector is now characterized by relentless competition between institutions and saturation for newcomers. As a result, market insights have become a necessity for a competitive advantage. Through data analysis initiatives, banks can confidently approach their data and derive actionable insights.

   Data governance supports company-wide analysis and its processes, ensuring that there is easy access to data and that it is well organized. This makes it easier to innovate and use data across the organization as opposed to leaving the responsibility solely to leadership teams.

iv) **Data-driven culture:** Data-driven models are increasingly transforming how organizations handle business goals and objectives. A data-driven culture is proving to be of great benefit to organizations, as it intuitively improves approaches to cost-cutting, innovation and customer insights. Data governance supports and encourages a data-driven culture so banks can more effectively run their operations and make customer-experience-focused decisions.

v) **Collaboration and risk management:** Banking institutions work with hundreds of data sources and require a way to log the data they have. They also need to utilize data for managing and acquiring new customers, discerning fraud and reducing risk. With support from data governance processes and procedures, banks create data catalogs to ease both data discovery and quality assessment. The result is better collaboration and decision-making and improved productivity.

vi) **Improved compliance and customer service:** As the customer experience and secure data controls become more important to consumers, institutions such as Fifth Third Bank are evolving their data governance approaches to become more effective and less invasive, enhancing both compliance and the customer experience.

Financial entities are also looking to deliver more personalized customer experiences to their customers but struggle as they encounter patchy and segmented data. NCBA[1] is a financial services institution that handles this challenge by adopting various customer experience platforms to enable the organization to follow the customer journey from beginning to end. Through this approach, they are able to derive insights into customer patterns and improve experiences for their clients.

At this juncture, it would be of paramount academic significance to explore the necessity of ESG data governance in banks. As it is a well-known fact that banking industry is facing mounting pressure to meet fast-changing demands in environmental, social, and governance (ESG) issues. New and evolving regulations call for greater transparency and disclosure of ESG-related data (see sidebar, “ESG regulatory and disclosure requirements”). Stakeholders and investors are increasing their scrutiny of the effects investment decisions have on the climate and society.

Now a day, banking preferences of consumers are massively influenced by concern about purpose and sustainability. To meet these expectations it is imperative that banks should integrate their IT systems to systematically collect, aggregate, and report on a broad range of ESG data. However, many financial institutions still do not have a comprehensive approach to integrating ESG data into their existing risk reporting.

Moving toward this goal will require significant changes to the IT infrastructure, from applications to data integration, architecture, and governance. New applications include not only the management and capture of ESG data but also financed emissions models, climate risk models, ESG scorecards, climate stress tests, and climate-adjusted ratings. ESG data must be woven into existing processes, such as credit approvals and decision making. And banks will need to adjust their data architecture, define a data collection strategy, and reorganize their data governance model to successfully manage and report ESG data.

Embedding of ESG requirements into core banking processes

- Integrating new workflows into existing processes, such as using artificial intelligence to incorporate ESG data into decision-making processes (for example, credit decisions).
- Communication of ESG requirements across the organization and bring all employees on board with an intentional change management approach.
- Review and revise existing data processes to comply with changing ESG requirements (for example, increasing the frequency of data updates).
- Developing a clear plan to support the integration of new ESG policies (such as how to add new certificates to investments).

## 2. Automobile Sector

The global big data market in the automotive industry size was valued at USD 4,500 million in 2021. It is expected to reach USD 15,800 million by 2030, growing at a CARG of 17% during the forecast period (2022-2030). Embracing technology, applications, and services ranging from sensors to artificial intelligence to big data analysis is transforming the auto industry. Consequently, the ecosystem is witnessing a steady influx of new participants, leading to the continuous evolution of automobiles.

Big data analytics facilitates the automobile manufacturing sector to collate data from ERP systems and combine data from different corporate functional units and supply chain participants. It is heartening to note that automobile industry is getting ready for industry 4.0 with the emergence of IoT, a networked system, and M2M communication.

*1. East African financial services organization NCBA has embraced digital technology to serve its 32 million global customers. However, its sales process was comparatively antiquated. Data was segmented and patchy, making it difficult to deliver a first-class customer service.*

With reference to data governance in automobile industry, it is worth mentioning the four data usage categories provided by German Association of Automotive Industry-

a) Traffic data: Traffic related data can be released anonymously to public services, such as police and fire brigades, supporting them in keeping the public space safe. Early alert systems are able to operate in real time.

b) Usage data: used for different services and business models, the required data is released anonymously to third parties in order to develop new products. Telematic data can be included, as well as traffic-related data. This category will drive future innovations.

c) IP data: this category contains data sets relevant to intellectual property. This data is available solely to the original equipment manufacturer (OEM) and its contractual partners; its use is in order to further improve the OEM's vehicles and to gain valuable insights on the lifecycles of its products under real conditions. The new dimensions of evaluable data are likely to optimize certain mobility concepts to a new level, also enabling the creation of more brand specific services.

d) Personal data: in order to offer a service tailored to an individual, it is necessary to gain information on that driver's behaviour, only possible if the individual gives their consent. With privacy more valued than ever, personal data requires special treatment; since the introduction of the General Data Protection Regulation (GDPR), severe penalties for data breaches can be imposed on companies.

These four categories consist mostly of technical data gathered through the telematics system of the connected vehicle and from roadside infrastructure. Communication between connected vehicles and infrastructure leverages the positive effect of data usage on traffic safety; in addition, fuel consumption is expected to decrease through intelligent analysis of operating states and following recommendations for travel speed and in advance phased traffic lights.

## OECD: Connected and Automated Vehicles -A Case Study of Data Governance Issues

Connected vehicles can connect to networks, like the Internet, to send and receive data with other networked devices, both inside and outside the vehicle. They communicate with other systems, including other vehicles, roadside infrastructure and third-party service providers.

Automated vehicles are vehicles that operate on a spectrum of declining input from the driver. Many aspects of vehicles manufactured today already involve some automation, including adaptive cruise control and active lane-keeping assistance. However, a fully automated, or autonomous or self-driving, vehicle would include the "full-time performance by an automated driving system of all aspects of the dynamic driving task under all roadway and environmental conditions that can be managed by a human driver".

Automated vehicles periodically connect to the Internet, e.g. to receive software updates. In some models of automated vehicle deployment, achieving increasing levels of automation is expected to require increasing levels of connectivity, as vehicles use short-range communication technologies to communicate with road-side infrastructure and other vehicles.

Connected and automated vehicles highlight how different digital technologies increasingly converge in their application. Connected vehicles commonly use both cellular and non-cellular communication technologies to connect and share data with other vehicles, infrastructures, road services, satellites and other third parties. Given they are intelligent devices using sensors to collect data, connected and automated vehicles are part of the "Internet of Things". Connected vehicles on the market already display some forms of automation enabled by artificial intelligence (AI), including driver assistance systems. As technologies continue to develop and vehicles become more automated, the use of data processing technologies like big data analytics and AI systems within vehicles are also expected to increase.

Connected vehicles can collect and transmit data differently than previous generations of vehicles. As vehicles become increasingly automated, data generation, collection, storage, transfer and use are expected to become increasingly essential to their function. The types of data collected or generated by such vehicles will include the following:

i) Locational data – data about the precise geographic location of a vehicle, including direction and speed. Such data will interact with both static data (such as high-definition 3D maps) and semistatic data (on temporary events like weather, accidents and traffic jams).

ii) Sensor data – data about how the car perceives the external environment, including infrastructure, traffic signals and other road users. Such data are typically derived from radar or light detection and ranging (LIDAR) sensors or cameras.

iii) Diagnostic data – data on how the vehicle is performing with respect to fuel consumption, energy emissions, engine operation, battery status and performance, among other indicators.

iv) Driving behaviour data – data on driver behaviour, such as seatbelt use, speeding and frequent stopping.

v) Identity and biometric data – identity data, like names and other identifying information. This may also include biometric information, like fingerprints.

It is to be noted that vehicles are increasingly gaining the ability to collect a greater variety and volume of data. In most jurisdictions, these data are primarily controlled by the original equipment manufacturer following consent from users as part of the terms of service. Some authors describe original equipment manufacturers as in a “gatekeeper position” with control over data generated by connected and automated vehicles.

Data collected by connected and automated vehicles can be valuable to other vehicles and infrastructures to support their basic function. Some models of automated driving rely on real-time flows of data to achieve real-time two-way communication. This is true both among connected vehicles and between them and connected infrastructures, like parking spaces and motorways.

In these models, effective automated driving relies both on short-range communications technologies in cars, as well as mechanisms to enable data access and sharing between a diverse set of stakeholders. These could include vehicle manufacturers, regulators, communication service providers and third-party service providers.

Similarly, data generated by vehicles could improve public policy development and delivery. Potential applications for connected car data include improved traffic management and safety, more dynamic management of traffic control and public spaces, and better and faster responses to incidents in real time. Data from connected and automated vehicles could also help authorities plan the deployment and improvement of new infrastructures and public services, like roads or bike paths.

Data generated by connected vehicles may also emerge as an input into production for firms. Automotive ecosystems are already characterised by a wider variety of actors. These include suppliers and downstream sectors with strong linkages, like the wholesale and retail trade and repair of motor vehicles sector.

Data from connected vehicles could have value for vehicle manufacturers, enabling new business models and revenue streams associated with improving customer experience and operational efficiency. Similarly, data from connected vehicles could provide the basis for the provision of a range of other data-driven business models to car users. These might include predictive repair and maintenance services or dynamic adjustment of insurance services based on driving behaviour

## Emerging approaches to data governance for connected and automated vehicles

Data from connected and automated vehicles are the subject of policy debate across the OECD. Discussions on how the data should be collected, processed, shared and reported are ongoing across OECD jurisdictions. In this regard, the following points are discussed in brief-

a) Approaches to data collection and management at the vehicle level: Data collected by connected and automated vehicles are likely to be personal in nature. Much technical data like vehicle movement and condition are likely to concern the driver or the passengers. In view of the privacy risks associated with the data generated and collected by vehicles, both the public and private sectors have developed principles for data collection and management at the vehicle level.

These complement data protection regulations that usually do not directly address automotive data. Among original equipment manufacturers, alliances of industry actors have promulgated codes of conduct and privacy principles. The European Automobile Manufacturers Association has developed the Principles of Data Protection.

In the United States, the Alliance for Automotive Innovation has developed Consumer Privacy Protection Principles. The Alliance represents the manufacturers of 98% of personal vehicles sold in the United States. Other players in the automotive ecosystem have also developed privacy principles. Automotive data aggregator Otonomo, for example, released a "Privacy Playbook" in 2019 (Otonomo, 2019[56]). Some data protection and privacy enforcement authorities have also released principles for data management and collection at the vehicle level for connected and automated vehicles.

b) Data processing near or within vehicles: Questions of where and how to process data from connected and automated vehicles are informed by both technical requirements, including the need to ensure vehicle operation, as well as regulatory and other requirements and obligations of the data controller, including with respect to the management of personal data. In some models of connected and automated driving, data are expected to be shared and processed with a widening ecosystem of actors.

These range from equipment manufacturers, regulatory authorities and cloud service providers to network operators and third parties providing in-vehicle services. Noting this expansion, the European Data Protection Board has encouraged local processing of data, notably within the vehicle. It also recommends avoiding external cloud computing of data generated in connected vehicles . The Board notes that such an approach can increase user control over personal data, as well as "mitigate the potential risks of cloud processing".

c) Access to in-vehicle data from connected and automated vehicles: Data from connected and automated vehicles are of value to a wide range of stakeholders. To date, such data have been under the effective control of the original equipment manufacturers after consent from the vehicle owner and/or driver. This consent is typically required to use the vehicle and related services. Manufacturers often argue that tight controls on this data are necessary for privacy and security. They contend such data are often personally identifiable and subject to appropriate laws.

Other actors, including those in the motor vehicle aftermarkets and services areas, argue that access to such data could enable a more competitive ecosystem of services. In addition, the owner and purchaser of a vehicle may not be its sole user. This can further complicate questions of how collected data should be appropriately managed and shared.

Efforts to enhance access to in-vehicle data in a mechanism compliant with the European General Data Protection Regulation are ongoing at the European level. Meanwhile, some jurisdictions like Austria, France and Germany have already set rules on access to vehicle data by third parties, including regulatory authorities and insurance companies.

d) Models of data sharing and access for connected and automated vehicles: Data from connected and automated vehicles have value for a wide variety of actors. These range from players directly involved in the automotive industry ecosystem to third-party players like entertainment service providers and aftermarket service providers of repair and maintenance.

In the context of automated vehicle trials, data sharing among innovators could help speed the rate of experimentation. However, unlike other valuable inputs into production, several economic characteristics, including non-rivalry, economies of scale and information asymmetries, preclude the emergence of markets for data.

In the absence of widespread data trading, and since data might be used repeatedly without depletion, new frameworks are required that enable greater data sharing among actors. This is particularly relevant for the automotive industry, which features a variety of upstream and downstream industrial activity and where incentives may not exist for data sharing.

e) Data reporting and mandatory data collection: Data from connected and automated vehicles hold great potential for regulators and public authorities to improve development of public policies – from transportation to planning. The use of such data can create public value by enhancing network operations, investment, maintenance, planning and road safety in jurisdictions across the OECD.

Initiatives across the OECD encourage or oblige the reporting of some kinds of data generated or collected by vehicles to relevant public authorities. For example, in Europe, the Data for Road Safety initiative enables data sharing between vehicle manufacturers and national road authorities and service providers. This initiative recognises that vehicles are already equipped with technologies that can detect dangerous road conditions and warn drivers.

It also points out that greater sharing of these data could benefit road operators and the wider public. The International Transport Forum recently released good governance principles for frameworks for reporting mobility data to public authorities. In some jurisdictions, authorities mandate the collection of some kinds of data.

For example, event data recorders are compulsory in vehicles in some jurisdictions. These devices record technical vehicle and occupant information for a brief period before, during and after a crash. Developing similar data storage systems for automated vehicles was the subject of international negotiation in 2020.

## 3. Energy Sector

From smart meters to equipment sensors, energy companies are gathering data from connected devices at an unprecedented rate. But as data grows—and BI, predictive analytics and artificial intelligence practices evolve—energy companies face a challenge: Innovation intended to improve the customer experience or operational efficiency can easily conflict with privacy laws, corporate data guidelines and regulatory mandates. So the million dollar question is how can the energy industry balance this data deluge with regulatory compliance and data protection laws?

Given the quantum of data being collected daily, there is a growing likelihood that organizations will “cross the line,” either intentionally or, as in most cases, unintentionally—especially as they begin to leverage new technology like big data analytics, artificial intelligence (AI), machine learning (ML), Internet of Things (IoT), and sensor-driven devices. So, as these technologies and use cases evolve, regulatory requirements must also shift in response.

Regulatory agencies are tasked with protecting consumer privacy, enforcing existing regulations and constantly updating codes to adapt alongside changing technology, but they still require a healthy balance to maintain innovation: If agencies overregulate, they may unnecessarily hamper growth; too little, however, and they risk failing the public or corporate trust.

## Limitations of Data Governance in Energy Sector

It is been observed that most of the power and utilities companies are not utilising data to its full potential nor meeting the soaring needs for data sharing. Across the energy sector, organizations are discovering that their data strategy will not enable their future. In fact, the data capabilities at many power and utilities companies do not even meet today's needs for reliability, efficient costs and employee productivity, let alone the evolving data-sharing needs related to emissions reporting and sustainability efforts.

Quality data is needed for all day-to-day operations for power and utilities companies, for compliance, grid reliability, financial reporting and to improve customer experience. Companies depend on data to keep lights on and homes warm during a storm, plan for peak energy demands despite volatile weather, get ahead of maintenance and mitigate damage by more quickly knowing the impact of natural disasters.

More than just a tool to avoid trouble, data can be an asset that strengthens the future of the organization. Business users need the latest data to innovate and build an agile data marketplace. With access to accurate data systems, users can develop self-service analytics capabilities to explore new ways to address operational and energy supply challenges.

In a survey conducted by EY across a segment of the electricity industry revealed the following significant points:

i) Power and utility executives see the value in data as an asset, but many companies are at the nascent stages of establishing a modern data plan. None of the respondents has a chief data officer, and less than one-third have a formal data strategy that serves both IT and business needs.

ii) A direct relationship between senior leaders' commitment to improving data governance and the organization's success rate with digital maturity and data accuracy, reporting and strategy was observed. The EY report explored the potential of the chief data officer in power and renewable companies in aligning data strategy to business strategy.

iii) While a CDO, specifically, isn't mandatory, but it is important to have a formal oversight, process or centre of excellence that works collaboratively to manage how data is collected, protected, shared and controlled. Centralizing the data, determining who is going to own it and empowering them to become the "data governor" of the organization is required. Moreover, creating one source of truth should be the goal so that from there information can be organized and extracted by each function of the business and stakeholder group.

iv) Power and utility data executives must also look ahead to compliance needs and the changes that will come with renewable energy integration and global warming, including mitigation strategies related to environmental disasters and climate change.

v) A free flow of information across the sector will also be necessary for utilities to meet customer expectations and to effectively embrace the future of the sector — such as when renewable energy (wind, hydro, solar) is purchased from customers or the increased adoption of electric vehicles (EVs).

For having a robust data governance, the energy sector based companies may consider the following questions while formulating their data strategy?

a) How to measure data quality?

b) Are key internal stakeholders are involved, including senior leaders and IT team?

c) Whether ESG sustainability trends have been identified that will impact the business?

d) Does the business have right data strategy at place to give business users the right access to the right data at the right time?

e) Is right data strategy is in place to advance self-service analytics?

f) How to comprehend the needs of all the stakeholders to deliver as per their expectations?

g) How data can be utilised as the most valuable product?

h) Who is entrusted with the responsibility of reviewing the quality data results?

## 4. Hospitality Sector

Numerous hotel companies are embarking upon analytics programme to improve the guest experience, maximise revenue and profits, optimize operations to control cost and enhance the value of the guest relationship. Brands are hoping to drive values for owners through robust guest databases and advanced targeted marketing programs. Hospitality companies are looking to other industries like retail, CPG and banking for inspiration on business analytics programs and analytics cultures.

Data security in hospitality sector is one of the  major concerns in view of the nature of the data collected by companies operating within hospitality. Hotels, motels, resorts, and rented apartment complexes all gather and electronically store a range of sensitive personal guest data, such as names, phone numbers, addresses, and credit card details.

From the perspective of cybercriminals, hospitality appears to offer an ideal target vector for conducting crimes such as identity theft and credit card fraud due to the existence of multiple databases and devices containing both Payment Card Information (PCI) and Personally Identifiable Information (PII). In view of this, it is important to look at the following data security concerns in the hospitality sector:

a) Complex Ownership Structures: Restaurants, hotels, and other companies in the hospitality sector often have complex ownership structures in which there's a franchisor, an individual owner or group of owners, and a management company that acts as the operator. Each of these groups may use different computer systems to store information, and the information can also frequently move across those systems.

   A case in point was the Wyndham Worldwide breaches of 2008 and 2010. Hackers gained access to the systems of an individual operating company through easily guessed passwords, and the attack easily proliferated through the entire corporate network, with the result that 619,000 customers had their information compromised.

b) Payment through Cards: The nature of the hospitality industry is such that it is extremely reliant on cards as a form of payment. Restaurants and hotels alike often require credit card details for reservations, and final payment is also frequently made by the same card.

   Cybercriminals use this reliance on cards to infect point-of-sale (POS) systems with malware that steals credit and debit card information by scraping the data. In fact, it was reported in 2017 that out of 21 of the most high-profile hotel company data breaches that have occurred since 2010, 20 of them were a result of malware affecting POS systems.

   Because this malware can often proliferate or move between POS systems run by the same operator, multiple individual and groups of hotels can be afflicted by these types of attacks, and they can go unnoticed for months.

c) High Staff Turnover: A vital part of protecting data is training staff to securely gather and store personal information. Well-trained staff also know how to recognize social engineering attempts and they understand an organization's compliance requirements. The risk is that the hospitality industry involves lots of seasonal work in which people might move on after only a few months, or they might be transferred. In the U.K., for example, the job turnover rate in hospitality is as high as 90 percent.

The high level of turnover and high degree of staff movement between different locations makes it a real challenge to maintain teams of well-trained staff. All it takes is one person who isn't familiar with the importance of data security for a cybercriminal to exploit a hospitality company's systems and gain access to sensitive data.

d) Compliance: Data security risks in the hospitality industry extend far beyond the reputation hit that a hotel can take if guests' data is compromised. Industry and political regulators are becoming stricter in governing how organizations process and store personal data.

The GDPR regulation was introduced by the EU in May 2018 as a landmark legislation that aims to return control over personal information to individuals while simultaneously enforcing stricter rules for organizations in protecting such information during any period in which they possess it.

While GDPR protects individual data within the EU and EEA, its ramifications have rippled through industries globally, and organizations are realizing the need to put greater compliance measures in place.

PCI DSS is another important global regulation that protects credit card data, and fines for non-compliance begin at $500,000 per incident. The risk here is not just to data security but to the future survivability of hospitality companies, many of which would not be able to absorb the substantial losses resulting from non-compliance fines.

e) Insider Threats: This type of data risk is more subtle and it involves employees selling data to third parties without the knowledge of the organization that employs them. Such insider threats typically occur to data on customer preferences and behaviour, which hospitality companies can collect at multiple touchpoints, from interactions with their website, to form data on booking systems, to review data. This data could be potentially lucrative when it ends up in the hands of those who know how to use it to gain a competitive advantage.

## Best Practices for Data Security in Hospitality Sector

Best practices for companies in the hospitality sector to protect data include:

a) Always encrypt payment card information.

b) Operate a continuous training program in cybersecurity to maintain a well-trained workforce.

c) Always adhere to relevant regulations, such as PCI DSS.

d) Use cybersecurity measures such as firewalls, network monitoring, anti-malware, and traffic filtering to protect against common threats.

e) Conduct tests against your organization's cybersecurity defenses in which you mirror the behavior of an actual hacker.

f) Know where the data is and enforce the principle of least privileges to limit access to sensitive information.

## 5. Information Technology (IT) Sector

With data being the new oil, there's an emerging mandate among global giants – to put into practice a data governance policy that not only restricts access to data but also governs which information should be made available and to whom. From a security and privacy point of view, data governance has gained credibility over the last couple of years with breaches and hacks becoming increasingly commonplace and organisations grappling with ransomware.

Examples of some of the leading IT companies embracing data governance models are as under:

a) **IBM:** IBM has one of the most robust data governance models and is also one of the biggest vendors of data governance solutions, which is now a strategic priority for companies of all sizes. Pegged as a quality control discipline for introducing rigour and discipline to the process of managing, using, improving and protecting organizational data, the most prized asset IBM data governance model possess the potential of significantly improving the quality and integrity of the company's data through inter-organisational collaboration and policy-making.

   According to the IBM model, the core disciplines outlined are Data Quality Management, Information Security & Privacy and Information Life-Cycle Management and the supporting disciplines are Data Architecture, Audit Information & Logging and Classification & Metadata. The key enablers are organisational structure, awareness, policy and stewardship.

b) **SAS:** SAS's data governance maturity model has been around for decades and presents a data governance model that can even drive the organizational philosophy of data management, acquisition, and even archiving. Termed as more of a cultural shift that requires both business and IT sides of the organisation to come together to define data elements and the rules that should eventually govern data across applications.

   According to SAS whitepaper, pockets of "data governance" emerged over the years and even grew as grassroots effort, it took off as a hot topic in the IT industry only in the early 2000s to keep pace with next-gen technology such as Hadoop and Internet of Things (IoT). And the data governance models also matured rapidly and evolved into business process management tools to deliver automated business rules.

   Some of the major key constraints in data governance models outlined is a) data being considered an IT issue; b) fragmented, siloed data driven culture wherein the processes are not well-designed or understood and c) Key resources are not allocated properly.

c) **Oracle:** Oracle's data quality solutions are based on the principle of optimizing, leveraging information as an enterprise asset**.** The California-headquartered computing giant's Enterprise Data Governance solution helps identify, secure, manage and even discover sensitive data in the database. From visualisations to sensitive database discovery results to automatic metadata discovery jobs, Oracle's data governance functions provide improved quality and access and security to the core enterprise asset. The company data governance policy outlines a) establishing enterprise data strategies; b) identifying the right stakeholders and assigning accountabilities; c) outlining the report status for data-focused initiatives.

d) **Microsoft:** Redmond giant, Microsoft, has been at the forefront of data governance issues and even charged the shift from governance being a "data management" to "data as a strategic advantage" issue. According to a post by Geoff Clarke, Regional Standards Manager, Microsoft Asia Pacific data became a boardroom discussion with businesses rapidly embracing digital innovation. Over the years, data has evolved from being merely an operational "IT" issue to becoming the lifeblood of the organisation and this critical asset poses high risk, constraints and even benefits. Microsoft's data governance framework helps organizations better understand the data protocols, aligning data strategy with business goals and outcomes and how to secure data as it is rapidly moved into the cloud.

## 6. Telecom Sector

As the Technology, Media, and Telecommunications (TMT) industry quickly grows in the face of remote working, 5G networks, and other innovations, vast amounts of data are gathered every second, yet are rarely used in an optimal way to help an organization reach its goals.

There are missed opportunities when companies let this data pass them by, not using it to strategically make data-driven decisions–especially at the enterprise level. Accurate, easily-accessible data can help the organization to reduce operational costs, increase sales, and get faster reporting to make informed decisions.

Technology is quickly evolving from streaming services to fiber internet, everything is moving faster. Big data in telecom is vital to understanding and acting on new technologies, adapting business strategies, and how to harness it all for both the company and customers.

With so many business opportunities, having a data governance strategy for the company's data analysts to create real-time forecasts can positively impact the business of the company. With clean, centralized data, one can increase visibility among the customers thereby creating more business opportunities, increase sales, and make better informed decisions leading to growth of the company.

The need for data governance in telecom sector is evident from the following significant statistics

Gartner reports that 80% of data governance initiatives fail to deliver on their expected outcomes. Harvard Business Review has found that over 65% of the target users for data governance initiatives do not sufficiently understand how those programs impact their roles within the organization. Finally, according to Forbes, over 74% of data leaders struggle to calculate the return on the investment of their data governance projects.

Hence, telecom sector needs to embrace a successful telecom data governance which is built on the following four pillars:

1. Link Data Governance to Business Goals.
2. Prioritize the data sets to be governed, based on the business value they provide.
3. Engage and communicate value to strategic, operational, and tactical teams
4. Leverage cultural engagement processes and people to reinforce data governance value on a day-to-day basis.

**Telecom Data Governance in India- Telecom Regulatory Authority of India (TRAI) recommends Apex Body for Data Governance**

TRAI has recommended the formation of the Data Digitization and Monetization Council (DDMC), an apex body to oversee all issues related to data digitization, data sharing, and data monetization in the country. The Authority further suggests that DDMC should also be entrusted with the responsibility of putting in place an overarching framework for the ethical use of data both by the Government as well as by the corporates in India.

As part of recommendations on Regulatory Framework for Promoting Data Economy through the Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India, TRAI noted that a statutory body be established at the Centre that will have suitable representation from the Department of Telecommunications (DoT) and the Ministry of Electronics and Information and Technology (MeitY).

Data Digitisation and Monetisation Council (DDMC), would be formed by either amending the present law or enacting a new law, to oversee all the issues related to data, including digitisation, monetisation, sharing and storage.

**CASE STUDY**

**Example of Airtel's Data Governance**

Airtel integrates data protection safeguards into product development. All products undergo application security assessment and compliance review at the development stage. Non-compliance of any third party/ partner with the privacy practices followed at Airtel is escalated for disciplinary actions up to and including termination of the contract. The company have also been offering cybersecurity services to B2B customers, under 'Airtel Secure' which includes security monitoring through multi-layered safeguards for enterprises against threats.

Since the company deals with mammoth personal data which relates to the private, professional or public life of the customers and in light of the fact that in the online environment, where vast amount of personal data are shared and transferred around the globe instantaneously, data protection is given utmost priority.

"Bharti Airtel Information Privacy Policy (BIPP)" is in alignment with the Information Technology (IT) Rules 2011 and best practices of industry and GDPR (General Data Protection Regulation). Airtel's privacy policy provides management direction and support to ensure privacy of personal information collected by Airtel, in order to allow collection, processing, retention, dissemination and destruction of the personal information in accordance with the appropriate laws, regulations and contractual obligations.

Bharti Airtel Information Privacy Policy (BIPP) is applicable to all employees of Airtel and all third parties (including strategic partners) of Airtel who have access to personal information of customers, employees and vendors. The BIPP is applicable across all business functions of Airtel and across all geographies of Airtel in India including Airtel center, all circles and other Airtel locations.

## 7. E-Commerce

Today, data determines the success of both online retail and e-commerce. High-quality data is required to enable these industries to speedily make critical and accurate decisions. E-commerce businesses also capture lots of sensitive consumer data, from payments to patterns, reiterating the importance of data governance in terms of regulation and compliance.

E-commerce businesses collect data from many sources, including web analytics, email and marketing tools, online transactions, surveys and more. This information is consolidated and consumed by the relevant stakeholders. Correctly implemented data governance initiatives ensure that these stakeholders have access to data and that the data is of high quality.

Governing and integrating these data sources in e-commerce means that teams can generate actionable insights on customers, trends, products, regions and more. These insights have a huge part to play in:

- Informing gaps to adapt to consumer and market trends
- More effective customer retention and engagement
- Optimization of pricing, inventory and labour allocations
- Informing innovation as well as new and untapped market opportunities

**Significance of Data Governance in E-Commerce Companies**

1. **Visibility, relevance and consistency:** Digital outlets have a huge influence on the client of today. For instance, online reviews go a long way toward swaying customers. Customer journeys have also advanced with time. There is more data for e-commerce companies to record.

   Data such as customer purchases, shipping details, inventory and more are interlinked and need to be updated seamlessly all through multiple platforms and systems. This responsibility is placed on various teams that may ultimately introduce data silos or irrelevant and obsolete data.

   An efficient and unified data governance system helps e-commerce companies efficiently manage such distributed data. Such a system guarantees that data remains relevant and consistent across platforms and prevents data silos. This gives these companies greater visibility to escalate their operations.

2. **Limiting data exposure:** Data should seamlessly circulate all through the ecosystem of stakeholders in the e-commerce and retail industries. Even though restricting data may limit the effectiveness of most

industries today, the circulation of such data may give rise to safety and security concerns. Security breaches involving sensitive customer data often destroy relationships between customers and brands.

Data governance systems provide e-commerce brands with security features like two-factor authentication, data encryption and tokenization to limit the accessibility to sensitive data.

3. **Dealing with data inconsistencies:** The data repositories and warehouses kept by e-commerce companies may suffer from data inconsistencies. A change in one repository means that all the other repositories need to be updated to reflect the same change, which may become complex and overwhelming over time.

   Inconsistent data impacts sales, revenues, productivity and overall strategy. However, a robust data governance system takes advantage of data pipelines to help curate, modify and thoroughly validate raw data. E-commerce businesses resultantly enjoy better data visualization and easier, faster and more accurate data analysis.

**Merits of Data Governance for E-Commerce**

1. **Overall performance:** By improving efficiency and saving time, data governance raises the overall efficiency of e-commerce companies. Various teams can easily find the correct data and generate insights faster. They can also get much more accurate answers faster.
2. **Data quality**: Data governance consistently tracks data quality and usage metrics. These metrics help e-commerce companies gain visibility into how various teams and stakeholders are using data.
3. **Better business insights:** E-Commerce teams can highlight areas of subpar performance, gain a competitive advantage and discover new revenue streams using analytics.
4. **Improved decision-making:** With data governance, companies can arrive at accurate decisions speedily using high-quality data. Staff can access the correct data under the right controls to ensure that privacy and compliance are maintained.
5. **Data ownership, responsibility and accountability:** For teams to be able to use data assets effectively and appropriately, they require data governance to help them capture and share ownership, responsibility and accountability of data. Additionally, staff know who are the experts to be contacted when questions and issues arise.

   Data governance is proving to be a necessary component of e-commerce today. Correctly implementing a robust data governance solution will position e-commerce companies for new opportunities, greater security and customer confidence, more sales and e-commerce growth.

## Product Data Governance Strategy for E-Commerce- A Crucial Element

For E-Commerce businesses, establishing a product data governance strategy is a crucial aspect as it has a direct effect on brand reputation and revenue. When it comes to working with product data, the important part is to list out the key elements. Once that is done, they need to be treated as strategic resources.

Some of the key points to take away when coming up with a strategy are:

1. **Ease of use for all stakeholders**

   Make sure that business users (everyone except developers who are hands-on with the product data) can utilize the product data easily. Avoid over-restricting data access.

2. **Transparent product data lifecycle**

   When product data is moving through the stages of its entire lifecycle, transparency is a key component to the best outcome. From the initial stages of determining attributes for a particular item that will be manufactured and sold, to creating the description listing and distributing it on third-party platforms, everyone who is involved in the process should have clear communication in place that guarantees transparency.

3. **Pre-validation & assets adaptation**

   To ensure high quality of product descriptions, it's important to review the information listed. Removing outdated details and updating new ones will provide an accurate product feed that in return boosts your customers' confidence in the buying decision.

4. **Controlled delivery & coverage monitoring**

   The last step is the actual delivery process that requires accurate formatting for each endpoint the information is being uploaded to. Once all of the descriptions are successfully distributed throughout the external sales channels, it's important to double-check them. Review if there are any errors in the descriptions, confirm that the correct product pictures were chosen and make sure that all of the intended products were listed.

## DATA GOVERNANCE – IMPORTANT REGULATORY DIMENSIONS

### Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

Body corporate to provide policy for privacy and disclosure of information.— (1) The body corporate or any person who on behalf of body corporate collects, receives, possess, stores, deals or handle information of provider of information, shall provide a privacy policy for handling of or dealing in personal information including sensitive personal data or information and ensure that the same are available for view by such providers of information who has provided such information under lawful contract. Such policy shall be published on website of body corporate or any person on its behalf and shall provide for— (i) Clear and easily accessible statements of its practices and policies; (ii) type of personal or sensitive personal data or information collected under rule 3; (iii) purpose of collection and usage of such information; (iv) disclosure of information including sensitive personal data or information as provided in rule 6; (v) reasonable security practices and procedures as prescribed in this rules.

As per Rule 2(i) "Personal information" means any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person

As per Rule 3 Sensitive personal data or information of a person means such personal information which consists of information relating to;— (i) password; (ii) financial information such as Bank account or credit card or debit card or other payment instrument details ; (iii) physical, physiological and mental health condition; (iv) sexual orientation; (v) medical records and history; (vi) Biometric information; (vii) any detail relating to the above clauses as provided to body corporate for providing service; and (viii) any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise: provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules.

### The Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 received the assent of the President on the 11th August, 2023. The mentioned Act provide for the processing of digital personal data in a manner that recognizes both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

With reference to the application of the aforesaid Act, it shall-

(a) apply to the processing of digital personal data within the territory of India where the personal data is collected in digital form; or in non-digital form and digitized subsequently;

(b) also apply to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India.

However, it does not apply to-

(i) personal data processed by an individual for any personal or domestic purpose; and

(ii) personal data that is made or caused to be made publicly available by—

  (A) the Data Principal to whom such personal data relates; or

  (B) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

The salient facets of the Act are- Focus on General Obligations of Data Fiduciary, Processing of personal data of children, Additional obligations of Significant Data Fiduciary, Right to access information about personal data, Right to grievance redressal, coverage on duties of Data Principal etc.

The act is expected to have an impact on the majority of organizational areas, including legal, IT, human resources, sales and marketing, procurement, finance, and information security because of the type and volume of personal data that is collected, stored, processed, retained, and disposed of in India.

For details: *https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf*

## AI Complementing Data Governance

The development of AI and machine learning in everyday business reflects the eminent role of data in management development strategies. To function effectively, AI depends on vast sets of data, which must be the subject of methodical and rigorous governance. Behind the concept of data governance lies the set of processes, policies, and standards that govern the collection, storage, management, quality, and access to data within an organization.

The role of data governance is to ensure that data is accurate, secure, accessible, and compliant with current regulations. The relationship between AI and data governance is a close one. AI models learn from data, and poor quality or biased data can lead to erroneous or discriminatory decisions.

The benefits of AI powered data governance are as under:

1. **Improve Quality of Data:** Data quality is a key to any data strategy. The more reliable the data, the more relevant the lessons, choices, and orientations that emerge from it, and AI contributes to improving data quality through a number of mechanisms. In fact, AI algorithms can automate the detection and correction of errors in datasets, thereby reducing inconsistencies and inaccuracies.

   Moreover, AI can help standardize data by structuring it in a coherent way, making it easier and more reliable to use, compare, and put into perspective. With machine learning, it is also possible to identify trends and patterns hidden in the data, enabling the discovery of errors or missing data.

2. **Automate Data Compliance:** At a time when cyber threats are literally exploding, data compliance must be a priority in an organization. But guaranteeing compliance requires constant vigilance, which can't depend exclusively on human intelligence. Especially as AI can proactively monitor potential violations

of data regulations by performing real-time analysis of all data flows – detecting any anomalies or unauthorized access, triggering automatic alerts, and even making recommendations to correct any problems.

In addition, AI facilitates the classification and labelling of sensitive data, ensuring that it is handled appropriately. Finally, AI systems can also generate automatic compliance reports, reducing the administrative workload.

3. **Strengthening Data Security:** Through its ability to proactively detect threats by analysing data access patterns in real time, AI can alert about suspicious behaviour, such as attempted intrusions or unauthorized access. To take data governance even further, AI leverages machine-learning-based malware detection systems. These systems can identify known malware signatures and detect unknown variants by analysing behaviour. Finally, it contributes to security by automating the management of security patches and monitoring compliance with security policies.

4. **Democratize Data:** At the heart of the data strategy lies one objective: to encourage employees to use data whenever possible. In this way, it can foster the development of a data culture within the organization. The key to achieving this is to facilitate access to data by simplifying the search and analysis of complex data.

AI search engines can quickly extract relevant information from large datasets, enabling employees to quickly find what they need. In addition, AI can automate the aggregation and presentation of data in the form of interactive dashboards, making information ever more accessible and easy to share.

## General Data Protection Regulation – European Union

The General Data Protection Regulation is a European Union law that was implemented May 25, 2018, and requires organizations to safeguard personal data and uphold the privacy rights of anyone in EU territory. The regulation includes seven principles of data protection that must be implemented and eight privacy rights that must be facilitated.

It also empowers member state-level data protection authorities to enforce the GDPR with sanctions and fines. The GDPR replaced the 1995 Data Protection Directive, which created a country-by-country patchwork of data protection laws. The GDPR, passed in European Parliament by overwhelming majority, unifies the EU under a single data protection regime.

Any organization that processes the personal data of people in the EU must comply with the GDPR. “Processing” is a broad term that covers just about anything you can do with data: collection, storage, transmission, analysis, etc. “Personal data” is any information that relates to a person, such as names, email addresses, IP addresses, eye colour, political affiliation, and so on. Even if an organization is not connected to the EU itself, if it processes the personal data of people in the EU (via tracking on its website, for instance), it must comply. The GDPR is also not limited to for-profit companies.

The GDPR allows the data protection authorities in each country to issue sanctions and fines to organizations it finds in violation. The maximum penalty is €20 million or 4% of global revenue, whichever is higher. Data protection authorities can also issue sanctions, such as bans on data processing or public reprimands.

Organizations can comply with the GDPR by implementing technical and operational safeguards to protect personal data they control. The first step is to conduct a GDPR assessment to determine what personal data they control, where it is located, and how it is secured. They must also adhere to the privacy principles outlined in the GDPR, such as obtaining consent and ensuring data portability. You may also be required to appoint a Data Protection Officer and update your privacy notice, among other organizational measures.

***(For more details on GDPR, please refer: https://gdpr.eu/faq/)***

## Regulatory Trends in AI Regulations

Recognizing that each jurisdiction has taken a different regulatory approach, in line with different cultural norms and legislative contexts, there are six areas of cohesion that unite under the broad principle of mitigating the potential harms of AI while enabling its use for the economic and social benefit of citizens.

1. **Core principles:** The AI regulation and guidance under consideration is consistent with the core principles for AI as defined by the OECD and endorsed by the G20. These include respect for human rights, sustainability, transparency and strong risk management. The OECD principles for AI have been discussed in the ensuing paragraphs.

2. **Risk-based approach:** The jurisdictions are taking a risk-based approach to AI regulation. What that means is that they are tailoring their AI regulations to the perceived risks around AI to core values like privacy, non-discrimination, transparency and security. This "tailoring" follows the principle that compliance obligations should be proportionate to the level of risk (low risk means no or very few obligations; high risks mean significant and strict obligations).

3. **Sector- agnostic and sector-specific:** Because of the varying use cases of AI, some jurisdictions are focusing on the need for sector-specific rules, in addition to sector-agnostic regulation.

4. **Policy alignment:** Jurisdictions are undertaking AI-related rulemaking within the context of other digital policy priorities such as cybersecurity, data privacy and intellectual property protection – with the EU taking the most comprehensive approach.

5. **Private-sector collaboration:** Many of these jurisdictions are using regulatory sandboxes as a tool for the private sector to collaborate with policymakers to develop rules that meet the core objective of promoting safe and ethical AI, as well as to consider the implications of higher-risk innovation associated with AI where closer oversight may be appropriate.

6. **International collaboration:** Driven by a shared concern for the fundamental uncertainties regarding the risks to safety and security posed by powerful new generative and general purpose AI systems, countries are pursuing international collaboration towards understanding and addressing these risks.

Other factors to consider in AI policy development include:

Ensuring regulators have access to sufficient subject matter expertise to successfully implement, monitor and enforce these policies

Ensuring policy clarity, if the intent of rulemaking is to regulate risks arising from the technology itself (e.g., properties such as natural language processing or facial recognition) or from how the AI technology is used (e.g., the application of AI in hiring processes) or both

***Examining the*** extent to which risk management policies and procedures, as well as the responsibility for compliance, should apply to third-party vendors supplying AI-related products and services

In addition, policymakers should, to the extent possible, engage in multilateral processes to make AI rules among jurisdictions interoperable and comparable, in order to minimize the risks associated with regulatory arbitrage – that are particularly significant when considering rules governing the use of a transnational technology like AI.

## Artificial Intelligence – OECD Principles

The OECD principles for Artificial Intelligence is covered under two categories-

A) Value-based Principles

B) Recommendations for Policy Makers

**A) Value-based Principles**

| Principles | Principles Brief Description | Principles Detail |
|---|---|---|
| Principle 1.1 | Inclusive growth, sustainable development and well-being | Stakeholders should proactively engage in responsible stewardship of trustworthy AI in pursuit of beneficial outcomes for people and the planet, such as augmenting human capabilities and enhancing creativity, advancing inclusion of underrepresented populations, reducing economic, social, gender and other inequalities, and protecting natural environments, thus invigorating inclusive growth, sustainable development and well-being. |
| Principle 1.2 | Human- centred values and fairness.<br><br>AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and should include appropriate safeguards to ensure a fair and just society. | AI actors should respect the rule of law, human rights and democratic values, throughout the AI system lifecycle. These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognised labour rights.<br><br>To this end, AI actors should implement mechanisms and safeguards, such as capacity for human determination, that are appropriate to the context and consistent with the state of art. |
| Principle 1.3 | Transparency and explainability<br><br>This principle is about transparency and responsible disclosure around AI systems to ensure that people understand when they are engaging with them and can challenge outcomes. | AI Actors should commit to transparency and responsible disclosure regarding AI systems. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:<br><br>● to foster a general understanding of AI systems,<br><br>● to make stakeholders aware of their interactions with AI systems, including in the workplace,<br><br>● to enable those affected by an AI system to understand the outcome, and,<br><br>● to enable those adversely affected by AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision. |

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|---|---|---|
| Principle 1.4 | Robustness, security and safety<br>AI systems must function in a robust, secure and safe way throughout their lifetimes, and potential risks should be continually assessed and managed. | i) AI systems should be robust, secure and safe throughout their entire lifecycle so that, in conditions of normal use, foreseeable use or misuse, or other adverse conditions, they function appropriately and do not pose unreasonable safety risk.<br>ii) To this end, AI actors should ensure traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle, to enable analysis of the AI system's outcomes and responses to inquiry, appropriate to the context and consistent with the state of art.<br>iii) AI actors should, based on their roles, the context, and their ability to act, apply a systematic risk management approach to each phase of the AI system lifecycle on a continuous basis to address risks related to AI systems, including privacy, digital security, safety and bias. |
| Principle 1.5 | Accountability<br>Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the OECD's values-based principles for AI. | AI actors should be accountable for the proper functioning of AI systems and for the respect of the above principles, based on their roles, the context, and consistent with the state of art. |

**B) Recommendation for Policy Makers**

| Principles | Principles Brief Description | Principles Detail |
|---|---|---|
| Principle 2.1 | Investing in AI research and development<br>Governments should facilitate public and private investment in research & development to spur innovation in trustworthy AI. | i) Governments should consider long-term public investment, and encourage private investment, in research and development, including inter-disciplinary efforts, to spur innovation in trustworthy AI that focus on challenging technical issues and on AI-related social, legal and ethical implications and policy issues.<br>ii) Governments should also consider public investment and encourage private investment in open datasets that are representative and respect privacy and data protection to support an environment for AI research and development that is free of inappropriate bias and to improve interoperability and use of standards. |

| | | |
|---|---|---|
| Principle 2.2 | Fostering a digital ecosystem for AI<br><br>Governments should foster accessible AI ecosystems with digital infrastructure and technologies, and mechanisms to share data and knowledge. | Governments should foster the development of, and access to, a digital ecosystem for trustworthy AI. Such an ecosystem includes in particular digital technologies and infrastructure, and mechanisms for sharing AI knowledge, as appropriate. In this regard, governments should consider promoting mechanisms, such as data trusts, to support the safe, fair, legal and ethical sharing of data. |
| Principle 2.3 | Providing an enabling policy environment for AI<br><br>Governments should create a policy environment that will open the way to deployment of trustworthy AI systems. | i) Governments should promote a policy environment that supports an agile transition from the research and development stage to the deployment and operation stage for trustworthy AI systems. To this effect, they should consider using experimentation to provide a controlled environment in which AI systems can be tested, and scaled-up, as appropriate.<br><br>ii) Governments should review and adapt, as appropriate, their policy and regulatory frameworks and assessment mechanisms as they apply to AI systems to encourage innovation and competition for trustworthy AI. |
| Principle 2.4 | Building human capacity and preparing for labour market transition.<br><br>Governments should equip people with the skills for AI and support workers to ensure a fair transition. | i) Governments should work closely with stakeholders to prepare for the transformation of the world of work and of society. They should empower people to effectively use and interact with AI systems across the breadth of applications, including by equipping them with the necessary skills.<br><br>ii) Governments should take steps, including through social dialogue, to ensure a fair transition for workers as AI is deployed, such as through training programmes along the working life, support for those affected by displacement, and access to new opportunities in the labour market.<br><br>iii) Governments should also work closely with stakeholders to promote the responsible use of AI at work, to enhance the safety of workers and the quality of jobs, to foster entrepreneurship and productivity, and aim to ensure that the benefits from AI are broadly and fairly shared. |

| | | |
|---|---|---|
| Principle 2.5 | International co-operation for trustworthy AI<br><br>Governments should co-operate across borders and sectors to share information, develop standards and work towards responsible stewardship of AI. | i) Governments, including developing countries and with stakeholders, should actively cooperate to advance these principles and to progress on responsible stewardship of trustworthy AI.<br>ii) Governments should work together in the OECD and other global and regional fora to foster the sharing of AI knowledge, as appropriate. They should encourage international, cross-sectoral and open multi-stakeholder initiatives to garner long-term expertise on AI.<br>iii) Governments should promote the development of multi-stakeholder, consensus-driven global technical standards for interoperable and trustworthy AI.<br>iv) Governments should also encourage the development, and their own use, of internationally comparable metrics to measure AI research, development and deployment, and gather the evidence base to assess progress in the implementation of these principles. |

## Data Protection Seal of Data Security Council of India

The Data Security Council of India (DSCI) is planning to devise a data protection seal (DPS) to verify and check secure use of people's data by platforms across the country. The project, currently piloted with partner organisations, will help users know which organisations are using their data safely and following the basic standards of data privacy. This will be similar to the ISI mark that conforms to a product in accordance with the Bureau of Indian Standards.

The data protection seal will provide some level of assurance about the application, website, or product, according to expectations of privacy, and whether it behaves responsibly. Such a process will allow companies to better comply with the Digital Personal Data Protection (DPDP) Act and also any other upcoming rules.

One of the main challenges in today's digital landscape is the rise of deepfakes, manipulated audio or video content that can deceive viewers. DSCI aims to tackle this issue by training and certifying Data Protection Officers (DPOs) through their DSCI-certified Data Protection Officer program. These DPOs will play a crucial role in identifying and addressing deepfake-related concerns, ensuring the security and authenticity of user data.

Other several major cybersecurity challenges include the growth of ransomware, attacks on multi-factor authentication, and the use of artificial intelligence. To address these challenges, DSCI collaborates with governments, agencies, regulators, industry sectors, associations, and think tanks to advocate for cybersecurity and privacy policies and capacity-building.

The data protection seal aims to help platforms comply with the Digital Personal Data Protection (DPDP) Act and upcoming regulations. Preserving privacy while analyzing deepfake content related to sensitive issues is crucial to combat misinformation and protect user data. However, analysing content authenticity without revealing it to the platform is a significant challenge, but essential in the fight against deepfakes.

The data protection seal program is currently being piloted with partner organizations and is operational in Delhi and Bengaluru. DSCI plans to train multiple batches of DPOs to help organizations comply with the DPDP Act. This initiative will enhance data privacy practices and build trust among users, knowing their data is handled responsibly.

As the digital landscape evolves, organizations must prioritize user privacy and data protection. The introduction of the data protection seal by DSCI is a significant step towards this goal. With the increasing prevalence of deepfakes and other cybersecurity challenges, platforms must adhere to strict privacy standards to maintain user trust and protect sensitive information.

The onset of the data protection seal by the Data Security Council of India plays a crucial role in safeguarding user privacy and promoting responsible data handling by platforms nationwide. As the program expands and more DPOs are trained, it is expected to make a significant contribution to the fight against deepfakes and the overall improvement of data privacy practices. With DSCI's commitment to creating a secure and ethical data protection ecosystem, users can trust that their personal information is handled with care and responsibility.

## Cyber Security breach – The Case of Sun Pharma

Sun Pharma's operations got affected by ransomware attack and a group claimed responsibility for the mentioned 'IT security incident' whose effect included breach of certain file systems and theft of certain company data and personal data, the drug manufacturer mentioned in a stock exchange filing. Sun Pharma first reported the incident on March 2, 2023. Back then it said that the incident did not affect Sun's core systems and operations. The five facts of the mentioned incident are as under:

1. On March 2, 2023, Sun Pharma reported an "information security incident" at the company, adding that the impacted assets have been "isolated".
2. 25 days later, a ransomware group claimed responsibility for the information breach. The infringement of the IT systems includes a breach of certain file systems and theft of certain company and personal data, Sun Pharma said.
3. "The Company promptly took steps to contain and remediate the impact of the IT security incident, including employing containment and eradication protocols to mitigate the threat and additional measures to ensure the integrity of its systems infrastructure and data," Sun Pharma said in a statement.
4. As part of its containment strategy, the company isolated its network and initiated a recovery process, resulting in the company's business operations being impacted.
5. As a result, revenues are expected to fall, Sun Pharma said. The company added that it is currently unable to determine other "potential adverse impacts" of the incident, including other security incidents or the possibility of litigation.

This comes amid growing threats of such attacks on Indian healthcare sector, which is the most attacked sector and is followed by education, research and government, and the military. A study by Check Point Research in January 2024 said healthcare saw the maximum number of attacks among all sectors in India, with an organisation in India being attacked 1,866 times per week on average in 2022. Global cyberattacks increased by 38% on year in 2022, it added.

From Sun Pharma's Cyber Security breach, it creates substantial academic interests to explore the reasons for vulnerability of pharma sector to cyber-attacks. Some of the reasons of cyber-attack are as under:

i) Research and development (R&D) are a top priority for pharmaceutical companies. If they want to stay ahead of their competitors, they need to constantly innovate when it comes to new drugs, treatments, and therapies. However, the IP from their clinical trials, manufacturing, and patents is especially valuable. Cybercriminals might target these assets to sell them on the black market, to forward them to a competitor, or to use them for their own advantage.

ii) Pharma companies access a huge amount of sensitive data, including:

- Patient information
- Clinical trial results
- Proprietary research
- Regulatory filings

This valuable data is subject to stringent regulations which makes it even more appealing to people who want to monetize it. For example, cybercriminals could use this data for fraud, blackmail, or identity theft.

iii) Pharmaceutical companies work via a complex network of partners, vendors, providers, and suppliers. With so many parties involved, there are countless insider threats and opportunities for cybercriminals to take advantage of, such as by accessing databases or compromising the integrity of the products. Unfortunately, it only takes one player to compromise their data security, and the entire supply chain will experience disruption.

iv) Majority of pharmaceutical companies operates globally. This means that cybercriminals can have a significant impact across multiple countries and regions via an attack. Thus, when it comes to attack scale, the pharma world has huge potential.

v) Although more pharmaceutical companies are starting to understand cyber risks, their cybersecurity solutions aren't always as developed as in other industries. This may be due to limitation of budgets and companies may not always be proactive regarding mitigating cybersecurity challenges. The result is limited cybersecurity measures makes them more vulnerable to phishing attacks, ransomware attacks, and other cyber-attack malware.

vi) With so much sensitive data, cybercriminals have lots of opportunities to exploit pharma companies. For example, they might use ransomware attacks to encrypt valuable data and demand a "ransom" for its release. Or, they might engage in insider trading, where they access secret information on regulatory approvals or treatment research.

## WAY FORWARD

Data governance is a journey, not a destination. To ensure its success, an organization needs a way to measure its progress and identify areas for improvement.

The three maturity levels that organizations go through as they become more data-driven companies are:

**i) Data integration**: application integration, data integration, and data loading

**ii) Data integrity**: data preparation, data stewardship, and data quality

**iii) Data intelligence**: data cataloging, data lineage, and metadata management

Because organizations require trusted data to empower data users, improve customer experiences, and make decisions with confidence, data quality metrics must be a core component of any data governance program. The further along an organization is on this maturity curve, the more it can take advantage of powerful technologies like data profiling and data matching with machine learning. This helps position an organization to get the maximum value out of all of its data assets while maintaining the necessary level of control and trust in that data.

It's important for business units across the organization to recognize the data governance team as a friend and ally in their business processes. After all, governance is about more than data protection and control of sensitive data. Data governance policies give business users access to the data they need, when they need it. Data governance is ultimately a tool to help optimize decision making.

While data governance is important, it should not hold back innovation or take it hostage. Modern technologies usually work best when used in concert with other technologies—like using blockchain to secure data generated by non-traditional energy producers (solar, wind, private), or integrating machine learning and semantic processing to configure energy storage or retrieval options via an intelligent chatbot. But for these kinds of "breakthrough" use cases, developers and companies need room to experiment and innovate; seasoned developers and architects are more likely to resolve potential issues during design or development phases, so data governance should have some flexibility in these phases.

As Jeff Goldblum famously said in Jurassic Park in 1993: "Life finds a way." Transformational technologies, if employed to the advantage of both customers and providers, will continue to evolve and contribute integrity to the data framework. Software developers and data architects will specialize beyond coding languages and platforms, focusing more on certain industries or business models where they can differentiate through knowledge of non-technical challenges. And new data governance approaches will have to be considered to allow innovation and protect data simultaneously.

**LESSON ROUND-UP**

- Data governance is everything one do to ensure data is secure, private, accurate, available, and usable. It includes the actions people must take, the processes they must follow, and the technology that supports them throughout the data life cycle.
- Data governance is the process of ensuring that the business rules for data are established and followed.
- Data management is the process of making sure that all data is captured, managed, used, and disposed of properly.
- The most common objective of data governance is the standardization of data definitions across an enterprise or organization. Other goals and objectives depend on the focus of a particular data governance program. Within the commonly accepted data governance framework, one should determine principles that make sense for the environment.
- Top-down method is the centralized approach to data governance. It relies on a small team of data professionals who employ well-defined methodologies and well-known best practices. This means data modelling and governance are prioritized. Only later is the data made more broadly available to the rest of the organization for analytics.
- The bottom-up method allows for much more agility when managing data. While the top-down method starts with data modelling and governance, the bottom-up approach starts with raw data. After the raw data is ingested, structures on top of the data can be created (referred to as "schema on read"), and data quality controls, security rules, and policies can be implemented.

## GLOSSARY

**Data Governance:** Data governance means setting internal standards—data policies—that apply to how data is gathered, stored, processed, and disposed of. It governs who can access what kinds of data and what kinds of data are under governance.

**Master Data Management**: Commonly referred to as MDM, Master Data Management is a technology-enabled discipline that comprises specific tools, processes, policies, and rules to ensure one point of reference for the entire organization. MDM ensures timely, consistent, and accurate data management and distribution across your business departments, entities, and applications.

**Data warehousing**: It involves the storage of the organization's various data sources in internal or external databases.

**BI management**: or Business Intelligence management ensures that the tools, processes, and units involved are following the guidelines outlined in the data governance strategy. While BI is the process of analysing data that has been checked for accuracy and validity and delivering actionable business insights that help organizations make better decisions.

**Document and content management**: They are both different processes that intersect. A DMS or a document management system is used to store and retain different document formats while a content management system can handle unstructured and structured data such as web content.

**Data security management (DSM)**: It ensures that there are measures to protect data from theft, breaches, and corruption. There are also laws in place that vary from region to region that organizations have to keep in mind while ensuring DSM.

**Data operations management**: It is the management of DataOps or data operations and focuses on data delivery to the organization. DataOps deals with implementing, planning, and managing a distributed data architecture that will support a wide range of tools and guidelines that have been outlined.

**Data development**: Itis the collation of data sets with a common objective. This means the way the data is collected has no consequence on this process. An ideal data developmental process would help the organization chart out data standards that are aligned with consistent data collection.

**Data architecture management (DAM)**: It keeps a track of the organization's data assets and charts out the data flow. On the basis of the data flowing through several systems, DAM aims to provide a strategy for managing this data flow.

**Data integration and distribution**: It ensures that data is synching and integrated across all business systems, applications, and the ERP. A data integration tool can be used to integrate all data so that there are no data silos that could slow down operations or result in issues. This is also a means to distribute data within the ERP and to other legal entities.

**Data quality management:** It is the process of adding rules and validations to ensure that data is meeting the set criteria for accuracy, consistency, timeliness, integrity, validity, and completeness. Consistent data quality is required to ensure that any analytics performed on the data is accurate and meaningful. It would be advisable to have periodic assessments to your data to ensure data quality even with changes in validation rules.

**Data stewardship**: It is responsible for the accessibility, usability, and security of the organization's data. A data steward oversees all functions that come under the data lifecycle from creation to storage to deletion.

**Reference data management:** It is the management of classifications that distinguish data across business systems. This include tracking any changes, the creation and distribution of reference data.

**Product information management:** It is the management of all product-related information that is used to market and sell products through existing channels.

**Workflow automation**: is the process of automating task flows for documents and data across business functions adhering to the set business rules. You can use a data entry workflow tool to quicken this process.

**Data management**: Data governance is a subset of data management but all the areas that data governance sets out a strategy for, come under data management as well. Therefore, data management involves the collection, storage, protection, organization, correction, management, and distribution of the enterprise's data. Data management processes ensure that the data is ready to be analysed for extracting business insights that impacts the growth of the organization.

**Master data**: It is what we like to call the single source of truth. While master data is the content, MDM is the practice area. It is the data that is absolutely critical for day-to-day operations within a business unit or organization.

**Metadata**: shares distinct attributes that help describe and categorize other data within a database. There are various types of metadata such as descriptive, structural, administrative, reference, statistical and legal.

**Reference data**: It is a subset of master data that is used to classify other data throughout the organization.

**Data migration**: It is the process of moving or migrating data between systems, formats, or servers.

**Data protection and compliance**: It is an important process to safeguard and protect important business information from corruption or loss. Compliance ensures that there are strict guidelines that are followed to protect data and in keeping with international and local data privacy laws.

**Bulk data transfer**: A mechanism, usually software-based, which is designed to move large data files, supporting compression, blocking, and buffering in order to cut down on wait times.

**Data staging**: It ensures a place for data to be stored where it can be validated or corrected.

**Database**: It is the collection of the organization's data listed out that can easily be retrieved or searched via data catalogues or other means to categorize data.

**Data Lake**: It is a storage repository for all categories of data regardless of its size. A data lake acts as a large container for data coming from various sources into an organization, internal or external.

**Data Warehouse**: It is the central location of data that is integrated across systems and applications. A data warehouse stores real-time and older data and can be used to create reports and for analysis.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What do you understand by data governance and explain its significance for an organization?
2. Distinguish between data governance and data management.
3. Elucidate the data governance scenario in telecom sector.

## LIST OF FURTHER READINGS

- Non-Invasive Data Governance: The Path of Least Resistance and Greatest Success First Edition by Robert S. Seiner
- Getting in Front on Data: Who Does What First Edition by Thomas C. Redman
- Data Governance: How to Design, Deploy and Sustain and Effective Data Governance Program (The Morgan Kaufmann Series on Business Intelligence) 1st Edition by John Ladley
- Get Governed: Building World Class Data Governance Programs by Morgan Templar

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# Stakeholders Rights

Lesson 10

## KEY CONCEPTS

■ Whistle Blowing ■ Vigil Mechanism ■ Grievance Redressal Mechanism ■ Human Rights ■ Sexual Harassment ■ Gender Parity ■ Local Procurement ■ Monetary benefits ■ Non Monetary Benefits ■ Code of Conduct ■ Attrition rate ■ Health and Safety

## Learning Objectives

**To understand:**

- Whistle Blowing / Vigil Mechanism
- Sexual Harassment at workplace
- Health & Safety concerns at work place
- Gender parity ratio at Workforce
- Supplier code of conduct
- Monetary & non-monetary benefits for employees

## Lesson Outline

# STAKEHOLDER'S RIGHTS

## BUSINESSES AND HUMAN RIGHTS

Human rights are basic rights and freedoms that protect us all. They are based on dignity, fairness, equality and respect. Businesses have a significant impact on the way we live our life and enjoy these human rights, whether it's as an employee, a customer or simply living alongside companies that share our cities and towns.

Companies do need to pay close attention to their supply chains but businesses can affect people's human rights in more subtle ways, at home and abroad. Companies with an online presence will need to make sure that they respect people's right to privacy and uphold data protection laws, care home providers need to treat the people they look after with dignity and respect and all businesses have an obligation to ensure safe working conditions for their staff.

Aside from it being the right thing to, it also makes good business sense to respect human rights. Businesses can find themselves involved in lawsuits, suffering reputational harm and missing out on business opportunities and investments as well as the chance of recruiting the best new employees.

Almost all human rights are relevant to business. A business can have an impacts – both positive and negative – on many people, including employees, customers, suppliers and their employees, and communities in which the business operates.

Globally, there is increasing expectation amongst governments, business, investors and civil society, that businesses operate responsibly and sustainably – and at the heart of this is respect for human rights.

In 2011 the UN Guiding Principles on Business and Human Rights (UNGPs) were unanimously endorsed by the UN Human Rights Council. The UNGPs are now the authoritative global standard for addressing and preventing human rights impacts associated with business activity. The UN Guiding Principles operate on a three-pillar framework, known as the Protect, Respect, Remedy Framework, which consists of:

- Pillar I: The State duty to protect human rights
- Pillar II: The business responsibility to respect human rights
- Pillar III: Access to remedy for victims of business-related human rights harm.

The idea of human rights is as simple as it is powerful: that people have a right to be treated with dignity. Human rights are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other status. Every individual is entitled to enjoy human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

While Governments have the duty to protect individuals against human rights abuses by third parties, businesses are increasingly recognizing their legal, moral and commercial need to respect human rights. Today, businesses are subject to closer scrutiny of their impacts on people and the planet. Companies that focus on respecting human rights - and cultivate positive relationships with their stakeholders - can help ensure their business' continued growth and social license to operate.

Businesses have minimum responsibilities to meet to respect human rights. They must act with due diligence to avoid infringing the rights of others, which includes addressing any negative human rights impacts related to their business. They must also abide by international standards and avoid causing or contributing to adverse human rights impacts through their activities and relationships.

Beyond these minimum requirements, companies can make voluntary, positive contributions to support human rights. For example, they can create diverse and inclusive workplaces, invest in communities and public policy advocacy, and engage employees and communities to promote collective action. While these types of actions to support human rights are encouraged, they do not substitute for nor do they offset respect for human rights.

## PART A. WHISTLE/ VIGIL/ GRIEVANCE REDRESSAL MECHANISM

### INTRODUCTION

History is witness that there have always been informers who reveal inside information to others. Ancient Greeks talked about whistleblowing centuries before.

The word whistle blower originates from 'whistle' as used by a referee to indicate an illegal or foul play. It was coined by civilactivist Ralph Nader in early 1970's so as to avoid any negative connotations. Whistleblowing is officially defined as "making a disclosure that is in the public interest". It will usually occur when an employee discloses to a public body, usually the police or a regulatory commission that their employer is partaking inunlawful practices. A whistle blower discloses information about misconduct in the workplace that he feel violates the law or endangers the welfare of others and speaks out with an intention to expose corruption or dangers to the public or environment. Whistleblowing is to be encouraged as it is an efficient and effective way of curbing unlawful practices.

Whistleblowing incorporates two words: 'Whistle' and 'Blowing' which means blowing a whistle or revealing some information in front of the public. The information can be about public or private organizations/institutions about activities which are deemed to be illegal, immoral or fraudulent. The people who disclose the wrong-doings are known as 'Whistleblowers.'

When a disclosure is made about the wrongdoings in a business corporation, it is called corporate whistleblowing.

Corporate whistleblowing plays a pivotal role in corporate governance that is adopted by an organization or a company.

In an organization, company stakeholders could comprise the board of directors, management, shareholders, employees, clients, etc. Corporate Governance has a direct impact on the growth and stability of an organization, company, it also has bearing on the integrity and reputation ofthe company. Corporate Governance ensures that the board of directors, the management of the company are transparent and disclose all the business activity of the company to gain the trust of the investors.

The term 'whistle-blowing' is a relatively recent entry into the vocabulary of public and corporate affairs although the phenomenon itself is not new.

In many cases of corporate whistleblowing, it was observed that the employees of the organization are generally the first ones who have sustainable information in regards to any wrongdoing or any kind of unethical practice happening in the organization, company but due to fear that they would be suspended or that they would be fired from their jobs speak about such activities in the last. This makes it important that every organization or company should have a whistleblowing policy that protects the identity of the whistleblower and there should also be legislative statute that gives protection to such employees.

Furthermore, by adopting an efficacious whistleblowing structure an organization or company can ensure to dissuade employees from indulging in unlawful activities, it would also enable the organization or the company to detect any wrongdoing in advance. An efficient whistleblowing structure would also enable the whistleblower to expose any kind of wrongdoing without any fear.

Whistleblower protection policies are also an imperative element of in-house controls, ethics and compliance program, which could exhibit to shareholders and law enforcement authorities that an organization has made efforts to thwart, detect and deal with dishonest behavior.

## MEANING OF VIGIL MECHANISM / WHISTLE BLOWER POLICY

According to Ahern, McDonald, Katharyn, Sally. (2002), the concept of whistleblowing essentially means when a particular organization or the company is given a warning beforehand about any kind of corruption or any illegal activity happening within the organization, company.

***"The purpose of whistleblowing is to expose secret and wrongful acts by those in power to enable reform."***- Glenn Greenwald

Whistleblowing could also be understood as the process that reveals any kind of unethical activity happening within an organization, company by an employee, or any person privy to such activities.

The International Labour Organization (ILO) defines Whistleblowing as "Reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers."

The term vigil means the purposeful surveillance to guard and observe. So, the purpose of vigil mechanism policy works on the meaning of vigil. Every company should adhere to a code of conduct and some commitment while operating its business. Some essential commitments such as maintaining the higher standards of moral, legal, and ethical conduct in its business operation. In order to maintain these standards, usually, companies attempt to protect their employees, directors and members against any victimization or harassment at the workplace.

Whistle Blower Policy or Vigil Mechanism can be understood as a mechanism for the Directors and Employees of the Company to report concerns about unethical behavior, actual or suspected fraud or violation of the Company's code of conduct or ethics policy.

The Whistle Blower Policy / Vigil Mechanism aims to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion, to report concerns about unethical behaviour, actual or suspected fraud, leakage of unpublished price sensitive information or suspected leakage of unpublished price sensitive information or violation of the Code of Business Conduct and Ethics for Board of Directors and Employees, against any employee/public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint subject to the disclosure or complaint being made in good faith and in reasonable time.

## GENESIS OF WHISTLE BLOWING

The idea of whistleblowing had been in the practice since long back. During the time of Kautilya, the idea similar to the whistleblowing had appeared. Although the term whistle-blowing is recent word added in the vocabulary but the phenomenon is not new one. The strategy of Kautilya resembled with the vigil mechanism. The strategy of Kautilya states that- "Any witness who supplies data about extortion and on the off chance that he/she prevails with regards to demonstrating it, will get the reward of one-6th of the sum being referred to; or if the source is an administration worker, he/she might get one-twelfth of the sum for a similar demonstration."

Whistleblowing had also been discussed in ancient Greece for generations. In his speech against Leokratis, Lykourgos, the Athenian orator, said: ***"Neither laws nor judges can bring any results until someone condemns the lawbreakers."***

The word whistle-blowing was coined by Ralph Nadar, a civil activist in the 1970's. Officially, Whistleblowing is defined as "making a public-interest disclosure." It usually occurs when an employee reports to a public entity, usually the police or a regulatory commission, that their employer is engaging in illegal behaviour. A whistleblower discloses information about workplace malpractice that he believes violates the law or jeopardizes the well-being of others, and speaks out in order to expose corruption or threats to the public or the environment.

In US, The Sarbanes-Oxley Act of 2002 was enacted by the United States Congress on July 30, 2002, to enable investors protect themselves from misleading financial reporting by corporations. This Act is also called as SOX Act of 2002 and corporate responsibility Act of 2002. This Act brought new strict reforms for existing securities regulations and imposed resilient penalties on lawbreakers. The Act of Sarbanes-Oxley Act of 2002 came into existence after the financial scandals in the early 2000s.This Act mandates every listed companies in USA to have whistle-blowing policy in place. The main objective of the Act is to protect the investors through improving the transparency, disclosure norms, and reliability of every information of the companies.

Similarly, UK has also enacted the Public Interest Disclosure Act, 1998 to prevent the companies' employees from discriminating against the whistle-blowing employees.

In 2001, the Indian Legislation Commission proposed that a law protecting whistleblowers be enacted in order to combat corruption. It had also written a bill to address the problem. In the year 2004, the government notified the "Public Interest Disclosure and Protection of Informers Resolution (PIDPIR)" and in response to this resolution, the Central Vigilance Commission (CVC) was established only to protect the government employees.

The Second Administrative Reforms Commission's report from 2007 also urged that a separate statute be enacted to protect whistleblowers.

India then enacted the Whistle Blowers Protection Act, 2014 ("Whistle Blowers Act"), which is applicable only to public servants. It was enacted with the intent to establish a mechanism to:

- receive complaints relating to disclosure of any allegation of corruption, wilful misuse of against any public servant;
- to inquire or cause an inquiry into such disclosure; and
- to provide adequate safeguards against victimization of the person making such complaint.

The Whistle Blowers Act may be utilized by any person to make a public interest disclosure. An amendment to the aforementioned Act was proposed in the form of the Whistleblowers Protection (Amendment) Bill, 2015 ("Amendment Bill"). The Amendment Bill sought to, inter alia, incorporate necessary safeguards against disclosures that may prejudicially affect the sovereignty and integrity of the country, security of the State, etc. However, the Amendment Bill was not passed by the Rajya Sabha and consequently, it lapsed.

More about whistle blower legislation in India is provided later in the chapter.

## NEED FOR A WHISTLE-BLOWING MECHANISM

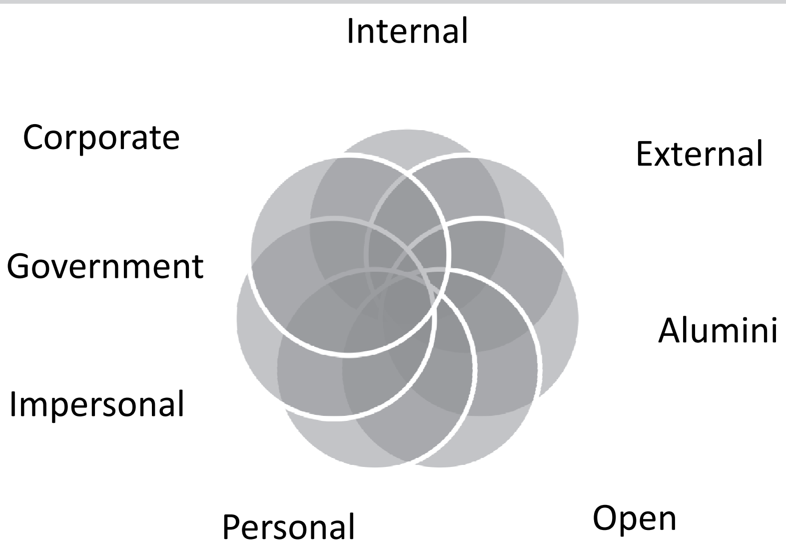
The corporate sector not only in India but the world over has been through several progressive changes over the last few decades. These changes, however, have constantly been overpowered by widespread controversial corporate scandals. These scandals not only adversely impact the reputation of the company but also hamper the interest of various investors and stakeholders of the company. Those inside the organization are definitely better positioned to prevent these wrong happenings and thus the even increasing need for whistle blower policy.

The need for whistle blower policy is for the following reasons -

- **To promote transparency:**
    - An effective whistle blowing policy facilitates a transparency among employees.
- **Prevent victimization of whistle blowers:**
    - A robust whistle blowing mechanism protects anyone who exposes alleged wrongdoing in the institutions and projects.

- **To promote an open enterprise culture:**
  - Effective protection of whistleblowers will support an open enterprise culture where employees not only have confidence in reporting but are also aware of the reporting procedures.
- **Reduce corruption:**
  - Strengthening whistle blowing mechanism will helps to prevent misuse of power by public servants and thus curb corruption.
- **To uphold rule of law and democracy:**
  - Strengthening of the whistleblower protection mechanism will helps in upholding the principles of democracy and ensure public participation in governance.
- **To create a better work environment:**
  - Whistle blowing helps in rectifying even the smallest incidents of wrongdoing, thereby instilling similar responsibilities in others and creating a better environment for all.

## Types of Whistle Blowers




**Internal:** When the whistleblower reports the wrong doings to the officials at higher position in the organization. The usual subjects of internal whistleblowing are disloyalty, improper conduct, indiscipline, insubordination, disobedience etc.

**External:** Where the wrongdoings are reported to the people outside the organization like media, public interest groups or enforcement agencies it is called external whistle blowing.

**Alumini:** When the whistle blowing is done by the former employee of the organization it is called alumini whistle blowing.

**Open:** When the identity of the whistleblower is revealed, it is called Open Whistle Blowing.

**Personal:** Where the organizational wrongdoings are to harm one person only, disclosing such wrong doings it is called personal whistle blowing.

**Impersonal:** When the wrong doing is to harm others, it is called impersonal whistle blowing.

**Government:** When a disclosure is made about wrong doings or unethical practices adopted by the officials of the Government.

**Corporate:** When a disclosure is made about the wrongdoings in a business corporation, it is called corporate whistle blowing.

## LEGISLATIVE FRAMEWORK IN INDIA SUPPLEMENTING THE WHISTLEBLOWING MECHANISM

The legislative framework in India about the protection of a whistleblower is still in a nascent stage as compared to the legislative framework adopted by countries like the United Kingdom and the United States of America.

Several pieces of legislation lay down provisions governing the process of whistleblowing and granting protection to the whistleblower. The following are the laws,

- The Whistleblowing Protection Act, 2014.
- The Companies Act, 2013 read along with "The Companies (Meeting Board and its Power) Rules 2014.
- The SEBI (Listing obligation and Disclosure requirement) Regulations, 2015.

### The Whistle Blowers Protection Act, 2014

The Whistle-blower Protection Act, passed in May 2014, established guidelines for whistle-blower protection in non-corporate cases. Under this Act, the Central Vigilance Commissioner is responsible for receiving complaints, reviewing public disclosure requests, and ensuring that complainants are protected under the law.

The law created a legal mechanism to deal with complaints about allegations of corruption or intentional misuse of power or discretion against any public servant and to investigate or cause an investigation into such allegations. It allows anyone, including government employees, to make a general interest disclosure before a Competent Authority. It also defines various competent authorities in great detail. It also provides safeguards to conceal the identity and safeguards against the victimization of the complainant. The law doesn't allow anonymous complaints and there will be no actions on such complaints. The maximum period for making such a complaint is seven years.

Any person who is dissatisfied with a Competent Authority order may file an appeal with the concerned High Court within sixty days of the date of the order.

Anyone who reveals the identity of a complainant unintentionally or purposely will face imprisonment.

The Act does not apply to Special Protection Group (SPG) personnel and officers who were formed under the Special Protection Group Act of 1988.

### The Companies Act, 2013 and the Companies (Meetings of Board and its Powers) Rules 2014

Under Section 177(9) read with Companies (Meetings of Board and its Powers) Rules, 2014, it is mandatory for

- All the listed companies and
- Companies which accept deposits from the public
- Companies which have borrowed money from Banks and Public Financial Institutions in excess of Rs.50 crores

to establish Vigil/Whistle-blowing mechanism to report any unethical behaviour or other concerns to the management.

Companies which are required to constitute an audit committee shall operate the vigil mechanism through the audit committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand. For other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

It provide adequate safeguards against victimization of employees and directors who avail of the Vigil mechanism and also provide for direct access to the chairperson of the Audit committee or the director nominated to play the role of audit committee, as the case may be, in exceptional cases.

Once established, the existence of the mechanism may be appropriately communicated within the organization. The details of establishment of Vigil mechanism shall be disclosed by the company in the website, if any, and in the Board's Report. In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand. Section 208 and Section 210 of the Companies Act, 2013 give the Registrar or the Inspector additional power to investigate the records of the companies and upon doing so submit a report to the central government. If further contains that they need to provide the government with all the relevant documents and also provide them with any suggestions that they may have to pertain to the investigation.

Section 210 of the Act, lays down the procedure that needs to followed by the registrar or the inspector while investigating the affairs of a company.

## Companies (Auditor's Report) Order, 2020 [CARO 2020]

The ministry of corporate affairs to strengthen the practice of corporate governance among the Indian Companies issued an order making it mandatory for all the listed companies to reveal all the whistleblower complaints to the auditor and the same shall be mentioned in the report published by the auditor.

## The SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015

Since listed companies deal with the money of investors and public, they are subjected to higher regulatory and legal framework as compared to private companies. Also, listed companies have higher market capitalization than private companies and the money involved, risk and chances of unfair practices and wrongdoings are also much more. Accordingly, the listed companies in addition to Companies Act also have to follow various SEBI regulations.

The SEBI LODR has several regulations which mandate the listed companies to disclose material events and ensure effective corporate governance in the company, some of these regulations are Regulation 22 of the SEBI LODR Regulations which is similar to Section 177 of the Act and provides for establishment of vigil mechanism in every listed company for reporting genuine grievances of employees and directors and also provides for protection to them against victimization. Regulation 46 states that every listed company has to disseminate vigil mechanism and its whistle-blower policy on a separate section on its website. Further, as per regulation 34 and 53 the company under the heading corporate governance in its annual report also has to state the details of the vigil mechanism and its whistle-blower policy and also further mention that no personnel have been denied access to the audit committee. Similarly, Regulation 4(2)(d)(iv) mandates every listed company to establish a vigil mechanism/ whistle-blower policy which would enable the stakeholder of the company such as employees and their representative bodies to lodge complaints against unethical and illegal practices in the company. Schedule II of the SEBI LODR Regulations states that the audit committee of the company shall be responsible for the reviewing the functioning of the vigilance mechanism.

## MAJOR WHISTLE BLOWING LEGISLATIONS AROUND THE WORLD

Many countries have devised and adopted a variety of laws and procedures for protecting and encouraging Whistle Blowing as discussed below:

### The United States

The US has dozens of whistle-blower laws at the state and federal level, as well as separate clauses in legislation designed to achieve other health, safety or welfare objectives. The three principal acts, however, are the Whistle-blower Protection Act 1989, the Corporate and Criminal Accountability Act (Sarbanes-Oxley Act), and the False Claims Act.

***(A) The Whistle-blower Protection Act, 1989***

The Whistleblower Protection Enhancement Act, 2012 was signed into law in November 27, 2012. The Whistleblower Protection Enhancement Act (WPEA) provides millions of federal workers with the rights they need to report government corruption and wrongdoing safely. The WPEA makes federal whistleblower rights stronger that at any time in history, lapping those created by the Whistleblower Protection Act of 1989 (WPA). This update is long overdue, as WPA protections were very weak.

The WPA was a landmark good government law with the mandate to protect federal employees who report waste, fraud and abuse. Over the past two decades, the WPA has fallen victim to hostile judicial activism. Unfortunately, with every month that passed before enactment of the WPEA, the status of federal government whistleblowers continued to erode due to a lack of viable rights. Formerly under the WPA, federal employees were not eligible for whistleblower protections if they:

- were not the first person who discloses given misconduct
- made a disclosure to a co-worker
- made a disclosure to a supervisor
- disclosed the consequences of a policy decision, or
- blew the whistle while carrying out job duties

Sections 101 and 102 of the WPEA restore the original intent of the WPA to adequately protect whistleblowers by clarifying that a disclosure does not lose protection because: (1) the disclosure was made to a person, including a supervisor, who participated in the wrongdoing disclosed; (2) the disclosure revealed information that had previously been disclosed; (3) of the employee or applicant's motive for making the disclosure; (4) the disclosure was made while the employee was off duty; or (5) of the amount of time which has passed since the occurrence of the events described in the disclosure. Section 101(b)(2) also clarifies that a disclosure is not excluded from protection because it was made during the employee's normal course of duties, providing the employee is able to show that the personnel action was taken in reprisal for the disclosure.

***(B) The Sarbanes-Oxley Act***

The Sarbanes-Oxley Act was passed in 2002 to combat corporate criminal fraud and to strengthen corporate accountability. It was a legislative response to the fraudulent activities exemplified by World Com and Enron Corporation. The Act provides for enhanced financial disclosures and auditor independence of publicly held corporations. Section 301 of the Act requires that audit committees of the boards of public corporations establish procedures for 'the confidential, anonymous submission by employees' of complaints regarding internal accounting controls or auditing matters. The Act provides some protections and assistance for the whistle-blower.

Employees are not required to complain to their employers first, but may complain to a Federal regulatory or law enforcement agency; any Member of Congress or any committee of Congress; or a person with supervisory authority over the employee. It does entertain the right of the whistle-blower to take legal action if they suffer retaliation. Those found guilty of retaliation are liable to up to ten years in prison. The impact of the Sarbanes-Oxley Act, however, is primarily limited to financial matters.

***(C) The False Claims Act***

Designed to stop fraud against the government, this act was passed during the US civil war under the administration of Abraham Lincoln. Regarded as the single most successful Whistle Blowing legislation in the country, the False Claims Act works by providing the whistle-blower between 15 and 30 per cent of the government's total recovery, the percentage depending on the extent to which the whistle-blower took the action that enabled the recovery to take place. It was amended in 1986 to establish protections for whistle-blowers, and to prevent harassing and retaliation against them. The Bill, which permits an anonymous disclosure, has been copied by a number of states in the US.

## The United Kingdom

In UK, to protect whistle-blowers, legislation was enacted in the wake of well- publicized scandals and disasters that occurred in 1980s and early 1990s. These included the collapse of Bank of Credit and Commerce International (BCCI), the drowning of four children at Lyme Bay, and the Clapham Rail crash.

***(A) The Public Interest Disclosure Act of 1998***

The Public Interest Disclosure Act (PIDA) became effective on July 2, 1999, in England, Wales and Scotland, as an amendment to the Employment Rights Act of 1996. PIDA covers both private and public employees (except police officers), and provides that "a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done on the ground that the worker has made a protected disclosure." Under the PIDA, whistle- blowers must use prescribed channels for making disclosures in order to retain the Act's protection. The disclosure can be made to the employer itself or an appropriate authority, and forbids the disclosure to media. As is clearly apparent, the UK's scheme is materially different from that of the United States, which does not require employees to use any particular channel to raise their concerns.

## Canada

Canada has very few laws which pertain directly to Whistle Blowing. The federal government enacted the Public Servants Disclosure Protection Act in 2007. The intent of this act is to protect most of the federal public service from reprisals for reporting wrongdoing. However, this Act has been extensively criticized as setting too many conditions on whistle-blowers and for protecting wrongdoers.

***Several provinces also have legislation which protects whistle-blowers to an extent:***

Section 28 of the New Brunswick Employment Standards Act, Chap.E-7.2, provides specific protection for those reporting wrongdoing.

In Ontario, the Environmental Protection Act, R.S.0. 1990, ¢. E.19 and the Environmental Bill of Rights, S.0. 1993, c. 28 provide protection.

Saskatchewan's Labour Standards Act provides protection, although the reporting must have been done to a lawful authority. A number of other acts provide narrow protections to individuals reporting wrongdoing under those acts.

## Australia

Australia has amended its Corporations Act to provide protection to officers, employees, and contractors and their employees. The Act provides protection against any retaliation against a whistle-blower and gives them a civil right, including the right to seek reinstatement of employment. It also provides qualified privilege against defamation and precludes contractual or other remedies being enforced including civil and criminal liability for making the disclosure.

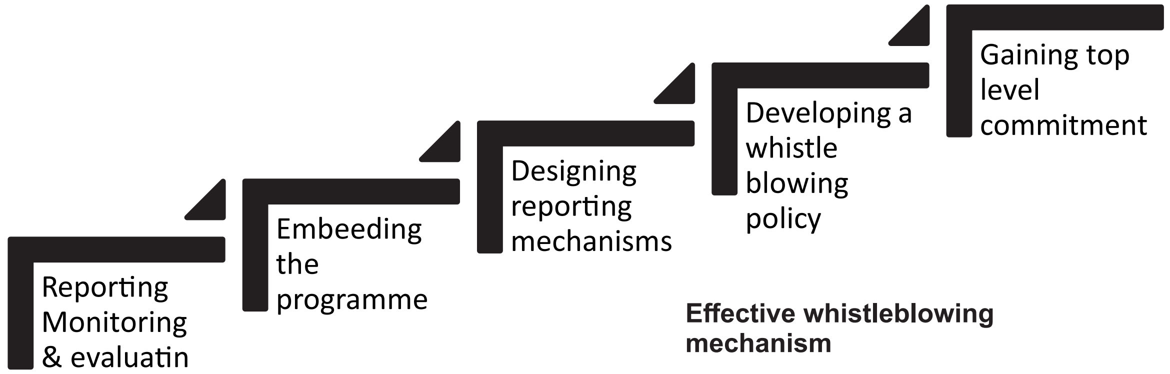
Secrecy provisions in any employment will not preclude Whistle Blowing. Disclosures which are covered include those made to the securities regulator; the company's auditor or a member of the audit team; a director, company secretary or senior manager of the company; and any other person authorized by the company to receive revelations of this kind. Interestingly, whistle-blowers must give their name before making the disclosure in order to receive protection under the Act.

## EXAMPLE OF VIGIL MECHANISM POLICIES OF INDIAN COMPANIES

in line with the statutory mandate almost all the listed companies have come out with their own whistle-blower policy. For example the HCL Limited has gone a step ahead and their whistle-blower policy is not only for the internal stakeholders but also external stakeholders such as third-party vendors, internal or external auditors etc. In a case of violation of Company's code of business ethics or breach of any of the company policy or insider trading, the complainant can lodge a complaint under the said policy. The Company has constituted an Ethics Committee and has a provision for Ombudsperson which is entrusted to investigate complaints and in exceptional cases the complainant can also have direct access to the chairman of the audit committee, the policy provides that the complaints are encouraged to be made in writing and may be can sent either electronically or by post at the address given in the policy.

Likewise, TATA Power Ltd also provides for Whistle-blower Policy wherein an employee, director or any other stakeholder of the company such as customers, vendor, suppliers etc. can make protected disclosures to the Chief Ethics Counsellor or to the Audit Committee, as the case may be, for violation of the TATA Code of Conduct. On the basis of this information, the Company will carry out an internal investigation under the supervision of the chairperson of the audit committee and identity of the Whistle-blower will be kept confidential and post investigation and after hearing the 'subject' i.e., against whom the complaint has been made, the management of the company will recommend appropriate action to the audit committee for its consideration and approval. In case of frivolous Protected Disclosures, the policy states that Audit Committee may take appropriate action against the Whistle-blower.

**Best Practices in designing and implementing effective whistle blowing mechanism:**




Seven Dimensions of Organizational Culture the influence the Employee Reflection Process that ultimately leads to Whistle Blowing Behaviour are:

| | | | |
|---|---|---|---|
| (1) Vigilance | (2) Engagement | (3) Credibility | (4) Accountability |
| (5) Empowerment | (6) Courage | (7) Options | |

## SOME WHISTLE BLOWER CASES IN INDIA

- **Satyendra Dubey Case (1973-2003):** He was an Indian Engineering Service (IES) officer posted as Project Director in the National Highways Authority of India (N.H.A.I) at Koderma, JHARKHAND. Indian Government led by Atal Bihari Vajpayee started ambitious Golden Quadrilateral project to connect all major cities of India via four and six lane highways. At this time he was responsible for the expansion of Aurangabad-Barachatti section of National Highway 2. He discovered that Larsen and Toubro had taken contract from Indian government and passed it to smaller contract mafias who were incapable of handling such a large scale project. Apart from this, he noticed that proper procedure and quality was not maintained while constructing the roads. He wrote to his senior officials in N.H.A.I and when he didn't get proper response he wrote directly to Prime Minister Atal Bihari Vajpayee office. He requested that his identity to be kept secret. But PMO officials circulated his letter along with details of his identity among the bureaucracy. The number of noting on the file bear witness to this (The Indian Express, November 30, 2003). While the file was making the rounds, not one official thought about the threat Dubey was being exposed to. Why officials in the PMO did not heed Dubey's request for anonymity is not known. But just over a year later, on November 27, 2003, he was murdered in Gaya, Bihar,
- **M Shanmugam Manjunath Case (1978-2005):** He was a manager at Indian Oil Corporation (IOC) posted in Lakhimpur Kheri in Uttar Pradesh. Manjunath was murdered for sealing a corrupt petrol station which was selling adulterated fuel. He had sealed two petrol pumps in Lakhimpur Kheri for three months and when they started operating again he took a surprise raid to check the quality of fuel. He was shot six times and his dead body was found in the back seat of his car. This news created huge outcry in nation and media. Sessions court found all accused guilty and sentenced them to death. Allahabad high court changed the verdict to life imprisonment of 5 while acquitting the other two. Indian Oil Corporation paid a compensation of 2.6 million INR to Manjunath's Family.
- **Narendra Kumar Case (1979-2012):** Narendra Kumar was an Indian Police Service (I.P.S) officer from 2009 batch and he was posted in Morena district of Indian state of Madhya Pradesh. Morena district is famous for fine quality of sand found in Chambal River bed which is used in construction of buildings, and in past years illegal mining is rampant in not only Morena District but in many parts of Madhya Pradesh. Narendra Kumar was posted as sub-divisional police officer in Morena district and he had been trying to stop illegal quarrying in the area. On 8th March he received information about illegally mined stones being carried in a tractor. He went to check if the information was true or not. He reached the spot and asked the driver to stop but the tractor driver ignored his warning and ran vehicle over him.
- **Lalit Mehta Case (1972-2008):** Lalit Mehta was a Right to Information (R.T.I) activist who had exposed ongoing scams in National Rural Employment Guarantee Act in Palamau District of Jharkhand. Lalit Mehta was an engineer turned social activist. He was actively involved in activities that sought to advance rural employment, basic health facilities, right to food, and child rights. At the time he was working as full-time activist of the Right to Food Campaign. He was also the secretary of the Vikas Sahyog Kendra (VSK), a non- governmental organization based in Palamau. On the evening of 14th May 2008 he was travelling back to Chatarpur on his motor bike when he was attacked and killed. The Chhatarpur Police found his mutilated body and a belt around his neck Kandaghati in Chhatarpur on May 15. He was strangled and his face was smashed to deformed beyond recognition. It was suspected that he was murdered by "people who siphoned off NREGS funds". National RTI Forum started Lalit Mehta RTI Gallantry Award, honoring his contribution in exposing scams viaR.T.IL.

- **SP Mahantesh Case:** He was serving as a Deputy Director of Cooperative Audit in Karnataka. Through his investigation he found that there were several irregularities in land acquisition, layout formation and allotment of sites and it involved many officials and politicians. He had prepared an audit report of the BEML Employees' Cooperative Society, which was accused of making improper land allotments to several influential persons. He was attacked thrice prior to final assault that claimed his life on 15th May 2012.0n the evening of 15th May he was driving home in his Maruti 800 when he was stopped by four assailants. Attackers first dragged him out and beat him with iron rods and punches. When he went unconscious, his body was thrown on sharp stones. This whole accident happened at high security zone where chief justice of Karnataka lives but according to police out of 16 CCTV cameras none was able to record footage as it was raining heavily that day. The 48-year-old died five days later due to a cardiac arrest.

- **Satish Shetty Case (1970-2010):** Satish was an Indian social activist and he was noted for exposing many land scams in state of Maharashtra. He had used the Right to Information Act to expose irregularities in Government offices and construction work carried out in Maharashtra. Shetty was a systematic whistle-blower and he was credited with throwing light on several major land scams in the Talegaon-Lonavala regions a famous region in Maharashtra for Real- Estate developers and retailors. He also exposed the corruption in the construction of country's first expressway the Mumbai-Pune expressway. In the morning of 13th January he was attacked by three to four masked men with butcher's knives when he was reading a newspaper at a kiosk at around 7 on his way home from a morning walk. The police investigations proposed a different theory for the murder, and eventually the case was transferred to CBI.

- **Rinku Singh Rahi Case:** He was Provincial Civil Services (PCS) civil servant and he was fighting against corruption in sponsored welfare schemes in Uttar Pradesh (UP). He was born in Aligarh and completed his B.Tech degree in Metallurgy at NIT, Jamshedpur in 2002. In the same year, he scored All India 17th rank in GATE but he opted for a civil services career instead. Rahi ordered an inquiry into the allocation of funds by social welfare department in Muzaffarnagar over the last five years and he found discrepancies. Out of the allocated funds to be distributed as part of Old-age pension scheme, money was taken for 62,447 people but only 47,707 beneficiaries received it. There were no records for 55 million rupees distributed to 22,000 OBC students and 110 million rupees distributed to all BPL families. He also went on hunger strike to draw attention of the State Government's reply on his pending RTI applications. He was shot six times by local gangsters, damaging his jaw and the vision of one eye and he is currently working as a coordinator at Bhimrao Ambedkar coaching center in his hometown.

- **Yashwant Sonawane Case:** He was posted as Additional District Collector of Malegaon (Maharashtra). He had received information about oil adulteration carried out at large scale in Malegaon. While going to Nandgaon he spotted a few trucks parked in a very suspicious manner near the road side. Trucks of big oil companies like IOC, HPCL and BPCL were parked. When he started investigating about the trucks people indulged in oil adulteration, attacked the officer, beat him up and then set him on fire. He was declared dead on arrival at the hospital.

- **D. K. Ravi Case (1979-2015):** Doddakoppalu Kariyappa Ravi commonly known as D. K. Ravi was an Indian Administrative Service officer of Karnataka cadre from the 2009 batch. He was posted as Deputy Commissioner in Kolar district and was known as pro-people administrator and started crackdown of illegal sand mining and encroachment of government lands in Kolar and Gulbarga. Later on he was transferred to Bangalore as Additional Commissioner of Commercial Taxes and there he prepared a list of many tax defaulters and set a target of 1000 crores to collect from tax evading defaulters. During first two weeks of his working he collected 138 crore INR from tax defaulters and came into lime light of many political goons. He received many threat calls from tax defaulters and sand mafia. On 16th March 2015 he was found dead with his body hanging on celling fan in his residence in Koramangala, Bangalore. The initial police investigation, forensic and medical evidence showed it a case of suicide but then protest erupted in cities where he worked and mass band was organized by opposition parties for handing over the inquiry to Central Bureau of Investigation (C.B.I). On 13 April, 2015, the Centre ordered a CBI probe into the mysterious death of IAS officer DK Ravi and the case is still going on.

- **V. Saseendran Case:** V. Saseendran was the Company Secretary of Malabar Cements Limited, a PSU. In 2007, Saseendran was prime witness in audit reports stating that the company registered a loss of Rs. 400 crores because of rampant corruption. Later Saseendran was forced to withdraw his allegation. In September 2010, V. Saseendran wrote to the Chief Minister of Kerla, Industries Minister and Vigilance Director informing them about rampant corruption in the loss-making company. He alleged that the managing director's secretary was leaking vital company information. He had been found hanging in his house in Palakkad with his two sons aged eight and eleven on February 24, 2011.

## SAFEGUARDS TO WHISTLE BLOWERS

The existing laws contain various provisions that restrict the access to the whistle-blowers and thereby prevent their disclosure. For instance, under section 173 (6) of Cr.P.C the police officer can form an opinion that any part of the statement recorded under section 161 of the Code of a person, the prosecution proposes to examine as its witness, need not be disclosed to the accused if it is not essential in the interests of justice or is inexpedient in the public interest.

Similarly, though section 273 of the Code requires the evidence to be taken in the presence of the accused, section 299 indicates that in certain exceptional circumstances an accused may be denied his right to cross-examine a prosecution witness in open court. The concerned person or witness may be the whistle-blower, whose identity can be concealed by the courts in the interest of justice. Further, the Law Commission of India and other Commissions have also contributed significantly for the protection of whistle-blowers. The 14th Report of the Law Commission (1958) examined, inter alia, the question of providing adequate facilities to witnesses attending cases in courts. The 4th Report of the National Police Commission (1980) acknowledged the troubles undergone by witnesses attending proceedings in courts. The 154th Report of the Law Commission (1996) particularly noted: "Necessary confidence has to be created in the minds of the witnesses that they would be protected from the wrath of the accused in any eventuality."

In its 178th Report (2001), the Law Commission recommended the insertion of section 164A in the Cr.PC to provide for recording of the statement of material witnesses in the presence of Magistrates where the offences were punishable with imprisonment of 10 years and more. On the basis of this recommendation, the Criminal Law (Amendment) Bill, 2003 was introduced in the Rajya Sabha and is pending enactment.

The Law Commission's 179th Report on Public Interest Disclosures and the Protection of Informers, states thus: "Good-faith whistle-blowers represent the highest ideals of public service and challenge abuses of power. They test loyalty with the highest moral principles but place the country above loyalties to persons, parties or Governments". The same also seems to be stress of the "consultation paper on witness identity protection and witness protection programmes" issued by the Law Commission. These provisions must be construed in a liberal manner by the courts to protect the whistle-blowers.

## JUDICIAL RESPONSE

The response of the Supreme Court for providing protection to witnesses and whistle-blowers is positive and justice oriented. The Supreme Court, in *Gurbachan Singh* v. *State of Bombay*, upheld a provision of the Bombay Police Act, 1951 that denied permission to a detenue to cross-examine the witnesses who had deposed against him. It was held that the law was only to deal with exceptional cases where witnesses, for fear of violence to their person or property, were unwilling to depose publicly against bad character.

In *Naresh Mirajkar* v. *State of Maharashtra*, the Supreme Court recognised the validity of the procedure of holding an in-camera trial. The Supreme Court was of the opinion that in certain circumstances, the identity of the witness can be kept secret and concealed by holding an in-camera trial. The decision of *Maneka Sanjay Gandhi* v. *Rani Jethmalani*, stressed the need for a congenial atmosphere for the conduct of a fair trial and this included the protection of witnesses.

Similarly, in *A.K. Roy* v. *Union of India*, stressing on the need to protect the identity of the informant, the Supreme Court held that the disclosure of the identity of the informant may abort the very process of preventive detention because, no one will be willing to come forward to give information of any prejudicial activity if his identity is going to be disclosed, which may have to be done under the stress of cross-examination.

In *Kartar Singh* v. *State of Punjab*, the Supreme Court upheld the validity of ss.16 (2) and (3) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) which gave the discretion to the Designated Court to keep the identity and address of a witness secret upon certain contingencies; to hold the proceedings at a place to be decided by the court and to withhold the names and addresses of witnesses in its orders.

The court held that the right of the accused to cross-examine the prosecution witnesses was not absolute but was subject to exceptions. The same reasoning was applied to uphold the validity of Sec. 30 of the Prevention of Terrorism Act, 2002 (POTA) in People's Union of Civil Liberties v. Union of India. In *State of Maharashtra* v. *Dr. Praful. B. Desai,* the Supreme Court observed: "The evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video conferencing.

Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before the concerned person with whom he is communicating with.

Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is recorded in the "presence" of the accused and would thus fully meet the requirements of section 278, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law". This judgment of the Supreme Court is a landmark judgment as it has the potential to seek help of those witnesses who are crucial for rendering the complete justice but who cannot come due to "territorial distances" or even due to fear, expenses, old age, etc.

In *Sakshi* v. *U.O.I*, the Supreme Court referred to the 172™ Report of the Law Commission and laid down that certain procedural safeguards had to be followed to protect the victim of child sexual abuse during the conduct of the trial.

## WHISTLE BLOWING – WAY FORWARD

On 18th January, 2021, Vice-President of India suggested the corporates to encourage whistle-blowing mechanism and provide adequate safeguards for the protection of whistle-blowers.

Corporate Governance is considered to be *sin non qua* for any company to operate, if a company has a strong corporate governance framework, then the company can conduct its operation with full transparency and can promote the policy of full disclosures to strengthen their relationship with all the stakeholders and their employees. Having a good corporate governance framework will ensure stability and growth for the company.

A strong Whistleblowing Framework helps a company to implement the practice of accountability efficiently, it could further encourage the employees to elevate their concerns to the concerned authorities and prevent any wrongdoing or malpractice, corruption, or fraud in the early stages thus maintaining their reputation.

The scope for whistleblowing looks encouraging in India. In the past several years with a lot of scandals coming to light more and more companies are encouraged to implement an efficacious and efficient whistleblower policy. Whistleblower Policy is an integral part of the corporate framework of the coming, if the companies are successful in implementing a strong whistleblowing framework it could help detect any kind of wrongdoing and would also discourage the employees from indulging in any kind of malpractices.

The company while adopting a whistleblowing framework should ensure that the framework has adequate safeguards to keep the identity of the complainant hidden along with this the company shall also adopt an incentive mechanism wherein if the complainant raises their apprehension for any kind of wrongdoing or proves that the company is indulging in any kind of malpractice and communicates evidence that proves the allegation then in such case the complainant shall be rewarded. Some of the suggestions to move forward are:

- **Awareness generation:**
  - The people must be made aware about the legislative provisions and their usage.
  - Educating people is necessary so that they can understand the benefits of disclosing the wrongdoings.
- **Protecting the identity of whistleblowers:**
  - Individual's identity shall not be disclosed at any cost until unless they give their consent on it or it is required in the public interest.
  - Such a mechanism will help to ensure robust protection to whistleblowers identity.
- **Widening the scope:**
  - Incorporating state government / private bodies will widen the scope of anti-corruption.

## PART B. WORKPLACE PRACTICES

There is a growing recognition that human capital is a source of competitive advantage for organisations. Employees are an integral part of an organization's stakeholder list and protecting their rights is an essential element of corporate governance. There is enough research to establish that employee representation and participation in corporate governance enhances wealth creation. Corporate leaders increasingly understand that people and the knowledge they create are often the most valuable assets in a corporation.

Discussed below are few areas where the organization need to focus on for maintaining healthy employee relationship and for protection of employee rights.

## HEALTH AND SAFETY

The Constitution of India provide detailed provisions for the rights of the citizens and also lays down the Directive Principles of State Policy which set an aim to which the activities of the state are to be guided. On the basis of these Directive Principles as well as international instruments, Government is committed to regulate all economic activities for management of safety and health risks at workplaces and to provide measures so as to ensure safe and healthy working conditions for every working man and woman in the nation. Government recognizes that safety and health of workers has a positive impact on productivity and economic and social development. Prevention is an integral part of economic activities as high safety and health standard at work is as important as good business performance for new as well as existing industries.

Health and safety should be a key component of every company's corporate governance framework by ensuring that companies provide a safe workplace for employees, contractors, and visitors. It is highly important to educate management and employees on the essence of health and safety compliance as part of corporate governance.

For many organisations, health and safety is a corporate governance issue. The board should integrate health and safety into the main governance structures, including board sub-committees, such as risk, remuneration and audit.

The International Labour Organization (ILO) estimates that every year, around 2.3 million workers around the world face fatal circumstances due to work-related accidents, that is why public and private sector organizations throughout the world are increasingly concerned with improving occupational health and safety in both developed and developing countries.

The rapid pace of technological and natural changes, combined with the persistence of unsafe and environmentally threatening working conditions, has served to focus attention on the requirement to make a secure, healthy operating environment, and to push a coherent safety culture within the workplace.

## Why is Occupational Health and Safety important?

Occupational Health and Safety (OHS) focuses primarily on protecting employees in the workplace from accidents, injuries, and exposure to harmful substances. While accidents can happen at any time, it is still the employer's responsibility to ensure that they take steps to reduce the risk of incidents and maintain a safe working environment. Prioritizing OHS at your business has several key benefits, including:

- Reduced risk or accidents or injuries by identifying and mitigating hazards
- Improved efficiency and productivity due to fewer employees missing work from illness or injury
- Improved employee relations and morale (a safer work environment is a less stressful work environment)
- Reduced costs associated with accidents or injuries (healthcare and rehabilitative costs, losses in productivity, impact on employees' well-being)
- Lower insurance premiums resulting from fewer workplace incidents and workers' compensation claims

It's no secret that all industries have safety hazards of some sort. The most important aspect of a good Occupational Health and Safety policy is identifying these hazards and ensuring that employees have the training, safety equipment, and other resources needed to work safely. Failure to implement effective policies and precautions can lead to injuries, reduced productivity due to the absence or loss of skilled labor, workers' compensation claims, and possible penalties from the Occupational Safety and Health Administration (OSHA).

The implementation of occupational health and safety standards helps organizations to:

## Reduce workplace incidents

Organizations will experience fewer unpleasant surprises if they address hazards in their operations. Employers can discover possibilities to improve safety and productivity by recognizing possible dangers and avoid workplace incidents.

## Reduce absenteeism and staff turnover

By managing Health and Safety hazards in the workplace more effectively, managers can better protect employees, which lower absenteeism and staff turnover rates.

## Increase productivity

Productivity suffers whenever a worker is hurt and unable to work again. Hiring and training a successor takes time away. Additionally, one might need to temporarily halt operations if any equipment was destroyed in the event.

## Reduce the cost of insurance premiums

By implementing proper safety measures, an organization can establish a foundation for attracting lower insurance premiums by demonstrating that it is taking great precautions to manage and safeguard its people.

### Create a proper health and safety culture

This guarantees that top-level management or safety management people bear accountability and ownership. The occupational health and safety of employees is continuously enhanced over time by having senior leadership involved and a clearly articulated approach for detecting danger.

### Enhance reputation

The company will be viewed as a top-tier industry player and gain international recognition if it adopts the most modern occupational health and safety standards. It will assist to distinguish the company from your rivals.

### Improve staff morale

Instead of quality management of the employed workplace systems and equipment, the emphasis needs to be largely on the physical and mental health of the personnel. it is critical to understand this component since it raises employee morale, which has a big influence on attrition and retention rates.

**CASE STUDY**

***Union Carbide Corporation v. Union of India***

The Bhopal gas leak case is still considered the world's worst industrial disaster. In the year 1934, American Industrial giant Union carbide incorporated with the Union of India to form Union Carbide India Limited (UCIL), in which Union Carbide was a majority shareholder holding a stake of 51%. The main objective of the company was to manufacture chemicals, batteries, pesticides and other industrial products. A new plant of UCIL was incorporated in a densely populated area of Bhopal, Madhya Pradesh in the year 1970. On the night of 2nd December 1984, a highly toxic gas, methyl isocyanate, escaped the premises of Union Carbide Limited (UCIL) harming a massive population along with the flora and fauna, killing around 2600 people instantly and leaving thousands of them injured. Later reports disclosed the count of people who died reached 20,000 and around 60,000 people suffered irrecoverable physical damage.

The zone wherein the plant was situated was for light industrial and commercial utility, not for dangerous industry. The plant was initially approved only to formulate pesticides in relatively small quantities. The government was apprehensive in implementing strict liability despite the principle being in existence since the Stockholm Conference came into existence.

The Union of India immediately enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (the Bhopal Act) for speedy trial of this case and to prevent the accused from escaping liability. The Union of India tried to litigate the case before the foreign courts but the foreign courts dismissed their petition citing a jurisdictional conflict.

The District Court awarded a sum of 350 million as interim compensation to the victims of the accident which was reduced by the High Court to 250 million. The dissatisfaction amongst the families of the victim led the Supreme Court to increase the amount of compensation to 470 million.

The applicants were still dissatisfied and filed a petition for increasing the compensation amount along with continuing the criminal charges levelled against Union Carbide.

As an aftermath of this tragedy, the Environment Protection Act, 1986 and the Public Insurance Liability Act, 1991 were enacted to prevent such catastrophe. It even widened the scope of Article 21 of the Indian Constitution, which guarantees every person the Right to Life and Personal Liberty. This right includes the Fundamental Right to Live in a Pollution Free Environment for their full enjoyment of life. The constitutional provisions incorporated under Article 39(b), 47, 48, 48A, 49, 51A(g) impose a duty on the citizens and the state to protect the environment.

Its aftermath was a warning that the path to industrialization is fraught with human, environmental and economic perils. The number of deaths, sick persons, babies born with cancer or deformities and completely handicapped has continued to rise every year. Such incidents many times not only affect the employees working inside the organization but also impact their kith and kin who are dependent and the public at large.

***L&T Corporate Environment, Health & Safety (EHS) Policy***

L&T's Corporate EHS Policy defines the commitment to Health & Safety and Mission Zero Harm through a structured Corporate EHS framework supporting our EHS procedures and guidelines. For proper implementation of EHS Policy, the company has The EHS Council which monitors and measures the compliance with corporate procedures.

Major supply chain contractors and subcontractors are audited before awarding any contracts to ensure that safety standards are maintained throughout the contract duration. In addition to this, the EHS Council audits each IC on the implementation of procedures. L&T's safety management systems across the business are also supported by internally developed Safe Operating Procedures (SOPs), which are fully endorsed by the L&T EHS Council.

Artificial Intelligence (AI) is being used as a prominent solution for the identification and prevention of unsafe acts and conditions, while further enhancing our Building Information Modelling (BIM) in Safety. We plan to increase the use of 3D models in more construction sites for scaffold erection and dismantling and introduce more VR modules. In remote places, the use of drones has been applied to identify safety hazards, without the necessity of putting people at risk. Continued focus on digitalisation allows us to move further to the 'Connected EHS Manager' and the 'Connected Workman' as we continue to push boundaries and standards in safety to significantly improve our safety performance.

The EHS Council has developed a Behavioural-Based Safety (BBS) Programme that is implemented across all businesses. External BBS providers such as DuPont continue to assist in further developing an integral safety culture in all our businesses at all levels and their understanding of risk. Introduction of the Safety Task Analysis Risk Reduction Talk (STARRT) Card and Hazard Identification Tool (HIT) Card have encouraged all employees to report hazards observed and ensure that action is taken.

Supplier/vendor Code of Conduct (COC) covers EHS and Human Rights parameters to be adhered and supply chain partners must sign the COC as a part of the contract documents

In line with L&T's vision, philosophy, and EHS Policy, management systems have been implemented in accordance with the International Standards ISO 45001:2018 (Occupational Health and Safety Management System Standard). EHS Management System defines the mandatory requirements for the systematic management and execution within the organisation. The Company's Integrated EHS Management System is accredited by international certification bodies

The Company's EHS Council undertakes a review of all accidents and incidents, and formulate procedures based on risk analysis of data gathered through respective IC. It makes use of advanced technology such as vision analytics/AI to detect any health & safety hazards and gather data.

This data is used for predictive analysis, measurement of incidents and unsafe behaviours. This enables identification of the key areas of risk which in turn guides the projects to proactively manage and focus resources to prevent any accidents or incidents. Such analysis is shared throughout the group IC structure, to support L&T Mission ZERO HARM objective.

Further, workers have a Safety Ambassador at sites who helps them to raise safety issues directly and in turn, the Ambassador communicates good health and safety practices to workers

## PREVENTION OF SEXUAL HARASSMENT

Prevention of Sexual Harassment (POSH) is a law as the name suggests and was brought into effect in 2013, to protect women from any harassment at work along with providing a safe, non-discriminatory environment within their workplaces.

If we trace down the journey of POSH Act coming into effect, it can be traced back to a supreme court verdict in the case of *Vishaka & Ors* vs. *State of Rajasthan & Ors.* in the year 1995. This case was filed by an NGO asking for landmark punishment for the rapists who were involved in a gang rape of a social worker, while she was at work.

While the Supreme Court of India pronounced its judgment stating that sexual harassment is a grave violation of the constitutional rights of women, a need for strict laws for the protection of women at the workplace came in the forefront.

Ever since the POSH Act came into existence, sexual harassment at the workplace is legally a crime. The Vishakha guidelines which got codified into law have resulted in top companies in India shifting their policies to comply with the Act (commonly known as POSH). The corporate sector has implemented the law in its workspaces resulting in a shift of women now being able to report cases of sexual harassment. However, industries that employ women from socio-economically poorer sections into their workforce require to pay more attention to the implementation of the Act.

In the last 9 years, it has influenced organizations to consider sexual harassment very seriously. The domino effect has led to several companies adopting best practices in handling sexual harassment effectively. Some organizations are going beyond what is mandated to identify ingenious ways for handling the issue of sexual harassment plaguing women at the workplace. At the same time, there are still several companies which continue to under-report the number of sexual harassment incidents. But overall, the POSH Act has propelled organizations to comply with its mandate and make the workplace safer for its female employees.

Workplace as defined under the Act, refers to the organisation and any place visited by the employee in the course of employment including transportation and work-from-home.

Workplace harassment is defined as any misconduct in a form of any action or communication which may be directed towards the victim to demean, mock, discriminate on grounds of religion or race, threats, intimidation or sexual or physical assault at a workplace. This may involve, colleagues, managers, support staff, clients, group of coworkers and so on.

“Sexual Harassment” includes anyone or more of the following unwelcome acts or behaviour ( whether directly or by implication), namely :

- Physical contact or advances;
- A demand or request for sexual favours;
- Making sexually coloured remarks;
- Showing pornography;
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

It is noteworthy that POSH Act comes as a gender-specific Act & extends even beyond the walls of an office. However, it is the responsibility of every organization to make sure that POSH Act is looked upon by both genders in the empowering manner.

It is also the responsibility of managers, human resource managers, team leaders and so on to create awareness within employees about various facts involved in the domain of POSH. To counter any assumptions or confusions, provisions to conduct POSH training is brought into effect.

Main objectives of POSH training is to make employees familiar with various aspects, definitions & consequences of harassment within a workplace and to train internal committee members effectively to equip them with a better understanding of situations wherein POSH act is applicable & how to better deal with such issues. To provide apt information about POSH gender neutrality & how can it be used by men who face any kind of sexual harassment during work in the workplace.

**Impact of inappropriate behaviour**

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts.

| ***Professional*** | ***Personal*** |
|---|---|
| • Decreased work performance<br>• Increased absenteeism, loss of pay<br>• Loss of promotional opportunities<br>• Retaliation from the respondent, or colleagues/ friends of the respondent<br>• Subjected to gossip and scrutiny at work<br>• Being objectified<br>• Becoming publicly sexualized<br>• Defamation<br>• Being ostracized<br>• Having to relocate<br>• Job and career consequences<br>• Weakened support network | • Depression<br>• Anxiety, panic attacks<br>• Traumatic stress<br>• Sleeplessness<br>• Shame, guilt, self-blame<br>• Difficulty in concentrating<br>• Headaches<br>• Fatigue, loss of motivation<br>• Personal Difficulties with time<br>• Eating disorders (weight loss or gain)<br>• Feeling betrayed and/or violated<br>• Feeling angry or violent towards the respondent<br>• Feeling powerless<br>• Loss of confidence and self esteem<br>• Overall loss of trust in people<br>• Problems with intimacy<br>• Withdrawal and isolation |

*Source : Handbook on Sexual Harassment of Women at Workplace*

Everyone is affected by sexual harassment since it creates an atmosphere that makes it difficult for employees to perform. The following are some of the potential consequences of workplace sexual harassment:

- **Emotional And Physical Issues**

  Physical and mental wellbeing are inextricably intertwined. Loss of appetite, migraines, weight changes, and sleep difficulties are all physical health issues. Sleep deprivation may lead to a variety of major health issues, including hormone instability, an elevated risk of high blood pressure, and a weaker immune system. Sexual harassment victims frequently experience mental and behavioral consequences, such as anxiety, sadness, and nervousness. They frequently have low self-esteem and assertiveness.

According to research, sexual harassment hurts women's work satisfaction, emotional commitment, and wellbeing, raising psychological anguish, generating more physical sickness, and producing more unhealthy eating habits.

- **Decreased Company Productivity**

  Sexual harassment hurts a company. Everyone loses when a workplace is contaminated with prejudice and harassment. Employees suffer from absenteeism, low morale, gossip, antagonism, tension, and anxiety as a result of the hatred caused by harassment. Businesses and the entire market are both affected by sexual harassment.

  Absenteeism, reduced performance, high employee turnover, bad morale, and legal costs associated with sexual harassment cost businesses millions of dollars each year. Sexual harassment victims and survivors are far more likely to leave, resulting in significant employee turnover and increased hiring and training costs.

  As per Heather McLaughlin and colleagues' research, roughly 80% of women who have been sexually harassed leave their professions within two years. It will be more difficult to acquire top people in a toxic workplace.

- **Financial Challenges**

  Sexual harassment not only harms one's health, but it also harms one's finances. Sexual harassment can have a negative impact on a victim's work performance and career path. Some people retreat from the job and detach from coworkers due to fear and low confidence.

  Sometimes sexual harassment victims may experience longer-term employment consequences, such as the loss of work recommendations, termination, or losing creditability in their industry. Individuals may also elect to leave their present position or company to prevent a hostile work environment. As a result, financial issues such as missed pay and unpaid leave may arise.

- **Brand name and reputation**

  The failure of a firm to appropriately prevent and respond to sexual harassment can lead to costly lawsuits.

  A high-profile example of sexual harassment can harm a company's brand and lead to lost sales. According to research, when prospective customers observe or learn about "divisiveness" directed at an employee in the workplace, they may form negative judgments that make them less inclined to purchase from the company.

**CASE STUDY**

***Vishaka vs. State of Rajasthan and Ors., JT 1997 (7) SC 384 (Bhanwari Devi Case)***

This was a landmark case regarding the protection of women against sexual harassment at workplace. It was the incident of 1992 where a lower caste social worker for the women's development programme in Rajasthan named Bhanwari Devi who was trying to stop a child marriage in her village was allegedly gang-raped by five men of the upper-class community. She went to the police station to lodge a complaint against the offenders but no thorough investigation was launched.

This landmark case raised so many questions in the context of sexual harassment which take place at a workplace. The Issue raised whether the employer has any responsibility in cases of sexual harassment by its employee or to its employees at a workplace?

To get justice, she took her case to the Trial Court where Court acquitted the accused for the reason of lack of the medical shred of evidence and other reasons. Due to which so many women's groups and organizations went for appeal against the judgment. The result of which, a public interest litigation was filed in the Supreme Court of India on the issue of sexual harassment at the workplace. This judgment had its basis in so many international treaties which had not been adopted in the municipal law.

Supreme Court held that the sexual harassment of a woman at a workplace would be violative of her fundamental rights of gender equality and right to life and liberty under Articles 14, 15, 19 and 21 of the Indian Constitution. The court concluded that such act would be considered as a violation of women's human rights.

After this verdict, a statutory vacuum was observed which proposed the route of judicial legislation in the context of sexual harassment at workplace. The case laid down so many guidelines and requirements which need to be fulfilled by the employer as well as other responsible persons or institutions:

- For preventing the acts of sexual harassment in the workplace, it should be the duty of the employer or any other responsible person to prescribe for procedures and settlements.
- Formation of a complaint committee at all workplaces.
- Such committee has to be headed by a woman employee only and should have NGO or third-party participation.
- Half of the members of a committee should be comprised of women only.
- All complaints regarding sexual harassment of a woman employee would be dealt by this committee only, appropriate action in this regard shall be initiated by the employers in accordance with the concerned law.
- The committee would advise and recommend to the victim for the further course of action.
- Provides for the definition of sexual harassment.

These guidelines were the first of its type which created for the gender equality rights of women, which should be free from harassment in both public and private employment. This judgment led the Indian Government to enact the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 which came into force from 9 December 2013. This Act superseded the Vishaka Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

## EMPLOYEE TURNOUT / ATTRITION RATE

How successfully a company hires, onboards, manages and rewards its people is fundamental to its success. These factors are too important to leave to chance, so the most successful companies use data to ensure excellence: They compare their attrition rates with national and industry-specific benchmarks. They hold managers responsible for keeping the lines of communication open with their reports. They actively manage their career development programs and look at total compensation metrics in context of the cost of replacing top performers.

"Employee turnover" refers to workers parting ways with the institution or company they work for. The "turnover rate," on the other hand, defines the total number of workers leaving within a certain period of time.

Turnover is a generalized term; turnover can occur in different ways, both undesirable or desirable, and shouldn't be confused with attrition. When calculating attrition, force reductions and terminations are not counted.

### Voluntary turnover

When an employee leaves a company or institution based on his or her own decision and not the employers', it's considered "voluntary turnover." Voluntary turnover can take many forms including resigning, retiring, moving to a different company or organization, relocating and/or traveling with spouses.

This kind of turnover is usually a common cause of concern among executives because they're usually unpredictable, out of the employer's control, and can cause major disruptions in the workplace. Additionally, voluntary turnover can also be costly, whether directly (retiring) or indirectly (losing top talent).

### Involuntary turnover

Involuntary turnover is when parting ways with the company happens for reasons that are out of the employees' hands. In human resources, it is usually divided into two subtypes:

### Controllable

The most popular form of controllable involuntary turnover is when an organization terminates an employee's contract or asks them to resign (while resigning itself is voluntary, if it stemmed from the company's decision it's considered involuntary).

The cause is usually due to poor performance, which negatively affects the flow of the workplace or the business itself, or because of the employee's unprofessional behavior, such as violating one or more workplace policies.

### Uncontrollable

Uncontrollable (unexpected) involuntary turnover may include aspects that neither parties are able to control, such as death, disability, and aspects like forced downsizing.

Depending on the situation, involuntary turnover can have some advantages and drawbacks. It can cause concerns among some employees about their job security, but it can also restore the workflow and productivity of those who were negatively affected by a terminated employee.

### Effects of high employee turnover

Having a high turnover rate can have some detrimental effects on the business. Some of the most consequential impacts are discussed below:

1. **Disruptions of the workflow**

   One of the immediate results of having a high turnover rate is reducing the overall productivity of the workplace. When a company lays off a large number of employees every year, it puts a lot of pressure on the existing workforce. This can cause noticeable disruption of the workflow while the business tries to acclimate to the new changes.

2. **Low workplace morale**

   If current employees are getting more and more overworked due to the extra workload, the general morale of the workers will start to deteriorate. Besides adding more responsibilities to the current workforce, even if temporary, having a high employee turnover can also make the employees more insecure about their job stability. Low workplace morale causes anxiety, which also affects the general productivity of the workplace.

   The problem is that studies found that 1 out of 4 employees will quit their job due to mental stress. In other words, having a high employee turnover can itself lead to more resignations!

3. **Financial losses**

   Any company that has a high turnover rate is prone to lose more money than it would if it retains its workforce, which happens for a variety of reasons. For example, the company will spend more money in order to recruit new employees to replace those who left. Additionally, the new employees might cause a reduction in return customers and client satisfaction rates due to low experience.

4. **Creating a negative workplace reputation**

   Employees also do their research while finding a new job, and one of the main deterrents that some employees will try to avoid are companies with high employee turnover. Reports from a survey show that only 1 out of 5 employees feel secure at their job and consider job security a priority while seeking a new job.

   Meanwhile, studies show that job security also has a major impact on employee engagement, with researchers finding out that engagement is likely to drop by more than 37% among insecure employees and those who are worried about their job stability.

5. **Risking the loss of talented and experienced employees**

   While some jobs have relatively higher or lower employee turnover rates than average, laying off many employees puts the company at a huge risk of losing irreplaceable and highly talented ones. This doesn't have to be through involuntary turnover, but also voluntary. As previously mentioned, having a high turnover rate on its own is enough to push some employees to quit their job or seek other job offers.

### Recent trends

The employment market in India has taken a turn since the pandemic hit, employees have understood the importance of work-life balance and flexibility. The percentage of Indian jobseekers putting work-life balance among their top goals has risen from 36% to 47% in the last two years, which has led to quiet-quitting, a term that has been popularly used in recent months.

The rising churn rate has led to tremendous impact on various industries in India. The IT sector is dealing with an all-time high attrition rate averaging at 25%, Ecommerce at 28.7% and Hi-Tech at 21.5%. Furthermore, professional services (25.7%) and financial services (24.8%) have also experienced high attrition rates. However, strangely the attrition rates in the engineering industry has been much lower, at 14%, 12.9% in chemicals, 12.4% in automobiles, and 8.6% in metals and mining. Evidently, this shows that high attrition rates are much more widespread in new age economy sectors than in traditional old economy sectors.

## GENDER PARITY AT WORK

Parity means that each gender is represented equally. It is an instrument at the service of equality, which consists in ensuring the access of women and men to the same opportunities, rights, opportunities to choose, material conditions while respecting their specificities. The notion of parity constitutes the foundation of policies to combat the disparities between women and men.

### Is gender parity the same thing as gender equality?

No. Although the terms are often used interchangeably, gender equality refers to how people of different genders are treated. Gender parity, on the other hand, is a measure of representation. You reach parity when each gender is represented equally.

While that seems simple, it can get complicated fast, says Dr. Janvi Patel, equal rights advocate and advisory board member for Equality Now.

*"Gender parity is a pretty basic indicator,"* she says. *"It's essentially the ratio of men to women, and the closer that number is to one, the better the parity. It would be great to see gender parity (1:1 ratio) in the boardroom, but to shift gender parity, there has to be deeper thinking about gender equality, which takes into account the differences between the sexes, not just the binary genders but also the non-binary; corporations need to understand the needs of each gender."*

The aim of gender equality in the workplace is to achieve broadly equal opportunities and outcomes for women and men, not necessarily outcomes that are exactly the same for all.

Workplace gender equality will be achieved when people are able to access and enjoy equal rewards, resources and opportunities regardless of gender.

It will require:

- Workplaces to provide equal pay for work of equal or comparable value;
- Removal of barriers to the full and equal participation of women in the workforce;
- Access to all occupations and industries, including leadership roles, regardless of gender; and
- Elimination of discrimination on the basis of gender, particularly in relation to family and caring responsibilities.

## Why does workplace gender equality matter?

Achieving gender equality is important for workplaces not only because it is 'fair' and 'the right thing to do,' but because it is also linked to a country's overall economic performance. Workplace gender equality is associated with:

- Improved national productivity and economic growth
- Increased organisational performance
- Enhanced ability of companies to attract talent and retain employees
- Enhanced organisational reputation.

## Women on the board

Considerable attention has been directed towards the number of women at board level, and to a lesser extent, in executive positions. This has led to positive developments, as we see that the percentage of women on boards has increased across all regions over recent years.

The number of women on the board is an easily measurable gender performance indicator, which explains why this is a focal area. Furthermore, it is expected that having more women on the board will have trickle-down effects on the rest of the workforce. For example, it could break down stereotypes on women in leadership and encourage women to pursue their careers further, to seek for roles which they would have not otherwise considered and to ask for more raises and promotions. Having more diversity on the board can break down gender barriers by broadening women's "professional imagination", providing them with role models and increasing their capacity to project themselves into leadership roles. Higher numbers of women on boards can therefore instigate cultural change and has a strong symbolic meaning, showing that women can be leaders.

Having more women on the board is also financially material. The McKinsey & Company Diversity Wins Report 2020 found that *"companies whose boards are in the top quartile of gender diversity are 28 percent more likely than their peers to outperform financially"* and the correlations are statistically significant. This might be linked to the fact that more companies have appointed women directors and there is an overall rise in the universe of companies included in the study, making it more likely to find statistically significant correlations.

However, more research has been conducted showing that gender diversity in the boardroom matters because it brings a broader collection of experience, viewpoints and backgrounds which result in better decision-making. Having more women on the board also tends to curb excessive risk taking, decrease aggressive tax strategies and improve company reputation, earnings quality and sustainability performance. These outcomes are not negligible for companies and their shareholders, especially in times of a global pandemic which will require companies to differentiate themselves from their industry peers.

The benefits of diversity apply not only at board level but throughout companies more broadly.

## Way Forward

While increasing the proportion of women on the board is important, further steps are needed to improve gender equality in the workforce. Companies need to hire and promote more women into senior management positions. This presents opportunities for companies to access new talent pools and increase innovation and efficiency, as we know that diverse teams perform better. Having more women in senior management will in turn ensure that they have the adequate skill sets and required experience to be appointed as board members, enabling companies to reach their quotas and align with the increasing number of regulations around the percentage of women on corporate boards. Investing in women talent early on therefore diminishes regulatory risks down the line. Having more women in leadership will also diminish the biases and negative stereotypes around women's ability to lead, hopefully addressing issues around unequal pay and gender pay gaps. Considering the growing regulatory frameworks and transparency expectations around remuneration practices, companies tackling these issues now will profit from lower compliance costs in the future. Furthermore, fair representation and compensation practices lead to better employee engagement, talent attraction and retention, and efficiency. The operational opportunities of gender equality in the workforce will therefore enable companies to differentiate themselves from their peers in a competitive environment.

Shareholders have their role to play in this shift, as they can push companies to adopt better practices and improve their performance in terms of gender equality. They can act faster than governments by imposing their own quotas. This does not only ensure that their investment practices align with the regulatory requirements, but also increases their opportunities for better returns, as gender-equal companies face lower regulatory and operational risks.

Diversity also needs to expand its scope to move away from addressing women as one group and to instead recognise the heterogeneity of women's experiences in the workplace. More efforts need to be made to collect data on indicators such as race, ethnicity, caste, religion, disability, sexual orientation and other identity markers, in order to address the further inequalities that some women experience according to their intersecting identities. Eventually, the discourse should also shift to recognise women for their abilities, experience and skills rather than branding them as diversity trophies. Companies and investors can help the world to wake up to the possibility that women deserve a say in the decision making process as legitimate leaders and fully-entitled human beings.

Women and girls represent half of the world's employment potential. Nonetheless, gender inequality persists globally and hinders social progress. Effectively developing this talent is a key part of ensuring organizational competitiveness in the future. Capturing the gains in diversity of thought and innovation from women's increased participation in the global workforce will be critical to solving the climate crisis. In addition, a growing body of evidence demonstrates a correlation between diversity at the executive level and a company's performance.

A study by McKinsey & Company analyzed more than 1,000 companies in 12 countries and concluded that gender-diverse companies are more likely to outperform their national industry average in terms of profitability.

Despite the evidence demonstrating women's value in the workforce, women continue to encounter structural barriers to participate in the world economy, particularly in industries traditionally dominated by men. Globally, the labor force participation rate for women is 25 percent lower than the rate for men.

The conversation around DEI has steadily become more frequent and louder across corporates in recent years. Companies have made it a priority to address DEI-related issues to foster a more inclusive work environment. In response, diversity, or lack thereof, at the top of organizations has captured the attention of key investors and stakeholders. Notably, bolstering gender diversity has remained a critical priority for public company boards for quite some time.

**CASE STUDY**

**Case study of HCL: An exemplar of Gender Diversity**

An unwavering commitment to purposefully make progress on DEI is at the heart of HCL's values. The company strongly believes that the diversified workforce, which includes 165 nationalities coming from many countries in which HCL does business, is both an asset and a real differentiator.

HCL provides its staff with a fair opportunity to attain their full potential in an inclusive environment in which they are valued, and treated equally and with respect. These essential components result in increased creativity, productivity, innovation, and better business results.

HCL has long been successful in employing people from different geographies and nationalities, creating a unique fabric of values and traditions. At the end of FY22, HCL employed people from 165 nationalities and women represented 28% of the global workforce. Gender diversity at a senior leadership level has seen a 2.5% increase over the last four years. The overall gender ratio has increased 3.1% over four years.

The company makes an intentional and continuous effort to create and sustain a culture of equality, self-awareness, authenticity, and accountability in the realm of gender, cross-cultural diversity, persons with disabilities, and LGBTQ+ inclusion. HCL has created a beautiful mosaic of different people, beliefs, experiences, and innovation where everyone has an equal shot. Its vision for DEI is that all thrive and contribute their strengths to find common ground for creativity and accomplishing remarkable things.

## MONETARY AND NON-MONETARY BENEFITS

An incentive or benefit is a reward given to a person to stimulate his or her actions in the desired direction. Incentives have motivational powers and are widely utilized by individuals and large organizations to motivate employees. They can either be monetary or non-monetary incentives.

Monetary Benefits are financial incentives often used by employers to encourage workers to meet their goals. Money, being a symbol of power, status, and respect, plays a major role in meeting a person's social – security and physiological needs. Yet money seizes to be a motivator when the psychological and safety needs are met.

### Types of monetary incentives

**Piece Rates –** This is mostly used in production industries where employees are given a certain amount of money on each produced piece. Piece rates motivate employees to work harder and quickly to produce more pieces as each has extra cash attached to it. However, when issuing piece rates, production supervisors must ensure quality is not compromised.

**Pay Raise –** These are mostly offered to employees who have worked in a company for a considerably longer period. Some companies also give pay rises to employees who have reached a certain level of production or those who have completed the required training programs. Some offer annual salary increments to loyal workers.

**Bonuses –** Another good form of monetary incentive is the issuance of bonuses. These might be bonuses to individuals who have met their sales quotas or even bonuses to teams that have completed their projects in time or have surpassed their production targets. Some companies give yearly bonuses to long-serving employees as a way of rewarding loyalty

**Sharing Profits –** This is another excellent way of rewarding employees. A small profit portion is shared with employees based on their position, duration with the company, and input in attaining the overall set goals. Profit-sharing is preferred by most companies since it gives employees a sense of belonging and ownership.

**Contests –** These re mostly offered to sales and production personnel. An additional price or bonus is given to the employee or a team with the highest production level. Again, Employers can offer cash rewards to employees with the best suggestions just to encourage more input in terms of positive ideas that improve sales, production, or performance.

For a long time, the monetary reward has been used by leaders and managers to inspire top workers but the fact is that the effect still does not last as long as it should. As a result, many companies turn to non-monetary incentives. When creating a reward program to motivate employees, decision-makers and business owners need to understand that the reward or incentive neither guarantees quality output nor loyalty but is merely a bonus that encourages employees to achieve their goals without compromising quality.

Non-monetary incentives are any items or experiential rewards given in an incentive program as a result of an employee's performance, which can easily be assigned a monetary value. In general terms, measurable benefits are items or events where compensation is monetary rewards. Non-monetary benefits are more memorable, they tend to be valued more than they cost, they are easier to separate from pay, they are especially attractive to gen-z and millennial employees, are easier to talk about and they have emotional value.

## Types of non-monetary incentives

**Flexible working arrangements:** Allowing employees to work from home on certain days of the week or allowing workers to choose their hours is a great way to implement an incentive program without any cost. This makes employees feel like their time is valued, and that it is understood that they can be trusted to arrange their own working life. Flexi work affords employees additional time to be with their families, thereby providing a work-life balance. For most employees, this is a great non-monetary benefit.

**Physical rewards:** Whether it's something as simple as a thermos with a funny, personal saying or something as extravagant as a set of golf clubs, there is significant emotional value that tends to come with physical rewards. Another benefit is that they are easier to tie to the company. Whether you invest in branding them or not, they have an emotional link to your company, meaning that their value and the employee's value of the workplace are connected.

**Experiential rewards:** Giving employees a unique experience is one of the most effective ways to create positive memories associated with your organization. This is best done when you find out what your employees' passions are, which also will show them that you are interested in who they are as a person.

**Growth opportunities:** Some of the studies show that career development, training, and education opportunities are amongst some of the most highly prized benefits a company can offer. The tangible benefits of helping an employee forward in their career, such as the potential to earn a promotion, are clear. However, investing in employee growth and development also shows that their place in the company in the long term is valued, as well.

**Recognition and praise:** This is best combined with one of the incentives listed above. Recognition for staff who have been working hard can mean a lot to them. This can be handwritten notes, weekly emails showcasing top performers in the business, or mentioning their success in a team meeting. It reinforces the emotional impact of the non-monetary reward they received.

**Extra time off -** Why not give employees an extra day of annual vacation or a longer lunch break as a reward? Allowing staff to leave an hour early or giving them half a day off could be a reward. An earlier Friday end, a later Monday start, or simply more time off to use whenever the employee chooses would undoubtedly be well accepted.

**Fringe benefits -**These are benefits that are added on top of an employee's regular pay. While the name suggests that fringe benefits are exceptional or unique, most of us would refer to them as standard employee benefits. Health insurance, workers' compensation, retirement programs, and family and medical leave are all examples of fringe benefits. Paid vacation, meal subsidies, commuter perks, and other benefits are examples of less typical fringe benefits. To attract new hiring and keep current employees satisfied, many organizations offer a mix of typical and uncommon benefits.

### Impact of monetary and non-monetary benefits on employees

Employees play a crucial role in achieving an organization's goals and objectives; thus, motivating them is vital. One of the strategies that many companies have used to increase their workforces' morale is applying rewards. The most common rewards are monetary and non-monetary rewards. Although the two forms of incentives are utilized in many organizations, there has been significant growth in non-monetary rewards in the recent past.

Monetary incentive enhance the direct satisfaction of employees and non-monetary incentive are helpful for the recognition of employees and that recognition is a motivational tool for the employees and leads to increase in performance. Monetary incentives can boost motivation, but non-monetary incentives are more effective motivators because these incentives have an intrinsic motivational impact on the workers. So, workers who are intrinsically motivated naturally enjoy their work or job. Monetary incentives are developed to satisfy basic human needs, encouraging and pushing people to do their best work performance, the recruitment of their capabilities and enhance their competencies level. Monetary incentives are also designed as a means of payment to increase productivity and improve employee work performance. Therefore, the more employees produce the more they can get. Although monetary incentives are the key to improving employees' motivation, job satisfaction and better performance, there are a number of non-monetary incentives that may represent more effective means of improving quality of work performance as well as motivational level. In addition, non-monetary incentives can also promote staff loyalty, enhance more interaction and cooperation among subordinates and superiors, enable more opportunity for staff participation or involvement and so on.

# PART C. SUPPLIER PRACTICES

## SUPPLIER CODE OF CONDUCT

The supplier code of conduct refers to a set of standards and guidelines that spell out both ethical and business practices that suppliers need to follow if they wish to conduct business with a company.

The supplier code of conduct helps companies establish a framework for ethical and sustainable practices in its value chain. It provides a set of expectations for suppliers, which could act as guidelines to ensure that they follow a responsible and sustainable process.

However, ensuring that suppliers are following the code requires that procurement and supply chain teams of an enterprise conduct regular audits of suppliers. Many global companies have set mandates that suppliers possess proper certification or verification of compliance. Non-compliance with the code may result in termination of the supplier relationship.

Supplier code of conduct also means that an enterprise has set additional checkpoints for third-party risk management or TPRM. For an enterprise, it is an important tool for its supply chain and procurement teams to ensure that its suppliers make serious efforts to meet the prescribed standards that it has set for areas such as labor practices, human rights, environmental impact and business conduct.

The supplier code of conduct also helps enterprises ensure that their suppliers are operating in a sustainable manner, which apart from ensuring compliance, also helps enterprises to mitigate supply chain risks, improve reputation and add value to their mission and vision.

## CASE STUDY- GOOGLE

### Supplier Code of Conduct

Google is committed to treating all workers with respect and dignity, ensuring safe working conditions, and conducting environmentally responsible, ethical operations. We expect suppliers in our operations and supply chain, and their suppliers, to embrace the following social, environmental, and ethical responsibilities.

### Supplier Conformance with Google's Supplier Code of Conduct

**Underlying Obligations.** In addition to these responsibilities, suppliers must comply with all applicable laws; legal regulations, directives, and guidelines; and all obligations in any contract a supplier may have with us.

**On-Site Work.** Suppliers using our properties or facilities will comply with all of our applicable policies and requirements.

**Certifications.** If Google requests additional certifications, such as ISO 50001, 14001 or OHSAS 18001, suppliers will make good faith efforts to obtain such certifications in a timely manner.

**Information Disclosure.** Suppliers will accurately disclose information regarding their labor, health and safety, environmental practices, business activities, structure, financial situation, and performance, in accordance with prevailing industry practices.

**Cooperation.** Suppliers will cooperate with any information requests or audits we may initiate to confirm their fulfillment of these responsibilities. Though we seek to work with suppliers to improve conditions, we may terminate our relationship with any supplier that fails to meet these responsibilities.

### Labor and Human Rights

Google is committed to upholding the human rights of workers and treating them with dignity and respect. This applies to all workers, including temporary, migrant, student, contract, direct employee, and any other type of worker. As a result, suppliers must manage their own workforce in order to achieve the following results:

**Freely Chosen Employment and Combating Modern Slavery**. Suppliers will not use or permit any form of forced, bonded, or indentured labor. All work must be voluntary, and all workers must be free to terminate their employment at any time. Suppliers will not hold workers' identity, immigration, or work permit documents longer than reasonably necessary for administrative processing. Suppliers are expected not to require workers to pay recruitment fees or other fees for their employment, either directly or through third parties, and are expected to repay any worker that has paid such fees. Suppliers will not unreasonably restrict workers' freedom to move into, out of, or at working facilities. As part of the hiring process, suppliers are expected to give each worker a written agreement describing the worker's terms of employment in a language understood by the worker, and, if internationally relocating, the written agreement will be provided before they leave their country of origin.

**Young Workers and Student Interns.** Suppliers will not use child labor. "Child" means any person under age 15, under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Workers under the age of 18 will not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers may use legitimate, properly-managed apprenticeship programs, such as student internships. Unless otherwise addressed by local law, suppliers are expected to pay student workers, interns, and apprentices at least the same wage rates as other entry-level workers performing equal or similar tasks.

**Wages.** Suppliers will pay legally-mandated wages and benefits, will comply with the law regarding wage deductions, and will provide workers with the basis on which workers are paid via pay stub or similar documentation. Suppliers are expected not to deduct from wages as a disciplinary measure.

**Working Hours.** Except in emergency or unusual situations, for suppliers' workers paid hourly, workweeks are expected not to exceed 60 hours per week (including overtime) or, if less, the maximum set by local law. Workers should be allowed at least one day off every seven days.

**Fair Treatment, Non-Discrimination, Diversity and Inclusion**. Suppliers will not permit harassment, abuse, corporal punishment, or inhumane treatment. Suppliers will not subject workers or potential workers to unlawful medical tests or physical exams. Suppliers will not discriminate in screening, hiring, or employment practices based on race, color, age, sex, gender, gender identity, gender expression, sexual orientation, marital status, ethnicity, national origin, caste, disability, genetic information, medical condition, pregnancy, religion, political affiliation, union membership, covered veteran status, or body art. Workers' religious practices will be reasonably accommodated. Suppliers will not inquire about potential workers' criminal histories on employment applications or before initial interviews, or, if no interview is conducted, before making conditional offers of employment. In addition, suppliers will demonstrate a commitment to identify, measure, and improve a culture of diversity and inclusion through all aspects of workplace management.

**Freedom of Association and Collective Bargaining.** Workers will be permitted to associate freely, bargain collectively, and seek representation in accordance with local laws. Suppliers are expected to permit workers to openly communicate and share grievances with management about working conditions without fear of reprisal or harassment.

## Health and Safety

Suppliers will integrate the following health and safety management requirements into business processes to provide workers with a healthy and safe work environment:

**Occupational Safety and Health.** Suppliers will comply with all applicable safety and health laws and regulations, and identify, evaluate, and control worker exposure to safety and health hazards, including chemical, biological, physical, and ergonomic stressors, through proper design, engineering controls, maintenance, safe work procedures, and ongoing health and safety guidance. Where these means cannot adequately control hazards, suppliers will protect workers with appropriate personal protective equipment and provide them with information about risks to them from these hazards. Suppliers will implement procedures to prevent, manage, track, and report occupational injury and illness, including encouraging worker reporting, classifying and recording cases, providing medical treatment, investigating cases, implementing corrective actions, and facilitating workers' return to work.

**Emergency Preparedness.** Suppliers will identify and plan for potential emergencies, and will implement emergency plans and provide guidance to workers on emergency response procedures, including emergency reporting, worker notification and evacuation, drills, fire detection and suppression equipment, exit facilities, and recovery plans.

**Sanitation, Food, and Housing.** Suppliers will provide workers with ready access to clean toilet facilities, potable water, and sanitary food preparation, storage, and eating facilities. If suppliers provide workers with residential facilities, those facilities will be clean and safe, with adequate personal space, entry and exit privileges, emergency egresses, heat and ventilation, and hot water for bathing and showering.

## Environmental

Google recognizes that environmental responsibility is integral to producing world-class products. In manufacturing operations and construction, suppliers will strive to create regenerative processes and will minimize adverse effects on the community, environment, and natural resources while safeguarding the health and safety of the public. In addition:

**Environmental Permits and Reporting.** Suppliers will obtain and keep current all required environmental permits, approvals, and registrations, and follow their operational and reporting requirements.

**Resource Efficiency and Clean Energy**. Throughout their operations, suppliers will work to reduce consumption of resources, including raw materials, energy, and water. Suppliers will track, document, and seek to minimize energy consumption and greenhouse gas emissions, and seek ways to improve energy efficiency and use cleaner sources of energy.

**Hazardous and Restricted Substances.** Suppliers will identify and manage chemicals and other materials that pose a hazard to the environment, to ensure their safe handling, use, storage, and disposal. Suppliers will identify, monitor, control, treat, and reduce hazardous air emissions, wastewater, and waste generated from its operations. Suppliers will adhere to our requirements restricting use of specific substances, including labeling for recycling or disposal.

**Waste Mitigation**: Wastewater, Solid Waste and Stormwater Management. Suppliers will work to reduce or eliminate waste of all types. Where waste cannot be eliminated, suppliers will manage and control all waste streams to comply with applicable laws and regulations, and in an environmentally responsible and secure way; this includes, but is not limited to, preventing illegal discharges and spills from entering storm drains, and treating as required prior to discharge or disposal of all wastewater and solid waste from operations, industrial processes, and sanitation facilities.

## Ethics and Compliance

Suppliers will uphold the highest standards of ethics to promote honesty and integrity in business operations, including:

**Business Integrity**. Suppliers will avoid even the appearance of conflicts of interest in their work with us, and will immediately disclose any known family or other close personal relationships with our employees who have an influence over their engagements with us. If suppliers extend any business courtesies to our employees, they will do so infrequently and the courtesies must be of no more than moderate value. Suppliers will also accurately reflect their business dealings in their books and records. Suppliers will not offer or accept any form of bribery, corruption, extortion, or embezzlement. Suppliers will not make illegal payments directly or indirectly. Suppliers will implement monitoring and enforcement procedures to ensure compliance with anti-corruption laws.

**Intellectual Property.** Suppliers will respect intellectual property rights, and will conduct technology and know-how transfers in a manner protecting intellectual property rights.

**Responsible Materials Sourcing.** Suppliers will maintain a policy reasonably assuring that any tantalum, tin, tungsten, and gold in products they manufacture does not directly or indirectly benefit armed groups that commit human rights abuses in or near the Democratic Republic of the Congo. Suppliers will exercise, and will make available to us upon request, due diligence on the source and chain of custody of these minerals.

**Privacy and Information Security.** Suppliers will protect the privacy of personal information of everyone with whom they do business, including suppliers, customers, consumers, and workers.

**Accessibility**. Suppliers will embed relevant web accessibility standards, innovation, and best practices to deliver inclusive products and services for our users and stakeholders.

## Management System

Suppliers are expected to adopt or establish a management system to carry out these responsibilities. The management system will be designed to ensure suppliers' operations: (a) comply with our requirements and applicable laws and regulations; (b) conform to these responsibilities; and (c) identify and mitigate operational risks related to these responsibilities. It should also facilitate continual improvement:

The management system should contain the following elements: executive level commitment and accountability; processes to identify, monitor, and comply with all applicable laws, regulations, standards, and requirements; risk management processes; communications and training for all workers and suppliers as determined by suppliers; ongoing assessments, monitoring, and continued improvement, including corrective action processes; a program that provides workers with a means to report grievances anonymously and without fear of retaliation, unless prohibited by law; and a program to ensure suppliers will continuously monitor these reporting processes, record issues raised, and take appropriate action.

**CASE STUDY**

**INFOSYS'S SUPPLY CHAIN GOVERNANCE**

Suppliers as a signatory to the United Nations Global Compact, Infosys leverages the UNGC principles covering human rights, labor, environment, and anti-corruption as foundational principles for building and improving its sustainable supply chain practices. The Company is committed to providing opportunities to diverse businesses and integrating the UNGC principles into its supply chain and towards building a positive long-term environmental and social impact.

The Responsible Supply Chain Policy of Infosys categorizes the suppliers into three segments – people, services and products. All the suppliers are required to sign the Supplier Code of Conduct. The agreement with vendors includes a mandate to comply with local laws and regulations.

The company expects its suppliers to support and respect internationally proclaimed human rights guidelines. A strong governance process and independent checks support regular quarterly audit of contract staff, in accordance with various labor laws are practiced. Grievances are addressed through appropriate mechanisms available to contract staff to safeguard their interests.

The company's contracts have appropriate clauses and checks to prevent the employment of child labor or forced labor in any form. They also provide forums, where suppliers can voice their concerns and issues. In fiscal 2022, the company launched a responsible supply chain assessment through an external, independent consulting partner.

This assessment aims to cover top 100 suppliers to baseline their ESG performance. The assessments are under way and cover governance, ethics and compliance with law, fair business practices, labor practices and human rights, health and safety, and environment. The assessment will give the supplier an ESG scorecard with scores on each of the assessment parameters, while highlighting strengths and areas for improvement. Post assessment, the company will also engage with the suppliers to identify specific initiatives that will help to improve their scores. Based on the overall learning from the program, the company will create a supplier education and engagement initiative to help its smaller suppliers to build competencies.

## LOCAL PROCUREMENT

Local procurement refers to the purchase of goods and services from local businesses. Typically, this occurs in emerging markets and in developed markets where local communities have expectations about participating in new opportunities (such as Australia and Canada). Also known as business linkages, local supplier development, local content or local sourcing, local procurement is increasingly favored as a strategic business tool by international companies in the extractive industries.

Local procurement requires a real commitment from the company to work with and build capacity of local suppliers in a way that enables them to become more competitive and profitable.

Typically these suppliers will be small and medium enterprises (SMEs). To compete for bidding and contracting opportunities local SMEs will often need training to bring them up to the required operational, safety, environmental and technical standards. A local procurement program (LPP) seeks to bridge the gap between the standards of the contracting company and the existing capacity of SMEs. It does this externally, through the provision of training, mentoring, and other support for SMEs, and internally, through a concerted effort to identify opportunities, communicate the business case and incentivize staff to commit to local procurement.

## Benefits of local procurement

Local procurement can provide a range of benefits for companies, suppliers and supply chain alike:

- **It benefits the local suppliers** – By keeping business local, the company will enjoy greater support from the community and deliver social value.
- **It helps meet CSR targets** – Publicly procured projects have defined levels of local spend, so working with local suppliers will help the companies reach those targets.
- **It can shorten timeframes** – With material challenges throughout the supply chain, working with suppliers that are local to the project may help reduce the time needed to source what is required.
- **It can help reduce costs** – As fuel prices remain high, having local suppliers can lower the cost of transporting materials and reduce the logistical requirements.
- **It provides environmental benefits** – By reducing shipping and storage, the overall environmental impact of the project is lessened.

Projects that embrace local procurement can add significant value for both the consumer and supply chain alike. By investing in local procurement, projects can directly support local economies through quantifiable apprentices, new jobs, safeguarded jobs and work placements.

If the further benefits of reduced costs and lowered carbon emissions, as well as shorter and less logistically challenging pathways for material delivery and storage are factored, it is clear that taking a more localised approach to procurement can have benefits for all concerned.

***EXAMPLE***

**The Make in India initiative** was launched by Prime Minister in September 2014 as part of a wider set of nation-building initiatives. Devised to transform India into a global design and manufacturing hub, Make in India was a timely response to a critical situation.

Make in India was launched by Prime Minister against the backdrop of a crisis however it quickly became a rallying cry for India's innumerable stakeholders and partners. It was a powerful, galvanising call to action to India's citizens and business leaders, and an invitation to potential partners and investors around the world. But Make in India is much more than an inspiring slogan. It represents a comprehensive and unprecedented overhaul of outdated processes and policies. Most importantly, it represents a complete change of the government's mindset – a shift from issuing authority to business partner, in keeping with Prime Minister's tenet of **'Minimum Government, Maximum Governance'.**

In a short space of time, the obsolete and obstructive frameworks of the past have been dismantled and replaced with a transparent and user-friendly system. This is helping drive investment, fostering innovation, developing skills, protecting Intellectual Property (IP) and building best-in-class manufacturing infrastructure. The most striking indicator of progress is the unprecedented opening of key sectors – including railways, defence, insurance and medical devices – to substantially higher levels of Foreign Direct Investment.

Today, India's credibility is stronger than ever. There is visible momentum, energy and optimism. Make in India is opening investment doors. Multiple enterprises are adopting its mantra. The world's largest democracy is well on its way to becoming the world's most powerful economy.

*Source: www.makeinindia.com*

## Make in India and Purchase Preference

The Government has issued Public Procurement (Preference to Make in India), Order 2017 as part of the policy of the Government of India to encourage 'Make in India' and promote manufacturing and production of goods and services in India with a view to enhancing income and employment. Subject to the provisions of this Order and to any specific instructions issued by the Nodal Ministry or in pursuance of this Order, **purchase preference shall be given to local suppliers in all procurements undertaken by procuring entities in the manner specified. As per the order the minimum local content shall ordinarily be 50%.** The Nodal Ministry may prescribe a higher or lower percentage in respect of any particular item and may also prescribe the manner of calculation of local content. The margin of purchase preference shall be 20%. Ministries /Departments and the Boards of Directors of Government companies may issue such clarifications and instructions as may be necessary for the removal of any difficulties arising in the implementation of this Order. Nodal Ministries/Departments have also been appointed for implementation of this Order.

### LESSON ROUND-UP

- Human rights are basic rights and freedoms that protect us all. Businesses have minimum responsibilities to meet to respect human rights. Companies that focus on respecting human rights - and cultivate positive relationships with their stakeholders - can help ensure their business' continued growth and social license to operate.
- A stakeholder is a party that has an interest in a company and can either affect or be affected by the business. The primary stakeholders in a typical corporation are its investors, employees, customers, and suppliers. However, with the increasing attention on corporate social responsibility, the concept has been extended to include communities, governments, and trade associations.
- Employees are an integral part of an organization's stakeholder list and protecting their rights is an essential element of corporate governance. Health and Safety, prevention of sexual harassment at workplace, employee attrition, gender parity, monetary and non-monetary benefits are some of the areas which impact employees as stakeholders in the corporate governance regime and hence needs to be addressed by all organisations.
- Whistleblowing could be understood as the process that reveals any kind of unethical activity happening within an organization, company by an employee, or any person privy to such activities. Corporate whistleblowing plays a pivotal role in corporate governance that is adopted by an organization or a company.
- Suppliers are another important spoke in the wheel of corporate governance as they provide materials, services, or equipment required by the project and have a bearing on the policies and functioning of an organization.

### GLOSSARY

**Human Rights:** Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

**Whistle blowing** means calling attention to wrongdoing that is occurring within an organization.

**Whistle Blower:** is an employee or group of employees who make a Protected Disclosure under a Whistle Blower Policy and may also be referred to as complainant in a case of whistle blowing.

**Gender Equality:** Gender equality in the workplace refers to equal opportunities and rights for working women, transwomen, men, and other people belonging to different gender identities.

**Gender Parity:** Gender parity is a statistical measure used to describe ratios between men and women, or boys and girls, in a given population. Gender parity may refer to the proportionate representation of men and women in a given group, also referred to as sex ratio, or it may mean the ratio between any quantifiable indicator among men against the same indicator among women.

**Employee Turnout:** Employee turnover, or employee turnover rate, is the measurement of the number of employees who leave an organization during a specified time period, typically one year.

**Monetary Benefits:** Monetary Benefits are financial incentives often used by employers to encourage workers to meet their goals.

**Non-Monetary Incentives** are any items or experiential rewards given in an incentive program as a result of an employee's performance, which can easily be assigned a monetary value.

**Local procurement:** Local procurement refers to the purchase of goods and services from domestic suppliers.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. How are human rights and business linked to each other?
2. Write a short note on various stakeholders for a business.
3. Explain the legislative framework related to whistle blowing mechanism in India?
4. How does health and safety concerns affect an organization and employees?
5. Draft a supplier code of conduct for your organization.
6. What do you understand by local procurement? How does it help suppliers and businesses?
7. Give salient features of POSH Act of India.
8. In motivating employees, non-monetary benefits are better in comparison to monetary benefits. Do you agree with this statement? Give reasons in support of your answer.
9. Examine the challenges associated with the existing whistle-blowing mechanism in India. Also analyze the need to provide adequate safeguards for the protection of whistle-blowers?

## LIST OF FURTHER READINGS


- Redeveloping Whistleblowing Policy in India: A fight for Better Corporate Governance, International Journal of Law Management and Humanities, Volume 4 Issue 1
- Sharma, Ajay, Law relating to whistleblowing in India a critical study, Department of Law, Panjab University, 2019
- Business and Human Rights: Ethical, Legal, and Managerial Perspectives by Florian Wettstein (Author)
- The Elephant in the Boardroom: How Leaders Use and Manage Conflict to Reach Greater Levels of Success, Edgar Papke Dec 2015 · Ascent Audio · Narrated by Don Hagen

**OTHER REFERENCES**

- https://www.usaid.gov/engendering-industries/gender-equality-best-practices-framework
- https://www.equilar.com/reports/100-q1-2023-equilar-gender-diversity-index.html
- www.makeinindia.com
- https://about.google/supplier-code-of-conduct/

# Business Ethics, Code of Conduct and Anti-Bribery

Lesson 11

## KEY CONCEPTS

■ Business Ethics ■ Fundamental Ethical Principles ■ Ethical dilemma • Code of Conduct ■ Lokpal and Lokayukta ■ Anti-Bribery Code

## Learning Objectives

**To understand:**

- Concept of Business Ethics
- Context and relevance of Business Ethics in today's business
- Four Fundamental Ethical Principles
- Ethical Dilemma
- Prevention of Corruption Act, 1988
- Lokpal and Lokayukta Act, 2013 (LLA)
- ICSI Anti-Bribery Code

## Lesson Outline

- Introduction
- Ethics
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

The corporate world across the globe are laying due emphasis on moral values of conducting business activities. With the passage of time, it has been realized that days are gone when stakeholders can be exploited be it customers, shareholders, creditors, human capital etc. With the onset of various industrial revolution, the business landscape have undergone a sea change. Moreover, the changes taking place in ESTEMPLE factors (E-Economic, S-Social, T-Technological, E-Ecological, M-Media, P-Political, L-Legal and E-Ethical) have also played a pivotal role in fostering ethics in business world.

Further, the new and emerging concepts in management like corporate governance, business ethics and corporate sustainability are some of the expressions through which this emerging ethical instinct in the corporate world is trying to express and embody itself in the corporate life. In this study we examine the concept of ethics and its importance for the business, corporate governance and governance through inner conscience and sustainability.

## WHAT IS ETHICS

As per the Oxford Dictionary the meaning of ethics is a "system of moral principles, rules and conduct." Ethics is a "Science of morals." The word ethics has emerged from Latin 'Ethicus' or in Greek 'Ethicos'. The originof these two words is from 'ethos' meaning character. Character unlike behavior is an intrinsic or basic factor which derives from inner most.

> The term 'ethics' can commonly refer to the rules and principles that define right and wrong conduct of individuals (Robbins, Bergman, Stagg and Coulter, 2003, p.150). Ethical Behavior is accepted as "right" or "good" in the context of a governing moral code. Ethics can be viewed as a way of behaving that can be prescribed and imposed by the work environment (Garcia- Zamor, 2003).

Ethics is the study of morality and application of reasons for taking any decision or choosing any course of action, morality is related to norms, values and beliefs embedded in social process.

Ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits tosociety, fairness, or specific virtues.

Thus, ethics relates to the standards of conduct and moral judgements thatdifferentiate right from wrong. Ethics is not a natural science but a creation of the human mind. For this reason, it is not absolute and is open to the influence of time, place and situation.

## BUSINESS ETHICS

According to Crane, ***"Business ethics is the study of business situations, activities, and decisions where issues of right and wrong are addressed."***

Baumhart defines, ***"The ethics of business is the ethics of responsibility. The business man must promise that he will not harm knowingly."***

Business ethics is the application of ethical values to business behaviour. Business ethics is relevant both to the conduct of individuals and to the conduct of the organisation as a whole. It applies to any and all aspects of business conduct, from boardroom strategies and how companies treat their employees and suppliers to sales techniques and accounting practices.

Business ethics are the moral principles that act as guidelines for the way a business conducts itself and its transactions. In many ways, the same guidelines that individuals use to conduct themselves in an acceptable way – in personal and professional settings – apply to businesses as well.

Business ethics constitute the ethical/moral principles and challenges that arise in a business environment. Some of the areas related with – and not limited to- business ethics include the following:

1. **Finance and Accounting:** Creative accounting, Earnings management, Financial analysis, Insider trading, Securities Fraud, Facilitation payment.
2. **Human Resource Management:** Executive compensation, Affirmative action, Workplace surveillance, Whistle blowing, Occupational safety and health, Indentures servitude, Union busting, Sexual Harassment, Employee raiding.
3. **Sales and Marketing:** Price fixing, price discrimination, green washing, spamming, using addictive messages/ images in advertising, Marketing to children, False advertising, Negative campaigning.

Business ethics refers to implementing appropriate business policies and practices with regard to arguably controversial subjects. Some issues that come up in a discussion of ethics include corporate governance, insider trading, bribery, discrimination, social responsibility, and fiduciary responsibilities.

Business ethics ensure that a certain basic level of trust exists between consumers and various forms of market participants with businesses. For example, a portfolio manager must give the same consideration to the portfolios of family members and small individual investors as they do to wealthier clients. These kinds of practices ensure the public receives fair treatment.

The concept of business ethics began in the 1960s as corporations became more aware of a rising consumer-based society that showed concerns regarding the environment, social causes, and corporate responsibility. The increased focus on "social issues" was a hallmark of the decade.

Since that time, the concept of business ethics has evolved. Business ethics goes beyond just a moral code of right and wrong; it attempts to reconcile what companies must do legally vs. maintaining a competitive advantage over other businesses. Firms display business ethics in several ways.

A simple example of being ethical is avoiding plastic bags. Currently, corporate ethics strongly emphasize sustainability that is resources for future generations are at risk.

On December 9, 2021, Wintrust Financial Corporation won the Better Business Bureau's (BBB) Torch Award for Ethics. Wintrust is a Chicago-based financial service. The company is known for its ethical standards and fair business practices.

Wintrust flared out as a value-driven organization. Every employee tries to provide a relationship-centric banking solution. BBB is popular for its contribution to community service and financial care.

Business ethics involve determining what is right and what is wrong. Acting ethically ultimately means determining what is "right" and what is "wrong." Basic standards exist around the world that dictate what is wrong or unethical in terms of business practices.

For example, unsafe working conditions are generally considered unethical because they put workers in danger. An example of this is a crowded work floor with only one means of exit. In the event of an emergency – such as a fire – workers could become trapped or might be trampled on as everyone heads for the only means of escape.

While some unethical business practices are obvious or true for companies around the world, they do still occur. Determining what practices are ethical or not is more difficult to determine if they exist in a grey area where the lines between ethical and unethical can become blurred.

For example, assume Company A works with a contact at Company B, an individual through which they negotiate all the prices for supplies they buy from Company B. Company A naturally wants to get the best prices on the supplies. When the individual from Company B comes to their home office to negotiate a new contract, they put him up in a top-tier hotel, in the very best suite, and make sure that all his wants and needs are met while he's there.

In technical terms, the practice is not illegal. However, it might be considered a grey area – close to, but not quite, bribery – because the individual is then likely to be more inclined to give Company A a price break at the expense of getting the best deal for his own company.

At this point it will be of massive academic interest to comprehend the parts of business ethics. The following are the parts of business ethics:

1. **History**

   The first part is the history. While the idea of business ethics came into existence along with the creation of the first companies or organizations, what is most often referred to by the term is its recent history since the early 1970s. This was when the term became commonly used in the United States.

   The main principles of business ethics are based in academia and on academic writings on proper business operations. Basic ethical practices have been gleaned through research and practical study of how businesses function, and how they operate, both independently and with one another.

2. **Scandals**

   The second major meaning behind the term is derived from its close relationship and usage when scandals occur. Companies selling goods in the U.S. that were created using child labour or poor working conditions is one such scandalous occurrence.

3. **Integration**

   Perhaps the most recent and continually developing aspect of ethics is the third piece – the idea that companies are building business ethics into the core of their companies, making them a standard part of their operational blueprint. As the world continues to grow more political – and more politically correct – an increased focus on proper business ethics and strong adherence to them become ever more the norm.

## FEATURES OF BUSINESS ETHICS

The features of business ethics are as under:

- **Code of Conduct** – Business ethics is actually a form of codes of conduct. It lets us know what to do and what not to do. Businesses must follow this code of conduct.
- **Based on Moral and Social Values** – Business ethics is a subject that is based on moral and social values. It offers some moral and social principles (rules) for conducting a business.
- **Protection to Social Groups** – Business ethics protect various social groups including consumers, employees, small businesspersons, government, shareholders, creditors, etc.
- **Offers a Basic Framework** – Business ethics is the basic framework for doing business properly. It constructs the social, cultural, legal, economic, and other limits in which a business must operate.
- **Voluntary** – Business ethics is meant to be voluntary. It should be self-practiced and must not be enforced by law.

- **Requires Education & Guidance** – Businessmen should get proper education and guidance about business ethics. Trade Associations and Chambers of Commerce should be active enough in this matter.
- **Relative Term** – Business ethics is a relative term. It changes from one business to another and from one country to another.
- **New Concept** – Business ethics is a relatively newer concept. Developed countries have more exposure to business ethics, while poor and developing countries are relatively backward in applying the principles of business ethics.

## Context and relevance of Business Ethics in today's business

Present day global crisis has raised questions about the legitimacy of capitalism. Ethical failures certainly played a role. While it remains to be seen whether and how many people blatantly broke the law, there are abundant signs of various forms of potentially unethical behavior. These include greed, unreasonable amounts of leverage, subtle forms of corruption (such as ratings agencies that appear to have had a conflict of interest), complex financial instruments that no one really understood, and herd behavior where people just followed along and failed to exercise independent judgment. Business leaders must use their personal moral compasses to make ethical decisions. As for the business's compass, it should be oriented toward satisfying customers above all stakeholders. That is the orientation that allows for the greatest competitive success and profitability.

Gary Hamel*, World's most influential business thinker (The Wall Street) and world's leading expert on business strategy (Fortune), answered this question which is basically conclusions of one International Conference in California organized by The Management Lab - a Silicon Valley based research organization, with the support of McKinsey & Company, where 35 top management scholars and practitioners of the world met for two days todebate the future of management. These are the points:

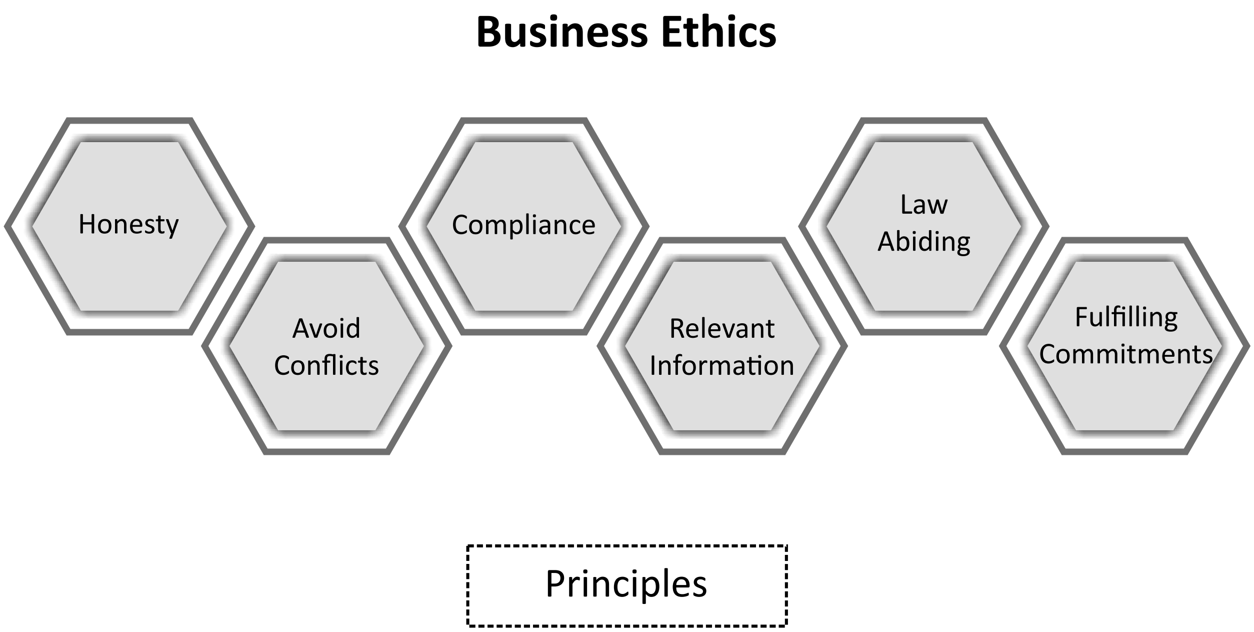
- "Modern" management much of which dates back to the late nineteenth century has reached the limits of improvement.
- Unless management innovators tackle those issues, companies will be unable to cope with tomorrow's volatile world.
- Management pioneers must find ways to infuse mundane business activities with deeper, soul-stirring ideals, such as honor, truth, love, justice, and beauty. These timeless virtues have long inspired human beings to extraordinary accomplishment and can no longer be relegated to the fringes of management.
- Most companies strive to maximize shareholder wealth - a goal that is inadequate. As an emotional catalyst,wealth maximization lacks the power to fully mobilize human energies Tomorrow's management systemsmust give as much credence to such timeless human ideals as beauty, justice, and community as they do to the traditional goals of efficiency, advantage, and profit.
- Tomorrow's managers will require new skills, among them reflective learning, system-based thinking, creative problem solving, and values- driven thinking. Business Schools and companies must redesign training programs to help executives develop such skills and reorient management systems to encourage their application.

* *Gary Hamel (Director, The Management Lab, a Silicon Valley based research organization) Ref: Harvard and Business Review, February 2009 issue, p.79-86*

Mere professional competence alone does not lead to excellence. In the long-term enduring quality or excellence comes from values. These universal human values like truth, beauty, goodness and harmony are applicable to all human activity. But for practical application of these values for a professional activity, we have to take into consideration the unique and intrinsic nature of that activity.

## PRINCIPLES OF BUSINESS ETHICS

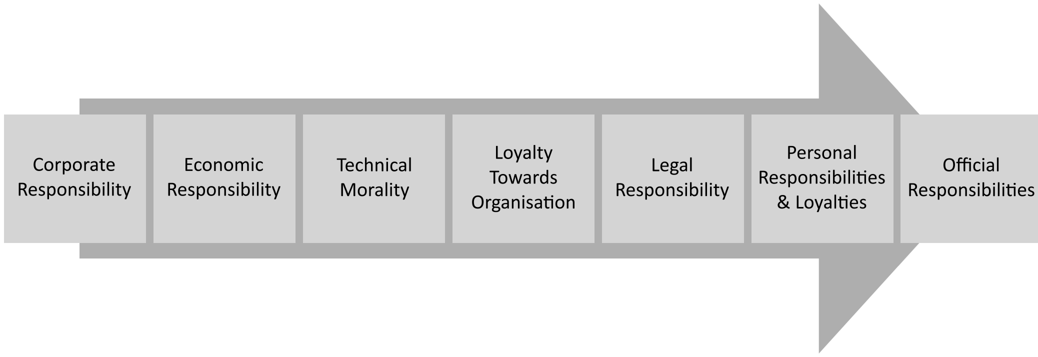
The fundamental principles of business ethics are as follows:




1. **Accountability**: Ethics is all about taking individual responsibility. It goes both ways. Individuals are responsible for unethical practices of the firm because they did not come forward to become whistle-blowers. Similarly, when an employee indulges in unethical business practices, the firm is responsible.
2. **Care and Respect**: Professional interactions between co-workers should be responsible and respectful. Firms should make sure that the workplace is safe and harmonious.
3. **Honesty**: The best way to gain the trust of the employees is to have transparent communication with them.
4. **Avoid Conflicts**: Firms need to minimize conflicts of interest in the workplace. Excessive competition within the workforce can end disastrously.
5. **Compliance**: Firms need to comply with all the rules and regulations.
6. **Loyalty**: The employees should be faithful to the organization and uphold the brand image. Grievances, if any, should be dealt internally.
7. **Relevant Information**: It is necessary to provide information that is comprehensible. All the relevant facts, whether positive or negative, must be disclosed. It is unethical to hide unreasonable terms and conditions in the fine print.
8. **Law Abiding**: Corporate laws protect the rights of every section of society. Any kind of discrimination is unethical. Personal biases of individuals should not affect the decision-making of leaders.
9. **Fulfilling Commitments**: It is unethical to justify non-compliance by interpreting agreements unreasonably.

## STANDARD ETHICAL PRACTICES A BUSINESS SHOULD ADOPT

Given below are the standard ethical practices that a business should adopt:




1. **Corporate Responsibility**: The organization works as a separate legal entity with certain moral and ethical obligations. Such ethics safeguard the interest of all the internal and external parties associated with the firm. This includes the employees, customers, and shareholders.
2. **Social Responsibility**: Making profits should not be at the cost of society. Therefore, corporate social responsibilities (CSR) have been a common practice where businesses work towards environmental protection, social causes, and spreading awareness.
3. **Personal Responsibility**: Employees are expected to act responsibly with honesty, diligence, punctuality, and willingness to perform excepted duties. Individuals should settle dues in time and avoid criminal acts.
4. **Technology Ethics**: In the 21st century, companies have adopted e-commerce practices. Technology ethics includes customer-privacy, personal information, and intellectual property fair practices.
5. **Fairness**: Favouritism is highly unethical. Every individual possesses certain personal bias. But at the workplace, personal beliefs and biases should not affect decision-making. The firm has to ensure fair chances of growth and promotion for all.
6. **Trustworthiness and Transparency**: Businesses should maintain transparency in business practices and financial reports.

## HOW BUSINESS ETHICS IMPROVE BOTTOM LINE

**1. Increased Productivity**

Employees who believe they are being treated fairly by an organization that cares about them work harder and are more committed to helping the company reach its goals. One owner of a small business, for example, could choose to pay employees below-market wages knowing that they are not likely find better employment opportunities in a poor job market.

Another company owner with a longer-term perspective could make the moral choice to pay above-market wages even though he doesn't have to. His view would be that it is unethical to take advantage of the bad job market. The payoff for his choice is greater productivity, which translates into lower production costs and higher profits. He also is more likely to retain his best employees when the economic environment becomes more positive and job opportunities increase.

**2. Greater Customer Loyalty**

Small business owners can be tempted to make choices that involve questionable ethics when dealing with customers. One example is not fully disclosing the facts relating to a purchase, such as selling a reconditioned appliance as new. The customer is often at a disadvantage because he doesn't know the right questions to ask. The penalty for operating a business in this fashion is low customer satisfaction and the likelihood the customer will neither purchase from that business again nor recommend it to others. This outcome has a negative affect on both revenues and profits because acquiring a new customer involves additional marketing cost, whereas selling to an existing customer does not.

3. **Positive Brand Image**

Businesses that gain a reputation for maintaining the highest ethical standards can achieve the status of being the gold standard in their industry. They may earn awards such as being named in "Best Places to Work" surveys. This recognition allows them to attract the most talented employees, which in turn helps the company build its competitive edge.

The most ethical businesses find it easier to attract customers as well. Consumers' perception of how they will be treated by the business affects their willingness to purchase from it. In dealing with ethical businesses, they don't have to be concerned about being sold inferior merchandise or being charged for unnecessary repairs.

4. **Avoiding Negative Publicity**

Companies with low ethical standards over time may acquire an unsavory reputation in the marketplace and, in extreme cases, attract negative publicity. Consumers frequently contact the media and voice complaints. Television stations have consumer hotlines and do stories about companies that are the worst offenders. In this Internet age, word gets around quickly.

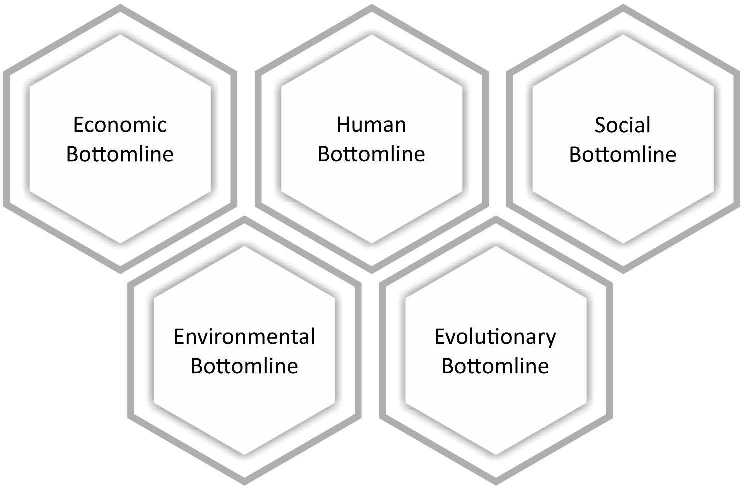
Consumers who have had bad experiences with a company quickly express their grievances through email and through posting on discussion boards or consumer satisfaction websites. If the complaints are frequent and valid, the effect on sales and profits can be significant. Consumers may not want to purchase from the company even if its prices are lower than the competition.

5. **Opening up Opportunities**

Growing a small business depends on finding new ways to attract customers, and an effective way to do that is to develop joint ventures, marketing alliances or partnerships with other businesses. A business owner might find a company that has a large customer base in a city where his company is not well known.

The willingness of these two companies to form a partnership is dependent upon both parties believing their potential partner is good to do business with. Every business relationship requires trust between the parties involved, because you can't always be there to monitor what your partner is doing.

## FIVE BOTTOM LINES OF THE FUTURE




*Source: Aurosociety (fourth dimension inc.)*

**Economic Bottomline:** Wealth-creation is the most basic and fundamental dharma of business. A business organization which doesn't create wealth for the society is adharmic, unethical. We have to focus more on the causative factors which lead to these economic goals like for example, Technology, Productivity, Quality, Customer,Service, Innovation or "knowledge". These are the key-factors of the Economic Bottomline.

**Human Bottomline:** The Key Result Areas in this domain are those factors which lead to a better quality of the work-force like for example, Leadership, Teamwork, Motivation, Creativity, Ethics, Values and Wellness.

**Social Bottomline:** An organization is an integral part of the larger social environment. In the long-term, well-being of the organization depends on the wellbeing of the society. This is the rationale behind the concept of Corporate Social Responsibility (CSR) which is gaining increasing acceptance among corporate leaders. However, here also the concept and practice of CSR has to progress beyond isolated charitable projects to embrace the community as a whole.

A business organization is not merely an economic entity but also a social organism, a human community. The highest aim of CSR must be to integrate the communal life of the organization with the communal life of the surrounding environment and harmonise the organizational goals with the developmental goals of the larger community of which it is a part. In this broader perspective, the corporation has to share with the community not only its wealth but also some of its capabilities or expertise.

There is a concentration of resources, knowledge, competence and skill in a business organization, which it has to share with the community of which it is a part.

> Among business leaders, J.R.D. Tata had a clear perception of this responsibility and also the potentiality of business for community development. He said "Every company has a special continuing responsibility towards the people of the area in which it is located. The company should spare its engineers, doctors, managers to advise the people of the villages and supervise new developments undertaken by cooperative effort between them and the company." We must note here that JRD's conception of corporate responsibility goes far beyond charity or sharing of wealth towards sharing of capabilities.

**Environmental Bottomline:** We are not only part of society but also part of Nature. Any human group which draws energy and resources from Nature has a responsibility to use them prudently within the laws and limits set by Nature. Here again as with CSR, the highest aim of ecological responsibility is to harmonize the communal life of the group (especially the economic and material life) and the resource-energy management strategies, with the laws of Nature and the natural environment.

However, for long-term effectiveness, social and ecological bottomlines should not remain as mere decorative, idealistic, showy "projects" at the fringe of the corporate life. They have to become part of the core strategy of the organization.

**Evolutionary Bottomline:** This is something which has not been recognized in the corporate world. We humans, as a species, are an unfinished project. We have not yet realized all our potentialities hidden within us, especially in the moral, psychological and spiritual realms of our consciousness. We have to progress or evolve further to reach our highest potential as human being.

The work and life of the modern corporate world provides a rich field of experience not only for professional growth but also for evolution of the individual. For someone who is seeking for moral and spiritual development, the corporate world provides a more effective field of experience for accelerated inner growth than an isolated ashram, monastery or forest.

The problems, difficulties, challenges, temptation and conflicts of the corporate world, are a fertile arena for becoming fully conscious of our weaknesses and strengths and also for expressing our inner potentialities. Secondly, the modern corporate experiences provide the right anvil for testing the quality and genuineness of our inner growth.

But a corporate leader or manager may ask: How can it be called a bottom- line? Why should a business organization bother about the personal growth of the employees, which is his personal business? There are two reasons why. The first reason is that personal growth will have its ultimate impact on the four bottom lines. Most of the moral and spiritual disciplines can also make the employee a better professional.

For example the discipline of inner peace, equanimity and loving kindness to all which are common disciplines in all eastern spiritual traditions can lead to greater clarity in thought, better judgment, more effective decision-making, less stress and a more harmonious interpersonal relationship or team-work. Similarly the spiritual discipline of karma yoga can lead to a greater efficiency, creativity and skill in action.

The second reason is that prophetic insights of seers have perceived this inner growth in the moral psychological and spiritual realms as the next step in human evolution and whichever group takes up this higher evolution as a part of its vision and strategy will be among the leaders of the future.

> As Sri Aurobindo said,
>
> "In the next stage of human progress it is not a material but a spiritual, moral and psychical progress that has to be made" and therefore "whatever race or country seizes on the lines of that new evolution and fulfills it will be the leader of humanity."

## SIGNIFICANCE OF BUSINESS ETHICS

The importance of general and business ethics, in particular, is huge. If we talk about following ethics in the business environment, the code of conduct framed by an organization plays a pivotal role in helping an employee to understand their rights, responsibilities, and duties. Let's understand thoroughly the importance of business ethics in day-to-day corporate life:

- Following business ethics strictly leads to profits, both in terms of boosting sales, revenue generation, customer attraction, and workforce development.
- From manufacturing, distribution to wholesale and retails, efficient dealing with clients and strengthening of employment policies leads to transparency in the business landscape. In order words, everything will be in hunky-dory, from customer satisfaction to pitching of sales, if ethics are properly taken into consideration.
- Business ethics help the company to get talented employees on board which ultimately reduces the recruitment cost and brings productivity in the company.
- It also helps in setting a safer and conducive environment in the company for employees to work in.
- Business ethics will create a positive image of the company. If both the employees and an employer follow business ethics with enthusiasm without getting indulged in unscrupulous activities, it will create a positive image in the society of the organization.
- If business ethics are strictly followed, it will safeguard consumer rights as well. Not only will they get complete information about what they are consuming, but their grievances can be redressed ethically.
- It will ensure there are no unfair or malpractices taking place in the company.

### Four Fundamental Ethical Principles

1. **The Principle of Respect for autonomy**

   Autonomy is Latin for "self-rule" We have an obligation to respect the autonomy of other persons, which is to respect the decisions made by other people concerning their own lives. This is also called the principle of human dignity. It gives us a negative duty not to interfere with the decisions of competent adults, and a positive duty to empower others for whom we're responsible.

**Corollary principles:** honesty in our dealings with others & obligation to keep promises.

2. **The Principle of Beneficence**

We have an obligation to bring about good in all our actions.

**Corollary principle:** We must take positive steps to prevent harm. However, adopting this corollary principle frequently places us in direct conflict with respecting the autonomy of other persons.

3. **The Principle of non-maleficence**

(It is not "non-maleficence," which is a technical legal term, & it is not "non-malevolence," which means that one did not intend to harm.)

We have an obligation not to harm others: "First, do no harm". Corollary principle: Where harm cannot be avoided, we are obligated to minimize the harm we do.

**Corollary principle:** Don't increase the risk of harm to others.

**Corollary principle:** It is wrong to waste resources that could be used for good.

Combining beneficence and non-maleficence: Each action must produce more good than harm.

4. **The Principle of justice**

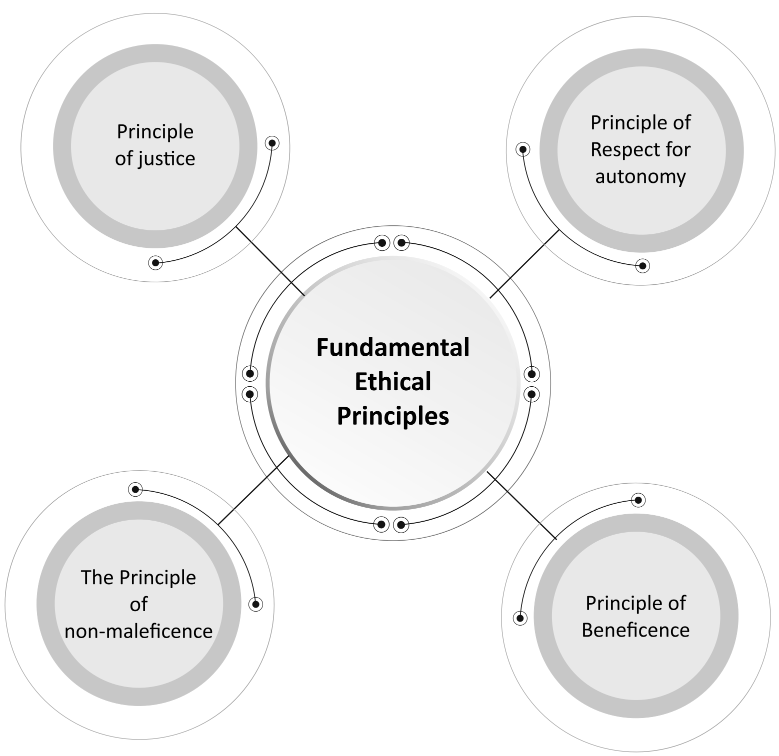
We have an obligation to provide others with whatever they are owed or deserve. In public life, we have an obligation to treat all people equally, fairly, and impartially.

**Corollary principle:** Impose no unfair burdens.

**Combining beneficence and justice:** We are obligated to work for the benefit of those who are unfairly treated.

The aforesaid principles are provided in exhibit 1.

**Exhibit 1**



## ETHICAL DILEMMA

An ethical dilemma (ethical paradox or moral dilemma) is a problem in the decision-making process between two possible options, neither of which is absolutely acceptable from an ethical perspective. Although we face many ethical and moral problems in our lives, most of them come with relatively straightforward solutions. On the other hand, ethical dilemmas are extremely complicated challenges that cannot be easily solved. Therefore, the ability to find the optimal solution in such situations is critical to everyone.

Every person may encounter an ethical dilemma in almost every aspect of their life, including personal, social, and professional.

Some examples of ethical dilemma include:

- Taking credit for others' work
- Offering a client a worse product for your own profit
- Utilizing inside knowledge for your own profit

### How to Solve an Ethical Dilemma?

The biggest challenge of an ethical dilemma is that it does not offer an obvious solution that would comply with ethics al norms. Throughout the history of humanity, people have faced such dilemmas, and philosophers aimed and worked to find solutions to them.

The following approaches to solve an ethical dilemma were deduced:

- **Refute the paradox (dilemma):** The situation must be carefully analyzed. In some cases, the existence of the dilemma can be logically refuted.
- **Value theory approach:** Choose the alternative that offers the greater good or the lesser evil.
- **Find alternative solutions:** In some cases, the problem can be reconsidered, and new alternative solutions may arise.

## COMMON ETHICAL ISSUES IN BUSINESS

1. **Unethical Accounting**: "Cooking the books" and otherwise conducting unethical accounting practices is a serious problem, especially in publicly traded companies. One of the most infamous examples is the 2001 scandal that enveloped American energy company Enron, which for years inaccurately reported its financial statements and its auditor, accounting firm Arthur Andersen, signed off on the statements despite them being incorrect. When the truth emerged, both companies went out of business, Enron's shareholders lost $25 billion, and although the former "Big Five" accounting firm had a small portion of its employees working with Enron, the firm's closure resulted in 85,000 jobs lost.

   Although the Federal Government responded to the Enron case and other corporate scandals by creating the Sarbanes-Oxley Act in 2002, which mandates new financial reporting requirements meant to protect consumers, the "Occupy Wall Street" movement of 2011 and other issues indicate that the public still distrusts corporate financial accountability.

2. **Social Media Ethics:** The widespread nature of social media has made it a factor in employee conduct online and after hours. Is it ethical for companies to fire or otherwise punish employees for what they post about? Are social media posts counted as "free speech"? The line is complicated, but it is drawn when an employee's online activities are considered disloyal to the employer, meaning that a Facebook post would go beyond complaining about work and instead do something to reduce business.

For example, a Yelp employee wrote an article on Medium, a popular blogging website, about what she perceived as awful working conditions at the influential online review company. Yelp fired her, and the author said she was let go because her post violated Yelp's terms of conduct. Yelp's CEO denied her claim.

Was her blog post libelous, or disloyal conduct, and therefore a legitimate cause for termination? In order to avoid ambiguity, companies should create social media policies to elucidate what constitutes an infringement, especially as more states are passing off-duty conduct laws that prohibit an employer's ability to punish an employee for online activities.

3. **Harassment and Discrimination**: Racial discrimination, sexual harassment, wage inequality – are all costly ethical issues that employers and employees encounter on a daily basis across the country. According to the Equal Employment Opportunity Commission (EEOC), the EEOCC secured $505 million for victims of discrimination in the private sector and government workplaces in 2019.

   The EEOC states that there are several types of discrimination, including age, disability, equal pay, genetic information, harassment, national origin, race, religion, retaliation, pregnancy, sex and sexual harassment.

4. **Health and Safety:** All employees have a right to a safe working environment and work conditions. Some of the most common employee safety considerations include:

   a) *Fall protection:* This involves measures to protect employees against falls, such as guard rails.

   b) *Hazard communication:* Identify any harmful substances employees work with and communicate how to handle these hazardous materials safely.

   c) *Scaffolding:* The HR department in construction or maintenance organisations is obliged to guide employees about the maximum weight numbers structures can handle.

   d) *Respiratory protection:* If relevant, provide guidelines about emergency procedures and the standards applicable to the use of respiratory equipment.

   e) *Lockout, tag out:* This involves specifying the control procedures for dangerous machines and hazardous energy sources, such as gas and oil.

   f) *Industrial trucks:* It's important to ensure that the required safety standards for trucks are in place to protect employees.

   g) *Ladders:* Before using ladders, employees must be given an understanding of the weight that the ladder can support.

   h) *Electrical wiring methods:* Create procedures for electrical and wiring tasks. For example, these guidelines can specify how employees can create a circuit to reduce electromagnetic interference.

   i) *Machine guarding:* It's important to provide operation guarding instructions for items such as guillotine cutters, power presses, shears and other devices where applicable.

   j) *General electrical regulations:* Developing general electrical regulations for employees is critical for safety in work environments that require the frequent use of electrical equipment. For example, employees should never place conductors or equipment in damp or wet locations.

   Health and safety guidelines should not only cover physical harm to employees rather it is also important to consider psychosocial risks, work-related stress and mental health issues. Factors such as high work demands, job insecurity, effort-reward imbalance and low levels of autonomy can contribute to health-related behavioural risks.

5. **Corporate espionage and nondisclosure:** Many organisations are at risk that current and former employees may steal information, such as client data, for use by competitors. Stealing an organisation's intellectual property or illegally distributing private client information constitutes corporate espionage. This is why it can be helpful to require mandatory nondisclosure agreements.

## Addressing Ethical Dilemmas

The ethical dilemma consideration takes us into the grey zone of business and professional life, where things are no longer black or white and where ethics has its vital role today. A dilemma is a situation that requires a choice between equally balanced arguments or a predicament that seemingly defies a satisfactory solution.

An ethical dilemma is a moral situation in which a choice has to be made between two equally undesirable alternatives. Dilemmas may arise out of various sources of behaviour or attitude, as for instance, it may arise out of failure of personal character, conflict of personal values and organizational goals, organizational goals versus social values, etc. A business dilemma exists when an organizational decision maker faces a choice between two or more options that will have various impacts on (i) the organization's profitability and competitiveness; and (ii) its stakeholders. 'In situations of this kind, one must act out of prudence to take a better decision.

### CASE STUDY

**CASE STUDIES ON ETHICAL DILEMMA**

**Example 1** Peeps into Mythology (From Mahabharata)[1]

Let's have a read of this episode from the Mahabharata.

At the end of imparting training in archery and other martial skill to all the *Pandavas* and *Kauravas*, Dronacharya, their mentor, called up *Arjuna* and conferred on him the Supreme *brahmastra*.

*Ashwatthama*, *Drona's* own son and a *Kauravite*, was incensed at this and argued with his father:

'What disparity it is to deny the *brahmastra* to your own son, and bestow it upon Arjuna? I simply cannot take this lying down. You must give one to me too...'

Drona refused to yield. But the obstinate pressure tactics used by *Ashwatthama* aroused the sentimental father in Drona, and he gave away another piece of *brahmastra* to his son.

Why was Drona so reluctant for long to equip *Ashwatthama* with this deadliest of weapons?

We have to wait for an answer to this question in the climactic phase of the Mahabharata war, when the leading Kauravites had fallen in Kurukshetra, and Ashwatthma was at the helm. Violating the strictest injunction of *Drona* against the use of the *brahmastra*, to both *Arjuna* and *Ashwatthama*, the latter hurled it to annihilate the *Pandavas* in a fit of impetuous anger. The whole earth was in peril because of the impending collision of the twoweapons, for *Arjuna* too had released his weapon in self-defense. Sensing the imminent catastrophe, the Sage *Vyasa* tried to mediate and prevail on them both. *Arjun*a responded, and could withdraw the weapon he had shot, but *Ashwatthama* lacked such capacity. *Vyasa* did devise a poignant compromise to avert the total devastation which the unretracted weapon of *Ashwatthama* could have wrought.

*What are the insights embedded in this two-stage drama?*

- *Drona* discriminated in favour of *Arjuna* and against *Ashwatthama* on the ground of values alone. He knew,as a guru, that his son may be no less than *Arjuna* in skill, but his value- system was in a mess.

1. *Ref: Foundations of Managerial Work: Contributions from Indian Thought by S. K. Chakraborty*

- *Drona* was conscious of the reality that powerful instruments in the hands of 'value-weak', 'skill-strong' individuals are apt to be used destructively. Before and since *Drona*'s time the world has witnessed countless such events.
- The *acharya* in *Drona* could initially snub and bridle the father in him. Yet later on, even a man of his willpower and wisdom succumbed to familial emotions. How much more demanding then is the task of cultivating and retaining objectivity in managerial roles donned by much lesser mortals! Unaware, the values of much-hyped objectivity in decision-making are caught in the quick-sands of subjectivity.
- Individuals with a strong sense of values can rise above temporary provocations, can contain their small egos without nursing a feeling of humiliation or loss of face, even when required to dispense with a legitimate retaliatory move. This magnanimity is what *Arjuna* demonstrated when *Vyasa* pleaded with him. Is this weakness or strength?

**Example 2**[2]

In a large public sector undertaking the corporate chief of finance was long engaged in a duel with one of the profit centre heads for establishing supremacy in financial decisions. Tragically, the profit centre accountant became the shuttlecock in this game. For observing corporate financial norms he was answerable to the corporate finance chief. But when he would report financial irregularities, after repeated prior information to the profit centre head, to the corporate boss, his life would be made difficult by the former. If he did not report, the CFO would be at his throat.

The sensible solution would seem to be that the two bosses met and resolved their conflicts. But that would never happen – each party continuing to use the junior accountant to fight out their egoistic battles through proxy. Both the bosses were pursuing a contingency approach – each waiting for the other to make the first move. One of the ultimate outcomes of these egoistic tussles was the quitting of the demoralized junior accountant after a few months.

**Example 3**

The Managing Director-designate of a pharmaceutical company had presented the General Manager – Finance with an entertainment bill of Rs.15,000/- for reimbursement. But there were no vouchers. The GM was in a moral fix, for, even LTC allowances to junior officers were being denied unless accompanied by proper papers. So the GM mustered enough courage to talk about the matter with the MD.

It transpired that apparently this sum was spent by him in Delhi to entertain certain senior officials who held the key to his confirmation as the MD (he happened to be an MBA from a leading management institute). The entire accounts department was in a stir with this episode. It was a culture-shock for them because the recently-retired MD had for years shown impeccable integrity in such matters. But the new MD seemed to grab his pound of flesh – at any cost.

**Example 4**[3]

First-hand experience of Mr. A.K.Chattopadhyay, Sr. Vice President of ACC Ltd., Refractories Divisions, Nagpur, India. Formerly he was Executive Director, Tata Refractories Ltd. And Deputy Chairman of IRMA.

'One incident happened sometime back when a man who had previously worked for ACC supplied and installed some refractory material to one of our customers. He represented himself to his customer as an ACC employee and claimed that the material had come from ACC, which was not true. So the client agreed to let him do the work because he used the ACC name. It so happens that the work that he did failed after two months.

*2. Ref: Foundations of Managerial Work: Contributions from Indian Thought by S. K. Chakraborty, p.32,36*
*3. Leading with Wisdom by Peter Pruzen*

'The customer came to Mr.Chattopadhay and talked with him about what had happened. He went through all the purchase orders, but could not find one for that specific job. Then he mentioned the name of the man who did the work. I told him that that man had not worked for us for over six months. The customer assured me that this man told him that he worked for ACC and that he was using ACC materials.

'In this situation, we had no legal obligation. The work was not done by our people or with our materials. But I felt it was our moral responsibility to stand behind this job because this customer gave the job to this man based on the ACC name. I replaced the material and sent my engineer out to install it. We lost heavily as there was no income whatsoever on this job. Even though I faced a lot of audit queries about this, I had the support of ACC management behind me.

'People who want to be spiritual-based leaders sometimes face conflict when they try to listen to their inner self. They are sometimes afraid to follow their conscience because they do not want to lose money. When I gavethe approval to have our people install new material for this job, that we had not originally done, losing a lot of money on it, I clearly told our people, "I am willing to take this loss, because I know there is a much bigger gain." This is the dilemma that we must face sometimes, when we listen to our inner voice. We will face opposition anddifficulties. However, the more the aspiring spiritual-based leaders do this, the more they will be successful. As a leader I must also help them to achieve the se successes. As there are successes, then they will grow in their courage to continue on this path to being a spiritual-based leader.'

**Example 5**

Surya meets his best childhood buddy Arnav after a decade. Surya had settled down in a different country after completing higher studies and has just returned to the country with a new job at a very senior position in a multi- national company.

Surya discovers that the warmth, camaraderie, openness and joy that they had felt years before had matured instead of fading out.

When Surya asks Arnav about his work, Arnav initially avoids but on coaxing reveals that he is having serious issues at his office where his colleagues are taking undue advantage of his simplicity and sincerity. He knows that Arnav has this innate goodness in him and is aware that this can be taken advantage of by others. On further probing Surya comes to know that Arnav works in the same organization that he will be joining but at several levels lower in hierarchy. But he abstains from revealing this to Arnav.

Surya joins the organization on the scheduled date and as expected, after a few days, Arnav comes to know of this. Arnav visits Surya in his personal chamber and congratulates him. He seems to be genuinely happy that both the friends share the same workplace.

Concerned that Arnav may make a habit of visiting him often in office as a friend sending wrong signals to others, Surya gently but expressly tells Arnav to maintain the hierarchical decorum in office. Arnav does not return to his chamber after that day but the office grapevine finds out about their childhood friendship.

After a few days, Arnav's appraisal report comes to Surya for his approval. He is shocked to find below average grades in almost all the parameters of performance. He knows this cannot be a correct assessment but hesitates to probe into this. He is concerned that his thoughts may be prejudiced or may be considered prejudiced by the others. So he signs the report. Consequently, Arnav, who is truly honest, sincere and dedicated to his work, is denied once more of his due appreciation from the organization.

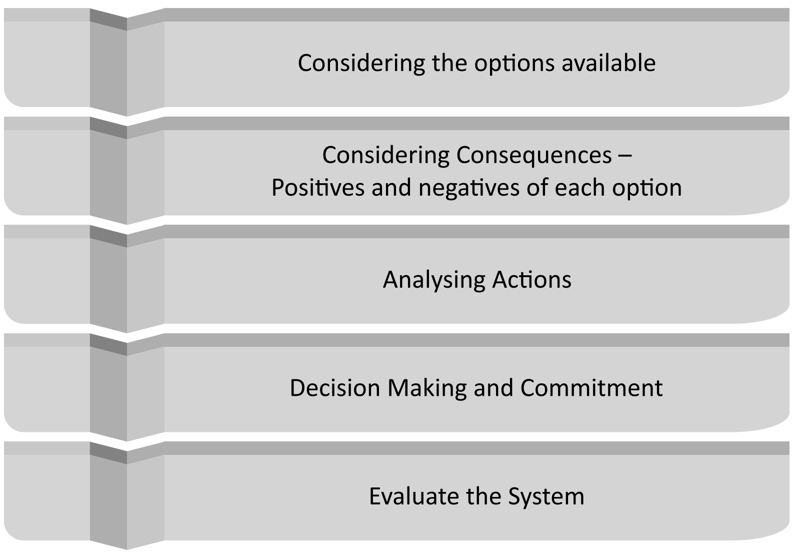
**Example 6**

Ramesh is in charge of the stationary department of a large software organization. Employees who need notepads, pens, scissors, and such stationary items enter their employee id, department name, project name and the items that they take in a register that he maintains. The organization has about a 10,000 employees and there are hundreds of entries in the register. At the end of the day, he enters these entries into the computer and updates stock. No one crosschecks the manual entry with the data entered in the system.

At home, he is the only bread-earner of a relatively large family with 3-4 school-going children. One of the children needed a special marker pen for a project in his school. It is quite an expensive pen and would make Ramesh go beyond his monthly budget.

Suddenly Ramesh realizes that the inventory that he maintains has these pens and various projects frequently uses these. There is an initial hesitation rising in him which he dismisses with the reason that the loss is less than negligible to the organization while it will be an enormous financial relief to him. Thinking thus, he makes an additional entry in the system for the pen against a project and picks it up for the child at home. When his wife asks him about the price, he mumbles a random value to her.

## Steps to Resolving an Ethical Dilemma




1. **What are the options?**

   List the alternative courses of action available.

2. **Consider the consequences**

   Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

   Who/what will be helped by what is done? Who/what will be hurt?

   What kinds of benefits and harms are involved and what are their relative values? What are the short-term and long-term implications?

3. **Analyse the actions**

   Actions should be analysed in a different perspective i.e. viewing the action per se disregard the consequences, concentrating instead on the actions and looking for that option which seems problematic. How do the options measure up against moral principles like honesty, fairness, equality, and recognition of social and environmental vulnerability? In the case you are considering, is there a way to see one principle as more important than the others?

4. **Make decision and act with commitment**

   Now, both parts of analysis should be brought together and a conscious and informed decision should be made. Once the decision is made, act on the decision assuming responsibility for it.

5. **Evaluate the system**

   Think about the circumstances which led to the dilemma with the intention of identifying and removing the conditions that allowed it to arise. Suggest change in the system in consultation with the concerned person.

## CASE STUDY

**RESOLVING ETHICAL DILEMMA – A CASE STUDY**

You are a senior manager in a major firm of investment managers.

Your employer is an international firm with a publicly stated commitment to the highest standards of ethical behaviour. The company is making losses and is due to make a very important presentation to a major corporate client, and if the deal falls through it would turn around the company. Management feels that this activity will provide a lucrative return to the successful bidder for the business and a number of major investment managers have been asked to make presentations.

Your firm is keen to win the mandate for the business and has committed considerable resources to its bid, for which initial presentations were held last week. Following the initial presentation, you learn that the proposal was well received and you are on the shortlist against only one other major firm. You realize that there is a substantial variation in the bid from the original presentation but you leave it to the judgement of the team. It is soon discovered by you that your team had got hold of the bid book of the competitor which was inadvertently left by them in the waiting room.

In business, howsoever highly competitive, there are rules and principles to ensure that certain ethical standards are maintained.

The ethical dilemma projected in this case should be resolved. Applying the steps to resolving an ethical dilemma:

**STEP I —** List the alternative courses of action available.

*What are the Options?*

i) Keep quiet and let things take their own course.

ii) Inform the company seeking the bid about the incident and let them decide whether to have a re-bid or not.

iii) Inform your competitor about the incident and let them decide whether to seek for a re-bid or any other corrective measures at their end.

iv) Withdraw the tender/bid and let the competitor get the deal.

**STEP II—**What are the consequences and evaluation of action?

Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

- Who/what will be helped by what is done?
- Who/what will be hurt?

- What kinds of benefits and harms are involved and what are their relative values?
- What are the short-term and long- term implications?

*Option 1*

i) In all probability the deal would be awarded to my company. The competitor was careless in leaving the bid-book, and therefore there is nothing wrong if my team took advantage of the situation. In any case, it isin the best interest of the company.

ii) There is however a risk that the competitor would discover his mistakes and approach the company seeking the bid company for a re-bid. In that eventuality, the reputation of my company "as being committed to thehighest ethical standards" will get affected. In addition, my company would not get the deal.

*Option 2*

i) The company seeking the bid, inspite of knowing about the incident, may award the deal to my company and not take any cognizance of the incident keeping in view the cost of the tendering process, the time involved,etc. or may decide to seek bids again.

ii) May award the deal to the competitor by disqualifying my company. (iii) May seek a re-bid.

*Option 3*

i) The competitor, in spite of being aware of the incident, may decide not to take up the matter with the company seeking bids, which may get me the deal.

ii) The competitor may approach the company seeking the bid. I inform them about the incident and tell themthat they were informed by my company about the same, and may : (a) either seek the company making thebid to seek bids again or; (b) let them decide whether or not to seek the bid again.

*Option 4*

The deal would rightfully have been awarded to the competitor but for the incident, and hence it is most appropriate that my company should withdraw.

**STEP III** – Make decision and act with commitment

Both the parts of the analysis should be complied and conscious decision should be made. Once the decision is made, it has to be followed through with commitment irrespective of the consequences.

**STEP IV** – Evaluate the system.

What my team did was ethically wrong. Even if the bid book was carelessly left by the competitor, my team had noright to capitalize on the same. They should have returned it to the competitor. In any case, the competitors wouldhave discovered their mistake. This would put the reputation of my company at stake.

The employees of the company need to be sensitized about the ethical practices and the culture of the company through appropriate training.

## CODE OF ETHICS

Managers at all levels and in all functional areas face ethical issues. In fact, there is seldom a decision wherein an ethical dimension is not involved. Matters of right and wrong, just and unjust, and fairness and unfair arise frequently. In order to deal with these issues, managers need some guidelines. Organisations, formulate both business and non- business guidelines in the form of a code of conduct or code of ethics. The need for a corporate code of conduct hasincreased due to frequent corporate scandals, inside trading and misuse of funds. With globalisation of business, more and more companies are developing a code of ethics to be observed. Moreover, every profession has a code of conduct for its members. The Institute of Company Secretaries of India, Medical Council of India, Bar Council, All India Management Association (AIMA) and other professional bodies have their own professional codes.

A corporate code of conduct may be defined as a document containing the core values and moral principles which all those working in the company are expected to follow in the course of their duties as well as in their daily activities. It reflects commitment of the company to ensure ethical behaviour on the part, of its members. It also indicates howan employee should act in general or in specific situations. A code of conduct lays down 'do's' and `don'ts'. It describes socially acceptable and responsible behaviour. Hence, a code of ethics is a tangible guide to ethically desirable behaviour.

It is a corporate code of conduct that helps its members to promote high standards of ethics and practice. It makes them aware of ethical dilemmas; and by adhering to these codes of conduct, business people can observe elevated standards of conduct and personal integrity so as to win the trust and confidence of the stakeholders.

A code of ethics should reflect top managements' desire for compliance with the values, rules, and policies that support an ethical climate. The development of a code of ethics should involve the President, Board of Directors, and Chief Executive Officers who should be implementing the code. Legal staff should also ensure that the code hasassessed key areas of risk correctly, and that it provides buffers for potential legal problems.

Corporate code of ethics often contains six core values or principles in addition to more detailed descriptions and examples of appropriate conduct. The six values that are desirable for codes of ethics include: (1) trustworthiness, (2)respect, (3) responsibility, (4) fairness, (5) caring, and (6) citizenship.

In the United States of America, Section 406 of the Sarbanes Oxley Act, 2002 requires public companies to disclose whether they have codes of ethics, and also to disclose any waivers of those codes for certain members of senior management. Section 406(a) of the Regulation requires companies to disclose:

- whether they have a written code of ethics that applies to their principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions;
- any waivers of the code of ethics for these individuals; and
- any changes to the code of ethics.

If companies do not have a code of ethics, they must explain why they have not adopted one. A company may file its codes as an exhibit in the annual report, post the codes on the company's website, or agree to provide a copy of the codes upon request and without charge.

To create a code of ethics, an organization must define its most important guiding values, formulate behavioural standards, review the existing procedures for guidance and direction and establish the systems and processes to ensure that the code of conduct is implemented and effective. Codes of ethics are not easily created from boilerplate.Ideally, the development of a code is a process in whereby Boards and senior management actively debate and decide core values, roles, responsibilities, expectations, and behavioural standards

Thus, the code of ethics outlines a set of fundamental principles which could be used as the basis for operational requirements (things one must do), operational prohibitions (things one must not do). It is based on a set of core principles and values and is by no means designed for convenience. The employees subjected to the code are required to understand, internalize, and apply it to situations which the code does not specifically address. Organizations expect that the principles, once communicated and illustrated, will be applied in every case, and that failure to do so may lead to disciplinary action.

Code of conduct has now been mandated for the directors and senior officers in listed companies and Central Public Sector Enterprises (CPSEs) and therefore, also falls under forced and regulatory ethics.

*Ideal Ethical Organization*

There can be various measures and initiative which may be taken by an organization. Some of them are discussed below.

a) Have reasonable ethical code of conduct, which can reasonably complied with;

b) Top management should always follow ethical practices;

c) Should not discriminate amongst its stakeholders without solid reasons;

d) Reward employees with track record of ethical standards like integrity, honesty, loyalty etc.;

e) Handle stakeholders, mainly employees grievances properly and quickly (many a times employee grievance leads to unethical practices);

f) Conduct ethics workshop;

g) Have ethics counsellors/ethics committees: for advising on employees with unethical issues or going through ethical dilemma;

h) Have vigil mechanism, whistle blowing policies etc.

## CODE OF CONDUCT

The Code of conduct or what is popularly known as the Code of Business Conduct contains standards of business conduct that must guide actions of the Board of Directors and senior management of the company. The Code of Conduct outlines specific behaviours that are required or prohibited as a condition of ongoing employment. The code of conduct for a group or organization is an agreement on rules of behavior for the members of that group or organization. Commonly generated by corporations themselves, corporate codes of conduct vary extensively in design and objective. Crucially, they are not directly subject to legal enforcement. In an era acutely aware of the dramatic social and environmental effects of corporate activity across the world, such codes of conduct have become the focus of considerable attention.

A well-written code of conduct clarifies an organization's mission, values and principles, linking them with standards of professional conduct. The code articulates the values the organization wishes to foster in leaders and employees and, in doing so, defines desired behavior. As a result, written codes of conduct or ethics can become benchmarks against which individual and organizational performance can be measured.

Additionally, a code is a central guide and reference for employees to support day-to-day decision making. A code encourages discussions of ethics and compliance, empowering employees to handle ethical dilemmas they encounter in everyday work. It can also serve as a valuable reference, helping employees locate relevant documents, services and other resources related to ethics within the organization.

The code of conduct may include the following:

a) Company Values

b) Avoidance of conflict of interests

c) Accurate and timely disclosure in reports and documents that the company files before Government agencies, as well as in the company's other communications

d) Compliance of applicable laws, rules and regulations including Insider Trading Regulations

e) Maintaining confidentiality of the company affairs

f) Standards of business conduct for the company's customers, communities, suppliers, shareholders, competitors, employees

g) Prohibition for the Directors and senior management from taking corporate opportunities for themselves or their families

h) Review of the adequacy of the Code annually by the Board

i) No authority to waive off the Code should be given to anyone in any circumstances. The Code of Conduct for each Company summarises its philosophy of doing business.

Although the exact details of this code are a matter of discretion, the following principles have been found to occur in most of the companies:

- Use of company's assets;
- Avoidance of actions involving conflict of interests;
- Avoidance of compromising on commercial relationship;
- Avoidance of unlawful agreements;
- Avoidance of offering or receiving monetary or other inducements;
- Maintaining confidentiality;
- Collection of information from legitimate sources only;
- Safety at workplace;
- Maintaining and Managing Records;
- Free and Fair competition;
- Disciplinary actions against the erring person.

## Difference between a Code of ethics and Code of conduct

The terms "Code of Ethics" and "Code of Conduct" are often mistakenly used interchangeably. They are, in fact, two unique documents. Codes of ethics, which govern decision-making, and codes of conduct, which govern actions, represent two common ways that companies self-regulate.

Both are used in an attempt to regulate behavior in very different ways. Ethical standards generally are wide-ranging and non-specific, designed to provide a set of values or decision-making approaches that enable employees to make independent judgments about the most appropriate course of action. Conduct standards generally require little judgment; you obey or incur a penalty, and the code provides a fairly clear set of expectations about which actions are required, acceptable or prohibited.

Violation of code of ethics may not lead to action against the employee but violation of code of conduct may lead to disciplinary action.

## Similarities

Both a Code of Ethics and a Code of Conduct are similar as they are used in an attempt to encourage specific forms of behaviour by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others in appropriate. In both cases, the organization's desire is to obtain a narrow range of acceptable behaviors from employees.

## ADVANTAGES OF BUSINESS ETHICS

More and more companies have begun to recognize the relation between business ethics and financial performance. Companies displaying a "clear commitment to ethical conduct" consistently outperform those companies that do not display an ethical conduct.

A company that adheres to ethical values and dedicatedly takes care of its employees is rewarded with equally loyal and dedicated employees.

1. **Attracting and retaining talent**

   People aspire to join organizations that have high ethical values. Such companies are able to attract the best talent. The ethical climate matters a lot to the employees. Ethical organizations create an environment that is trustworthy, making employees willing to rely on company's policies, ability to take decisions and act on those decisions. In such a work environment, employees can expect to be treated with respect, and will have consideration for their colleagues and superiors as well. Thus, company's policies cultivate teamwork, promote productivity and support employee-growth.

   Retaining talented people is as big a challenge for the company as getting them in the first place. Work is a mean to an end for the employees and not an end in itself. The relationship with their employer must be a win-win situation in which their loyalty should not be taken for granted. Talented people will invest their energy and talent only in organizations with values and beliefs that matches their own. In order to achieve this equation, managers need to build culture, compensation and benefit packages, and career paths that reflect and foster certain shared values and beliefs.

2. **Investor Loyalty**

   Investors are concerned about ethics, social responsibility and reputation of the company in which they invest. Investors are becoming more and more aware that an ethical climate provides a foundation for efficiency, productivity and profits. Relationship with any stakeholder, including investors, based on dependability, trust and commitment results in sustained loyalty.

3. **Customer satisfaction**

   Customer satisfaction is a vital factor of a successful business strategy. Repeated purchases/orders and an enduring relationship with mutual respect is essential for the success of the company. The name of a company should evoke trust and respect among customers for enduring success. This is achieved by a company only when it adopts ethical practices. When a company with a belief in high ethical values is perceived as such, the crisis or mishaps along the way is tolerated by the customers as minor aberrations. Such companies are also guided by their ethics to survive a critical situation. Preferred values are identified and it is ensured that organizational behavior is aligned to those values. An organization with a strong ethical environment places its customers' interests as foremost. Ethical conduct towards customers builds a strong competitive position for the company. It promotes a strong public image too.

4. **Regulators**

   Regulators eye companies functioning ethically as responsible citizens. The regulator need not always monitor the functioning of the ethically sound company. Any organisation that acts within the confines of business ethics not only earns profit but also gains reputation publicly.

   To summarise, companies that are responsive to employees' needs have lower turnover in staff.

   - Shareholders invest their money into a company and expect a certain level of return from that money in the form of dividends and/or capital growth.

- Customers pay for goods, give their loyalty and enhance a company's reputation in return for goods or services that meet their needs.
- Employees provide their time, skills and energy in return for salary, bonus, career progression and experience.

## SOME MORE CASE STUDIES ON BUSINESS ETHICS

**1. Apple Suppliers & Labour Practices**

With its highly coveted line of consumer electronics, Apple has a cult following among loyal consumers. During the 2014 holiday season, 74.5 million iPhones were sold. Demand like this meant that Apple was in line to make over $52 billion in profits in 2015, the largest annual profit ever generated from a company's operations.

Despite its consistent financial performance year over year, Apple's robust profit margin hides a more complicated set of business ethics. Similar to many products sold in the U.S., Apple does not manufacture most its goods domestically. Most of the component sourcing and factory production is done overseas in conditions that critics have argued are dangerous to workers and harmful to the environment.

For example, tin is a major component in Apple's products and much of it is sourced in Indonesia. Although there are mines that source tin ethically, there are also many that do not. One study found workers—many of them children—working in unsafe conditions, digging tin out by hand in mines prone to landslides that could bury workers alive.

About 70% of the tin used in electronic devices such as smartphones and tablets comes from these more dangerous, small-scale mines. An investigation by the BBC revealed how perilous these working conditions can be. In interviews with miners, a 12-year-old working at the bottom of a 70-foot cliff of sand said: ***"I worry about landslides. The earth slipping from up there to the bottom. It could happen."***

Apple defends its practices by saying it only has so much control over monitoring and regulating its component sources. The company justifies its sourcing practices by saying that it is a complex process, with tens of thousands of miners selling tin, many of them through middle-men. In a statement to the BBC, Apple said "the simplest course of action would be for Apple to unilaterally refuse any tin from Indonesian mines.

According to the company's management the mentioned approach would have been easy for them and would certainly shield them from criticism. But at the same time it would have been a lazy and cowardly path also, as it would have done nothing to improve the situation. The company chose to stay engaged and attempted to drive changes on the ground.

In an effort for greater transparency, Apple released annual reports detailing their work with suppliers and labor practices. While more recent investigations have shown some improvements to suppliers' working conditions, Apple continues to face criticism as consumer demand for iPhones and other products continues to grow.

**2. Artic Offshore Drilling**

Offshore oil and gas reserves, primarily along coastlines in Alaska, California, Louisiana, and Texas, account for a large proportion of the oil and gas supply in the United States. In August 2015, President Obama authorized Royal Dutch Shell to expand drilling off Alaska's northwest coast. His decision brought into sharp relief the different, oftentimes competing views on the expansion of offshore drilling.

Many proponents of offshore drilling argue that tapping into the vast amount of oil and gas reserves in the Arctic will help shore up national security interests for the United States, bolster its economy and workforce, and offer Americans a reliable, safe supply of oil.

According to Robert Bryce, senior fellow at the Manhattan Institute for Policy Research, there are "enormous amounts of recoverable energy resources in the Arctic. The Department of Energy estimates them at something on the order of 400 billion barrels of oil equivalent in natural gas and oil. That's four times the crude oil reserves of Kuwait." Framed this way, drilling in the Arctic presents a way for Americans to mitigate risks from dependence on foreign oil and build the local and national economies by creating jobs and supplying cheap oil.

A competing point of view charges that offshore oil drilling poses immense risk to the environment while reinforcing a reliance on dirty, environmentally unfriendly sources of energy. Critics claim that industrial activity associated with offshore drilling in the Arctic could harm native animals, including polar bears, walruses, seals, and whales already jeopardized by climate warming and declining levels of sea ice.

Environmentalists argue that oil companies have not demonstrated the capability to clean up an oil spill in water obstructed by ice. Furthermore, they contend, extracting oil only perpetuates a fossil-fuel economy and will contribute dangerously to rising global temperature thereby exacerbating climate change.

"Granting Shell the permit to drill in the Arctic was the wrong decision, and this fight is far from over," said Michael Brune, executive director of the Sierra Club. "The people will continue to call on President Obama to protect the Arctic and our environment."

**3. Buying Green- Consumer Behaviour**

Green consumer products, such as organic food, fair trade coffee, or electric cars, represent a fast-growing segment of the consumer market. In the area of organic food alone, data from the Organic Trade Association reveals that consumer demand in the United States has seen double-digit growth every year since 1990.

In 2014, the organic food market reached almost $40 billion in sales. Consumers of these products tend to be seen in a more positive light—they are deemed more ethical, more altruistic, and kinder than people who do not buy green products. But is there another side to this kind of consumer behavior?

In a series of experiments comparing consumption of green and "conventional" products, psychologists Nina Mazar and Chen-Bo Zhong demonstrated that those people who bought green products—like eco-friendly laundry detergent or organic yogurt—were less likely to share money with a stranger, more likely to cheat on a task in which they could earn money, and more likely to steal money when they thought they would not get caught. As the psychologists stated, "purchasing green products may license indulgence in self-interested and unethical behaviors."

Mazar and Zhong, whose study received considerable media attention in their native Canada, as well as in American and British publications, said the results surprised them. Initially, they expected green products to provide a halo effect, whereby the positive impressions associated with green consumption would lead to positive outcomes in other areas. "Given that green products are manifestations of high ethical standards and humanitarian considerations, mere exposure [to them would] activate norms of social responsibility and ethical conduct," said Mazar and Zhong in an interview.

But as the results indicate, the opposite can be true. "The message of this research is that actions which produce a sense of self content and moral glow can sometimes backfire," Mazar stated in another interview.

These patterns have been shown to extend to other shopping scenarios. For example, one study tracked scanner data and shopper receipts at a California grocery store. Those shoppers who brought reusable grocery bags with them were more likely to buy environmentally friendly products, like organic food. But they were also more likely to buy indulgent products, like ice cream, cookies, candy, and cake.

The researchers followed up this study with a series of experiments that showed these moral licensing effects only happened when the decision to bring the reusable bags was at the shopper's discretion. When shoppers were told that the store required customers to use cloth bags, licensing effects disappeared and customers chose not to buy indulgent products. Only when consumers felt like using cloth bags was their own idea did the moral licensing effects hold.

**4. Negotiating Bankruptcy**

John Gellene, a bankruptcy lawyer at the law firm Milbank Tweed, worked directly under Wall Street attorney Larry Lederman. In 1994, Lederman asked Gellene to represent mining equipment company Bucyrus-Erie (BE) in a reorganization bankruptcy that became increasingly complicated.

In an attempt to initially ward off bankruptcy, BE had, pursuant to the legal advice of Milbank Tweed and the financial advice of Goldman Sachs, accepted a $35 million infusion of cash from an investment fund called South Street. In exchange, BE gave South Street a lien on all of the company's manufacturing equipment, putting it ahead of other BE creditors, including Jackson National Life (JNL).

JNL was BE's largest single creditor, but was unsecured. BE had posted no collateral in return for JNL's loan, so JNL was in line in bankruptcy court behind all of BE's creditors that had demanded collateral. South Street was controlled by Mikael Salovaara, a former Goldman Sachs banker who had previously provided financial advice to BE and was advised by Lederman.

When Gellene filed a Chapter 11 bankruptcy petition on behalf of BE, he was required to ask the court to appoint him and Milbank Tweed as BE's counsel for purposes of the proceedings. At that time, he filed documents under oath that were supposed to disclose any potential conflicts of interest that Milbank Tweed had in the proceedings. For reasons unknown, Gellene did not disclose to the bankruptcy judge (who would appoint counsel) the fact that Milbank Tweed was representing both South Street and Salovaara regarding various matters.

Legal scholars and attorneys reflecting on this case years later have speculated as to why Gellene did not disclose what might seem to be obvious connections that could be potential conflicts of interest for Milbank Tweed. Lawyer Steve Sather suggests that the lack of disclosure may have been inadvertent, or that Gellene did not see the connections as inherent conflicts, among other possible reasons.

Regardless, Gellene did successfully guide BE through the reorganization process. The failure to disclose was not discovered until years later by JNL, which then sued Milbank Tweed. Criminal charges were filed against Gellene for three felony counts of making false statements under oath in regard to Milbank Tweed's ability to serve as bankruptcy counsel. Gellene was convicted and sent to prison for 15 months.

**5. Selling ENRON**

In the late 1990s, the state of California deregulated many of its electricity markets, opening them up to private sector energy companies. Enron Corporation had long lobbied for deregulation of such markets and would likely have profited greatly had California's experiment succeeded and become a model for other states.

Enron CEO Ken Lay wrote a public statement saying that Enron "believes in conducting business affairs in accordance with the highest ethical standards... your recognition of our ethical standards allows

Enron employees to work with you via arm's length transactions and avoids potentially embarrassing and unethical situations." At the same time, Tim Belden, a key Enron employee in its energy trading group, noticed that California's "complex set of rules...are prone to gaming."

According to Bethany McLean and Peter Elkind, authors of The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron:

"In one scheme, Enron submitted a schedule reflecting demand that wasn't there... Another was a variation of the Silverpeak experiment: Enron filed imaginary transmission schedules in order to get paid to alleviate congestion that didn't really exist... Get Shorty was a strategy that involved selling power and other services that Enron did not have for use as reserves..."

Some Enron employees admitted that their schemes were "kind of squirrelly," but used them because they were profitable. The impact on customers was clear: electricity prices rose and rolling blackouts occurred. Enron's profits, however, quadrupled. An Enron lawyer later wrote that the Enron traders did not think "they did anything wrong." Another employee admitted, "The attitude was, 'play by your own rules.' ...The energy markets were new, immature, unsupervised. We took pride in getting around the rules."

In October 2001, Enron's unethical and illegal business practices became public knowledge. Enron's stock prices plummeted, and the company filed for bankruptcy in December 2001.

**6. The Collapse of Barings Bank**

Founded in 1762, Barings Bank was a United Kingdom institution with worldwide reach. Even the Queen of England had an account there. In 1989, Nick Leeson was hired at Barings, where he prospered. He was quickly promoted to the trading floor and appointed manager in Singapore where he traded on the Singapore International Monetary Exchange (SIMEX). Leeson was an aggressive trader, making large profits in speculative trading. In 1993, his profits constituted almost 10% of Barings' total profits. He had developed a reputation for expertise, for near-infallibility, and his superiors in London gave him little supervision.

In July 1992, a new Barings employee suffered a small loss on Leeson's watch. Leeson did not wish to lose his reputation for infallibility, or his job, so he hid the loss in an error account. Leeson attempted to make back the loss through speculative trading, but this led to even bigger losses, which again were hidden in this account. He kept doubling up his bets in an attempt to get out from under the losses. Leeson later said:

"I wanted to shout from the rooftops...this is what the situation is, there are massive losses, I want to stop. But for some reason you're unable to do it. ... I had this catastrophic secret which was burning up inside me—yet...I simply couldn't open my mouth and say, 'I've lost millions and millions of pounds.'"

Leeson took out a short-term, highly leveraged bet on the Nikkei index in Japan. At the same time, a severe earthquake in Kobe, Japan sent the index plummeting, and his loss was so huge that he could no longer hide it. Barings, a 233-year old bank, collapsed overnight and was bought by ING for £1.

Leeson fled to Malaysia, Thailand, and finally to Germany, where he was arrested and extradited to Singapore. He plead guilty to two counts of deceiving bank auditors (including forging documents) and cheating the SIMEX. Leeson was sentenced to six and a half years of prison in Singapore, but only served four years due a diagnosis of colon cancer, which he ultimately survived.

**7. Wells Fargo and Moral Emotions**

On September 8, 2016, Wells Fargo, one of the nation's oldest and largest banks, admitted in a settlement with regulators that it had created as many as two million accounts for customers without their permission. This was fraud, pure and simple. It seems to have been caused by a culture in the bank that made unreasonable demands upon employees. Wells Fargo agreed to pay $185 million in fines and penalties.

Employees had been urged to "cross-sell." If a customer had one type of account with Wells Fargo, then top brass reasoned, they should have several. Employees were strongly incentivized, through both positive and negative means, to sell as many different types of accounts to customers as possible.

"Eight is great" was a motto. But does the average person need eight financial products from a single bank? As things developed, when employees were unable to make such sales, they just made the accounts up and charged customers whether they had approved the accounts or not. The employees used customers' personal identification numbers without their knowledge to enroll them in various products without their knowledge. Victims were frequently elderly or Spanish speakers.

Matthew Castro, whose father was born in Colombia, felt so bad about pushing sham accounts onto Latino customers than he tried to lessen his guilt by doing volunteer work. Other employees were quoted as saying "it's beyond embarrassing to admit I am a current employee these days."

Still other employees were moved to call company hotlines or otherwise blow the whistle, but they were simply ignored or oftentimes punished, frequently by being fired. One employee who sued to challenge retaliation against him was "uncomfortable" and "unsettled" by the practices he saw around him, which prompted him to speak out. "This is a fraud, I cannot be a part of that," the whistleblower said.

Early predictions were that CEO John Stumpf would not lose his job over the fiasco. However, as time went on and investigations continued, the forms and amount of wrongdoing seemed to grow and grow. Evidence surfaced that the bank improperly changed the terms of mortgage loans, signed customers up for unauthorized life insurance policies, overcharged small businesses for credit-card processing, and on and on.

In September of 2016, CEO Stumpf appeared before Congress and was savaged by Senators and Representatives of both parties, notwithstanding his agreement to forfeit $41 million in pay. The members of Congress denounced Wells Fargo's actions as "theft," "a criminal enterprise," and an "outrage." Stumpf simultaneously took "full responsibility," yet blamed the fraud on ethical lapses of low-level bankers and tellers. He had, he said, led the company with courage. Nonetheless, by October of 2016 Stumpf had been forced into retirement and replaced by Tim Sloan.

Over the next several months, more and more allegations of wrongdoing arose. The bank had illegally repossessed cars from military veterans. It had modified mortgages without customer authorization. It had charged 570,000 customers for auto insurance they did not need. It had ripped off small businesses by charging excessive credit card fees. The total number of fake accounts rose from two million to 3.5 million. The bank also wrongly fined 110,000 mortgage clients for missing a deadline even though the party at fault for the delay was Wells Fargo itself.

At its April 2017 annual shareholders meeting, the firm faced levels of dissent that a Georgetown business school professor, Sandeep Dahiya, called "highly unusual."

By September, 2017, Wells Fargo had paid $414 million in refunds and settlements and incurred hundreds of millions more in attorneys' and other fees. This included $108 million paid to the Department of Veterans Affairs for having overcharged military veterans on mortgage refinancing.

In October 2017, new Wells Fargo CEO Tim Sloan was told by Massachusetts Senator Elizabeth Warren, a Democrat, that he should be fired: "You enabled this fake-account scandal. You got rich off it, and then you tried to cover it up." Republicans were equally harsh. Senator John Kennedy Texas said: "I'm not against big. With all due respect, I'm against dumb."

Sloan was still CEO when the company had its annual shareholders meeting in April 2018. Shareholder and protestors were both extremely angry with Wells Fargo. By then, the bank had paid an additional $1 billion fine for abuses in mortgage and auto lending. And, in an unprecedented move, the Federal Reserve Board had ordered the bank to cap its asset growth. Disgust with Wells Fargo's practices caused the American Federation of Teachers, to cut ties with the bank. Some whistleblowers resisted early attempts at quiet settlements with the bank, holding out for a public admission of wrongdoing.

In May 2018, yet another shoe dropped. Wells Fargo's share price dropped on news that the bank's employees improperly altered documents of its corporate customers in an attempt to comply with regulatory directions related to money laundering rules.

Ultimately, Wells Fargo removed its cross-selling sales incentives. CEO Sloan, having been informed that lower level employees were suffering stress, panic attacks, and other symptoms apologized for the fact that management initially blamed them for the results of the toxic corporate culture, admitting that cultural weaknesses had caused a major morale problem.

**8. The COSTCO Model**

Costco is often cited as one of the world's most ethical companies. It has been called a "testimony to ethical capitalism" in large part due to its company practices and treatment of employees. Costco maintains a company code of ethics which states:

"The continued success of our company depends on how well each of Costco's employees adheres to the high standards mandated by our Code of Ethics... By always choosing to do the right thing, you will build your own self-esteem, increase your chances for success and make Costco more successful, too."

In debates over minimum wage in the United States, many commentators see Costco as an example of how higher wages can yield greater company success, often pointing to competitors such as Walmart and Target as examples that fall short in providing for their employees. Other commentators do not see Costco's model as being easily replicable for different types of businesses, citing wages as only one of many factors to consider in companies' best practices.

Costco tends to pay around 40% more and provides more comprehensive health and retirement benefits than Walmart and Target, saving large amounts in employee turnover costs. The company resists layoffs, invests in training its employees, and grants them substantial autonomy to solve problems. U.S. Secretary of Labor Thomas Perez stated:

"And the remarkable loyalty that [employees] have to [Costco cofounder Jim Sinegal] is a function of the fact that he categorically rejects the notion that, 'I either take care of my shareholders or my workers.' That is a false choice."

While few disagree with the benefits of fair treatment of employees, some commentators credit the success of Costco to its broader business model that favors higher productivity, not employee satisfaction. Columnist and economist Megan McArdle explains:

"A typical Costco store has around 4,000 SKUs [stock keeping units], most of which are stacked on pallets so that you can be your own stockboy. A Walmart has 140,000 SKUs, which have to be tediously sorted, replaced on shelves, reordered, delivered, and so forth. People tend to radically underestimate the costs imposed by complexity, because the management problems do not simply add up; they multiply."

Furthermore, McArdle notes that Costco mainly serves as a grocer rather than department store and caters to a generally affluent customer base in suburban areas.

**9. Bhopal Gas Tragedy**

**Introduction**

Union Carbide India Limited (UCIL):

In 1970, in the North adjacent to the slums and railway station, a pesticide plant was set up by Union Carbide India Limited (UCIL). From late 1977, the plant started manufacturing Sevin (Carbaryl) by importing primary raw materials, viz. alpha-naphtol and methyl isocyanate (MIC) in stainless steel drums from the Union Carbide's MIC plant in USA.

However, from early 1980, the Bhopal plant itself started manufacturing MIC using the know-how and basic designs supplied by Union Carbide Corporation, USA (UCC). The Bhopal UCIL facility housed three underground 68,000 liters liquid MIC storage tanks: E610, E611, and E619 and were claimed to ensure all safety from leakage.

**Chronology of Occupational Hazards of the Union Carbide India Limited Plant Leading Before the Disaster**

- 1976: Local trade unions complained of pollution within the plant.
- 1980: A worker was reported to have accidentally been splashed with phosgene while carrying out a regular maintenance job of the plant's pipes.
- 1982 (January): A phosgene leak exposed 24 workers, all of whom were admitted to a hospital. Investigation revealed that none of the workers had been ordered to wear protective masks.
- 1982 (February): An MIC leak affected 18 workers.
- 1982 (August): A chemical engineer came into contact with liquid MIC, resulting in burns over 30 percent of his body.
- 1982 (October): In attempting to stop the leak, the MIC supervisor suffered severe chemical burns and two other workers were severely exposed to the gases.
- 1983-1984: There were leaks of MIC, chlorine, monomethylamine, phosgene, and carbon tetrachloride, sometimes in combination.

In early December 1984, most of the Bhopal plant's MIC related safety systems were not functioning and many valves and lines were in poor condition. In addition, several vent gas scrubbers had been out of service as well as the steam boiler, intended to clean the pipes. For the major maintenance work, the MIC production and Sevin were stalled in Bhopal plant since Oct. 22, 1984 and major regular maintenance was ordered to be done during the weekdays' day shifts.

The Sevin plant, after having been shut down for some time, had been started up again during November but was still running at far below normal capacity. To make the pesticide, carbon tetrachloride is mixed with methyl isocyanate (MIC) and alpha-naphthol, a coffee-colored powder that smells like mothballs. The methyl isocyanate, or MIC, was stored in the three partly buried tanks, each with a 15,000-gallon capacity.

During the late evening hours of December 2, 1984, whilst trying to unclog, water was believed to have entered a side pipe and into Tank E610 containing 42 tons of MIC that had been there since late October. Introduction of water into the tank began a runaway exothermic reaction, which was accelerated by contaminants, high ambient temperatures and other factors, such as the presence of iron from corroding non-stainless steel pipelines.

**Sequence of events on the day of Catastrophe – December 3rd, 1984**

*December 3, 1984 12:40 am:* A worker, while investigating a leak, stood on a concrete slab above three large, partly buried storage tanks holding the chemical MIC. The slab suddenly began to vibrate beneath him and he witnessed at least a 6 inche thick crack on the slab and heard a loud hissing sound. As he prepared to escape from the leaking gas, he saw gas shoot out of a tall stack connected to the tank, forming a white cloud that drifted over the plant and toward nearby neighborhoods where thousands of residents were sleeping. In short span of time, the leak went out of control.

*December 3, 1984 12:45 am:* The workers were aware of the enormity of the accident. They began to panic both because of the choking fumes, they said, and because of their realization that things were out of control; the concrete over the tanks cracked as MIC turned from liquid to gas and shot out the stack, forming a white cloud. Part of it hung over the factory, the rest began to drift toward the sleeping neighborhoods nearby.

*December 3, 1984 12:50 am:* The public siren briefly sounded and was quickly turned off, as per company procedure meant to avoid alarming the public around the factory over tiny leaks. Workers, meanwhile, evacuated the UCIL plant. The control room operator then turned on the vent gas scrubber, a device designed to neutralize escaping toxic gas.

The scrubber had been under maintenance; the flow meter indicated there was no caustic soda flowing into the device. It was not clear to him whether there was actually no caustic soda in the system or whether the meter was broken. Broken gauges were not unusual at the factory. In fact, the gas was not being neutralized but was shooting out the vent scrubber stack and settling over the plant.

*December 3, 1984 1: 15- 1:30 am:* At Bhopal's 1,200-bed Hamidia Hospital, the first patient with eye trouble reported. Within five minutes, there were a thousand patients. Calls to the UCIL plant by police were twice assured that "everything is OK", and on the last attempt made, "we don't know what has happened, sir". In the plant, meanwhile, MIC began to engulf the control room and the adjoining offices.

*December 3, 1984 3:00 am:* The factory manager, arrived at the plant and sent a man to tell the police about the accident because the phones were out of order. The police were not told earlier because the company management had an informal policy of not involving the local authorities in gas leaks. Meanwhile, people were dying by the hundreds outside the factory. Some died in their sleep. Others ran into the cloud, breathing in more and more gas and dropping dead in their tracks.

**Immediate Impacts**

With the lack of timely information exchange between Union Carbide India Limited (UCIL) and Bhopal authorities, the city's Hamidia Hospital was first told that the gas leak was suspected to be ammonia, then phosgene. They were then told that it was methyl isocyanate (MIC), which hospital staff had never heard of, had no antidote for, and received no immediate information about.

The gas cloud, composed mainly of materials denser than air, stayed close to the ground and spread in the south-easterly direction affecting the nearby communities. Most city residents who were exposed to the MIC gas were first made aware of the leak by exposure to the gas itself.

**Actions Initiated**

Formal statements were issued that air, water, vegetation and foodstuffs were safe, but warned not to consume fish. The number of children exposed to the gases was at least 200,000. Within weeks, the State Government established a number of hospitals, clinics and mobile units in the gas-affected area to treat the victims.

Legal proceedings involving UCC, the United States and Indian governments, local Bhopal authorities, and the disaster victims started immediately after the catastrophe. The Indian Government passed the Bhopal Gas Leak Act in March 1985, allowing the Government of India to act as the legal representative for victims of the disaster, leading to the beginning of legal proceedings.

Initial lawsuits were generated in the United States federal court system in April 1985. Eventually, in an out-of-court settlement reached in February 1989, Union Carbide agreed to pay US$470 million for damages caused in the Bhopal disaster. The amount was immediately paid.

UCC chairman and CEO Warren Anderson was arrested and released on bail by the Madhya Pradesh Police in Bhopal on 7 December 1984. Anderson was taken to UCC's house after which he was released six hours later on $2,100 bail and flown out on a government plane. Anderson, eight other executives and two company affiliates with homicide charges were required to appear in Indian court.

In response, Union Carbide said the company is not under Indian jurisdiction. In 1991, the local Bhopal authorities charged Anderson, who had retired in 1986, with manslaughter, a crime that carries a maximum penalty of 10 years in prison.

He was declared a absconder from justice by the Chief Judicial Magistrate of Bhopal on 1 February 1992 for failing to appear at the court hearings in a culpable homicide case in which he was named the chief defendant. Orders were passed to the Government of India to press for an extradition from the United States. From 2014, Dow is a named respondent in a number of ongoing cases arising from Union Carbide's business in Bhopal.

A US Federal class action litigation, Sahu v. Union Carbide and Warren Anderson, had been filed in 1999 under the U.S. Alien Torts Claims Act (ATCA), which provides for civil remedies for "crimes against humanity." It sought damages for personal injury, medical monitoring and injunctive relief in the form of clean-up of the drinking water supplies for residential areas near the Bhopal plant. The lawsuit was dismissed in 2012 and subsequent appeal denied. Anderson died in 2014.

**Ethical Negligence**

i) *The Corporate Negligence:* This point of view argues that management (and to some extent, local government) underinvested in safety, which allowed for a dangerous working environment to develop.

ii) *Safety audits:* In September 1984, an internal UCC report on the West Virginia plant in the USA revealed a number of defects and malfunctions. It warned that "a runaway reaction could occur in the MIC unit storage tanks, and that the planned response would not be timely or effective enough to prevent catastrophic failure of the tanks". This report was never forwarded to the Bhopal plant, although the main design was the same.

iii) *The Disgruntled Employee Sabotage Argument:* Now owned by Dow Chemical Company, Union Carbide maintains a website dedicated to the tragedy and claims that the incident was the result of sabotage, stating that sufficient safety systems were in place and operative to prevent the intrusion of water.

**10. Cadbury: An Ethical Company Struggles to Insure the Integrity of its Supply Chain**

Chocolate had always been considered an affordable little luxury, associated with romance and celebrations. Therefore in 2000 and 2001, revelations that the production of cocoa in the Côte d'Ivoire involved child slave labor set chocolate companies, consumers, and governments reeling.

In the United States, the House of Representatives passed legislation mandating that the FDA create standards to permit companies who could prove that their chocolate was produced without forced labour to label their chocolate "slave-labour free." To forestall such labelling, the chocolate industry agreed to an international protocol that would give chocolate producers, governments, and local farmers four years to curb abusive practices and put together a process of certification.

The stories of child slave labour on Côte d'Ivoire cocoa farms hit Cadbury especially hard. While the company sourced most of its beans from Ghana, the association of chocolate with slavery represented a challenge for the company, since many consumers in the UK associated all chocolate with Cadbury.

Furthermore, Cadbury's culture had been deeply rooted in the religious traditions of the company's founders, and the organization had paid close attention to the welfare of its workers and its sourcing practices. In 1908, the company had ended a sourcing relationship that depended on slave labour. Now for the first time in nearly 100 years, Cadbury had to take up the question of slavery again.

By the 2005 deadline, the chocolate industry was not ready to implement the protocols and asked for two years more to prepare. Privately, many industry officials believed that the kind of certification sought by the protocols was unrealistic.

Because cocoa was produced on over a million small farms in western Africa, insuring that all of these farms, most located deep in the bush, complied with child labour laws seemed impossible. Furthermore because beans from numerous small farms were intermingled before shipment, it was difficult to track those produced by farms in compliance with labour standards and those that were not.

In 2008, a confrontation between U.S. government officials and the industry seemed imminent. Observers argued that this left Cadbury, a company that had done much to improve its supply chain, in a difficult position.

## ANTI CORRUPTION

### Bribery and Corruption – Global Scenarios

**US**: The deterrence of bribery and corruption is one of the primary issues for governments worldwide. The US Foreign Corrupt Practices Act, 1977 (FCPA), which prohibits businesses from bribing foreign officials and political figures, remains the most robustly enforced anti-bribery and anti-corruption (ABAC) legislation globally. The US Department of Justice and the Securities and Exchange Commission take the lead in its enforcement.

The core aim of the Foreign Corrupt Practices Act (FCPA) is to prohibit companies and their individual officers from influencing foreign officials with any personal payments or rewards. The FCPA applies to any person who has a certain degree of connection to the United States and engages in corrupt practices abroad, as well as to U.S. businesses, foreign corporations trading securities in the U.S., American nationals, citizens, and residents acting in furtherance of a foreign corrupt practice, whether or not they are physically present in the U.S.

This is considered the nationality principle of the Act. Any individuals involved in these activities may face prison time. In the case of foreign natural and legal persons, the Act covers their deeds if they are in the U.S. at the time of the corrupt conduct. This is considered the protective principle of the Act.

**UK**: The Bribery Act 2010 is an Act of the Parliament of the United Kingdom that covers the criminal law relating to bribery. Introduced to Parliament in the Queen's Speech in 2009 after several decades of reports and draft bills, the Act received the Royal Assenton 8 April 2010 following cross-party support. Initially scheduled to enter into force in April 2010, this was changed to 1 July 2011.

The Act repeals all previous statutory and common law provisions in relation to bribery, instead replacing them with the crimes of bribery, being bribed, the bribery of foreign public officials, and the failure of a commercial organisation to prevent bribery on its behalf.

The penalties for committing a crime under the Act are a maximum of 10 years' imprisonment, along with an unlimited fine, and the potential for the confiscation of property under the Proceeds of Crime Act 2002, as well as the disqualification of directors under the Company Directors Disqualification Act 1986.

The Act has a near-universal jurisdiction, allowing for the prosecution of an individual or company with links to the United Kingdom, regardless of where the crime occurred. Described as "the toughest anti-corruption legislation in the world", concerns have been raised that the Act's provisions criminalize behaviour that is acceptable in the global market, and puts British business at a competitive disadvantage.

## ANTI BRIBERY LAWS

The following Anti-Bribery laws have been discussed in this section:

1. Prevention of Corruption Act, 1988 (The PCA)
2. Lokpal and Lokayukta Act, 2013 (LLA)
3. ICSI Anti-Bribery Code.

## 1. PREVENTION OF CORRUPTION ACT, 1988 (THE PCA)

The PCA criminalises the acceptance of gratification (pecuniary or otherwise) other than the acceptance of legal remuneration by public servants which is paid by their employers in connection with the performance of their duties. Aiding and abetting the commission of bribery is also an offence, such that any person, who bribes or attempts to bribe a public servant or acts as a middleman for such bribing may also be held liable.

Further, the PCA creates an adverse presumption if a public servant's assets are disproportionate in value to his or her income and cannot be satisfactorily accounted for. The provisions of the PCA apply regardless of the location or jurisdiction of the commission of an offence, as long as the same is committed by a 'public servant' as defined under it. Judicial decisions have also interpreted the term 'public servant' in the PCA to include a wide variety of persons, such as bank employees in both private and government owned banks.

The Prevention of Corruption Act, 1988 (No. 49 of 1988) is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India. This law defines who a public servant is and punishes public servants involved in corruption or bribery. It also punishes anyone who helps him or her commit the crime corruption or bribery. It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

**The Act is divided into five chapters:**

- Chapter I (Sections 1 and 2): Preliminary
- Chapter II (Sections 3 to 6): Appointment of Special Judges
- Chapter III (Sections 7 to 16): Offences and Penalties
- Chapter IV (Section 17 to 18): Investigation into cases under the Act
- Chapter IVA (Section 18 A): Attachment and Forfeiture of Property
- Chapter V (Sections 19 to 30): Sanction for Prosecution and Other Miscellaneous Provisions

The PCA deals only with bribery of public servants. It does not extend to bribery or corruption in the private sector, i.e. where a public servant is not involved. That said, a private person/entity will be liable for inducing a public servant to commit an act that is prohibited by the PCA, by corrupt or illegal means or by exercising personal influence.

**Who is Public Servant [Section 2(c)]:**

"Public servant" means –

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) Public Duty has been defined by Section 2(b) of the Act, which means a duty in the discharge of which the State, the public or the community at large has an interest;

(iii) any person in the service or pay of a local authority;

(iv) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(v) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(vi) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vii) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(viii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(ix) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(x) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(xi) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

**Undue advantage – Section 2(1)(d)**

It means any gratification whatever, other legal remuneration.

*Explanation:* For the purposes of this clause-

(a) the word 'gratification' is not limited to pecuniary gratifications or to gratifications estimable in money.

(b) the word ' legal remuneration is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.

*Explanation 1:* Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or nor.

*Explanation 2:* Wherever the words' public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

## Offence relating to Public Servant being bribed [Section 7]

Any public servant who, –

(a) obtains or accepts or attempts to obtain from any person, an **undue advantage**, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an **undue advantage** from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

**Explanation 1.** – For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

**Illustration. –** A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

**Explanation 2**. – For the purpose of this section, –

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

**Taking undue advantage to influence public servant by corrupt or illegal means or any exercise of personal influence [Section7A]:**

7A. Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

## Offence relating to bribing of a Public Servant [Section 8]

(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention –

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper performance of public duty; shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

**Provided that** the provisions of this section shall not apply where a person is compelled to give such undue advantage:

**Provided further** that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

**Provided also** that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

(2) Nothing in section 8(1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in it's investigation of the offence alleged against the latter.

***Illustration.*** – A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

***Explanation.*** – It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

## Offence relating to bribing a public servant by a commercial organisation [Section 9]

(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending –

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation.

**Provided that** it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of section 8 and this section, –

(a) "commercial organisation" means –

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

**Explanation 1.** – The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

**Explanation 2.** – Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

**Explanation 3.** – If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under sections 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.

## Person in charge of commercial organization to be guilty of offence [Section 10]

Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

*Explanation* – For the purposes of this section, ''director'', in relation to a firm means a partner in the firm.''

## Public servant obtaining undue Advantage without consideration from person concerned in proceeding or business transacted by such public servant [Section 11]

Whoever, being a public servant, accepts or obtains or attempts for himself, or for any other person, any undue Advantage without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions or public duty of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

## Punishment for abetment of offences [Section 12]

Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

## Criminal Misconduct by a Public Servant [Section 13]

(1) A public servant is said to commit the offence of criminal misconduct –

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

*Explanation 1.* – A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

*Explanation 2.* – The expression "known sources of income" means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a terms which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

## Punishment for habitual Offender [Section 14]

Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine.

## Punishment for attempt [Section 15]

Whoever attempts to commit an offence referred to in clause (a) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine.

## Matters to be taken into consideration for fixing fine [Section 16]

Where a sentence of fine is imposed under section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (2) of section 13 or section 14 or section 15, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (b) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

## CHAPTER IV INVESTIGATION INTO CASES UNDER THE ACT

### Persons authorised to investigate [Section 17]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,–

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

**Provided that** if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

**Provided further** that an offence referred to in clause (b) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

### Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties [Section 17A]

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval –

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

### Power to inspect bankers' books [Section 18]

If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

*Explanation*. – In this section, the expressions "bank" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891 (18 of 1891).

## CHAPTER IVA ATTACHMENT AND FORFEITURE OF PROPERTY

### Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act (Section 18A)

(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".

## CHAPTER V SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

### Previous sanction necessary for prosecution [Section 19]

(1) No court shall take cognizance of an offence punishable under 2 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 3 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)] –

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless –

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

*Explanation*. – For the purposes of sub-section (1), the expression "public servant" includes such person –

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

*Explanation*. – For the purposes of this section,–

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

### Presumption where public servant accepts any undue advantage [Section 20]

Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.

### Accused person to be a competent witness [Section 21]

Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that –

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless –

  (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

  (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

  (iii) he has given evidence against any other person charged with the same offence.

### The Code of Criminal Procedure, 1973 to apply subject to certain modifications [Section 22]

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if, –

(a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;

(b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:– "Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";

(c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:– "(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely :–

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:–

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

## Particulars in a charge in relation to an offence under Section 13(1)(a) – [Section 23]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under clause (a) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

**Section 24[Omitted]**

## Military, Naval and Air Force or other law not to be affected [Section 25]

(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub- section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

## Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act [Section 26]

Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

## Appeal and Revision [Section 27]

Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.

## Act to be in addition to any other law [Section 28]

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

**Amendment of the Ordinance 38 of 1944 [Section 29]**

In the Criminal Law Amendment Ordinance, 1944,–

(a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words “State Government”, wherever they occur, the words “State Government or, as the case may be, the Central Government” shall be substituted;

(b) in section 10, in clause (a), for the words “three months”, the words “one year” shall be substituted;

(c) in the Schedule,–

(i) paragraph 1 shall be omitted;

(ii) in paragraphs 2 and 4, –

(a) after the words “a local authority”, the words and figures “or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company” shall be inserted;

(b) after the words “or authority”, the words “or corporation or body or Government company or society” shall be inserted;

(iii) for paragraph 4A, the following paragraph shall be substituted, namely:– “4A.An offence punishable under the Prevention of Corruption Act, 1988.”;

(iv) in paragraph 5, for the words and figures “items 2, 3 and 4”, the words, figures and letter “items 2, 3, 4 and 4A” shall be substituted.

## 2. LOKPAL AND LOKAYUKTA ACT, 2013 (LLA)

The preamble of the Act states that it is an Act for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

The preamble further provides that whereas the Constitution of India established a Democratic Republic to ensure justice for all; and whereas India has ratified the United Nations Convention Against Corruption; and whereas the Government’s commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption; it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of Corruption.

The LLA requires each State to establish a Lokayukta by law under the state legislature. The Lokpal has the jurisdiction to inquire into all complaints arising from the Prevention of Corruption Act against certain public functionaries, including an incumbent or past Prime Minister, an incumbent or past Union Minister and any person who is or has been a Member of Parliament.

The LLA provides that after the completion of investigation with respect to a complaint under the PCA, the Lokpal can itself initiate prosecution against the accused and/or impose penalties via its prosecution wing or initiate prosecution in the special court proposed to be established to try offences under the PCA.

The Act consists of 15 Chapters, details of which are as under:

| *Part* | *Chapter* | *Section* | *Particulars* |
|---|---|---|---|
| I | | 1 | Preliminary |
| II | I | 2 | Definitions |

| Part | Chapter | Section | Particulars |
|---|---|---|---|
| | II | 3 to 10 | Establishment of Lokpal |
| | III | 11 | Inquiry Wing |
| | IV | 12 | Prosecution Wing |
| | V | 13 | Expenses of Lokpal to be charged on Consolidated Fund of India |
| | VI | 14 to 19 | Jurisdiction in respect of Inquiry |
| | VII | 20 to 24 | Procedure in respect of Preliminary Inquiry and Investigation |
| | VIII | 25 to 34 | Power of Lokpal |
| | IX | 35 & 36 | Special Courts |
| | X | 37 & 38 | Complaints against Chairperson, Members and Official of Lokpal |
| | XI | 39 | Assessment of Loss and Recovery thereof by Special Court |
| | XII | 40 to 43 | Finance, Account and Audit |
| | XIII | 44 to 45 | Declaration of Assets |
| | XIV | 46 & 47 | Offences and Penalties |
| | XV | 48 to 62 | Miscellaneous |
| Part III | | 63 | Establishment of the Lokayukta |

Here, we shall discuss the important provisions of the LLA:

**Establishment of Lokpal (Section 3):**

(1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

(2) The Lokpal shall consist of–

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfills the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent. shall be Judicial Members:

Provided that not less than fifty per cent. of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,–

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be–

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turptitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if–

a. he holds any office of trust or profit, resign from such office; or

b. he is carrying on any business, sever his connection with the conduct and management of such business; or

c. he is practising any profession, cease to practise such profession.

**Appointment of Chairperson and Members on recommendations of Selection Committee (Section 4):**

(1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of–

(a) the Prime Minister–Chairperson;

(b) the Speaker of the House of the People–Member;

(c) the Leader of Opposition in the House of the People–Member; 7

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him–Member;

(e) one eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President–Member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

**Inquiry Wing (Section 11):**

(1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988 (49 of 1988):

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27.

**Prosecution Wing (Section 12):**

(1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988).

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

**Jurisdiction of Lokpal to include Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government (Section 14):**

(1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:–

(a) any person who is or has been a Prime Minister: Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,–

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub- clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served, in connection with the affairs of the Union;

(e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;

(f) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

*Explanation:* For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) and the provisions of that Act shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.

(3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-

section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 (49 of 1988) against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

(2) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952).

*Explanation:* For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

**Matters pending before any court or committee or authority for inquiry not to be affected (Section 15):**

In case any matter or proceeding related to allegation of corruption under the Prevention of Corruptions Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

**Constitution of benches of Lokpal (Section 16):**

(1) Subject to the provisions of this Act,–

  (a) the jurisdiction of the Lokpal may be exercised by benches thereof;

  (b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

  (c) every bench shall ordinarily consist of at least one Judicial Member;

  (d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

  (e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

  (f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

**Distribution of business amongst benches (Section 17)**

Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

**Power of Chairperson to transfer cases (Section 18)**

On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

**Decision to be by majority (Section 19)**

If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

**Provisions relating to complaints and preliminary inquiry and investigation (Section 20):**

(1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order–

(a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:–

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may–

(a) grant sanction to its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;

(b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency.

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

**Persons likely to be prejudicially affected to be heard (Section 21):**

If, at any stage of the proceeding, the Lokpal–

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry, the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

**Lokpal may require any public servant or any other person to furnish information, etc (Section 22):**

Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

**Power of Lokpal to grant sanction for initiating prosecution (Section 23);**

(1) Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or section 6A of the Delhi Special Police Establishment Act, 1946 (25 of 1946) or section 19 of the Prevention of Corruption Act, 1988 (49 of 1988), the Lokpal shall have the power to grant sanction for prosecution under clause (a) of sub-section (7) of section 20.

(2) No prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of clause (3) of article 320 of the Constitution.

**Action on investigation against public servant being Prime Minister, Ministers or members of Parliament (Section 24):**

Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

## Powers of Lokpal (Chapter VIII)

**Supervisory powers of Lokpal (Section 25):**

(1) The Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) and section 8 of the Central Vigilance Commission Act, 2003 (45 of 2003), have the powers of superintendence over, and to give direction to the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under the second proviso to sub-section (1) of section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

(3) Any officer of the Delhi Special Police Establishment investigating a case referred to it by the Lokpal, shall not be transferred without the approval of the Lokpal.

(4) The Delhi Special Police Establishment may, with the consent of the Lokpal, appoint a panel of Advocates, other than the Government Advocates, for conducting the cases referred to it by the Lokpal.

(5) The Central Government may from time to time make available such funds as may be required by the Director of the Delhi Special Police Establishment for conducting effective investigation into the matters referred to it by the Lokpal and the Director shall be responsible for the expenditure incurred in conducting such investigation.

**Search and seizure (Section 26):**

(1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

**Lokpal to have powers of civil court in certain cases (Section 27):**

(1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:–

   (i) summoning and enforcing the attendance of any person and examining him on oath;

   (ii) requiring the discovery and production of any document;

   (iii) receiving evidence on affidavits;

   (iv) requisitioning any public record or copy thereof from any court or office;

   (v) issuing commissions for the examination of witnesses or documents: Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

   (vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860).

**Power of Lokpal to utilise services of officers of Central or State Government (Section 28):**

(1) The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigating agency of the Central Government or any State Government, as the case may be.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the superintendence and direction of the Lokpal,–

   (a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

**Provisional attachment of assets (Section 29):**

(1) Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that–

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption; and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, the Lokpal or the authorised officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Lokpal and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

*Explanation*:–For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

**Confirmation of attachment of assets (Section 30):**

(1) The Lokpal, when it provisionally attaches any property under sub-section (1) of section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 (49 of 1988) shall be confiscated and vest in

the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

*Explanation*: For the purposes of this sub-section, the expressions "bank", "debt" and "financial institution" shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

**Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances (Section 31):**

(1) Without prejudice to the provisions of sections 29 and 30, where the Special Court, on the basis of prima facie evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

**Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption (Section 32):**

(1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available,–

   (i) that the continuance of the public servant referred to in clause (d) or clause (e) or clause (f) of sub-section (1) of section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

   (ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

**Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry (Section 33):**

The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record–

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

**Power to delegate (Section 34):**

The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

## Complaints against Chairperson, Members and Officials of Lokpal (Chapter X)

**Removal and suspension of Chairperson and Members of Lokpal (Section 37):**

(1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2), on receipt of the recommendation or interim order made by the Supreme Court in this regard until the President has passed orders on receipt of the final report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,–

(a) is adjudged an insolvent; or

(b) engages, during his term of office, in any paid employment outside the duties of his office; or

(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

**Complaints against officials of Lokpal (Section 38):**

(1) Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988) shall be dealt with in accordance with the provisions of this section.

(2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is prima facie satisfied on the basis of evidence available, that–

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

(4) On the completion of the inquiry, if the Lokpal is satisfied that there is prima facie evidence of the commission of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer

or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

## Assessment of Loss and Recovery thereof by Special Court (Chapter XI)

**Assessment of loss and recovery thereof by Special Court (Section 39):**

If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) by the special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted: Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

## Offences and Penalties (Chapter XIV)

**Prosecution for false complaint and payment of compensation, etc., to public servant (Section 46):**

(1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person being an individual or society or association of persons or trust (whether registered or not), for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

Explanation: For the purpose of this sub-section, the expression “good faith” means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under section 79 of the Indian Penal Code (45 of 1860).

**False complaint made by society or association of persons or trust (Section 47):**

(1) Where any offence under sub-section (1) of section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## CHAPTER XV MISCELLANEOUS

**Reports of Lokpal (Section 48)**

It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

**Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force (Section 49)**

The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988 (49 of 1988).

**Protection of action taken in good faith by any public servant (Section 50)**

No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

**Protection of action taken in good faith by others (Section 51)**

No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

**Members, officers and employees of Lokpal to be public servants (Section 52)**

The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**Limitation to apply in certain cases (Section 53)**

The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

**Bar of jurisdiction (Section 54)**

No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.

**Legal assistance (Section 55)**

The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.

**Act to have overriding effect (Section 56)**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

**Provisions of this Act to be in addition of other laws (Section 57)**

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

**Amendment of certain enactments (Section 58)**

The enactments specified in the Schedule shall be amended in the manner specified therein.

**Power to make rules (Section 59)**

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of complaint referred to in clause (e) of sub-section (1) of section 2;

(b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of section 4;

(c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of section 10;

(d) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of section 27;

(e) the manner of sending the order of attachment along with the material to the Special Court under sub- section (2) of section 29;

(f) the manner of transmitting the letter of request under sub-section (2) of section 36;

(g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under section 40;

(h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of section 42;

(i) the form and manner and the time for preparing the returns and statements along with particulars under section 43;

(j) the form and the time for preparing an annual return giving a summary of its activities during the previous year under sub-section (5) of section 44;

(k) the form and manner of declaration of assets and liabilities by public servants under section 44: Provided that the rules may be made under this clause retrospectively from the date on which that provisions of this Act came into force;

(l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 45;

(m) any other matter which is to be or may be prescribed.

**Power of Lokpal to make regulations (Section 60)**

(1) Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of section 10;

(b) the place of sittings of benches of the Lokpal under clause (f) of sub-section (1) of section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (10) of section 20;

(d) the manner and procedure of conducting preliminary inquiry or investigation under sub-section (11) of section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

**Laying of rules and regulations (Section 61)**

Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

**Power to remove difficulties (Section 62)**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary for removing the difficulty: Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**Establishment of the Lokayukta (Part III)**

**Establishment of Lokayukta (Section 63):**

Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption again.

## ICSI ANTI BRIBERY CODE

**Objective**

To ensure that neither the company nor any of its employees, directors or authorised representatives indulge in bribery in any of their actions taken for and on behalf of the company in the course of economic, financial or commercial activities of any kind.

**Scope**

The Code shall be applicable to the company and its

(i) Board of Directors,

(ii) Employees (full time or part-time or employed through any third party contract),

(iii) Agents, Associates, Consultants, Advisors, Representatives and Intermediaries, and

(iv) Contractors, Sub-contractors and Suppliers of goods and/or services.

**Definitions**

For the purpose of The Code, unless the context otherwise requires,

'Bribery' includes giving or receiving bribe and third party gratification. The act of giving bribe is when committed intentionally in the course of economic, financial or commercial activities and when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, act or refrain from acting.

*'Facilitation payment'* means a payment made to government or private official that acts as an incentive for the official to complete some action or process expeditiously to the benefit of the party making the payment.

*'Foreign public official'* means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, whether permanent or temporary, whether paid or unpaid and includes a person who performs a public function or provides service for a foreign country.

Words and expressions used and not defined in this Code shall have the meaning assigned to them in their respective Acts.

**Clause 1: Adherence to Anti-Corruption Laws**

The company shall follow all anti-corruption laws applicable in India.

**Clause 2: Bribery in Private Sector**

The company or its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries shall not involve in bribery.

**Clause 3: Facilitation Payments**

No facilitation payment shall be made by the company either directly or through its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries.

**Clause 4: Bribery to Foreign Public Officials**

The company, either directly or through its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries in the conduct of international business shall not offer, promise or give any undue pecuniary or other advantage, to a foreign public official, for that official or for a third party, in order that the official acts or refrains from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage.

**Clause 5: Policy for Gifts, Hospitality & Expenses**

The company shall follow a policy for gifts, hospitality and expenses as approved by its Board.

**Clause 6: Whistle Blower Mechanism**

The company shall set up a Whistle Blower Mechanism as approved by its Board to enable its employees or others to raise concerns and report violation(s) of the Code.

**Clause 7: Anti- Bribery Training and Awareness Programmes**

The company shall put in place an annual Corporate Anti-Bribery Code awareness-cum-training program as approved by its Board for all its employees, agent, associates, advisors, representatives, intermediaries, consultants, contractors, sub-contractors and suppliers.

**Clause 8: Monitoring Mechanism for Anti-Bribery Code**

The company shall set up mechanism as approved by its Board for regular monitoring of its Anti- Bribery Code.

**Clause 9: Sanctions for Non-compliance**

Any non-compliance of the Code is subject to disciplinary mechanism. The company shall set up disciplinary mechanism as approved by its Board, for non-compliance of any part of t he Corporate Anti- Bribery Code.

The disciplinary mechanism shall include:

- Nature of offence
- Penalty of the office
- Competent Authority

Guiding Instructions for Implementation of the Code:

1. Corporate Anti-Bribery Code is to be adopted voluntarily.
2. The Code shall be approved by the Board of Directors of the company. Any change in the Code shall be made with the approval of the Board of the Company.
3. The Code shall be communicated to all existing employees, management and Board members.
4. All the existing employees, management and Board members shall confirm in writing that they shall unconditionally follow the Code in its entirely throughout their employment/association with the company.
5. All the new appointees shall be required to confirm in writing, at the time of their induction in the company that they shall be bound by the Code.
6. All agents, associates, consultants, advisors, all the contractors, sub-contracts and suppliers of goods and/or services, representatives and intermediaries engaged by the company shall also be required to follow the Code while carrying on their assignments for and on behalf of the company at any time during their association with the company. It shall also be made a mandatory condition while confirming their appointment.
7. Anti-Bribery Code of the company shall be put on company's website. Any change in the Code shall be immediately updated.
8. The Annual Report of the Board shall contain an assertion that the company has an Anti-Bribery Code and the same is being followed by all employees, agents, associates, consultants, advisors, all the contractors, sub-contracts and suppliers of goods and/or services, representatives and intermediaries as well as members of the Board of the company. Any incident of bribery noticed or reported and action taken by the Board shall also be reported.
9. With a view to facilitate the companies, the following model suggested policies which may be adopted by the Board of Directors of the company are annexed to the Code:
   a. Model Policy on Gifts, Hospitality & Expenses
   b. Model Policy on Purchase through Supplier and other Service Provider
   c. Guidelines for Whistle Blower Policy

10. Disclaimer: Due care and diligence is taken in developing the Corporate Anti-Bribery Code. This Code does not substitute or supplant any existing laws. If any of the parameter of this Code are or become inconsistent with the applicable laws, provisions of the related laws shall prevail.

[for more details the students may refer to the ICSI publication on the Corporate Anti-Bribery Code]

**CASE STUDY**

The following case studies of renowned companies regarding adherence to the Principle 1 of Business Responsibility and Sustainability Reporting (BRSR), i.e**., 'Businesses should conduct and govern themselves with integrity, and in a manner that is Ethical, Transparent and Accountable'** will assist in comprehending the scenario prevailing in the corporate sector pertaining to business ethics, assimilation of the Code of Conduct and Anti-Bribery practices.

The case studies of the following companies have been covered based on their latest Annual / Integrated Reports.

1. Tata Steel
2. ACC Cement
3. NTPC Limited.

**1. Tata Steel**

The essential indicators covered under the mentioned principle of BRSR for Tata Steel are:

i) Percentage coverage by training and awareness programmes on any of the principles of BRSR conducted during the financial year.

ii) Details of fines/ penalties/ punishment/ award/ compounding fees/ settlement amount paid in proceedings (by the entity or by directors/ KMPs with regulators/ law enforcement agencies/ judicial institutions, in the financial year. (*Note:* the entity shall make disclosures on the basis of materiality as specified in Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and as disclosed on the entity's website.)

iii) Of the instances disclosed in point ii above, details of the Appeal/ Revision preferred in cases where monetary or non-monetary action has been appealed.

iv) Prevalence of Anti-Corruption or Anti-Bribery Policy in the company. If the company has so, then its brief details and if available, the web-link of the policy.

***i) Percentage coverage by training and awareness programmes on any of the principles of BRSR conducted during the financial year.***

The company have conducted training and awareness programmes for various personnel, i.e., Board of Directors, Key Managerial Personnel (KMPs) and Employees and Workers to sensitize them about the Principles of BRSR. The topics covered under the training and awareness programmes are- Safety, Health and Environment, Strategy / Industry Trends, Ethics & Governance and Legal & Regulatory matters, Code of Conduct, Anti-Bribery and Anti-Corruption Policies, Conflict of Interest, Prevention of Sexual Harassment Policies etc. Thus, the topics focused in the training and awareness programmes exemplifies the company's philosophy of creating a legion of personnel who will be law abiding and ethical in approach.

Moreover, the attendance in the training and awareness programmes have been hundred percent which elucidate an inclusive approach on the part of the management of the company and eagerness to learn on the part of the human capital.

ii) ***Details of fines/ penalties/ punishment/ award/ compounding fees/ settlement amount paid in proceedings (by the entity or by directors/ KMPs with regulators/ law enforcement agencies/ judicial institutions, in the financial year. (Note: the entity shall make disclosures on the basis of materiality as specified in Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and as disclosed on the entity's website.)***

On perusing the Integrated Report of the company, it is observed that no penalty have been levied on the company, thereby indicating a law compliant company.

iii) ***Of the instances disclosed in point ii above, details of the Appeal/ Revision preferred in cases where monetary or non-monetary action has been appealed.***

As per the Integrated Report, the mentioned criterion is not applicable to the company, since the company has not committed any infringement of law.

iv) ***Prevalence of Anti-Corruption or Anti-Bribery Policy in the company. If the company has so, then its brief details and if available, the web-link of the policy***.

Yes, Tata Steel has an Anti-Bribery and Anti-Corruption (ABAC) Policy and all Tata Steel companies have adopted the ABAC Policy. In some cases, depending upon local laws and regulations, Tata Steel's overseas subsidiaries may modify the ABAC Policy to align with local requirements.

The purpose of the ABAC Policy is to ensure all Tata Steel Group Companies, in any part of the world, conduct their operations and business activities in consonance with applicable laws and with the highest ethical standards and ensure the prevention and detection of fraud, bribery and corruption. Tata Steel's ABAC Policy is applicable to all individuals working at all levels and grades, including Directors, Senior Executives, Senior Managers, Officers, Employees, Consultants, Contractors, Trainees, Interns, Seconded Staff, Casual Workers & Agency Staff, Agents, Business Partners, Service Providers, Professional Associates, and other relevant persons, third parties or companies associated with Tata Steel, including those acting on behalf of Tata Steel.

The Company also communicates, creates awareness, and disseminates the ABAC Policy to all its employees, vendors and supply chain partners through e-modules. Furthermore, Tata Steel, from time to time, designates an employee of sufficient seniority, competence, and independence as the Compliance Officer/Chief Ethics Counsellor to ensure compliance with the provisions of this ABAC Policy.

The weblink of the Policy is as follows: *https://www.tatasteel.com/media/11802/1-abac-policy_final.pdf*

**Reference**: *https://www.tatasteel.com/media/18370/tata-steel-ir-2022-23.pdf*

2. **ACC Cement**

The essential conditions covered under Principle 1 of BRSR for Ambuja Cement are as under:

i) ***Does the policy relating to ethics, bribery and corruption cover only the Company? Yes/No. Does it extend to the Group/Joint Ventures/Suppliers/Contractors/ NGOs/Others?***

The Company considers Corporate Governance as an integral part of responsible management. The Company has a Code of Business Conduct (along with Anti -Bribery and Corruption Directive) and a vigil mechanism named as EthicalView Reporting Policy ('EVRP') that has been approved by the Board of Directors. These are applicable to all Directors and employees of the Company and all its subsidiaries, and an annual affirmation is taken from the designated employees.

The Anti -Bribery and Corruption Directive and the EthicalView Reporting Policy also extend to the Company's business partners, including vendors/ service providers/ customers. The Company as part of JV compliance framework of the Holcim Group, has encouraged JV partners to adopt the best practices with respect to ethics, transparency and governance. The Code is available on the Company's website at: www.acclimited.com/assets/new/pdf/ACC -Code -ofConduct-Final-signed-18-04-2017.pdf

Thus, the aforesaid approach of the company is an exemplar of good corporate governance. Further, the above mentioned approach encompasses personnel of all levels as well as business partners, thereby indicating company's strong commitment towards adherence to the relevant laws and regulations.

***ii) Resolution of stakeholder complaints in the past financial year.***

The Company received 128 complaints under the EthicalView Reporting Policy, out of which 88 complaints were addressed and the balance 40 complaints are under various stages of investigation and completion. The update on EthicalView is presented to the Audit Committee, who in turn briefs to the Board.

Thus, it may be opined that the management of the company is agile towards resolving stakeholders complaints, thereby exhibiting its care towards its stakeholders.

**Reference**: *https://www.acclimited.com/AnnualReport-2021-22/pdf/ACC%20limited%20IR_2021_final.pdf*

**3. NTPC Limited**

With reference to the Principle 1 of BRSR (*Businesses should conduct and govern themselves with integrity, and in a manner that is Ethical, Transparent and Accountable*), it is to be noted that the company has the following policies in the company-

1. Code of Conduct*
2. Core Values.
3. Fraud Prevention Policy.
4. CDA Rules.
5. Whistle Blower Policy.
6. Internal code of conduct for prevention of insider trading.
7. Code of Corporate Fair Disclosure Practices for prevention of insider trading.
8. Related Party Transaction Policy.
9. Policy for determination of materiality of events or information for disclosure.
10. Policy on maintenance & preservation of documents.
11. Policy for Determining Material Subsidiaries.
12. Training Policy for Directors of NTPC.

*Code of Conduct for Board Members & Senior Management Personnel

For compliance of the above mentioned policies, all the Directors & Chief Vigilance Officer is responsible. Thus, the company has incorporated all the policies that goes a long way in ensuring fair business practices and ensuring good corporate governance.

**Reference:***https://www.ntpc.co.in/sites/default/files/annual-report/complete-reports/Annual-Report-2021-22.pdf*

## CONCLUSION

In making ethics work in an organization it is important that there is synergy in vision statement, mission statement, core values, general business principles and the code of ethics. A commitment by corporate management to follow an ethical code of conduct confers a variety of benefits. An effective ethics programme requires continual reinforcement of strong values. Organisations are challenged with the task to make their employees live and imbibe their ethical codes and values. To ensure a right ethical climate, a right combination of spirit and structure is required.

Corporate Ethics is much needed to stress the importance of sustainability, social development, stakeholders and consumers satisfaction. It is an orientation to provide a valuable service instead of displaying more orientation for profits. Ethics, point out what is good and what is bad and also what is right or wrong.

It brings to the notice of the business community the importance of honesty, sincerity and fairness which makes them alert and socially conscious. It reconciles conflicting interest of various sections of the society such as workers, shareholders, consumers, distributors, suppliers, competitors and government and thus, expedite a better relation between business and the society.

### LESSON ROUND-UP

- Business ethics is a form of applied ethics. In broad sense ethics in business is simply the application of moral or ethical norms to business.
- The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.
- To create a code of ethics, an organization must define its most important guiding values, formulate behavioral standards to illustrate the application of those values to the roles and responsibilities of the persons affected, review the existing procedures for guidance and direction as to how those values and standards are typically applied, and establish the systems and processes to ensure that the code is implemented and is effective.
- An ethical dilemma involves a situation that makes a person question what is the ‘right’ or ‘wrong’ thing to do. Ethical dilemmas make individuals think about their obligations, duties and responsibilities. These dilemmas can be highly complex and difficult to resolve. Easier dilemmas involve a ‘right’ versus ‘wrong’ choice; whereas, complex ethical dilemmas involve a decision between a right and a right choice.
- Advantages of business ethics - attracting and retaining talent, investor loyalty, customer satisfaction and regulators.
- In making ethics work in an organization it is important that there is synergy between vision statement, mission statement, core values, general business principles and code of ethics.
- The PCA criminalizes the acceptance of gratification (pecuniary or otherwise) other than the acceptance of legal remuneration by public servants which is paid by their employers in connection with the performance of their duties.
- The LLA requires each State to establish a Lokayukta by law under the state legislature.

## GLOSSARY

**Business Ethics:** Business ethics (also known as corporate ethics) is a form of applied ethics or professional ethics, that examines ethical principles and moral or ethical problems that can arise in a business environment.

**Indian Ethos:** Indian Ethos in Management refers to the values and practices that can contribute to service, leadership and management. These values and practices are rooted in Sanathana Dharma (the eternal essence), and have been influenced by various strands of Indian philosophy.

**Ethical Dilemma:** An ethical dilemma or ethical paradox is a decision-making problem between two possible moral imperatives, neither of which is unambiguously acceptable or preferable. The complexity arises out of the situational conflict in which obeying one would result in transgressing another.

**Bribery:** 'Bribery' includes giving or receiving bribe and third party gratification. The act of giving bribe is when committed intentionally in the course of economic, financial or commercial activities and when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, act or refrain from acting.

**Facilitaion payment:** Facilitation payment' means a payments made to government or private official that acts as an incentive for the official to complete some action or process expeditiously to the benefit of the party making the payment.

**PCA:** The Prevention of Corruption Act, 1988 is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Is there any advantages of Business Ethics for an organization? Explain some of the advantages?
2. Explain the concept of 'Ethical Dilemma' with suitable examples.
3. Enumerate the laws and enforcement regimes behind Anti-Corruption and Anti-Bribery Laws in India.
4. What is the composition of the Lokpal?
5. How ICSI Anti-Bribery Code have been playing a pivotal role in curbing corrupting practices?

## LIST OF FURTHER READINGS

- Business Ethics and Corporate Governance by A.C. Fernando, Publisher: Pearson
- Conscious Leadership: Elevating Humanity Through Business by John Mackey, Steve Mcintosh, and Carter Phipps
- Speed of Trust: The One Thing That Changes Everything by Stephen M .R. Covey
- Ethics 101: What Every Leader Needs To Know by John C. Maxwell
- Grow the Pie: How Great Companies Deliver Both Purpose and Profit by Alex Edmans
- The Business Ethics Field Guide: The Essential Companion to Leading Your Career and Your Company to Greatness by by Bill O'Rourke, Brad Agle, and Aaron Miller

- Intentional Integrity: How Smart Companies Can Lead an Ethical Revolution by Robert Chesnut
- Net Positive: How Courageous Companies Thrive by Giving More Than They Take by Andrew S. Winston
- Defining Moments: When Managers Must Choose Between Right and Right by Joseph L. Badaracco Jr.
- Business Ethics by Stephen M. Byars and Kurt Stanberry
- Business Ethics: Best Practices for Designing and Managing Ethical Organizations by Denis Collins


**OTHER REFERENCES**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- https://www.wallstreetmojo.com/business-ethics/
- https://corporatefinanceinstitute.com/resources/esg/business-ethics/
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- https://ethicalengineer.ttu.edu/studies/case-study-bhopal-gas-tragedy
- https://cases.som.yale.edu/cadbury

# Board's Accountability on ESG

Lesson 12

## KEY CONCEPTS

■ ESG ■ Identification of ESG Goals ■ ESG Governance Structure

## Learning Objectives

**To understand:**

- Board's Responsibility for integration of ESG into vision, mission, values and strategies.
- Constituents of ESG- Factors covered under Environmental, Social and Governance.
- International perspectives
- ESG reporting scenario prevailing in selected corporate houses.

## Lesson Outline

- Introduction
- What constitutes 'E', 'S', 'G'?
- International Perspective
- Accountability of the Board on "E", "S", "G"
- ESG Governance Structure
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

The term "ESG" was first coined in the year 2004 when the United Nations Global Compact and the Swiss Federal Department of Foreign Affairs jointly published a report "Who Cares Wins. Connecting Financia Markets to a Changing World." ESG has now become centre stage and a critical requirement for an organisation's ability to create value and nurture sustainability. More and more Boards are integrating their ESG goals and mission into the operating strategies and policies of their organisations. Survival of a business, in the future may actually depend to a significant extent on its ESG focus.

### What is ESG?

ESG stands for Environmental, Social and Governance. ESG represents the three main areas that organisations should focus and manage to improve overall sustainability.

The International Finance Corporation, World Bank Group defines ESG as under:

> *"ESG as a set of environmental, social, and governance factors considered by companies when managing their operations, and investors when making investments, in respect of the risks, impacts, and opportunities relating to but not limited to:*
>
> *Environmental issues: potential or actual changes to the physical or natural environment (e.g. pollution, biodiversity impacts, carbon emissions, climate change, natural resource use);*
>
> *Social issues: potential or actual changes on surrounding community and workers (e.g. health and safety, supply chain, diversity and inclusion); and*
>
> *Governance: corporate governance structures and processes by which companies are directed and controlled (e.g. board structure and diversity, ethical conduct, risk management, disclosure and transparency), including the governance of key environmental and social policies and procedures."*

### What Constitutes ESG?

In order to provide a clear understanding on ESG, the factors that impact ESG are separately listed below:

**Environmental:**

- Usage:

  Natural Resources

  Energy

  Water

- Generation:

  By Products

  Waste

  Carbon Emissions

- Pollution

  Green House Gas Emissions

Air Pollution

Water Pollution

- General Impact:

Climate Change

Bio Diversity and Ecosystems Rehabilitation

**Social:**

- Employee Related

Labour Practices

Health and Safety

Child Labour

Employee Welfare

- Society Related:

Diversity and Inclusion

Community Management

Attributes of Product and Services

Human Rights Policy

**Governance:**

- Board Related:

Board Composition

Board Diversity

Board Independence

Succession Planning

Board Evaluation

- Others:

Risk Management

Internal Controls, Policies and Processes

Ethics and Compliance Management

Governance Structure

Environmental and Social Oversight

Executive and Board Compensation

Stakeholder Engagement

Anti-Corruption

Supply Chain

IT Security & Data Protection

Disclosures and Reporting

## Why is ESG relevant to today's organisations?

There are several reasons why ESG concerns have now become very relevant and intertwined with a company's operations.

a) **Regulatory and Governmental interventions:**

There is now huge pressure to get organisations work on climate change, reduce GHG emissions, limit resources usage, curb waste and improve productivity. The adoption by various governments of Sustainability Development Goals is a pointer in this direction. Businesses must therefore focus their attention on their Sustainability orientation. Otherwise the governments could make their operations uneconomical by levying additional costs. Sometimes they may even go to the extent of shutting down operations.

b) **Cost Reductions:**

Adopting ESG relevant processes can actually lead to reduction in overall cost of operations for very many businesses. For instance, savings in water consumption, recycling of waste, reduction in usage of scarce raw materials lead to corresponding decrease in cost of goods sold. In these days when pricing has to be super-competitive, such reductions directly add to your bottom line.

c) **Improvement in Productivity:**

There is a clear link between an organisation's orientation to environment and sustainability and its employees' productivity. When the company sees the big picture, when there is an attempt to look at the interests of all stakeholders, the employees are motivated to give their best. Such an exercise also attracts better talent.

d) **Better Social Standing/Better Brand Image**

A company with a concern for environment and a deep interest in improving sustainability is always better regarded in the society in which it operates. The brand image of the company is unconsciously built with every forward step it takes in the ESG arena.

e) **Increased Business Revenue:**

With more customers looking to purchase only sustainable products, ESG focus will actually see more revenue traction for the company concerned. A product manufactured with lower carbon emissions, reduced material usage (say packaging) and better governance processes is bound to be preferred by a "sustainability conscious" customer.

f) **Better Financing Options:**

ESG considerations (apart from economic returns) are a key part of an investor's decision to financing. A Company with a better ESG track record can access easier financing at better terms.

As ESG is emerging as an important strategy resulting in long term value creation, the role/engagement and the accountability of the Board is substantial in terms of strategies, policies, oversight and its integration into the business.

## Indian Regulatory Perspective on Accountability of the Board:

The MCA and the Companies Act provide the responsibility requirements of Indian Boards towards ESG considerations.

Sec 166(2) of the Companies Act provides that a Director of a Company shall act in good faith in order to promote the objects of the Company for the benefit of its members as a whole and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

In 2019 the Ministry of Corporate Affairs released the National Guidelines on Responsible Business Conduct requiring Companies to focus on ESG along with business operations.

SEBI and the Companies Act have also mandated reporting requirements on the Board on ESG.

## International Regulatory Perspective on Accountability of the Board:

**Malaysia:**

The Malaysian Code of Corporate Governance updated in April 21 clearly mandates the Board to integrate sustainability considerations in operating Strategy. Principle A.1 of the Code reads as under:

Effective board leadership and oversight also require the integration of sustainability considerations in corporate strategy, governance and decision-making, as sustainability and its underlying environmental, social as well as governance (ESG) issues become increasingly material to the ability of companies to create durable and sustainable value and maintain confidence of their stakeholders. For companies to be resilient, boards need to take a much more holistic view of the business coupled with proactive and effective measures to anticipate and address material ESG risks and opportunities.

**United States:**

Each State in the US has its own corporate governance requirements but most of them have been modelled on the Delaware Act or the Model Business Corporations Act. They are more on the governance side of corporations.

The Securities Exchange Commission, in respect of all listed corporations, has laid down numerous reporting requirements mandating corporations to disclose information on ESG.

**Singapore:**

The Practice Guidance issued by the Monetary Authority of Singapore highlights the various governance requirements of corporations. Guidance Note No1 relates to the Board Roles and Director duties. Among other things the Note States that the Board's role is to: "provide entrepreneurial leadership and set strategic objectives which should include appropriate focus on value creation, innovation and sustainability.

## Board's accountability for ESG:

The Regulatory authorities both domestic and foreign are clear about the accountability of the Board of Directors for ESG initiatives. It, therefore, becomes a critical responsibility for the Board to see that ESG issues/concerns/ projects are integrated into the operational policies, processes and objectives so that achievement of business objectives would directly lead to meeting ESG requirements as well. We can study the accountability of the Board under the following heads:

1. Identification of ESG Risks and Opportunities
2. Integration of ESG Goals into operating strategies
3. ESG Reporting.

**1. Identification of ESG Risks and Opportunities:**

In the section "What constitutes ESG" a number of ESG factors that need to be considered by any business have been listed. Each organisation needs to prioritise from this list the top ESG concerns that affect their operations or their other stakeholders and look to address them.

As per the Global Risks Report 2024 of the World Economic Forum, the following are the top ten severe Environmental and Social risks over the next ten-year period:

1. Extreme Weather Events
2. Critical change to Earth systems
3. Bio-diversity loss and Eco System Collapse
4. Natural Resource shortage
5. Misinformation and disinformation
6. Adverse outcomes of AI technologies
7. Involuntary Migration
8. Cyber Insecurity
9. Societal Polarisation
10. Pollution

Wherever these affect a particular business, they will have to considered for remedial action.

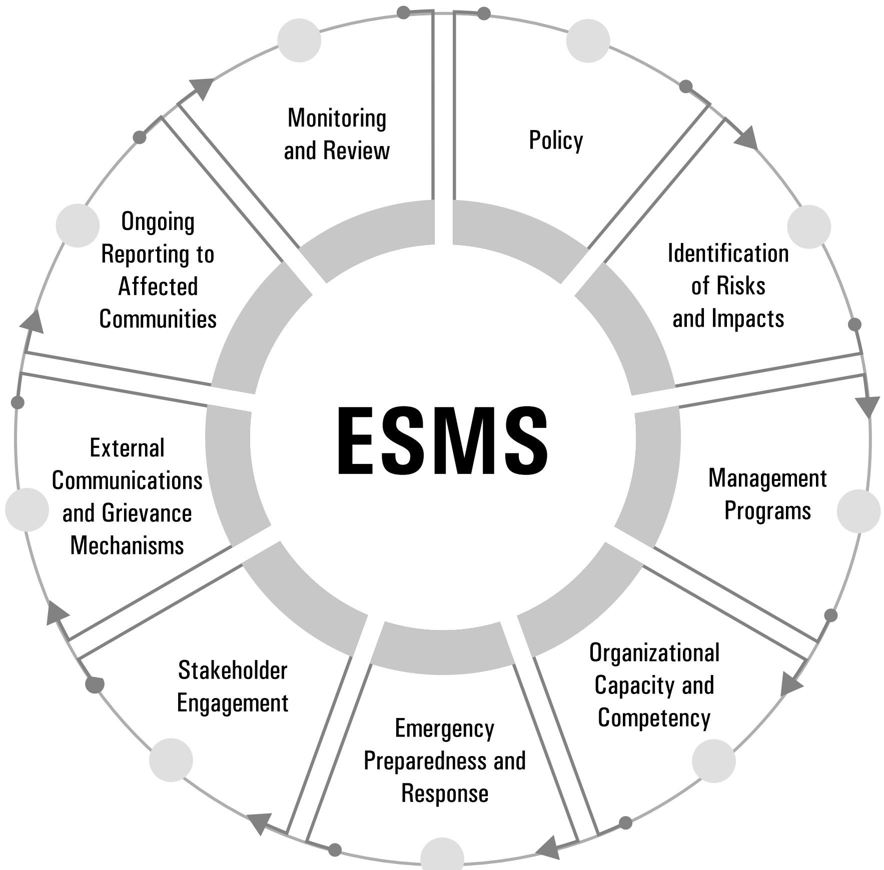
CRISIL in their ESG risk assessment of 586 companies for the fiscal year 2022 found 73 companies in the "below average" and "weak" categories. A lot of work is therefore to be done by the Boards of Indian Companies to combat ESG related issues.

**2. Integration of ESG Risks/Opportunities into Strategy/Policy/Oversight:**

The next step is to integrate the identified ESG Risks and Opportunities into the Organisation's strategies, objectives and policies and have an effective oversight of the same. To make this integration, the Board has to consider the following:

1. Align ESG Goals with the respective operational functions.
2. Have a separate oversight for ESG standards and goals
3. Establish organisational policies on ESG e.g. human rights policy, environment policy, anti-corruption policy etc.

   The International Finance Corporation has developed an Environmental and Social Management System Implementation Handbook demonstrating how the various considerations listed above can be integrated into the normal management of a business. Nine elements have been identified to be worked on as shown in the following diagram:




*Source*: *IFC ESMS Implementation Hand Book*

The Board of Directors are accountable for most of the items stated in the elements of effective ESMS whether policy, identification of risks, stake holders' engagement, reporting obligations, monitoring/overseeing ESG targets.

The IFC ESG Guide Book states that *Boards are responsible for setting an organization's strategy and vision and for overseeing their implementation.Accordingly, they should ensure that ESG issues are fully integrated into their company's vision or purposeand its strategy.*

Deloitte's "Chair of the future—India perspective" survey Published in September 2022 states that The Chairs that were interacted with (35 Chairpersons of Indian corporates), observed that Boards need to have a clear oversight on the notion of sustainability and long-term value creation. They should be able to ask questions around the organisation's ability to transition to lower carbon initiatives, the removal of waste from supply chains, the climate impact on andof the business, and its social and community impact across the value chain and supply systems, amongst others.

**How have Indian Boards fared on ESG identification and integration:**

Let us look at some case studies:

**Hindustan Unilever Limited:**

One of the largest Fast Moving Consumer Goods Company in the country, Hindustan Unilever Limited has fully integrated sustainability into their business strategy and are working towards ESG goals to lead change.

The Company realises that it cannot be oblivious to the needs of the environment and society.

There is a separate ESG Committee of the Board with five Directors fully responsible for oversight on sustainability related matters. The Board and the ESG Committee have ensured that the Company's sustainable business strategy is also in line with India's development agenda and the United Nations Sustainable Development Goals.

The Board has laid down the following policies:

- Responsible Partner Policy specifying among other things fundamental principles for sustainable business;
- Safety and Health Policy for employees, contractors and visitors; and
- Environment Policy to prevent or minimise the risk of an adverse environmental impact arising from their business.

Following are the data related to ESG as listed out in their Annual Report for the financial year 2022-23.

**Improvements:**

| | | |
|---|---|---|
| 1. | Reduction in total energy consumed - | 44% |
| 2. | Reduction in $CO_2$ emissions - | 97% |
| 3. | Reduction in water usage - | 48% |
| 4. | Reduction in waste generated - | 55% |
| 5. | No of women micro entrepreneurs | |
| | Created by Project Shakti | 1,90,000+ |
| 6. | No of employees trained on | |
| | Code of Business Principles - | 100% |
| 7. | Hazardous Waste to Landfill | 0% |

The Company has set out an ambitious sustainability agenda to tackle issues such as climate change, plastic pollution and inequality. Some of the targets set out are:

| | |
|---|---|
| • Net Zero Emissions for all Products | By 2039 |
| • Reduce by 50% the Greenhouse Gas impact of the products sold | By 2030 |
| • Help protect and regenerate land, forests and oceans | By 2030 |
| • Contribute to 3 trillion litres of water potential in India | By 2025 |
| • Double the number of food products sold that deliver positive nutrition | By 2025 |
| • 5% of the workforce to be made up of people with disabilities | By 2025 |
| • Ensure that everyone providing goods and services to the Company will | |
| • Earn a living wage or income | By 2030 |
| • Pioneer new employment models and provide access to flexible working practices to all employees | By 2030 |

**ICICI Bank Limited:**

One of the largest banks in the country, ICICI Bank is cognisant of protecting and nurturing the environment to ensure the sustenance of the future generations. The Bank has adopted a structured approach in building green workplaces, conserving energy and water and reducing the use of paper.

ICICI Foundation, the philanthropic arm of the Bank implements environment supportive projects in the areas of tree plantation, sustainable forests, watershed management, rainwater harvesting and renewable energy.

The Bank's ESG philosophy is to adopt sustainable business practices that ensures the long-term success of the organisation and at the same time have a positive impact on the environment and the society.

The Bank's ESG policy is approved by the Board of Directors and the Risk Committee of the Board comprising of five directors has complete oversight of this Policy. The Bank has a Steering Committee under the Risk Committee of the Board to closely monitor progress on ESG initiatives.

**Highlights of their ESG activities as per their Annual Report for the year 22-23:**

| | | |
|---|---|---|
| 1. | Water Saving | 11 billion litres |
| 2. | Water Harvesting Potential created | 17.1 billion litres |
| 3. | Green Energy Certification - | For a little over one third area |
| 4. | Developed a Framework for Sustainable Financing – billion | Outstanding as at 31st March 2023 – 556 |
| 5. | Bank's Data Privacy Practices | above Industry's benchmark. |
| 6. | Dedicated ESG Team for ESG initiatives | |

**ITC Limited:**

A diversified conglomerate, ITC has been a pioneer in Triple Bottom Line reporting. The Company believes that businesses exist to service society and has made sustainable and inclusive growth as the bedrock of its corporate strategy.

The Company has been carbon, water and solid waste recycling positive for more than a decade and is now focussing its agenda under Sustainability 2.0 on the following areas:

- Climate change
- Net zero economy
- Water Security
- Restoration of Bio Diversity
- Nature Based Solutions
- Circular Economy for post-consumer packaging waste

The Board has constituted a CSR and Sustainability Committee consisting of 9 Directors to oversee all ESG and Sustainability initiatives of the Company.

**Tata Motors Ltd:**

One of the largest automobile companies in the country, the Board of Tata Motors is committed to ensuring that sustainability is engrained in their values and integrated into their business strategy. They aim to forge a better future for generations to come.

The Board has constituted a Safety, Health and Sustainability Committee to oversee the ESG functions. Being an integral part of the Tata Group endeavour "Project Aalingana", the Company emphasises on decarbonisation, circular economy principles and preservation of the natural environment as sustainability initiatives to be integrated into their business strategy. The Company has not only an Environmental Policy but also an "Environmental Procurement Policy" to tailor environmental concerns into procurement operations.

## 3. ESG Reporting

There are two types of Reporting on ESG: mandatory and voluntary.

**Mandatory Reporting:**

Sec 134(4) introduced one of the first ESG disclosure requirements for Companies. It mandated Companies to include a report by the Board on conservation of energy along with the annual financial statements.

SEBI in the year 2021 released the Business Responsibility and Sustainability Report Framework aligning with the nine principles espoused in the NGRBC. The BRSR framework has been made applicable to the top 1000 listed companies by market capitalisation.

**Voluntary Reporting:**

A large number of Indian Companies voluntarily report on their Sustainability performance through

a) Integrated Reporting (combination of financial and non-financial reporting)

b) Sustainability Reporting using standards set by:

- The International Sustainability Standards Board
- The Task Force on Climate Related Financial Disclosures
- Carbon Disclosure Project
- Global Reporting Initiative
- B Corp Standard

**Disclosure requirements under SEBI BRSR Framework with respect to role and Accountability of the Board on ESG**

**PART III. Section B: Guidance note for Business Responsibility & Sustainability Reporting format that deals with Management and Process Disclosures, substantially covering the disclosure requirements on ESG related matters on the part of Board are as under:**

| ***Q. No.*** | ***Field Name*** | ***Instruction/Guidance*** |
|---|---|---|
| 5, 6 | Specific commitments, goals and targets set by the entity along-with performance, if any | Under this field, the entity may disclose if it has any specific commitment, goal or target against any of the principles. Such disclosures may include the following:<br>● Baseline and context for goals and targets<br>● Entities covered such as subsidiaries / associates / joint ventures / value chain partners<br>● Expected result or outcome, in quantitative or qualitative terms |

| Q. No. | Field Name | Instruction/Guidance |
|---|---|---|
| | | • Expected timeline for achieving each goal and target<br>• Whether goals and targets are mandatory (based on legislation) or voluntary. If they are mandatory, the organization should list the relevant legislation.<br><br>The entity shall state the performance achieved against each goal or target. Any change in goals with regard to timelines, partial achievement of a goal or delay in achievement should also be specifically indicated, and where possible, with reasons.<br><br>The entity need not strictly follow the tabular format for this disclosure. The issues for each principle can be covered in a running format. |
| 7. | Statement by director responsible for the report for to highlight ESG issues | The listed entity shall include a statement from the director who is responsible for preparation of the report, highlighting the relevance of sustainability to the organization. Such statement can include the following:<br>• The overall vision and strategy of the organization for the short-term, medium- term, and long-term, with respect to managing the significant environmental and social impacts that the organization causes, contributes to, or that are directly linked to its activities, products or services<br>• Strategic priorities and key topics for the short and medium-term with respect to sustainability<br>• Broader trends influencing the sustainability priorities of the entity<br>• Key events, achievements, and failures during the reporting period<br>• Views on performance with respect to targets<br>• Outlook on the organization's main challenges and targets<br>• Any other items pertaining to the organization's strategic approach<br><br>2. The listed entity can place this disclosure at the beginning of the report or under Section B. |

| Q. No. | Field Name | Instruction/Guidance |
|---|---|---|
| 8. | Highest authority responsible for implementation and oversight of the Business Responsibility policy(ies) | 1. For the policies disclosed at Question 1 of Section B, the entity shall disclose the highest executive authority in the organization who is responsible for their implementation and highest authority responsible for oversight. Such authority could be a director of the board, committee of the board, senior management personnel or a committee of employees.<br>2. In case a committee is the highest authority, then the composition of the committee shall be disclosed, including the following: name of individuals, designation and in case of director, DIN and category (Chair / ED / NED / ID).<br>3. In case an individual is the highest authority, the name, designation and in case of director, DIN and category (Chair / ED / NED / ID) shall be disclosed.<br>4. In case, different authorities are responsible for the implementation of different policies, the same may be indicated. |
| 9. | Does the entity have a specified Committee of the Board/ Director responsible for decision making on sustainability related issues? (Yes / No) | 1. The entity shall indicate 'Yes' if it has a specified Committee of the Board or a director of the Board of the entity who is responsible for decision making on sustainability related issues.<br>2. In case a Committee of the Board is responsible, its composition shall be disclosed, including the following: name of individual, designation and in case of director, DIN and category (Chair / ED / NED / ID). In case a director is responsible, DIN and category (Chair / ED / NED / ID) shall be disclosed.<br>3. In case the response to this question is the same as that to question 8, the entity need not repeat its response and can cross-refer to the same. |

Students may refer to Lesson 19 (Sustainability Audit; ESG Rating; Emerging Mandates from Government and Regulators) for the details of ESG reporting Indian/international prescriptions

**Summary:**

To summarise, the following questions may be raised on accountability of Board on ESG?

1. **With respect to Board Composition/Committees:**

   Whether the Company has diversified Board including an ESG expert as Board member?

   Whether the Board has constituted an exclusive committee for identifying ESG risks and opportunities?

2. **With respect to Policies and Strategies:**

Whether the company has ESG Goals and targets?

Whether the Company's vision/mission/values as aligned with ESG Goals? Whether ESG is integrated into business models?

Whether the company has policies on ESG matters on non-mandatory matters? Whether the company has extended the ESG practices to supply chain also?

Whether the Board, Senior Management and employees are sensitised with various ESG issues? ?

Whether ESG targets are set for Board/Senior management? Whether Enterprise Risk Management System addresses ESG related risks?

Whether ESG issues are taken into consideration for investment decision?

How effectively the Board engages with stakeholders?

3. **With respect to Reporting:**

Whether the Company disclosures ESG related matters as per regulatory prescriptions?

Whether the company disclosures critical ESG issues voluntarily beyond what is prescribed?

Does the company follow global standards for ESG Reporting?

**Case Study on Sterlite Industries (India) Ltd Copper Smelting Plant at Thoothukudi, Tamil Nadu**

Sterlite Industries (India) Ltd set up a 40000-tonne capacity copper smelter unit in Thoothukudi, Tamil Nadu in 1997. The plant operated from 1998 till 2018. Ever since its commencement, the plant was complained of violating pollution norms. After a huge protest from locals, the plant was ordered to be shut down by the Tamil Nadu Pollution Control Board on 28th May 2018.

The Madras High Court upheld the decision of the TNPCB. Sterlite then went on appeal against the closure to the Supreme Court. A three-judge bench of the Supreme Court on 29th February 24 upheld the orders of the Madras High Court. The Apex Court stressed the need to prioritise the well-being of the local populace and upheld the principles of sustainable development, the polluter-pays principle and the public trust doctrine in its decision to keep the plant closed.

**Case of HCL Technologies**

The company has a long history of giving back to the communities and have been built on the values of innovation, entrepreneurship, humanity and a people-centric culture. The company is committed to long term value creation for all its stakeholders and its philosophy has always been about incorporating the right environmental, social and governance (ESG) practices to ensure a sustainable present and future. Its holistic approach is designed to maximize its contribution towards the UN Sustainable Development Goals (SDGs).

The company conducts materiality assessment periodically to identify and prioritize topics material to our business operations. The stakeholder engagement inputs, regulatory requirements, global trends and peer benchmarking are fed into our materiality exercise. The goals of the company under Environment, Social and Governance are as under:

1. **Environment**

   - Achieve Net Zero by 2040.

- Reduce absolute scope 1 & 2 emissions by 50% by 2030.
- Transition to 80% of electricity usage to renewable energy by 2030.
- Achieve zero waste to landfill at all owned facilities by 2025.

**2. Social**

- Improve the environmental, social and governance (ESG) knowledge and skills of the employees.
- Improve the gender diversity in the workforce with 40%.
- Women by 2030 Increase gender representation in senior leadership levels to 30% by 2030.
- Become recognized among the best employers in our key operating geographies.

**3. Governance**

- Strengthen the sustainable supply chain process.
- Integrate environmental, social and governance (ESG) to Risk Management and Internal Audit processes.
- Become recognized among industry leader for information security practices and data privacy standards.

**Tata Group: Project Aalingana:**

Project Aalingana (meaning embrace in Sanskrit) embodies the Tata group's vision for a greener, cleaner, more sustainable and equitable future for the planet. It commits embedding sustainability into business strategy by focussing on three interconnected pillars:

i) driving the decarbonisation of business and our value chain;

ii) applying a systemic circular economy approach to reduce resource use and waste; and

iii) preserving and restoring the natural environment.

The project has been launched with sustainability commitments from seven companies who currently make up 99.5% of the group's Scope 1 and Scope 2 emissions, 94% of freshwater use and 99.4% of solid waste.

The project has the following targets set out:

**Driving Net Zero:**

25% reduction in absolute carbon emissions by 2030 (baseline 2020)

Net Zero emissions across the group by 2045

**Pioneering Circular Economies:**

More than double the content of renewable or recycled resources in products by 2025 (baseline 2020)

Replenish freshwater and zero waste to landfill by 2030

Replenish more freshwater than consumed by 2040

**Preserving Nature and Bio Diversity:**

Action plans for net positive impact by 2024.

Invest in Nature-based solutions by 2025

Be a Nature Based Solution leader by 2030

## WAY FORWARD

With reference to ESG matters, it is to be noted that there's no one-size-fits-all solution. The boards of the companies must navigate its own uniqueness related to its organizational structure, global reach, environmental impact, business circumstances, and industry requirements. Further, the broad constellation of topics comprising ESG often doesn't fit neatly into any one board committee's charge. Consequently, companies increasingly are opting for ESG governance frameworks that allocate responsibilities to various combinations of board committees and the full board.

It is to be noted that companies in high-emitting sectors like industry and energy face stringent scrutiny by the Government.

Forward-looking organisations started reporting their ESG performances complying with globally-accredited frameworks such as GRI, TCFD, and IR. Even unlisted companies voluntarily disclose their ESG exercises based on the BRSR-lite format. Many large global investors have adopted well-defined ESG policies in their due diligence and investment monitoring processes. They capitalise on opportunities to promote ecologically impactful investing and environmental sustainability. On the other hand, investors perform exclusionary screening for socially sensitive companies and avoid investing in entities with poor ESG parameters. However, the Indian corporate environment is still at an early stage of optimising its transition strategy, financing requirements, and ESG profiles.

Thus, it may be inferred that board's accountability on ESG matters is going to soar in the near future and their decisions or approaches in dealing with ESG issues will undergo microscopic analysis by the stakeholders.

### LESSON ROUND-UP

- There is substantial shift in the focus of companies from shareholder value maximisation to enterprise value creation for stakeholders including employees, customers, communities, government and supply chain as well.
- The Board of Directors are accountable for most of the items stated in the elements of effective ESMS whether policy, identification of risks, stakeholders engagement, reporting obligations, monitoring/ overseeing ESG targets.
- Climate Action failure is considered to be most critical risk globally in both short term and long term. As per the Global Risks Report 2022 of the world Economic Forum, most severe risks on a global scale over the next 10 years include, climate action failure, extreme weather, bio-diversity loss , social cohesion erosion, livelihood crises, infectious diseases etc.
- Many companies already use management systems for quality control. An environmental and social management system (ESMS) simply extends that approach to the management of your business's impact on the environment, your workers, and other external stakeholders.
- The accountability of the Board on ESG may be discussed under the following heads:
    1. Identification of ESG risks and opportunities.
    2. Strategy, policy, oversight and Value creation.
    3. ESG Reporting.

## GLOSSARY

**ESG Performance:** An organization's performance in fulfilling its responsibilities regarding environmental, social, and governance issues.

**Integrated Reporting:** Integrated reporting is a process founded on integrated thinking for communicating how an organisation's strategy, governance, performance and prospects lead to the creation of value in the short, medium and long term.

**BRSR Framework:** The BRSR Framework is based on 9 Principles, which include conducting business with integrity, providing sustainable and safe goods and services, respecting and promoting human rights, and promoting inclusive growth and equitable development, among others.

**4 Ps of Board's Accountability:** The four Ps of Board's Accountability are- people, purpose, performance and progression.

**3 ESG Pillars:** The three pillars of ESG are- people, process and product.

**Board Accountability:** Board accountability means that the board takes responsibility for the company's actions and presents them transparently to stakeholders.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Examine the performance of any two listed public sector companies (Central Public Sector Enterprises, preferably 'Navratnas') and two private sector companies from Coal, Power and Fertilizers sectors (core sectors of Indian economy) on their compliances with the elements covered under the Environmental, Social and Governance dimensions. Suggest scope of improvement.
2. How the concept of Business Responsibility and Sustainability Reporting is going to change the scenario of corporate sector's approach towards achieving business sustainability and growth?
3. What are the key takeaways for Indian companies with reference to the best practices of ESG?

## LIST OF FURTHER READINGS


- ESG Matters: How to Save the Planet, Empower People, and Outperform the Competition by Dr. Debra Brown
- Benchmarking ESG & CSR: A Compendium of Best Practices in ESG & CSR in India by Garima Dadhich, Ravi Raj Atrey
- Sustainability: What Everyone Needs to Know by Paul B. Thompson · Patricia E. Norris
- ESG in the Boardroom: A Guidebook for Directors by Katayun Iris Jaffari and Stephen Pike


## OTHER REFERENCES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- https://timesofindia.indiatimes.com/blogs/voices/india-transforms-its-esg-landscape-to-be-future-ready/
- https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure2_p.PDF

# Environment

Lesson 13

## KEY CONCEPTS

■ Environment ■ Water quality ■ Air quality ■ Climate change ■ Nationally Determined Contributions (NDCs) ■ Environmental Impact ■ Energy Conservation and Management

## Learning Objectives

**To understand:**

- The concept of environment and its significance
- Policy related aspects of environment
- Environmental policies
- Environmental impacts
- The scenario of energy consumption in India
- The approaches embraced by various companies for fostering energy conservation
- Creating awareness for effective energy management
- Bureau of Energy Efficiency
- Environmental improvement scenario in India

## Lesson Outline

## INTRODUCTION

The environment consists of all things-living or non-living that influence human life. It plays a vital role in the functioning of our daily lives. The environment/nature and its wonderful species existed even before human habitat. Every species, be it on land or water, existed peacefully. The mayhem began after the dawn of human civilization and industrialization. Humans began to use the environment as a means to an end without giving much thought to the consequences of the abuse or respect that it should give to the facilitator of life on Earth.

The importance of environment is evident from the following facts:

i) The environment provides us with resources for production which include renewable and non-renewable resources.

ii) The environment includes sun, water, air, and soil without which human life would not exist. It sustains life by providing genetic diversity and biodiversity.

iii) Production and consumption of activities generate waste mainly in the manner of garbage that the environment helps get rid of.

iv) Humans enjoy the beauty of mountains, lakes, rivers, deserts, and many other breath-taking natural elements only because of the existence of the environment.

v) In absence of environment existence of human beings, animals, food etc. will become extinct.

The above mentioned points have been discussed at length in the ensuing paragraphs thereby focusing on the importance of environment conservations:

**a)** **Agriculture:** Agriculture relies on the environment, and so do we rely on agriculture. A country's wealth could be measured on its ability to feed its people, although not all nations can produce agriculturally. Preserving the environment, with regards to agriculture, could mean preventing soil erosion, flooding and desertification, and could help its citizen have something to eat. Unsustainable farming techniques impact natural ecosystems and make farming impossible.

**b)** **Fishing:** The various bodies of water, like the oceans, lakes and seas are another source of essentials such as food. All over the world, communities depend on seafood and related activities. Marine conservation is therefore vital in protecting human food supplies, human activities and marine animals. It saves more animals from extinction and also feeds land animals which depend on water. Some of the major challenges affecting the oceans include overfishing and pollution.

**c)** **Climate:** Human activities have a direct impact on the climate and a subsequent effect on all life. Global warming, linked to greenhouse gas emissions, which is an adverse effect on the climate, results in droughts, floods, rising sea levels and cases of extreme heat and cold.

Climate change is the outcome of human activities and has been linked to excess rainfall, extreme weather and a change in regular weather patterns. Conserving natural environments should be done to see these extreme outcomes reversed, making the world a better place. For instance, reforesting will bring about rainfall, which will facilitate agriculture.

**d)** **Water quality:** Conservation measures ensure there is excellent-quality water for all. This, in turn, has both social, environmental and economic benefits. Economically, conservation of the environment boosts tourism, provides catch for fishing, decreases the cost of healthcare, and provides an environment for the ecotourism industry.

Generally, a conserved environment reduces the prevalence of water-borne diseases, increases the quality of water entering aquifers, helps use surface water for recreation and increases the overall quality of life. Environmentally, a conserved environment preserves the diversity of water-dependent plants and animals and preserves the various natural services of aquatic ecosystems.

**e) Air Quality:** A preserved environment provides good-quality air, which also has both social, economic and environmental benefits. Economically, it boosts tourism, decreases healthcare costs and decreases the erosion of buildings and pavements.

Socially, it decreases the prevalence of circulatory and lung-related diseases and also increases the quality of life for the residents. Environmentally, it preserves water quality and preserves aquatic ecosystems and biodiversity.

**f) Protects Biodiversity:** A conserved environment preserves biodiversity, which has equal benefits to the ones mentioned above. It preserves water and land-based ecosystems, preserves energy flow throughout the biosphere, provides for natural services, preserves food webs, and boosts nature-based tourism.

**g) Protects Wildlife:** Environmental protection protects wildlife and promotes biodiversity. Maintaining a healthy and functional ecosystem helps prevent the extinction of certain animal species. If the environment is destroyed, some animals are forced out of their habitat, making it hard for them to survive elsewhere. It could also bring about human and animal conflict, which ends disastrously for both species.

**h) Protects Earth:** Environmental protection definitely safeguards the environment from certain factors that are destroying the planet, such as climate change. We need to reduce the amount of harm we are inflicting on the planet as it is contributing to its destruction. If we do not conserve the environment, nature has a ferocious way of fighting back, such as extreme weather, droughts and heavy rains which are negatively affecting our lives, our food, and homes. We have to do everything humanly possible to conserve the environment, for the planet.

**i) Protects Human Health:** Environmental conservation will in turn protect and improve human lives and health. If the environment is destroyed, new diseases emerge, and species that could help produce medicines are destroyed. Wild habitats are particularly important as they prevent emerging infectious diseases from jumping from animals to humans.

## POLICY RELATED ASPECTS OF ENVIRONMENT

Environmental law is an integral part of any government agency. It includes a series of laws and regulations related to water quality, air quality, and other environmental aspects. The success of environmental legislation mainly depends on how they are implemented. Legislation is also a valuable tool to educate people about their responsibility to maintain a healthy environment. Environmental law in India is based on principles of environmental law and focuses on the management of certain natural resources such as minerals, forests, and fisheries. Environmental law in India directly reflects the provisions of the Constitution. The need to protect and maintain the environment and make sustainable use of natural resources is reflected in India's constitutional framework and India's international obligations.

In India, the major regulatory bodies entrusted with the environmental related matters are:

i) The Ministry of Environment & Forests is the nodal agency in the administrative structure of the Central Government, for the planning, promotion, co-ordination and overseeing the implementation of environmental and forestry programmes. The Ministry is also the Nodal agency in the country for the United Nations Environment Programme (UNEP).

The principal activities undertaken by Ministry of Environment & Forests, consist of conservation & survey of flora, fauna, forests and Wildlife, prevention & control of pollution, afforestation & regeneration of degraded areas and protection of environment, in the frame work of legislations. The main tools utilized for this include surveys, impact assessment, control of pollution, regeneration programmes, support to organizations, research to solve solutions and training to augment the requisite manpower, collection and dissemination of environmental information and creation of environmental awareness among all sectors of the country's population.

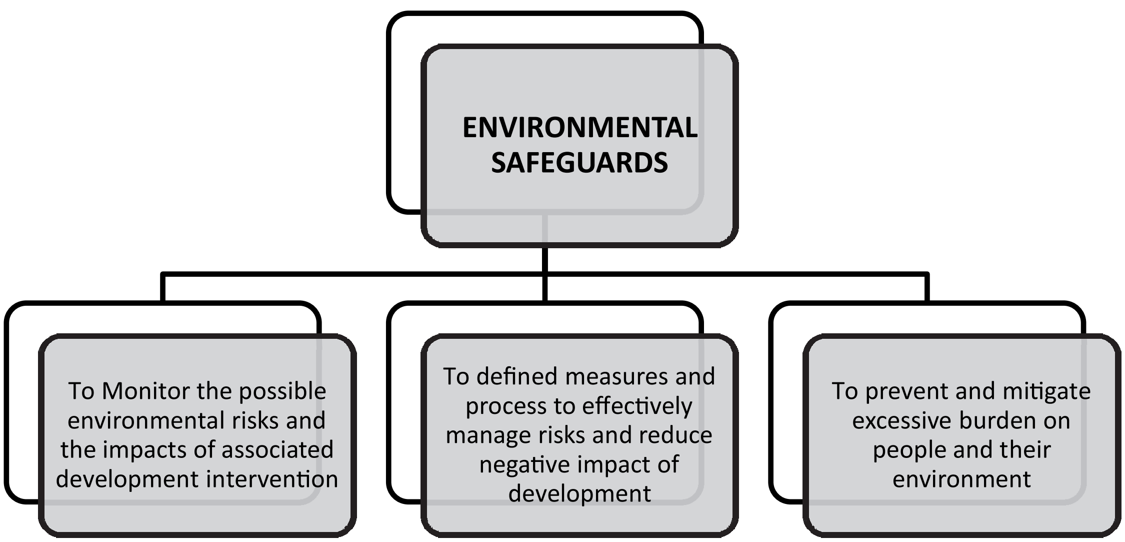
ii) The Central Pollution Control Board (CPCB), statutory organisation, was constituted in September, 1974 under the Water (Prevention and Control of Pollution) Act, 1974. Further, CPCB was entrusted with the powers and functions under the Air (Prevention and Control of Pollution) Act, 1981. It serves as a field formation and also provides technical services to the Ministry of Environment and Forests of the provisions of the Environment (Protection) Act, 1986.

Principal Functions of the CPCB, as spelt out in the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, (i) to promote cleanliness of streams and wells in different areas of the States by prevention, control and abatement of water pollution, and (ii) to improve the quality of air and to prevent, control or abate air pollution in the country.

At this juncture, it would be of substantial academic interests to explore the genesis of environment protection policies in India. Its beginning can be traced to Stockholm Declaration of 1972 which pushed India towards ensuring environmental protection by setting up an authority named National Council for Environmental Policy and Planning within the Department of Science and Technology that same year. It was later transformed into the Ministry of Environment and Forest (MoEF) in 1985, which is an apex body to regulate and ensure environmental protection in India. A constitutional amendment incorporated Article 48A and Article 51A (g) under Directive Principles of State Policy and Fundamental Duties, respectively, to strengthen the environmental laws in India.

The environmental safeguard policies are framed by the Government of India (GoI) to reduce the risks due to impacts of development. These environmental safeguards have the potential to address key challenges such as biodiversity conservation, natural resource management and pollution abatement through specific policies that integrate environmental concerns into decision-making. The environmental safeguards is provided in exhibit 1.

**Exhibit 1**




**Source**: Citizen Consumer and Civic Action Group

Since the enforcement of the Environment (Protection) Act in 1986, the Government of India has launched programs for conservation of natural resources and biodiversity. However, the challenges have increased with rapid urbanisation, industrialisation and other destructive human activities leading to climate change. The overview of the important environmental protection policies of India is provided in exhibit 2.

**Exhibit 2**

**Overview of key environmental safeguard policies of India**

| ***S.NO.*** | ***Name of Policy and Year*** | ***Aim/Target*** |
|---|---|---|
| 1 | National Water Policy, 1987 | To govern the planning and development of water resources and their optimum utilisation |
| 2 | National Forest Policy, 1988 | To maintain ecological balance and safeguarding the interest of tribals and forest-dependent people by involving them in timber production and other local livelihood opportunities |
| 3 | National Conservation Strategy and Policy Statement on Environment and Development, 1992 | To regulate the utilisation of natural resources through joint efforts of local communities and other stakeholders by incorporating traditional knowledge for environmental protection |
| 4 | Policy Statement for the Abatement of Pollution, 1992 | To strengthen the environmental compliance and enforcement of pollution control norms in India through CPCB and SPCBs |
| 5 | National Population Policy, 2000 | To achieve a stable population by 2045 through strategically managing the Total Fertility Rate (TFR) |
| 6 | National Environment Policy, 2006 | To achieve sustainable development, by incorporating environmental consideration into the development process |
| 7 | National Agroforestry Policy, 2014 | To increase sustainable agricultural production by combining tree farming with agriculture |

**Source:** Citizen Consumer and Civic Action Group

India's complex environmental regulations hinge on five major pieces of legislation: The Environment (Protection) Act, 1986 amended 1991; Forest (Conservation) Act, 1980 amended 1988; Wildlife (Protection) Act, 1972; the Water (Prevention and Control of Pollution) Act, 1974 amended 1988; and the Air (Prevention and Control of Pollution) Act, 1981 amended 1987. New laws making an impact on the regulatory landscape are the E-Waste Management Rules, 2016 and the Plastic Waste Management Amendment Rules, 2021.

The Indian government launched the National Action Plan on Climate Change in 2008 to enhance climate change mitigation and adaption efforts. The Climate Change Division of Ministry of Environment, Forest and Climate Change is India's nodal agency for climate change cooperation and global negotiations. It is also the nodal unit for coordinating the National Action Plan on Climate Change.

In 2010, the Government of India established the National Green Tribunal to better uphold environmental protections in the country. The Tribunal is an increasingly integral force in the effort to create a more sustainable national development path across industries.

In 2015, India released its Nationally Determined Contributions (NDCs). Back then, the key targets were mainly to increase the cumulative electric power installed capacity from non-fossil sources to 40 percent, and reduce the emissions intensity of GDP by 33 to 35 percent compared to 2005 levels, by 2030. The key highlights of India's updated NDCs include:

At the COP 26 in Glasgow, India's Prime Minister announced five targets to fight climate change: India will (1) raise its non-fossil energy capacity to 500 GW by 2030; (2) meet 50 percent of its energy requirements from renewable sources by 2030; (3) reduce total projected carbon emissions by one billion tons from 2021 to 2030; (4) reduce the carbon intensity of its economy by more than 45 percent by 2030; and (5) achieve the target of Net Zero by 2070. India is currently not on track to meet these ambitious targets.

The targets are raised significantly higher than before and accommodate the "Panchamrit"—goals presented by PM Modi at COP26—which are to raise the non-fossil fuel-based energy capacity of the country to 500 GW by 2030; to reduce the total projected carbon emissions by one billion tonnes between now and the year 2030; and to achieve net zero emissions by the year 2070.

This NDC serves as a first-of-its-kind step in the journey of realising the goal of net zero, and deeply focuses on improving the share of renewables in the energy sector. It is complemented by several government schemes at home such as PM-UJJWALA, PM-KUSUM, and PM-UJALA yojana, and internationally like the "One Sun, One World, One Grid initiative.

Taking a step further, at COP27, India submitted its Long-Term Low Emission Development Strategy (LT LEDS) to UNFCCC, which included plans for rapid expansion of green hydrogen production, three-fold increase in nuclear capacity by 2032, 20 percent ethanol blending in petrol by 2025, and more. With this, India joins the select list of fewer than 60 parties that have submitted their LT LEDS and shows India's readiness to fulfil its climate pledges.

The significance of environmental policies, acts or regulations all the more become important for addressing the issue of climate change. According to a study by the World Meteorological Organization in 2020, India is estimated to have suffered an average annual loss of US$ 87 billion (more than INR6 lakh crore) from climate-induced extreme weather events such as heat waves, tropical cyclones, floods, and more.

Climate change has also made heatwaves in India 30 times more likely. As the most vulnerable country to climate change, as per a ranking by HSBC, the loss incurred is not only substantially harming India's GDP but is also uprooting the lives of millions of people and exacerbating food and water insecurity, health risks, and environmental degradation.

## ENVIRONMENTAL PERMITS

Beginning March 5th 2016, the Ministry of Environment, Forests, and Climate Change has adopted a new method of classifying each type of industry. A concept of "white industries" has been introduced for classifying "non-polluting" companies. They do not need a permit or consent and just require to notify the relevant State Pollution Control Board.

For all the others (red, orange and green industries), there are certain environmental permits that are required to be obtained. You might require multiple numbers of permits depending on what kind of activity your business is delving into and the size of the business. Your company will be given a Pollution Index (PI) score, depending on the utilization of the resources, the air emissions, water effluents, and hazardous waste generated. You will be required to obtain consents and permits from the apt board. The PI score is allocated in the following manner:

**Red category:** PI score of 60 and above. Including but not restricted to asbestos, nuclear power plants, shipbreaking, oil and gas extraction, etc.

**Orange category:** PI score of 41 to 59. For example, food processing, printing ink manufacturing, paint blending, and pharmaceutical formulations.

**Green category:** PI score of 21 to 40. 63 sectors have been identified under it. For example sawmills, tyres/rube retreating, polythene and plastic products.

**White category:** PI score up to 20. For example solar power generation through solar photovoltaic cells, wind power, and mini hydro-electric power less than 25 megawatts.

In India, there exists an integrated permit system where a single permission suffices for a lot of consents and permits. For example, a combined consent application to the relevant State Pollution Control Board can be submitted to obtain the 'consent to establish' and subsequently the 'consent to operate' under the Water Act, Air Act and Hazardous and Other Waste Rules, 2016. Technology has made the process easy. For instance, the recently adopted E-Waste (Management) Rules, 2016 has introduced only one centralized and pan India application form by the Central Pollution Control Board instead of the State Board in order to get an authorization for the producers.

## ENVIRONMENTAL IMPACTS

Environmental impacts are changes in the natural or built environment, resulting directly from an activity that can have adverse effects on the air, land, water, fish, and wildlife or the inhabitants of the ecosystem. In other words, environmental impacts are those concerned with the built and natural environment, including air, water and biodiversity. Events cause impacts resulting from activities such as construction, energy use and transport of spectators and participants, which in turn impact on major environmental issues such as climate change and the reduction in natural resources.

Pollution, contamination, or destruction that occurs as a consequence of an action that can have short-term or long-term ramifications is considered an environmental impact. Most adverse environmental impacts also have a direct link to public health and quality of life issues. Several successful reductions in pollution levels have been attributed to stricter regulations, including levels of carbon monoxide and more recent reduction in fine particulate matter.

Mass transit, as a result of the operations and maintenance of infrastructure, facilities, and vehicles, has numerous potential environmental impacts to manage, including air pollution and greenhouse gas from energy use, noise, and vibrations, water discharges, waste removal of passenger trash, harmful materials such as lead-based paint, mercury, PCBs, asbestos, contaminated soil, and groundwater.

The environmental impacts of fossil fuels often result in real costs to society, in terms of human health (i.e., loss of work days, health care costs), infrastructure decay (i.e., from acid rain), declines in forests and fisheries, and perhaps ultimately, the costs associated with climate change.

Dollar costs of environmental externalities are difficult to evaluate and depend on assumptions that can be subject to wide interpretation and discretion. Although environmental impacts and associated dollar costs are often included in economic comparisons between renewable and conventional energy, investors rarely include such environmental costs in the bottom line used to make decisions.

Environmental impacts on health have long been a major concern of social reformers, forward-looking health professionals, and social movements. The state of a society's environmental health is very related to its social and economic organization. The huge upsurge of synthetic chemicals since World War II has altered the environment in dramatic ways, leading to increased cancers of various types and to other diseases. Actual and potential environmental hazards and catastrophes have become a significant component of the cultural milieu of many societies.

Environmental impacts from shipping have been the focus of increasing attention over the past decades, primarily focused on waterborne discharges and spills of oil, chemical, and sewage pollution. A number of international treaties and national laws have been adopted, along with industry best practices, to prevent these pollution releases through accident or substandard operation.

**IPAT Equation**

The environmental impact of materials use has often been conceptually formed by the “IPAT” equation:

**I=P×A×T..................................(Equation 1).**

in which the overall environmental impact I is expressed as the product of population P, the affluence A (expressed, for example, as gross domestic product [GDP] per person), and technology T (expressed, for example, as environmental impact per unit of per capita GDP). Historically proposed by Commoner, Ehrlich, and Holdren, the IPAT equation is now the “master equation” of industrial ecology. If the technology factor is expanded somewhat, the equation can be rewritten as:

**I=P×A×M×D×H..................... (Equation 2).**

where M is the materials intensity, D is the dissipation factor, and H is the hazard factor, which depends on the chemical form of the material lost and the susceptibility of the receiving ecosystem. In words, Eq. (2) becomes:

**Environmental impact=(Population)×(GDP/person)×(units of material/GDP)×(units of pollution/unit of material)×(impact/unit of pollution)............................. (Equation 3).**

In the energy sector, the equivalent of the IPAT equation is the Kaya’s identity, a mathematical expression for energy-related carbon emissions that can be written as:

**C=P×GDP/P×E/GDP×C/E.......................................(Equation 4).**

Where the total energy-related carbon emissions C is expressed as a product of population P, GDP per capita, energy intensity E/GDP, and carbon intensity of energy use C/E. Although the master equation and Kaya’s identity should be viewed as conceptual rather than mathematically rigorous, they can be used to suggest goals for technology and society.

The technology-related terms M, E, and C offer the greatest hope for a transition to sustainable development, especially in the short term, and it is modifying these terms that is among the central tenets of industrial ecology.

To comprehend the environmental impacts, it is essential to understand it in the light of ESG dimensions applicable to the corporate sector. In this section, the Indian corporate landscape have been considered to explore the environmental impacts, as these are intertwined concepts.

The awareness of ESG issues and targeting goals beyond maximising profits and minimising risks is now a growing trend among corporates around the world. While industrialisation has brought newer opportunities, there is no denying the fact that it also led to challenges like fast increasing global temperatures, natural calamities, extreme weather, loss of biodiversity, disease transmission and widening inequality. A sector-wise data shows that a mammoth 56% of the emissions is accounted for by energy industries, followed by manufacturing and construction ones. The transport accounts for 13% share in it.

According to S&P Global , India is likely to have over 52% of its gross domestic product (GDP) exposed to physical risks like wildfire, flood, sea’’ level rise, or storms by 2050. Clearly, embracing sustainability has become an imperative for businesses nowadays.

The good news is that the awareness of ESG issues and targeting goals beyond maximising profits and minimising risks is now a growing trend among the corporates around the world. And this trend is now reflected among Indian companies too. Much like their global counterparts, they are also paying attention to the ESG framework.

In a survey wherein 586 companies were covered, it was observed that only one-fifth published a detailed sustainability report in fiscal 2021. While FMCG and hotel industries were high on disclosures, companies that showed some glimmer of hope included auto OEMs, lending and cement sectors. In the cement industry, almost half of the companies analysed disclosed the clinker ratio, while two-thirds of the companies analysed in the auto space had EVs in their portfolio.

Three out of five companies in the textile sector disclosed the usage of recycled or sustainable source material. But only one adopted the Sustainable Apparel Coalition (SAC) HIGG Index, an industry standard to measure sustainability. The REITs put up a good show with 100% of them making quantitative disclosures on green building certifications in their portfolio.

However, of the total companies covered, merely 20 per cent made it in the 'strong' and 'leadership' matrix, while a whopping 80 per cent or 464 companies were placed as 'weak', 'below average' and 'adequate'. Entrepreneur India reached out to some of these companies from IT space to Pharma to Cement ( who figured in the leadership and strong matrix of Crisil Sustainability Yearbook 2022) to understand how they are walking the talk on maximizing their organisation's environmental, social, and governance (ESG) impact.

## Exemplary Approach of Indian Companies in creating Positive Environmental Impacts – Based on Annual Reports of 2021-22

i) **Infosys**

This IT giant has not only made it to the Crisil's ESG rankings for a second year in a row, but also finds a place in the Dow Jones Sustainability Index, which assesses the ESG performance of companies globally. Starting its climate action journey in 2008, the company turned carbon neutral in 2020, 30 years ahead of the timeline set by the Paris Agreement. By 2030, it aims to reduce absolute Scope 1 and 2 greenhouse gas emissions by 75% and scope 3 emissions by 30%, recycling 100% of used water, and zero waste to landfill.

ii) **Marico**

In the FMCG space, a number of initiatives are being taken like reduction in lamination based paper packaging, eliminating the use of single plastic, usage of recyclable packing material and water conservation.

Marico's water stewardship program, 'Jalashay,' focuses on replenishing more water for the community than that consumed in its own operations, year-on-year. Through this, it has successfully created 263 crore litres of water conservation capacities pan-India, till date which is over three times of total water that the company consumed in its operations in FY22. "We aim to build 412 crore litres of total water harvesting capacity across India by FY25," says Saugata Gupta, MD and CEO, Marico.

The FMCG company also launched the ESG 2.0 framework this year. Through this it plans to phase out hazardous substances such as PVCs while introducing at least 30% r-PCR in the packaging portfolio, wherever applicable. By FY25, it also aims to have a 100% recyclable, reusable or compostable packaging portfolio. "In parallel with this, we have set our net zero emissions target in global operations by 2040. In India, we aim to achieve net zero in operations by 2030, " adds Gupta.

iii) **DR. REDDY'S LABS**

The pharma giant identified its first set of six ESG goals in 2010 for the following decade. By 2020, it had met three goals fully water consumption, waste reduction, and stopping hazardous waste and three partially-water neutrality, energy consumption and renewable energy. It became the first pharma company in India and the third in Asia to join the Science-based Targets initiative (SBTi) for reducing the carbon footprint.

Recognised by the S&P Corporate Sustainability Assessment, the Dow Jones Sustainability Index, Frost & Sullivan TERI among others, it is the only Indian pharma company to be featured on the Bloomberg Gender- Equality Index. Its ESG goals for 2030 include 100% renewable power, carbon neutral in direct emissions (Scope 1 & 2), 12.5% reduction in indirect carbon emissions (Scope 3) and being water-positive by 2025.

iv) **MINDTREE**

The IT company scores high on ESG goals and has won several awards for the same. All its campuses are zero discharge locations. It implements WOW initiative- a program where the recyclable waste is scientifically disposed and sent for recycling. Through its 3R strategy (Reduce, reuse, recycle), it ensures minimal freshwater usage. The rainwater harvesting and installaton of recharging pit initiative at its Bengaluru facility helped it reduce private water purchases by 12.370 KL in FY22. It is committed to invest in green new buildings at all its locations, increase EV vehicles, and a large-scale data command center.

Going forward, it aims to achieve carbon neutrality by using 100% renewable energy for internal operation by 2030, a whopping 30% reduction in scope 1 & 2 emissions and 20% reduction in scope 3 emissions by 2025.

v) **ULTRATECH CEMENT**

Cement industry is a massive Co2 emitter. However, manufacturers are taking several steps to lower emissions. They are adding solar and wind power generating capacities along with utilising every potential of waste heat recovering system (WHRS) in the plant. They are also pushing for blended cement to reduce clinker ratio to reduce emissions. UltraTech cement, the industry leader, is committed to Net Zero Concrete by 2050 under the GCCA Climate Ambition 2050 and to the Science Based Targets Initiative (SBTi) of reducing Scope 1 CO2 intensity by 27% by 2032 from the 2017 levels.

The decarbonisation endeavours of the company has resulted in a 9.1% reduction of Scope 1 Co2 intensity against our SBTi target. Apart from this, it has taken measures like rain water harvesting & water recharge within its manufacturing units (mines, plant area and unit residential colonies) as well as through watershed projects in the local communities around the units, resulting in giving back 73+million $m^3$ of water to nature in FY22 alone making it 3.8 times water positive. It launched a sustainable supply chain called 'Project Sahyog', in 2019 and integrated ESG criteria into it.

The focus of the company is to accelerate 'ESGbility, strengthen sustainability ', wherein the company report comprehensive measures that have been taken and planned for the future to enhance the ESG quotient and sustainability.

vi) **Welspun Group**

In the textile space, Welspun group, is making great strides by restoring ecological balance in the domains of air, water and land. It is reducing its energy & carbon footprint through dedicated efforts towards energy efficiency, cleaner fuels and replacement of virgin raw materials with recycled raw materials. Moreover, it is monitoring its Scope 1 & Scope 2 emissions and reporting in the public domain.

It has also initiated Scope 3 emissions calculation as per the global standards and shall report the same. Its facilities are located in waterstarved zones and processing operations are highly water-intensive, making it imperative to be judicious in its usage. It has implemented a unique project in the area of water management at Anjar through the establishment of a 30 MLD Sewage treatment plant to meet its water requirement.

## ENERGY CONSUMPTION

The history of human evolution rests on the availability and use of energy. From the transformation from the early use of fire and animal power that improved lives, to the present world with use of electricity and cleaner sustainable fuels for a multitude of purposes – energy has been the enabler of development. Energy presents a fundamental need ranging from, but not limited to, the essential services of cooking, heating, cooling, lighting, mobility, and operation of appliances, to information and communications technology, and machines in every sector of every country.

The lack of access to reliable and clean energy supplies is now considered as a major barrier to improving human well-being around the globe. Energy is one of the major inputs for the economic development of any country. In the case of the developing countries, the energy sector assumes a critical importance in view of the ever increasing energy needs requiring huge investments to meet them.

Energy can be classified into several types based on the following criteria:

- Primary and Secondary energy
- Commercial and Non commercial energy
- Renewable and Non-Renewable energy

## Primary and Secondary Energy

Primary energy sources are those that are either found or stored in nature. Common primary energy sources are coal, oil, natural gas, and biomass (such as wood). Other primary energy sources available include nuclear energy from radioactive substances, thermal energy stored in earth's interior, and potential energy due to earth's gravity.

## Commercial Energy and Non Commercial Energy

Commercial Energy: The energy sources that are available in the market for a definite price are known as commercial energy. By far the most important forms of commercial energy are electricity, coal and refined petroleum products.

Commercial energy forms the basis of industrial, agricultural, transport and commercial development in the modern world. In the industrialized countries, commercialized fuels are predominant source not only for economic production, but also for many household tasks of general population. Examples: Electricity, lignite, coal, oil, natural gas etc.

Non-Commercial Energy: The energy sources that are not available in the commercial market for a price are classified as non-commercial energy. Non-commercial energy sources include fuels such as firewood, cattle dung and agricultural wastes, which are traditionally gathered, and not bought at a price used especially in rural households. These are also called traditional fuels. Non-commercial energy is often ignored in energy accounting.

Example: Firewood, agro waste in rural areas; solar energy for water heating, electricity generation, for drying grain, fish and fruits; animal power for transport, threshing, lifting water for irrigation, crushing sugarcane; wind energy for lifting water and electricity generation.

## Renewable and Non-Renewable Energy

Renewable energy is energy obtained from sources that are essentially inexhaustible. Examples of renewable resources include wind power, solar power, geothermal energy, tidal power and hydroelectric power. The most important feature of renewable energy is that it can be harnessed without the release of harmful pollutants.

Non-renewable energy is the conventional fossil fuels such as coal, oil and gas, which are likely to deplete with time.

It is to be noted that in response to increasing concerns about the effect of anthropogenic greenhouse gases on global climate, international action has agreed to reduce emissions. Renewable energy is being explored with renewed commitments as an intelligent solution to be tapped for addressing challenges such as poverty and global warming. If the world is to develop sustainably, it has been recognised that it is then necessary to secure access to affordable, reliable, sustainable, and modern energy services while reducing greenhouse gas emissions and the carbon footprint of the energy sector.

The world in its commitment to sustainability has pledged to expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries (SDG 7).

Development of an Energy systems which is capable of delivering to the ever growing and emerging needs of developing economies, is the need of the hour. Growing energy demands world over and in the densely populated regions of Asia including India have driven the need to shift to cleaner fuels and lager energy systems.

Therefore, in India, there has been a push to increase installed generating capacity of power and to decrease the reliance on primary fossil fuels to cater to these needs. Generating and providing reliable power at competitive prices in a sustainable manner by optimising the use of multiple energy resource with innovative eco-friendly technologies has been at the core of policy planning in India. Also, the environmental and health burdens arising out of the use of hydrocarbons force the world towards adopting energy efficiency and clean energy systems.

It is noteworthy that not all potential is viable to be transformed into capacity, and overall capacity does not lead to an equal amount of generation due to production losses etc. Power plants have a capacity to produce a certain amount of power during a given time, but if they are taken offline (i.e. for maintenance or refuelling) then they are not actually generating power.

## ENERGY CONSERVATION SCENARIO – CASES OF SELECTED INDIAN COMPANIES

Having discussed about energy consumption scenario, it would be of immense academic interest to explore energy conservation scenario of selected companies in India.

**i) The Mahindra Group**

The Mahindra Group is committed to achieving carbon neutrality by 2040 – the four big drivers for the decarbonisation of all Group companies being energy efficiency, renewable energy, electric mobility and offsetting. Some of the key initiatives and successes include Mahindra Holidays, Mahindra Heavy Engines Ltd., (MHEL) becoming India's first and the world's third manufacturing unity to double its energy productivity in 2020 (baseline 2016), achieving the goal within four years. Mahindra & Mahindra has deployed more than 100 energy efficiency projects within the auto Group alone; energy used to produce a vehicle is 67% less than what it was some years ago.

Twenty Mahindra companies have also committed to the Science-based Targets Initiative, pledging to set science-based emissions reduction targets and align business strategies with steps to reduce global warming. Other Group-wide initiatives include the adoption of technology for energy-efficient lighting, air-conditioning, motors and appliances; business process re-engineering to reduce energy requirements; heat recovery projects to re-use waste heat, and construction to reduce the need for energy.

**ii) ITC Group**

At ITC, more than 41% of the company's total energy consumption is from renewable sources, despite a growing manufacturing footprint. The company has set a target of achieving a 50% share of renewable energy in its total energy mix, and meeting 100% of purchased grid electricity requirements from renewable sources.

In 2020-21, ITC units consumed 22,369 Terra Joules (TJ) of energy, lower by about 6.2% due to the ongoing pandemic. Of the total energy requirement, 41.3% was met from renewable sources – biomass, wind and solar. In 2020-21, the investments in energy conservation equipment has resulted in saving of 190 TJ which is equivalent to 21,468 tonnes of GHG emissions (Scopes 1 & 2).

Energy conservation measures adopted across ITC units:

a) Installation of new energy-efficient electric boilers.

b) Installation of Vapour Absorption Machine (VAM).

c) Optimisation of compressed air through measures such as intelligent flow controller and additional compressor to manage low-pressure load etc.

d) Installation of zero air-loss moisture removal traps for compressed air system.

e) Automation in tube cleaning systems in Heating, Ventilation and Air Conditioning (HVAC) chillers resulting in higher efficiency.

f) Advanced dirt separator system in chilled water line of HVAC.

g) Replacement of cooling tower, AHUs, chillers, compressors, motors, fans, pumps and agitators with higher efficiency ones.

h) Replacement of steam heated equipment such as pressing machine, laundry driers, dishwashing machine etc. with energy efficient electrically heated ones.

i) Improvement in energy usage efficiency in lighting systems by changing over to efficient lighting solutions such as Light Emitting Diodes (LEDs).

j) Process improvements to enhance productivity and reduce specific energy consumption across Businesses.

**iii) HDFC Bank**

HDFC Bank plans to become carbon neutral by 2031-32. As part of this initiative, the Bank is looking at reducing its emissions, energy, and water consumption. It will continue to incorporate and scale up the use of renewable energy in its operations. HDFC Bank is developing an internal framework to track and measure its carbon footprint. The bank has taken the following initiatives to reduce the overall consumption of energy and conserve water at the branches:

a) 3 star and above rated appliances used and regular maintenance carried out to ensure efficiency.

b) Replacement of Tube/CFL lights with LED lights (69% branches currently use LED lighting).

c) Implementation of switch rooms across 384 branches resulting in reduced air-conditioning usage (both in running hours and temperature settings), leading to decrease in electricity bill units by 14%.

d) Replacement of Uninterruptible Power Supply UPS with new energy ecient devices; reduction of UPS capacity by 50% (equivalent to 750 KVA).

e) Replacement of bottled drinking water with water purifiers.

f) Installation of sensor-based taps at corporate office and other select office locations.

**iv) Godrej & Boyce**

Godrej & Boyce believes that energy is a vital gear for driving a greener and cleaner future. The company is entrenching an energy efficient culture through improved operational efficiencies, energy conservation mechanisms and increased focus on inclusion of renewable sources into the energy mix.

G&B has the goal to improve energy productivity by 100% by 2030. The company intends to use 40% renewable energy in its manufacturing facilities across the country over the next three years. G&B has generated 23% revenue has been accrued from Good & Green products. Fuel consumed includes high speed diesel, piped natural gas, liquefied petroleum gas, furnace oil, biomass energy, energy from grid electricity and solar energy.

Energy management has assumed a large role in sustainable and inclusive growth at Godrej & Boyce. With humble beginnings as an energy conservation cell way back in 1980, new dimensions such as green certification, carbon foot printing and sustainability reporting have been added.

The Vikhroli manufacturing facility has maintained unity power factor for more than two decades, resulting in substantial cost savings. Godrej & Boyce is conscious of the preparedness required to meet the potential future scenarios related to energy consumption.

In line with its commitment, the Company invested Rs. 6.7 crore during the reporting period in various energy efficiency initiatives that resulted in savings of over 21 lakh kWh of electricity per annum. Key initiatives were related to optimisation of Heating, ventilation, and air conditioning (HVAC), Compressed air system, Pumps and motors, Variable Frequency Drive (VFD) and lighting.

**v) Tata Consultancy Services (TCS)**

TCS saw a year-on-year reduction in absolute energy use by 46.6 percent in MWh and an absolute carbon footprint reduction (across Scope 1 and Scope 2) by 48.8% (in tonnes of carbon dioxide equivalent). This reduction was not commensurate to the extremely low occupancy because some utilities had to be run to maintain the infrastructure.

TCS' specific greenhouse gas emissions (Scope 1 + Scope 2) comes to 0.54 $tCO_2e$/ FTE (Full Time Equivalent)/Annum in the current reporting year, a reduction of 53% year-on-year. This is estimated with the actual carbon footprint and a notional FTE (working out of TCS offices), considering an increase of 8.23% in the FTE over the last year due to the pandemic.

Total renewable energy used – rooftop solar power plants and through power purchase agreements – was 45.5 million units amounting to 15.6% of the total electricity consumption. Tata Consultancy Services achieved the target power utilization efficiency (PUE) of 1.65 across 21 of 23 target data centres.

The company has also taken up additional 44 data centres for this initiative and reduced weighted average PUE of all DCs to 1.77 in reporting year from 2.4 in 2017. The company has focused on temporary closure of ODCs and hub rooms as SBWSTM was approved by customers and all stakeholders, leading to further reduction in energy consumption.

The investment in IoT based energy management system helped TCS to define a new normal of consumption profile, leveraging cognitive AI/ML algorithms and monitoring performance against it to drive efficiency.

*Encapsulating the energy scenario of India:*

1. India's economy grows at a rate of 4.7% a year in 2019-2050, down from 7.4% a year over the past 20 years.
2. Primary energy grows strongly in all three scenarios, more than doubling between 2019-2050. Average growth per year is between 2.4% and 2.6%. As result of this strong growth, India accounts for around 14% of the global primary energy consumption in 2050 across all scenarios, up from around 7% in 2019.
3. The share of coal in total primary energy has been broadly stable around 2019 levels (45%) over the past 40 years. However, coal's share declines in all scenarios, reaching between 6% and 33% by 2050.
4. India's natural gas production grows in all scenarios, up to 59-132 Bcm in 2050 (from 27 Bcm in 2019).
5. The share of natural gas in total primary energy grows in all scenarios, increasing from 5% in 2019 to 7-11% in 2050, supported by industry and heavy road transport demand.
6. Renewable energy grows strongly in all scenarios, at an average of 4-6% a year. As a result, renewable

energy becomes the largest source of primary energy in 2050 in Accelerated and Net Zero, and the largest together with coal in New Momentum.

7. Electricity generation in 2050 is around four times of that in 2019 in New Momentum and Accelerated, and five times in Net Zero, with solar and wind power accounting for 57% to 95% of that growth.
8. Solar and wind installed capacities in 2050 reach 1.3-2.2 TW and 0.3-1.2TW, respectively, depending on the scenarios.
9. Hydrogen demand grows by a factor of four in New Momentum up to a twelve-fold increase in Net Zero. In 2050 green hydrogen represents 47% of total production in New Momentum and 80% in Net Zero.
10. Carbon emissions vary significantly by scenario. In New Momentum, emissions increase by around 85% in 2050. In Accelerated and Net Zero, emissions decrease by 30% and 77%, respectively.

## Significant Features of Energy Conservation Act, 2001

The Energy Conservation Act, 2001 empowers the central government, and in some cases, the state government, with several important features and provisions to promote energy conservation and efficient energy use. The salient features of the Energy Conservation Act, 2001 are as follows:

i) **Energy usage standards**: The Act grants the power to the central government and state government to establish energy usage standards for specific appliances and equipment. This enables the government to regulate and set minimum energy performance standards for various products, appliances, and equipment to promote energy-efficient technologies and practices.

ii) **Mandatory labelling**: The Act mandates the display of labels on specific equipment and appliances, indicating their energy performance and efficiency levels. This helps consumers make informed choices and encourages the adoption of energy-efficient products, appliances, and equipment in the market.

iii) **Restriction on non-compliant items**: The Act empowers the government to prohibit the manufacturing, import, and sale of items that do not meet the energy usage standards set by the government. This helps to ensure that only energy-efficient products and equipment are available in the market, thereby promoting energy conservation and efficient energy use.

iv) **Information dissemination**: The Act requires energy-intensive industries, commercial establishments, and other designated consumers to be informed about energy conservation measures and guidelines. This promotes awareness among consumers and businesses about the importance of energy conservation and encourages the adoption of energy-saving practices.

v) **Energy utilization standards**: The Act authorizes the government to establish and recommend energy utilization standards and guidelines for designated consumers. This helps set benchmarks for energy consumption and promotes the adoption of energy-efficient practices in industries, commercial establishments, and other sectors.

vi) **Energy Conservation Building Codes (ECBC):** The Act allows the government to prescribe or modify Energy Conservation Building Codes (ECBC) to suit local conditions for new commercial buildings with a contract load of 500 kW or more. This promotes energy-efficient building design, construction, and operation practices, leading to reduced energy consumption in the built environment.

vii) **Energy Conservation Fund:** The Act provides for the establishment of Central and State Energy Conservation Funds. These funds are utilized for promoting energy conservation measures, creating awareness, implementing energy efficiency programs, and supporting research and development in the field of energy conservation.

## Significant Changes in The Energy Conservation (Amendment) Act, 2022

1. **Carbon Credit Trading Scheme**: The Amendment Act empowers the Central Government to specify a carbon credit trading scheme, allowing the trading of permits to emit a specified amount of carbon dioxide or other greenhouse gases. Registered entities compliant with the scheme may be issued carbon credit certificates, and any person, other than designated consumers, may purchase carbon credit certificates on a voluntary basis. The aim is to reduce greenhouse gas emissions and address climate change.

   India took a giant step in 2024 by revamping its Carbon Credit Trading Scheme (CCTS), allowing non-obligated entities to participate in the tradable carbon credits market. That means companies and individuals can voluntarily use carbon credits to address their planet-warming emissions.

   This significant revision introduces an offset mechanism, enabling these entities to register projects and obtain tradable carbon credit certificates (CCCs). Each credit represents one tonne of carbon dioxide equivalent (tCO2e). The aim is to efficiently price emissions through CCC trading and expand the voluntary carbon market.

   In 2023, India introduced the 2023 Carbon Credit Trading Scheme (CCTS), encompassing both compliance and voluntary sectors. However, while the compliance segment is scheduled to commence in 2025-26, there is no set timeline for the launch of the voluntary carbon market.

   Under India's revised carbon market scheme, obligated entities have the flexibility to purchase additional credits or sell surplus ones. Meanwhile, businesses can trade CCCs to offset their emissions.

   However, sectors facing challenges in meeting reduction targets, particularly those with hard-to-abate emissions, are exploring the possibility of trading energy-saving certificates (ESCerts) and renewable energy certificates (RECs) as offsets.

2. **Obligation to Use Non-Fossil Sources of Energy**: The Amendment Act empowers the Central Government to specify a minimum share of consumption of non-fossil sources of energy or feedstock by designated consumers, including industries, transport sector, and commercial buildings. Failure to meet the minimum share may result in penalties, including a penalty of up to INR 10 lakh for each failure, and an additional penalty of up to twice the price of every metric ton of oil equivalent prescribed under the Act, which is more than the prescribed norms.

3. **Energy Conservation and Sustainable Building Code**: The Amendment Act substitutes the definition of 'energy conservation building codes' with 'energy conservation and sustainable building code' which provides norms and standards for energy efficiency and conservation, use of renewable energy, and other green building requirements for buildings. Buildings constructed after the notification of the code by the Central and State Governments, and having a minimum connected load of 100 Kilowatt, are required to comply with the energy conservation and sustainable building code.

4. **Renewable Energy and National Green Hydrogen Mission**: The Amendment Act focuses on the promotion of renewable energy and the National Green Hydrogen Mission, which is aimed at developing domestic carbon markets and combatting climate change. The Act introduces concepts such as carbon trading and mandates the use of non-fossil sources to ensure faster decarbonization and help achieve sustainable development goals in line with the Paris Agreement and other climate change actions.

5. **Penalty for Non-Compliance**: The Amendment Act introduces penalties for non-compliance with the provisions of the Act, including penalties for failure to meet the minimum share of consumption of non-fossil sources of energy by designated consumers. This is aimed at enforcing compliance and encouraging the use of renewable energy and other sustainable practices.

At this juncture, it is imperative to discuss about Bureau of Energy Efficiency (BEE) also. The Bureau of Energy Efficiency (BEE), established under the Energy Conservation Act, 2001, is a statutory body in India with the following key features:

i) **Statutory body**: The Bureau of Energy Efficiency (BEE) is established as a statutory body under the provisions of the Energy Conservation Act, 2001. It is responsible for initiating and implementing policies and methodologies to improve energy efficiency in the Indian economy.

ii) **Establishment and merger**: The BEE were set up on March 1, 2002, by merging with the earlier Energy Management Centre, which was a society under the Ministry of Power. This merger brought together expertise and resources to form a unified body dedicated to energy efficiency and conservation.

iii) **Focus on self-regulation and market standards**: The BEE aims to develop policies and methodologies that emphasize self-regulation and market standards. This approach promotes voluntary adoption of energy-efficient practices by industries and consumers and encourages the use of market mechanisms to drive energy efficiency improvements.

iv) **Accelerated and sustained adoption of energy efficiency**: The primary objective of the BEE is to reduce the energy intensity of the Indian economy through accelerated and sustained adoption of energy efficiency measures in all sectors. This involves actively engaging with all stakeholders, including government agencies, industries, consumers, and other relevant entities, to promote energy-efficient practices and technologies.

v) **Promoting energy efficiency in all sectors**: The BEE's mandate includes promoting energy efficiency in all sectors of the economy, including industry, commercial, residential, and transportation sectors. It works towards developing sector-specific policies, standards, and programs to improve energy efficiency and conservation practices in each sector, contributing to the overall goal of reducing energy consumption and promoting sustainable energy management.

The objectives of Bureau of Energy Efficiency are as under:

i) **Leadership and policy support**: The BEE aims to provide leadership and policy support for national energy efficiency and conservation programs and efforts. This involves developing strategies, guidelines, and recommendations to promote energy-efficient practices across various sectors of the economy, including industry, commercial, residential, and transportation sectors.

ii) **Stakeholder guidance**: The BEE is tasked with guiding and advising stakeholders on policies and programs related to energy efficiency. This includes providing technical expertise, conducting awareness campaigns, and disseminating information to consumers, businesses, and other relevant stakeholders about the benefits and importance of using energy efficiently.

iii) **Monitoring and verification**: The BEE established frameworks and procedures to monitor, verify, and measure the efficient use of electricity in individual sectors as well as at the national level. This involves conducting energy audits, data collection, and performance evaluation to track progress, identify areas of improvement, and ensure compliance with energy usage standards and guidelines.

iv) **Multi-sectoral support**: The BEE seeks to garner support from multiple sectors, including government, private sector, and bilateral/multilateral agencies, to implement the Energy Conservation Act and promote effective utilization of energy and its conservation. This involves collaboration, partnerships, and coordination with various stakeholders to implement energy efficiency projects, programs, and initiatives.

v) **Delivery mechanisms**: The BEE aims to demonstrate effective delivery mechanisms for energy efficiency through public and private partnerships. This involves working with government agencies, industry associations, financial institutions, and other stakeholders to promote innovative financing mechanisms, business models, and market-based approaches to accelerate the adoption of energy-efficient technologies and practices.

vi) **Policy implementation**: The BEE is responsible for managing, implementing, and planning energy conservation policies as specified in the Energy Conservation Act. This includes developing and implementing energy efficiency standards, labelling programs, building codes, and other regulatory measures to promote energy conservation and efficient use of energy in various sectors of the economy.

## Powers and Functions of Bureau of Energy Efficiency

1. Recommending norms for processes and energy consumption standards to be notified by the Central Government, in order to regulate and promote energy efficiency in various sectors.
2. Recommending the issuance of energy savings certificates by the Central Government, which serve as a tradable instrument for promoting energy efficiency initiatives and investments.
3. Developing standards and labels for appliances and equipment to guide consumers in making energy-efficient choices and creating market demand for energy-efficient products.
4. Creating a list of designated consumers, i.e., industries or establishments that are identified as high energy consumers and are required to comply with energy consumption norms and reporting requirements.
5. Undertaking promotional activities in coordination with central and state-level agencies, such as awareness campaigns, capacity-building programs, and training initiatives to promote energy efficiency practices across different sectors.
6. Developing Energy Service Companies (ESCOs) that provide energy efficiency services and solutions to consumers, thereby facilitating the implementation of energy efficiency projects.
7. Transforming the market for energy efficiency by creating mechanisms for demand aggregation, bulk procurement, and innovative financing models to overcome financial barriers and promote investments in energy efficiency projects.
8. Creating awareness about energy efficiency through various measures, such as operating a clearing house for information dissemination, conducting workshops, seminars, and educational programs to sensitize stakeholders about the benefits of energy conservation.
9. Promoting innovative financing mechanisms for energy efficiency projects, such as performance contracting, energy performance certificates, and green bonds, to mobilize funds and accelerate the implementation of energy efficiency initiatives in the country.

As an initiative towards effective energy management, the Bureau of Energy Efficiency has notified the regulations for Energy Accounting and Auditing of DISCOMs. The Bureau of Energy Efficiency (BEE), through Ministry of Power, Government of India, notified the regulations viz. 'Bureau of Energy Efficiency(Manner and Intervals for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021' vide Notification No.18/1/BEE/DISCOM/2021 dated 6th October 2021, and amendment issued thereof on 28th Oct. 2022. The extant regulations specify the following key aspects related to energy accounting and audit for electricity distribution companies.

i) Intervals of time for conduct of periodic energy accounting and annual energy audit and report submission thereof.

ii) Pre-requisites for annual energy audit and periodic energy accounting.

iii) Reporting requirements for annual energy audit and periodic energy accounting.

iv) Manner of annual energy audit and periodic energy accounting.

v) Prioritization and preparation of action plan and

vi) Structure of annual energy audit report.

These regulations have been issued under the ambit of Energy Conservation Act, 2001, with an overall objective to reduce inefficiencies and losses in distribution sector thereby ensuring financial and economic viability of DISCOMs.

Energy accounting for all energy inflows in the distribution system, including renewable energy generation, open access consumers, and energy consumption by the end consumers, shall be conducted on a periodic basis. This necessitates that energy accounting data is made available at a consumer, transformer, feeder and system level. Energy accounting will help to identify areas of high loss and pilferage, and thereafter, focused efforts can be made by DISCOMs to take corrective action.

The regulation stipulates quarterly energy accounting by DISCOMs, through a certified Energy Manager and annual energy audit by an Independent Accredited Energy Auditor. The periodic energy accounting (quarterly) report needs to be submitted within 60 days of completion of the respective Quarter while the annual energy audit report should be submitted within four months of the completion of the financial year. Up to 31st Dec. 2022, five (5) Quarterly Energy Accounting Reports (for Q2, Q3 and Q4 of FY 2022, and Q1 & Q2 of FY 2023) and two annual energy audit reports (for FY 2021 and FY 2022) should have been submitted by all DISCOMs.

(Detailed regulation may be referred from the following link: *https://powermin.gov.in/sites/default/files/uploads/Guidelines_Energy_Accounting_and_Auditing_of_DISCOMs.pdf*)

## WAYFORWARD- INDIA'S ENVIRONMENTAL IMPROVEMENT SCENARIO*

**i) Energy Transition:** The utilisation rate of coal power plants is falling. India's coal mines use only two-thirds of the capacity with some large ones using only 1 percent, according to a Global Energy Monitor (GEM) analysis. Despite this situation, India hosted its biggest ever coalmine auction (141 new sites) just a few weeks ago, allowing mining in some of India's most ecologically rich and fragile forests, and rural areas populated by tribal communities.

India's coal, with its high ash content, is extremely polluting and inefficient to burn, requiring twice as much to produce the same amount of power as imported coal. With falling prices of renewables, these new coal mines can become stranded assets in future, while adding heavily to emissions in the present. To get on a 1.5°C emissions pathway, Indian needs specific plans from now until 2070 to phase out old, low-efficiency power plants and reduce or stop new coal capacity additions.

India provides subsidies for both fossil fuels and renewable energy, including direct subsidies, fiscal incentives, price regulation, and other government support. According to a 2022 report by International Institute for Sustainable Development and Council on Energy, Environment and Water, as compared to previous financial years, the support for fossil fuels increased in 2021, with subsidies for coal, oil, and gas being nine times higher than the subsidies for renewables and Electric Vehicles (EVs).

However, there is a silver lining that India has commenced with noteworthy schemes such as FAME and tools like the e-Amrit portal for boosting EV sales. However, for EVs to truly contribute to reducing India's emissions, the share of renewable energy over fossil fuel sources in India's electricity generation must also increase. India's climate pledge on renewable energy is based on installed capacity and not actual generation.

According to actual generation, coal dominates while renewable energy holds a low share. In this

*• Statistical figures indicated under this head is only for information purpose.*

regard, India may develop a detailed assessment of the finance and time required for transition from coal to renewables, and a clear plan for its implementation. This may assist India to negotiate better for international financial support at intergovernmental dialogues and other key partnerships such as the G7-India Just Energy Transition Partnership.

It is significant to note that during final days of COP27, India suggested including 'phase down' of all fossil fuels (not just coal) in the cover decision of COP27 which did not succeed this time. It will be a crucial point to persist on in the upcoming negotiations to promote emission reduction drastically worldwide.

ii) **Carbon Sink:** Since 2015, India has been planning on increasing its forest and tree cover and has initiated several programs like the Green India Mission, green highways policy, financial incentives for forests, plantations along rivers, and more to achieve the same. However, the total forest and tree cover in India in 2015 was 24.16 percent of the total land, barely increasing to 24.62 percent by 2021.

While India has made bold commitments to restore 26 million hectares of deforested and degraded land (Bonn Challenge) and sequester an additional 2.5-3 billion tons of CO2 by 2030, in order to realise these goals, forest conservation and reforestation must be catalysed with appropriate funding. Ironically, the budget for the Green India Mission afforestation programme decreased from INR246 crore in 2020-21 to INR 235 crore in 2021-22.

iii) **Adaptation:** During 2015-16, India set up a National Adaptation Fund with an initial allocation of US$ 55.6 million (INR3,500 million) to combat the adaptation needs in crucial sectors, further assisting national and state-level adaptation measures financially. However, there exists a lack of accountability in monitoring the impact of the projects and a severe lack of information on its progress and financing in the public domain.

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Moreover, there is a need to specifically address agricultural adaptation. Around 60 percent of Indians depend on agriculture for their livelihoods, and climate change is an existential threat to their yields and to India's food security.

Along with scaling and redesigning current programs, like on-farm water management and simplifying soil health cards, India must also develop robust programs on skill development for farmers , and implement financial security mechanisms enabling them to shift to climate-friendly agricultural practices like agro ecology, crop diversification, use of organic fertilisers, promoting plant-based agriculture, alternative proteins, and more. This will in turn help reduce the massive share of carbon emissions from the agricultural sector, which is around an enormous 14 percent in India.

## ICMA Green Project Categories

i) **Renewable Energy:**

Transition and Net Zero: INR 350 billion ($4.3 billion) outlay provided for energy security, energy transition, and Net Zero objectives.

INR 207 billion ($2.5 billion) outlay provided for renewable energy grid integration and evacuation from Ladakh.

Green Hydrogen: This involves a budget outlay of INR 197.44 billion ($2.4 billion). The target is to reach an annual production of 5 MMT by 2030 to facilitate the economy's transition to low carbon intensity and to reduce dependence on fossil fuel imports. The project aims to meet at least 10% of the global demand for green hydrogen by 2030. The National Green Hydrogen Mission is to enable India to be energy independent by 2047.

Battery Energy Storage System: The goal is to set up capacity of 4000 MWh, supported by Viability Gap Funding. A detailed framework for Pumped Storage Projects will also be formulated.

GOBARdhan: A 5% compressed biogas mandate is to be introduced for all organizations marketing natural and biogas.

**ii) Circular Economy:**

GOBARDhan: 500 new 'waste to wealth' plants will be established to promote a circular economy, at a total investment of INR 100 billion ($1.2 billion). These will include 200 compressed biogas (CBG) plants, including 75 plants in urban areas and 300 community or cluster-based plants.

**iii) Clean Transportation:**

Customs duties will be exempted for imports of capital goods and machinery required to manufacture lithium-ion cells for batteries used in electric vehicles. By 2027, the market for lithium-ion batteries in India is anticipated to grow to INR 400 billion ($4.85 billion), with a remarkable CAGR of 17.23 percent over the forecast period of 2022–2027.

**iv) Environmentally Sustainable Management of Living Natural Resources and Land Use:**

Atmanirbhar Clean Plant Program: INR 22 billion ($267 million) will be allocated to boost the availability of disease-free, quality planting material for high-value horticultural crops.

PM-PRANAM: This programme will aim to incentivize States and Union Territories to promote alternative fertilizers and balanced use of chemical fertilizers.

GOBARDhan: Bio-Input Resource Centres will assist 10 million farmers to adopt natural farming over the next three years. For this, 10,000 Centres will be set up, creating a national micro-fertilizer and pesticide manufacturing network.

A Green Credit Program has been introduced under the Environmental Protection Act to inculcate green and sustainable practices at all levels, including local bodies and individuals.

**iv) Terrestrial and Aquatic Biodiversity:**

MISHTI (Mangrove Initiative for Shoreline Habitats & Tangible Incomes) aims to conserve mangroves and preserve the landscapes in which they are located.

The Amrit Dharohar scheme will encourage the optimal usage of wetlands; enhance biodiversity, carbon stock, and eco-tourism opportunities; and help generate income for local communities.

**v) Sustainable Water and Wastewater Management:**

India can transition from man-made-holes to machine-made-holes by enabling all cities and towns to undertake 100% mechanical de-sludging of septic tanks and sewers.

## S&P Global's Corporate Sustainability Assessment - Indian Companies Features in Global ESG Assessments

S&P Global's Sustainability Yearbook 2024 which is the only analysis of its kind based on S&P Global's Corporate Sustainability Assessment or CSA has given berth to Indian corporate houses affiliated to different sectors.

However, before discussing about the criteria under which Indian companies have secured berth in CSA, it is imperative to discuss the methodology embraced for preparation of S&P Global's Sustainability Yearbook 2024.

The Sustainability Yearbook aims to distinguish those companies within their industries that have each demonstrated strengths in corporate sustainability. Yearbook members and distinction levels are selected based on their 2023 Corporate Sustainability Assessment (CSA) Score, which is the S&P Global ESG Score without the inclusion of any modelling approaches. The selection methodology reflects exclusion screening criteria.

As of December 22, 2023, over 9,400 companies assessed for the 2023 CSA were considered for inclusion in the Sustainability Yearbook 2024. Distinctions have been calculated against the top performing company in each Industry, and exclusions applied thereafter. The methodology also encompasses the following categories:

i *Top 1%:* Within each industry, companies with a minimum CSA Score of 60, whose score is within 1% of the industry's top-performing company.

ii) *Top 5%:* Within each industry, companies with a CSA Score of at least 57, whose score is within a range of 1% to 5% of the industry's top-performing company. This distinction is not assigned if no company in the industry achieved a minimum CSA score of 60.

iii) *Top 10%:* Within each industry, companies with a CSA Score of at least 54, whose score is within a range of 5% to 10% of the industry's top-performing company. This distinction is not assigned if no company in the industry achieved a minimum CSA score of 60.

iv) *Industry Mover*: In this category, the companies are assessed based on whether the company achieved an improvement in its S&P Global Score of atleast five percent and accomplished the strongest improvement in their industry, on the condition that the company is a Yearbook Member and participated in the CSA this year and last year.

v) *Member*: Under this category, companies within the top 15% of their industry by number and achieved a minimum CSA Score above 30 and falling within 30% of that industry's top performing company are considered.

It is to be noted that certain companies have been excluded from the assessment such as tobacco, anti-personnel mines, biological and chemical weapons, cluster munitions etc.

As a sample study, five Indian companies covered under the Sustainability Yearbook 2024, i.e., Hindustan Zinc Limited, Tech Mahindra Limited and Dr.Reddy's Laboratories Limited affiliated to Metal & Mining, IT Services and Pharmaceuticals industries respectively have been covered for the mentioned five categories – *Top 1% S&P Global CSA Score, Top 5% S&P Global CSA Score, Top 10% S&P Global CSA Score, Industry Mover and Member* is provided below-

**Category 1: Top 1% S&P Global CSA Score**

**Company: Hindustan Zinc Limited**

**Industry: Metals & Mining**

| **Highlighted Criteria & Dimension Weights** | **Companies performance on Highlighted Criteria (Based on Annual Reports 2022-2023)** |
|---|---|
| *Environmental Dimensions- 34%*<br>• Biodiversity<br>• Climate Strategy<br>• Waste<br>• Water<br>*Social Dimension- 33%*<br>• Occupational Health & Safety<br>• Social Impacts on Communities<br>*Governance & Economic Dimensions-33%*<br>• Business Ethics<br>• Corporate Governance<br>• Risk & Crisis Management | The performance of the company under Environmental, Social and Governance & Economic Dimensions have been broadly explored based on the company's Sustainability Goals 2025.<br>*Environmental Dimension*<br>i) *Climate Change-*<br>a) 0.5 mn tCO2e Greenhouse gas (GHG) emission savings in company's operations from base year 2017. As part of its net-zero journey, the company strives to address the climate change.<br>b) The company has revised its emission targets to make them more stringent.<br>c) These target revisions will assist the Company in achieving net-zero emission by 2050 or sooner in the long-term, and in the short-term will serve to reduce Scope 1 and Scope 2 emissions by 50% and Scope 3 emissions by 25% by 2030, in line with the business ambition for 1.5°C campaign led by the SBTi in partnership with the UN Global Compact and the 'We Mean Business' coalition.<br>ii) *Water Stewardship*- Become 5x water positive company and achieve 25% reduction in freshwater consumption. The company is working to achieve water stewardship goals through a strategic approach that identifies the following elements:<br>a) Minimising freshwater consumption.<br>b) Exploring alternative water solutions.<br>c) Increased use of recycled water.<br>d) Replenishing groundwater.<br>e) Monitoring and auditing of water consumption at end user, withdrawal from source, water balance, quality of water including waste water and efficiency of waste water treatment facility<br>iii) *Circular Economy-*<br>a) 3x Increase in gainful utilisation of smelting process waste. In this regard, company's Waste to Wealth Community is continually working on this objective to identify ways for recycling and gainful utilisation of the waste we generate during the manufacturing process. |

| | |
|---|---|
| | b) The company is working on a pilot trial with a Calgary-based technology company which has developed the capability to use mine waste to produce cement like materials that serve to save resources, lower environmental impact and potentially reduce GHG emissions.<br>c) Value-added product from smelter waste residue.<br>iv) *Biodiversity Conservation-*<br>a) Protect and enhance biodiversity throughout the life cycle. The company have prepared exclusive biodiversity management plans (BMPs) for each of its operational sites.<br>b) Biodiversity management initiatives include biodiversity risk assessment, afforestation programme, restoration of exhausted waste dumps, conservation of schedule-1 fauna species, awareness, and partnership, etc.<br>c) The company has engaged with the International Union for Conservation of Nature (IUCN) for revisiting its BMP and to align its actions towards no net loss.<br>*Social Dimension*<br>i) *Social Impact-* Positively impact one million lives through social, economic and environmental initiatives.<br>ii) *Diversity in Workforce-* Inclusive and diverse workplace with 30% diversity.<br>iii) *Ensuring Zero Harm-* Zero work-related fatalities and 50% reduction in total recordable injury frequency rate (TRIFR).<br>iv) Five CSR Programmes of the company – Zinc Kaushal, 4000+ youth benefitted since FY 2019-20; Unchi Udaan, 7 batches since FY 2017-18 comprising 226 students; Zinc Football Academy, 4000+ youth benefited since FY 2017-18; Sakhi Microenterprise, 27,000+ women benefitted since FY 2019-20 and Drinking water, 100,000 villagers benefitted since FY 2018-19.<br>*Governance & Economic Dimensions*<br>i) *Responsible Sourcing-* 100% responsible sourcing in the supply chain.<br>ii) Implementation of responsible sourcing guidelines of London Metal Exchange (LME) and Organisation for Economic Cooperation and Development (OECD) framework.<br>iii) Supplier sustainability assessment.<br>iv) Human rights training and awareness.<br>v) Ensuring local procurement |

**Category 2: Top 5% S&P Global CSA Score**

**Company: Tech Mahindra Limited**

**Industry: IT Services**

| Highlighted Criteria & Dimension Weights | Companies performance on Highlighted Criteria (Based on Annual Reports 2022-2023) |
|---|---|
| *Environmental Dimensions- 23%*<br>• Climate Strategy<br>• Environmental Policy & Management Systems<br>*Social Dimension- 35%*<br>• Customer Relationship Management<br>• Human Capital Development<br>• Privacy Protection<br>• Talent Attraction & Retention<br>*Governance & Economic Dimensions- 42%*<br>• Business Ethics<br>• Information Security/ Cybersecurity & System Availability<br>• Innovation Management | *Environmental Dimension*<br>*Climate Change:*<br>i) During FY23, the company's emissions have reduced 40.62% from the base year of FY16 while Scope 1+2 emissions have risen minimally on account of our people resuming work from office.<br>ii) The company's management approach is underscored by its commitment to transition towards being a net zero organisation. It tracks and monitor our performance as per the rules set by the Board, governed by our Climate Policy, aligned with TCFD recommendations<br>iii) The company have signed the SBT initiative of Business Ambition of 1.5°C and committed to become carbon neutral by 2030 and achieve Net Zero by 2035.<br>iv) Additionally, the company have joined the 1.5° Supply Chain Leaders by the Exponential Roadmap Initiative (ERI) to reduce GHG emissions across the value chain.<br>v) The company's GHG emissions scope includes Scope 1,2 and 3 emissions for global operations.<br>vi) The company is working to minimize environment impact of its operations by making its facilities more energy efficient as well as taking steps to conform to green building norms through the presence of recycling equipment, air and water purification systems, etc.<br>vii) Tech Mahindra is undertaking carbon pricing to drive carbon offsets. Total Environmental Protection Expenditure Funds from the Internal Carbon Pricing mechanism help the company to invest in low-emission technologies.<br>viii) The company is supporting efforts pertaining to carbon sequestration at its locations. It is collaborating with NGOs to enable its Green Marshals in planting trees in and around its campus to realise its carbon sequestration aim of offsetting 5% of its emissions in the long run.<br>*Social Dimension*<br>i) The company has an employee engagement framework that track progress across five critical dimensions of associate experiences- Career Alignment, Recognition, Empowerment and Strive. Tech Mahindra's CARES survey is conducted annually to provide an insight into its Associates experiences at the organisation. |

| | |
|---|---|
| | ii) As a global sustainability leader, the company is 'intentionally diverse and globally inclusive organisation'. It has adopted specific policies to encourage and support women as well as members from the LGBTQ+ community.<br>iii) Conducting of Meet & Greet events across locations to welcome new joiners to the Tech Mahindra family.<br>iv) Involving Associates in CSR activities through two platforms- Individual Social Responsibility (ISR) and Making Sustainability Personal (MSP).<br>v) 61,995 lives directly benefited from CSR programs of which 53% were women.<br>vi) Upskilling of 22,596 youths, including 1,303 with disabilities.<br>vii) For enabling education, 4,379 teachers trained and 4,829 children with disabilities were supported with special education.<br>*Governance & Economic Dimensions*<br>i) At TechM, Board composition reflects the values of independence, diversity, expertise and experience.<br>ii) Conducting of quarterly sessions to enhance collective knowledge. MD&CEO as well as the senior leadership of the company conduct knowledge sharing sessions with the board on quarterly basis. These sessions serve to apprise the members of the key areas of focus of the company's diverse businesses, understanding their respective operating external environment in depth, and implementing plans for various business strategies being adopted across the organisation.<br>iii) TechM has taken the following three main steps towards sustainable development- Supplier audits (Questionnaire-based complemented by on-site inspections), Capacity-building measures, i.e., trainings workshops and other collaborations and Continuous improvement, i.e., conducting programmes on climate risk evaluation.<br>iv) Incentivising suppliers for adopting sustainability practices by felicitating the top supplier with the 'TechM Supplier Sustainability Award'. |

**Category 3: Top 10% S&P Global CSA Score**

**Company: Dr. Reddy's Laboratories Limited**

**Industry: Pharmaceuticals**

<table>
<tr><th>Highlighted Criteria & Dimension Weights</th><th>Companies performance on Highlighted Criteria (Based on Annual Reports 2022-2023)</th></tr>
<tr><td>
Environmental Dimensions- 13%
<ul><li>Environmental Policy & Management Systems</li></ul>
Social Dimension – 42%
<ul><li>Access to Healthcare</li><li>Health Outcome Contribution</li><li>Human Capital Development</li><li>Marketing Practices</li><li>Talent Attraction & Retention</li></ul>
Governance & Economic Dimensions- 45%
<ul><li>Business Ethics</li><li>Innovation Management</li><li>Product Quality & Recall Management</li></ul>
</td><td>
Environmental Dimension<br>
The goals and target of the company under environmental dimension is as under:
<table>
<tr><th>Goal</th><th>Target</th><th>Progress this year</th></tr>
<tr><td>Leading the energy transition</td><td>By 2030, transition to 100% renewable power.</td><td>42% electricity through renewable sources.</td></tr>
<tr><td>Pathway to carbon neutrality</td><td>By 2030, carbon neutrality in our operations (Scope 1 & 2 emissions).</td><td>30% carbon neutrality.</td></tr>
<tr><td>Addressing the global water crisis</td><td>By 2025, be a water-positive Company.</td><td>Water-positivity target achieved.</td></tr>
<tr><td>Building a resilient value chain.</td><td>By 2030, reduce 12.5% indirect carbon emissions across our supply chain (Scope 3 emissions).</td><td>Revised Scope 3 emissions inventory complete, emissions reduction plan in progress.</td></tr>
</table>
Social Dimension
<table>
<tr><th>Goal</th><th>Target</th><th>Progress this year</th></tr>
<tr><td>Advancing access to medicines.</td><td>By 2030, serve 1.5 billion patients.</td><td>689 million+ patients reached.</td></tr>
<tr><td>Enhancing affordability of medicines.</td><td>By 2027, 25% new launches to be first to market.</td><td>39% first to market new launches.</td></tr>
<tr><td>Innovating for better health.</td><td>From 2027, launch 3 innovative solutions every year to improve the standard of treatment.</td><td>Key innovative set of solutions chosen for further development.</td></tr>
<tr><td>Gender diversity.</td><td>By 2030, at least 35% women in senior leadership positions</td><td>16% representation of women in leadership.</td></tr>
</table>
</td></tr>
</table>

| | | |
|---|---|---|
| Gender equity. | By 2035, gender parity across the organisation. | 18% gender diversity globally. |
| 18% gender diversity globally. | By 2030, include at least 3% Persons with Disabilities (PwDs) in our workforce. | 0.4% Persons with Disabilities in our workforce. |
| Equity and fairness for all. | By 2025, ensure living wages for the extended workforce on our premises. | Strategic partner and action plan identified to close the living-wage gap |

*Governance & Economic Dimension*

| Goal | Target | Progress this year |
|---|---|---|
| Excellence in compliance, ethics and corporate governance. | Robust corporate governance with the highest standards on compliance and ethics. | Strong corporate governance structure in place, no material deviations |
| Greater transparency and improved reporting. | By 2025, enhance ESG disclosures to reach top quartile. | Comprehensive BRSR, integrated reporting, independent assurance and enhanced ESG disclosures. |
| Engaging our suppliers. | By 2030, ensure 100% strategic suppliers are compliant with our chosen ESG framework. | Capability building complete, supplier audits in progress |

**Category 4: Industry Mover**

**Company: Dabur India Limited**

**Industry: Personal Products**

<table>
<tr><th>Highlighted Criteria & Dimension Weights</th><th>Companies performance on Highlighted Criteria (Based on Annual Reports 2022-2023)</th></tr>
<tr><td>

*Environmental Dimensions- 27%*

- Biodiversity
- Product Stewardship

*Social Dimension - 36%*

- Customer Relationship Management
- Occupational Health & Safety
- Sustainable Marketing & Brand Perception

*Governance & Economic Dimensions - 37%*

- Business Ethics
- Innovation Management
- Product Quality & Recall Management
- Supply Chain Management

</td><td>

*Environmental Dimension*

*i) Climate Change:*

<table>
<tr><th>Goal</th><th>Achievement</th></tr>
<tr><td>Achieve Net Zero in the entire value chain by 2045.</td><td>Committed to near term and Net Zero science based targets.</td></tr>
<tr><td>Eliminate coal across own manufacturing units by FY 2024-25.</td><td>Successful Coal Free Trials in Operations in June 2023.</td></tr>
<tr><td>Achieve >60% Scope 1 and Scope 2 energy from renewable and cleaner sources by FY 2025-26.</td><td>50% of the total energy consumed in operations is from renewable sources.</td></tr>
</table>

*ii) Biodiversity:*

<table>
<tr><th>Goal</th><th>Achievement</th></tr>
<tr><td>Ensure own manufacturing operations outside Bio Endangered/protected biodiversity zones.</td><td>100% of DIL's own operations are outside protected biodiversity zones.</td></tr>
<tr><td>Ensure 100% Afforestation equivalent to sourced critically endangered herbs by FY 2025-26.</td><td>a) 30% of risk associated with critical endangered herbs mitigated through conservation and restoration measures.<br>b) 47% increase in the cultivation of medicinal herbs compared to FY 2020-21, with a total of 7,731 acres cultivated in FY 2022-23.</td></tr>
</table>

*ii) Water Dimension:*

<table>
<tr><th>Goal</th><th>Achievement</th></tr>
<tr><td>Reduce Water Intensity in operations by 30% by FY 2025-26.</td><td>22% reduction in water intensity (kL/MT) from FY 2018-19, despite high growth in the water intensive 'Juices' portfolio.</td></tr>
<tr><td>Become Water Positive in own operations and communities by 2030.</td><td>77,412 KL of water recharged since FY 2018-19 through community-led water conservation initiatives.</td></tr>
</table>

</td></tr>
</table>

| | |
|---|---|
| | *iii) Circular Economy:* |

| Goal | Achievement |
|---|---|
| Move from Plastic Waste Neutrality in 2021-22 to Plastic Waste Positivity in 2022-23. | Dabur emerges as Plastic Waste Positive enterprise in 2022-23, having collected, recycled and processed 35,000 MT of post-consumer Plastic Waste. |
| 80% reusable, recyclable, or compostable packaging by 2028. | |
| Use 30%, 10%, and 5% of recycled plastic packaging content in plastic packaging of non-food grade items for Category I, Category II, and Category III plastics, respectively, by FY 2025-26. | |
| Promote circularity in value chain. | |

*Social Dimension*

*i) Social Impact:*

| Goal | Achievement |
|---|---|
| Transform lives of 2.5 Million people by 2023 and 5 Million by 2030 in a sustainable manner. | 2.76 Million lives positively impacted in 2022-23, a 21% increase over 2021-22. |
| Sustainably cultivate medicinal and aromatic plants in 15,000 acres by 2030 (200% increase over 2020). | 7,731 acres of land brought under cultivation till 2022-23. |
| Enhance livelihood of more than 13,500 farmers' families by 2030 (100% increase over 2020) | a) 9,653 farmers engaged in cultivation of herbs and 11,220 beekeepers engaged.<br>b) 45% increase in the saplings distributed to farmers free of cost compared to FY 2020-21, with a total of 32.5 Lakh saplings distributed in FY 2022-23. |

*ii) Product Responsibility:*

| Goal | Achievement |
|---|---|
| Progressively reduce added sugar content in juices. | Reduced 20.95% added sugar from 2018. |

*iii) Diversity & Inclusion*

| Goal | Achievement |
|---|---|
| 18% gender diversity at managerial level by 2028. | 70 bps improvement in gender diversity in permanent employees and workers. |

*Governance & Economic Dimensions*

*i) Governance:*

- 57% board independence.
- 100% independent audit committee.
- 5 out of 6 Committees are led by Independent Directors.
- 98.6% board meeting attendance.
- 96% average committee meeting attendance.
- An ESG committee formed to provide oversight on environmental, social, and governance matters.

*Additional Information-*

- Independent Director inducted in the ESG Committee in May 2023.
- Appointment of lead independent director in May 2023.
- Board gender diversity increased from 7% to 14% in FY 2023-24.

*ii) Responsible Outsourcing:*

**Goal**

| Goal | Achievement |
|---|---|
| Ensure zero deforestation due to high risk materials by FY 2025-26 through 100% sustainable sourcing. | a) 100% of Tetra Pak laminate and paper sourcing being done from FSC certified vendors.<br>b) 97% corrugated boxes sourced from sustainable sources.<br>c) 84% sustainable sourcing of high deforestation risk materials in FY 2022-23. |

**Category 5: Member**

**Company: PI Industries Limited**

**Industry: Chemicals**

<table>
<tr><th>Highlighted Criteria & Dimension Weights</th><th>Companies performance on Highlighted Criteria (Based on Annual Reports 2022-2023)</th></tr>
<tr><td>
Environmental Dimensions - 34%
<ul><li>Climate Strategy</li><li>Emissions</li><li>Product Stewardship</li><li>Waste</li><li>Water</li></ul>
Social Dimension- 32%
<ul><li>Human Capital Development</li><li>Occupational Health & Safety</li></ul>
Governance & Economic Dimensions- 34%
<ul><li>Business Ethics Innovation Management</li></ul>
</td><td>
Environmental Dimension<br>
Company's 2025 Goal
<table>
<tr><th>Company's 2025 Goal</th><th>SDG alignment</th><th>Progress till FY23</th></tr>
<tr><td>Increase renewable energy usage to 20 percent of total</td><td>SDG 12: Responsible Consumption and Production</td><td>4.83%</td></tr>
<tr><td>Reduce Specific CO2 emissions by 25 percent</td><td>SDG 12: Responsible Consumption and Production</td><td>Reduced by 15%</td></tr>
<tr><td>Reduce landfill waste by 25 percent</td><td>SDG 12: Responsible Consumption and Production</td><td>Increased by 63%</td></tr>
<tr><td>Reduce specific freshwater consumption by 25 percent</td><td>SDG 6: Clean Water and Sanitation<br>SDG 12: Responsible Consumption and Production</td><td>Reduced by 12.6%</td></tr>
</table>
Social Dimension
<table>
<tr><th>Company's 2025 Goal</th><th>SDG alignment</th><th>Progress till FY23</th></tr>
<tr><td>Today's IC for your necessary action please.</td><td>SDG 3: Good health and well-being<br>SDG 8: Decent work and economic growth<br>SDG 16: Peace, Justice and Strong Institutions</td><td>0.068 in FY23 for all employees and contract workers</td></tr>
<tr><td>Ensure NIL fatal injury in plant operations.</td><td>SDG 3: Good health and well-being<br>SDG 8: Decent work and economic growth<br>SDG 16: Peace, Justice and Strong Institutions</td><td>NIL</td></tr>
</table>
</td></tr>
</table>

| | | | |
|---|---|---|---|
| | Increase employees' average training hours per full time employee by 25 percent | SDG 8: Decent work and economic growth | Increased by 62% |
| | Increase women's participation in leadership positions by 25 percent | Gender Equality | Increased by 23% |

## Carbon Border Adjustment Mechanism (CBAM)

On 16 May 2023, a significant milestone was passed as legal regulations for European Union Emission Trading System (EU ETS) reform and the new EU Carbon Border Adjustment Mechanism (CBAM) were published in the *Official Journal of the EU*.

The EU's "Fit for 55" legislative package, which was initially announced in July 2021 and includes the new CBAM and ETS reform, is viewed as a key enabler for helping Europe reduce emissions at least 55% by 2030 (from 1990 levels). These targets are set out in the European Climate Law and are part of the wider European Green Deal strategy to achieve climate neutrality by 2050.

A transitional period for CBAM will begin 1 October 2023 and extend through 2025, during which time quarterly emissions reporting will be required. Affected businesses will need to get ready to comply with new compliance and reporting requirements starting later this year and begin to assess the medium- to long-term process and cost implications.

The EU's Carbon Border Adjustment Mechanism (CBAM) is the EU's tool to put a **fair price on the carbon emitted** during the production of carbon intensive goods that are entering the EU, and to encourage cleaner industrial production in non-EU countries.

By confirming that a price has been paid for the embedded carbon emissions generated in the production of certain goods imported into the EU, the CBAM will ensure the carbon price of imports is equivalent to the carbon price of domestic production, and that the EU's climate objectives are not undermined. The CBAM is designed to be compatible with WTO-rules.

CBAM will apply in its definitive regime from 2026, while the current transitional phase lasts between 2023 and 2026. This gradual introduction of the CBAM is aligned with the phase-out of the allocation of free allowances under the EU Emissions Trading System (ETS) to support the decarbonisation of EU industry.

## Key principles of CBAM

The EU CBAM is a climate measure that aims to address the risk of carbon leakage by ensuring equivalent carbon pricing for imports and domestic (EU) production that is subject to carbon costs under the EU ETS. While the EU ETS applies to installations based in the EU and to certain production processes and activities (and will be extended further, as detailed below), CBAM will apply to certain goods imported into the EU.

## Scope of goods covered

CBAM will cover the following product categories:

- Kaolin and other kaolinic clays, calcined
- Cement, aluminous cement, cement clinkers, etc.
- Fertilizers (e.g., ammonia, nitric acid, sulphonitric acids)
- Agglomerated iron ores and concentrates
- Comprehensive coverage of iron and steel products (except some ferro-alloys, scrap etc.)
- The iron and steel products include downstream products, such as screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles
- Aluminum structures and parts of structures
- Certain aluminum reservoirs, tanks, vats, containers
- Stranded wire, cables, plaited bands and the like, made of aluminum, not electrically insulated
- Other articles of aluminum
- Hydrogen
- Electrical energy

This product list has significantly increased compared to initial draft versions of the regulation; for example, downstream products are now included, not just raw and semi-finished materials. Therefore, the list will apply to a larger number of businesses.

Political discussions seem to favor extending CBAM further by 2030, to cover all product categories that are subject to the EU ETS if these products were manufactured in the EU. This would include polymers, diverse chemicals, mineral oil products, paper and pulp, among other categories.

## Transition period: 1 October 2023 to 31 December 2025

Between 1 October 2023 and 31 December 2025, transitional provisions will apply. Quarterly emissions reporting will be required and purchasing CBAM certificates will be optional. Importers (customs declarants, indirect representatives) will be required to quarterly report embedded emissions in goods imported during that quarter of the calendar year, detailing direct and indirect emissions as well as any carbon price effectively paid in a third country.

Notably, from 31 December 2024, importers must have "authorized CBAM declarant" status to qualify for the import of in-scope goods.

## How it will work

Under new CBAM rules, importers are required to report total verified greenhouse gas (GHG) emissions embedded in goods imported in a given calendar year. Following the transitional period (at the end of 2025), the financial impact of CBAM will gradually increase, with a progressive phase-in of CBAM costs until 2034. Carbon cost paid at origin can be deducted from the payable CBAM charges (provided that evidence of the cost can be made available).

Payment of CBAM charges will be facilitated through the purchase and surrender of CBAM certificates, which will be priced at the weekly averages of EU ETS allowances auctions.

During the calendar year, the importer must ensure that the number of CBAM certificates in its CBAM registry account at the end of each quarter corresponds to at least 80% of the embedded emissions in imported products since the beginning of the calendar year. The importer must surrender CBAM certificates in the exact number corresponding to emissions embedded in goods imported in the calendar year, in addition to submitting an annual CBAM declaration.

## Definition of embedded emissions

CBAM charges correspond to embedded emissions in the named product categories, and the definition of embedded emissions to be declared has been extended to indirect emissions. The declaration of emissions can be made based on actual emissions, which need to be determined based on a schema provided by the EU regulators, although the details are not yet finalized. Implementing legal acts containing additional details are likely to be published in Summer 2023.

If actual emissions are declared, they must be accredited by independent verifiers. If no actual emissions are available, standard “default” values will be used that reflect average emissions

for a certain product manufactured in a specific country or region. If no reliable data to determine these standard values is available, the EU Commission will determine default values based on the worst-performing EU installations. Further guidance is expected in the implementing acts in Summer 2023.

## Exemptions and extended circumvention practices

CBAM will not apply to goods of nonpreferential origin in Switzerland, Liechtenstein, Iceland and Norway. There are only a small number of exemptions, including for low-value consignments up to €150 and certain military imports.

Examples of circumvention practices have been slightly extended in what is now an open catalogue of practices that may consist of, but are not limited to:

- Slight modification of goods to change Combined Nomenclature classification
- Artificial split of shipments to benefit from CBAM exceptions described above

## Implications for businesses

CBAM and the reform of the EU ETS will affect businesses both in the EU and across the globe, from an operational perspective and in terms of strategic decision-making. Impacts may be either direct or indirect. A holistic approach across the value chain and supply chain is recommended.

EU-based operators subject to EU ETS must plan for increasing carbon costs if usage of conventional fuels is continued. Consequently, increased costs may affect competition on the EU and global market for emission-heavy businesses. With the new EU ETS II, the price of conventional fuels will further increase and may catalyze the need for transformation in this sector. It is worth noting the EU and the EU Member States nationally provide large, diverse programs of grants and incentives to support businesses in the transition. Additional revenues from the carbon market will bring further funding opportunities as part of the EU Innovation Fund, especially for businesses investing in innovative low-carbon technologies.

## LESSON ROUND-UP

- The environment consists of all things-living or non-living that influence human life. It plays a vital role in the functioning of our daily lives.
- Environmental law is an integral part of any government agency. It includes a series of laws and regulations related to water quality, air quality, and other environmental aspects. The success of environmental legislation mainly depends on how they are implemented.
- Energy can be classified into several types based on the following criteria- Primary and Secondary energy, Commercial and Non-commercial energy and Renewable and Non-Renewable energy
- Commercial energy forms the basis of industrial, agricultural, transport and commercial development in the modern world.
- The energy sources that are not available in the commercial market for a price are classified as non-commercial energy.
- The awareness of ESG issues and targeting goals beyond maximising profits and minimising risks is now a growing trend among corporates around the world.
- India's Energy mix has been seeing a shift from more conventional resources of energy to renewable sources.
- The utilisation rate of coal power plants is falling. India's coal mines use only two-thirds of the capacity with some large ones using only 1 percent, according to a Global Energy Monitor (GEM) analysis.
- Environmental impacts are changes in the natural or built environment, resulting directly from an activity that can have adverse effects on the air, land, water, fish, and wildlife or the inhabitants of the ecosystem.
- Since 2015, India has been planning on increasing its forest and tree cover and has initiated several programs like the Green India Mission, green highways policy, financial incentives for forests, plantations along rivers, and more to achieve the same.
- Renewable energy grows strongly in all scenarios, at an average of 4-6% a year.
- Atmanirbhar Clean Plant Program: INR 22 billion ($267 million) will be allocated to boost the availability of disease-free, quality planting material for high-value horticultural crops.

## GLOSSARY

**Biodiversity:** The variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems. A high level of biodiversity is usually considered to be desirable and important to all species' survival.

**Carbon footprint:** The measurement of greenhouse gas emissions attributable to an event or activity, expressed as tonnes of carbon dioxide equivalent which allows the different greenhouse gases to be compared on a like-for-like basis relative to one unit of $CO_2$.

**Carbon offsetting:** Where individuals and organisations mitigate their emissions by investing in projects that avoid the production of carbon or remove it from the atmosphere.

**Climate change:** The term used to describe the change in global or regional climate patterns, in particular attributable to the increased levels of atmospheric carbon dioxide produced by the use of fossil fuels.

**Greenhouse gases:** Gases that trap heat in the atmosphere are called greenhouse gases. The principal greenhouse gases are carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O) and fluorinated gases, such as hydro fluorocarbons (HFCs).

**Green procurement:** The purchasing of environmentally friendly products and services, and the use of environmental requirements in the selection, and contracting, of suppliers.

**LEED certification:** A third-party verification process in order for structures to be considered "green," or environmentally friendly. LEED stands for Leadership in Energy and Environmental Design, is focused primarily on new, commercial-building projects and based upon a points system, see http://leed.usgbc.org.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What do you understand by environmental impact and what measures corporate houses are taking to reduce negative impacts on the environment?
2. How effective environmental policy can play a pivotal role in preserving the environment?
3. How awareness on a wide scale regarding conservation of energy may be created?
4. Pollution is a menace. In this regard, how to achieve the trade-off between industrial development and environmental protection?

**LIST OF FURTHER READINGS**


- Energy Management And Conservation (PB) by Shrama K V, I K International
- Energy Management And Conservation by K V Sharma and P Venkataseshaiah, Wiley India
- Environmental Law by Gurdip Singh Edition: 2nd Edition 2016, with Supplement, Reprinted 2021
- Principles of Environmental Laws [HB] by Dr. Rabindra Kr. Pathak, Ms. Surbhi Singh, published by Book Corporation


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- https://www.conserve-energy-future.com/methods-and-importance-of-environmental-conservation.php#:~:text=Environmental%20conservation%20protects%20wildlife%20and,for%20them%20to%20survive%20elsewhere.
- https://iced.cag.gov.in/?page_id=256
- https://blog.ipleaders.in/environment-legislation-in-india/
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- https://prsindia.org/files/budget/budget_parliament/2023/DfG_2023-24_Analysis-Environment_Forest_and_Climate_Change.pdf
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- https://thecsrjournal.in/energy-conservation-top-companies-india/
- https://www.iea.org/commentaries/empowering-people-to-act-how-awareness-and-behaviour-campaigns-can-enable-citizens-to-save-energy-during-and-beyond-today-s-energy-crisis
- https://blog.ipleaders.in/important-environment-law-compliance-business-india/
- https://enterslice.com/learning/rules-regulations-under-the-bureau-of-energy-efficiency-bee/

# Corporate Social Responsibility (CSR)

Lesson 14

## KEY CONCEPTS

Corporate Social Responsibilities ■ United Nation's Sustainable Development Goals (SDGs) ■ Schedule VII

## Learning Objectives

**To understand:**

- Constitution of CSR Committee
- Composition of CSR Committee
- Activities Permissible under CSR – Schedule VII
- United Nation's Sustainable Development Goals (SDGs)

## Lesson Outline

- Introduction
- Meaning of CSR
- Significance of CSR to sustainability of business
- CSR Under Companies Act, 2013
- Constitution of CSR Committee
- Composition of CSR Committee
- CSR Policy
- Spending of CSR Amount
- CSR Implementation
- Activities which may be included by companies in their CSR Policies
- CSR Reporting
- Display of CSR Activities on its website
- Need Assessment
- Impact Assessment
- United Nation's SDGs
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

## INTRODUCTION

Corporate Social Responsibility is also called Corporate Citizenship or Corporate Responsibility. Generally, CSR is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society.

Corporate Social Responsibility is the way companies manage their businesses to produce an overall positive impact on society through economic, environmental and social actions. Corporate social responsibility (CSR), also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business/ businesses. Business depends for its survival on long term prosperity of the society.

CSR has been defined by different people giving it a varied dimension. According to Michel Hopkins "Corporate Social Responsibility is concerned with treating the stakeholders of a company or institution ethically or in a responsible manner. 'Ethically or in a responsible manner' refers to treating key stakeholders in a manner deemed acceptable according to international norms."

According to Milton Friedman, "The business of business is business". He held the views that the only social responsibility is to maximise profits for shareholders, staying within the realm of law. Achieving this is the first objective and foremost responsibility of a corporate. If they are unsuccessful in this mission, they cannot reasonably be expected to assume other responsibilities.

### Significance of CSR to Sustainability of Business

Significance of CSR to sustainability of business in its multiple dimensions can be better understood in terms of:

- Reduction in Operating Costs
- Boost in Brand Image and Reputation
- Increased Sales and Customer Loyalty
- Higher Productivity and Quality
- Attract and Return Employees
- Reduced Regulatory Oversight
- Access to Capital

## CSR UNDER THE COMPANIES ACT, 2013

Provisions of section 135 of the Companies Act, 2013 read with Schedule VII of the Act and Companies (CSR Policy) Rules, 2014 provide the broad framework within which the eligible companies are required to formulate their CSR policies including activities to be undertaken and implementation of the same. CSR is a board-driven process, and the Board of the company is empowered to plan, approve, execute, and monitor the CSR activities of the company based on the recommendation of its CSR Committee. The Government has no direct role in the approval and implementation of the CSR programmes /projects of a company.

According to Section 135 of the Companies Act, 2013, every company having -

- net worth of rupees five hundred crore or more; or
- turnover of rupees one thousand crore or more; or
- a net profit of rupees five crore or more

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more Directors, out of which at least one director shall be an independent director.

Where a company is not required to appoint an independent director under section 149(4), it shall have in its Corporate Social Responsibility Committee two or more Directors.

> Section 149(4) of the Act states that every listed public company shall have at least one-third of the total number of Directors as independent Directors and the Central Government may prescribe the minimum number of independent Directors in case of any class or classes of public companies.
>
> Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that the following class or classes of companies shall have at least two directors as independent directors -
>
> i. the Public Companies having paid up share capital of ten crore rupees or more; or
>
> ii. the Public Companies having turnover of one hundred crore rupees or more; or
>
> iii. the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

## Applicability of the provisions of Section 135 on Holding, Subsidiary or a Foreign Company

Rule 3 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 provides that -

(1) Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (I) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit. of a foreign company of the Act shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance .with the provisions of section 381(1)(a) and section 198 of the Act.

Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per section 135(6) shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.

## Constitution of CSR Committee

The companies mentioned in the rule 3 shall constitute CSR Committee as under.-

(i) a company covered under section 135(1) which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director ;

(ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

(iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.

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

**Composition of the CSR Committee**

The composition of the CSR Committee for various categories of companies is as under:

**Listed Companies:** Three or more directors, out of which at least one shall be an independent director.

**Unlisted public companies:** Three or more directors, out of which at least one shall be an independent director. However, if there is no requirement of having an independent director in the company, two or more directors.

**Private Companies:** Two or more directors. No independent directors are required as mentioned in the proviso under section 135(1).

**Foreign Companies:** At least two persons out of which: (a) one shall be as specified under clause (d) of subsection (1) of section 380 of the Act, and (b) another shall be nominated by the foreign company. (Refer rule 5(1) of the Companies (CSR Policy) Rules, 2014).

Where the amount required to be spent by a company on CSR does not exceed fifty lakh rupees, the requirement for constitution of the CSR Committee is not mandatory and the functions of the CSR Committee, in such cases, shall be discharged by the Board of Directors of the company.

## Functions of the CSR Committee

The Corporate Social Responsibility Committee shall —

(i) formulate and recommend the CSR policy to the Board;

(ii) recommend the amount of expenditure to be incurred on CSR activities;

(iii) monitor the CSR policy of the company from time to time; and

(iv) formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the items as mentioned in rule 5(2) of the Companies (CSR Policy) Rules, 2014.

For companies covered under Section 135(9) of the Act and not required to have CSR Committee, these functions shall be carried out by the Board itself.

## Responsibilities of the Board in relation to the CSR provisions

CSR is a Board-driven process. The responsibilities of the Board of a CSR-eligible company, inter-alia, include the following — (i) approve the CSR policy; (ii) disclose contents of such policy in its report and also place it on the company's website, if any; (iii) ensure that the activities included in the CSR policy are undertaken by the company; (iv) ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years; (v) satisfy itself regarding the utilisation of the disbursed CSR funds; and (vi) if the company fails to spend at least two per cent of the average net profits of the company, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and transfer the unspent CSR amount as per provisions of sections 135(5) and 135(6) of the Act.

## Annual Action Plan

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR Policy, which shall include the following, namely:-

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;

(d) monitoring and reporting mechanism for the projects or programmes; and

(e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

## CSR POLICY

The Corporate Social Responsibility Committee shall, —

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

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

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

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

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

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

## SPENDING OF CSR AMOUNT

The Board of every company referred to in section 135 (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Explanation. – For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

### CSR Expenditure

The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 , such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that -

(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.

(ii) the Board of the company shall pass a resolution to that effect.

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -

(a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or

(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

(c) a public authority:

(d) Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

**Different modes of incurring CSR Expenditure**

*CSR expenditure can be incurred in multiple modes:*

*(i) 'Activities route', which is a direct mode wherein a company undertakes the CSR projects or programmes as per Schedule VII of the Act, either by itself or by engaging implementing agencies as prescribed in Companies (CSR Policy) Rules, 2014.*

*(ii) 'Contribution to funds route', which allows the contributions to various funds as specified in Schedule VII of the Act.*

*(iii) Contribution to incubators and R&D projects, as specified in item (ix)(a) and contribution to institutes/ organisations, engaged in research and development activity, as specified under item (ix)(b) of Schedule VII of the Act.*

## CSR IMPLEMENTATION – RULE 4

### CSR Activities to be undertaken by the company itself or through other Entities – Rule 4(1)

The Board shall ensure that the CSR activities are undertaken by the company itself or through, –

(a) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company; or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

*Explanation*.- For the purpose of clause (c), the term "entity" shall mean a statutory body constituted under an Act of Parliament or State legislature to undertake activities covered in Schedule VII of the Act.

### Entities undertaking CSR Activities to get register – Rule 4(2)

(a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the **01st day of April 2021.**

(b) Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021.**

(c) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

(d) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

### Engagement of International Organisation – Rule 4(3)

A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

### Collaboration with other companies – Rule 4(4)

A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

### Utilisation of Funds – Rule 4(5)

The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

### Ongoing Projects – Rule 4(6)

In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

**Entities are eligible to act as an Implementing Agency for undertaking CSR Activities**

Rule 4(1) of the Companies (CSR Policy) Rules, 2014 provides the eligible entities which can act as an implementing agency for undertaking CSR activities. These are:

*(i)* *Entity established by the company itself or along with any other company – a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961.*

*(ii)* *Entity established by the Central Government or State Government – a company established under section 8 of the Act, or a registered trust or a registered society.*

*(iii)* *Statutory bodies – any entity established under an Act of Parliament or a State legislature.*

*(iv)* *Other bodies – a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.*

## IMPACT ASSESSMENT

The words 'Impact Assessment' has neither been defined under the Companies Act, 2013 nor under the Companies (CSR Policy) Rules, 2014. In common words the impact assessment may be defines as a means of measuring the effectiveness of organisational activities and judging the significance of changes brought about by those activities. It is neither Art or Science, but both. Impact assessment is intimately linked to Mission, and, in that sense, ripples through the organisation. The impact assessment is a effective tool to monitor the way the CSR expenses are being expended by a company and how the society is being benefitted from the CSR expenses. The impact assessment ensures the end use of the expenses which are being incurred, for whom it is being incurred and what are the ultimate benefits on the environment, its social impacts and so of the inculcation of the governance structure in the company concerned.

### Impact Assessment through an independent Agency

Every company having average CSR obligation of ten crore rupees or more in pursuance of section 135(5) of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

### Placement of Impact Assessment Report before the Board

The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

### Ceiling of Expenditure on Impact Assessment

A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed -

- two percent of the total CSR expenditure for that financial year; or
- fifty lakh rupees,

whichever is higher.

### Independent Agency

In terms of Rule 8(3) of the Companies (CSR Policy) Rules, 2014 the impact assessment shall be conducted by an independent agency. The Independent Agency has not been defined under the Act or Rules. The Board has the prerogative to decide on the eligibility criteria for selection of the independent agency for impact assessment. The word 'independent' shall be construed that the agency concerned shall not be the related party as prescribed under Section 2(76) of the Companies Act, 2013.

## Unspent Amount of CSR – Section 135(6)

Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

## Transfer of unspent CSR amount – Rule 10

Until a fund is specified in Schedule VII for the purposes of subsection (5) and(6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

## Penalty for Default in Compliance – Section 135(7)

If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

## Central Government to give Directions – Section 135(8)

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

## Non-applicability of Constitution of CSR Committee – Section 135(9)

Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

## Activities which may be included by companies in their CSR Policies Activities – Schedule VII

**(i) Eradicating Hunger, Poverty and Malnutrition**

Eradicating hunger, poverty and malnutrition, "promoting health care including preventive health care" and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

**(ii) Promoting Education**

Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

The Government of India, Ministry of Corporate Affairs vide its General Circular No. 08/ 2022 dated 26th July 2022 clarified on spending of CSR funds for "Har Ghar Tiranga" campaign.

'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

2. The companies may undertake the aforesaid activities, subject to fulfillment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry thereof, from time to time.

**(iii) Promoting Gender Equality**

Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

**(iv) Environmental Sustainability**

Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

**(v) Protection of National Heritage**

Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

**(vi) Measures for the benefit of Armed Forces Veterans**

Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;

**(vii) Rural Sports**

Training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports

**(viii) Prime Minister's National Relief Fund**

Contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;

**(ix) Research and Development Projects**

(a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and

(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE);

Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

**(x) Rural Development Projects**

**(xi) Slum Area Development.**

*Explanation*. - For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

**(xii) Disaster Management**

Disaster management, including relief, rehabilitation and reconstruction activities.

**Activities do not qualify as eligible CSR activity**

*Rule 2(1)(d) of the Companies (CSR Policy) Rules, 2014 defines CSR and the following activities are specifically excluded from being considered as eligible CSR activity:*

*(i) Activities undertaken in pursuance of normal course of business of the company. However, exemption is provided for three financial years, till FY 2022-23, to companies engaged in R&D activities for new vaccines, drugs, and medical devices in their normal course of business, related to COVID19. This exclusion is allowed only in case the companies are engaged in R&D in collaboration with organisations as mentioned in item (ix) of Schedule VII and disclose the same in their Board reports;*

*(ii) Activities undertaken outside India, except for training of Indian sports personnel representing any State or Union Territory at national level or India at international level;*

*(iii) Contribution of any amount, directly or indirectly, to any political party under section 182 of the Act;*

*(iv) Activities benefitting employees of the company as defined in section 2(k) of the Code on Wages, 2019;*

*(v) Sponsorship activities for deriving marketing benefits for products/services; (vi) Activities for fulfilling statutory obligations under any law in force in India.*

## MAPPING SUSTAINABLE DEVELOPMENT GOALS (SDGS) WITH CSR PROGRAMS OF THE COMPANY

### United Nation's SDGs

The Sustainable Development Goals (SDGs) were developed at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, 2012. The purpose was to create a set of global goals, related with the environmental, political and economic challenges that we face as humanity.

The 2030 Agenda listed "Sustainable Development Goals" consisting of 17 goals and 169 targets in order to eradicate poverty and realize a sustainable world. **The 17 sustainable development goals (SDGs) to transform our world[1]:**

1. *https://www.un.org/development/desa/disabilities/envision2030.html*

GOAL 1: No Poverty

GOAL 2: Zero Hunger

GOAL 3: Good Health and Well-being

GOAL 4: Quality Education

GOAL 5: Gender Equality

GOAL 6: Clean Water and Sanitation

GOAL 7: Affordable and Clean Energy

GOAL 8: Decent Work and Economic Growth

GOAL 9: Industry, Innovation and Infrastructure

GOAL 10: Reduced Inequality

GOAL 11: Sustainable Cities and Communities

GOAL 12: Responsible Consumption and Production

GOAL 13: Climate Action

GOAL 14: Life Below Water

GOAL 15: Life on Land

GOAL 16: Peace and Justice Strong Institutions

GOAL 17: Partnerships to achieve the Goal

## SDG India Index[2]

India played a prominent role in the formulation of the United Nations Sustainable Development Agenda 2030 and much of the country's National Development Agenda is mirrored in the Sustainable Development Goals (SDGs). The progress of the world to meet the SDGs largely depends on India's progress. However, with 17 Goals, 169 Targets and 306 National indicators, the SDGs might be difficult to grasp and understand, and defining and measuring success poses a challenge.

While countries around the world have been considering how to implement and measure success against the Goals, NITI Aayog has taken the lead by bringing out the SDG India Index – Baseline Report 2018, and showing how SDGs will be measured in India. The NITI Aayog released the Baseline Report of the *Sustainable Development Goals (SDG) India Index*, which comprehensively documents the progress made by India's States and Union Territories towards implementing the 2030 SDG targets.

NITI Aayog has constructed the SDG India Index spanning across 13 out of 17 SDGs (leaving out Goals 12, 13, 14 and 17). The Index tracks the progress of all the States and Union Territories (UTs) on a set of 62 National Indicators, measuring their progress on the outcomes of the interventions and schemes of the Government of India. The SDG India Index is intended to provide a holistic view on the social, economic and environmental status of the country and its States and UTs.

The SDG India Index is an aggregate measure which can be understood and used by everyone – policymakers, businesses, civil society and the general public. It has been designed to provide an aggregate assessment of the performance of all Indian States and UTs, and to help leaders and change makers evaluate their performance on social, economic and environmental parameters. It aims to measure India and its States' progress towards the SDGs for 2030.

*2. https://niti.gov.in/sdg-india-index*

## Key Features of SDG India Index, 2018

Guided by MoSPI's National Indicator Framework and based on consultations with Central Ministries/ Departments and States/UTs, NITI Aayog has constructed a list of Sixty two priority indicators for computation of the SDG India Index after extensive discussions with 38 Central Ministries and Departments and States and UTs. Being the baseline report, this report does not consider time series comparison of data. As a result, the SDG India Index tells us where a State/UT currently stands on each of the indicators considered, and will present incremental change in subsequent versions.

The SDG India Index 2018 report provides critical insights on the status of SDGs in the country even though it may not be a comprehensive representation of overall baseline since it is constrained by limited data availability. As data availability improves and new estimation techniques become available, subsequent reports of SDG India Index will become more comprehensive with additional indicators, and also help to measure incremental progress.

Despite these gaps and limitations, the SDG Index can be useful to States/UTs in assessing their starting point on the SDGs in the following ways:

- **Support States/UTs to benchmark their progress:** SDG India Index can help States/UTs to benchmark their progress against the national targets and performance of their peers to understand reasons for differential performance and devise better strategies to achieve the SDGs by 2030.
- **Support States/UTs to identify priority areas:** The SDGs undoubtedly present a very bold agenda. It is clear from this analysis, that several States will face major challenges in achieving the SDGs. SDG India Index will act as tool to highlight the key areas on which the respective States/UTs need to invest and improve by enabling States/UTs to measure incremental progress.
- **Highlight data gaps related across SDGs:** The preparation of the index has highlighted data gaps related to the SDGs. As highlighted earlier, SDG India Index does not currently cover Goals 12, 13 and 14 largely on account of unavailability of comparable data across States and UTs. Even for basic indicators like Maternal Mortality Ratio, data is not available for States in the North-East and UTs. The stated limitations of this index highlights the need for India to develop its statistical systems at the national and State levels. It highlights the need to increase the capacity and capability of data collection.

## Mapping of CSR Programmes with SDGs

The company's CSR Project shall be in line with the SDGs. The 17 Point Programme as enunciated by the United Nations have already been incorporated under Schedule VII of the Companies Act, 2013.

**Format for the Annual Report on CSR Activities to be included in the**

**Board's Report**

**[For Financial Year Commenced Prior To 1st Day of April, 2020]**

1. A brief outline of the company's CSR Policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR Policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent of the amount as in item 3 above)

5. Details of CSR spent during the financial year.

    (a) Total amount to be spent for the financial year;

    (b) Amount unspent, if any;

    (c) Manner in which the amount spent during the financial year is detailed below.

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
|---|---|---|---|---|---|---|---|
| ***S. No.*** | ***CSR Project or Activity Identified*** | ***Sector in which the Project is covered*** | ***Projects or Programs (1) Local area or (2) Other Specific the State and district where projects or programs was undertaken*** | ***Amount outlay (budget project or programs wise*** | ***Amount spent on the project or programs Sub-heads: (1) Direct Expenditure on projects or programs (2) Overheads*** | ***Cumulative expenditure upto the reporting period*** | ***Amount Spent : Direct or through implementing Agency*** |

*Give details of implementing agency:

6. In case the company has failed to spend the two per cent of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.

7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

| Sd/- | Sd/ | Sd/- |
|---|---|---|
| (Chief Executive Officer or Managing Director or Director) | (Chairman CSR Committee) | (Person specified under clause (d) of sub-section (1) of section 380 of the Act) (wherever applicable) |

**FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT FOR FINANCIAL YEAR COMMENCING ON OR AFTER THE 1ST DAY OF APRIL, 2020**

1. Brief outline on CSR Policy of the Company:

2. Composition of CSR Committee:

| ***S. No.*** | ***Name of Director*** | ***Designation / Nature of Directorship*** | ***Number of meetings of CSR Committee held during the year*** | ***Number of meetings of CSR Committee attended during the year*** |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

3. Provide the web-link(s) where Composition of CSR Committee, CSR Policy and CSR Projects approved by the board are disclosed on the website of the company.

4. Provide the executive summary along with web-link(s) of Impact Assessment of CSR Projects carried out in pursuance of sub-rule (3) of rule 8, if applicable.

5. (a) Average net profit of the company as per sub-section (5) of section 135.

   (b) Two percent of average net profit of the company as per sub-section (5) of section 135.

   (c) Surplus arising out of the CSR Projects or programmes or activities of the previous financial years.

   (d) Amount required to be set-off for the financial year, if any.

   (e) Total CSR obligation for the financial year [(b)+(c)-(d)].

6. (a) Amount spent on CSR Projects (both Ongoing Project and other than Ongoing Project).

   (b) Amount spent in Administrative overheads.

   (c) Amount spent on Impact Assessment, if applicable.

   (d) Total amount spent for the Financial Year [(a)+(b)+(c)].

   (e) CSR amount spent or unspent for the Financial Year:

| | ***Amount Unspent (in Rs.)*** | | | | |
|---|---|---|---|---|---|
| ***Total amount spent for the Financial Year (in Rs.)*** | ***Total Amount transferred to Unspent CSR Account as per sub-section (6) of Section 135*** | | ***Amount transferred to any fund specified under Schedule VII as per second proviso to sub-section (5) of Section 135*** | | |
| | ***Amount*** | ***Date of transfer*** | ***Name of the fund*** | ***Amount*** | ***Date of transfer*** |
| | | | | | |

   (f) Excess amount for set-off, if any:

| ***S. No.*** | ***Particulars*** | ***Amount (In Rs.)*** |
|---|---|---|
| (i) | Two percent of average net profit of the company as per sub-section (5) of Section 135 | |
| (ii) | Total amount spent for the financial year | |
| (iii) | Excess amount spent for the Financial Year [(ii) – (i)] | |
| (iv) | Amount available for set off in succeeding Financial Years [(iii)-(iv)] | |

7. Details of Unspent Corporate Social Responsibility amount for the preceding three financial years:

| 1 | 2 | 3 | 4 | 5 | 6 | | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| ***S. No.*** | ***Preceding Financial Year(s)*** | ***Amount transferred to Unspent Account under section 135(6)*** | ***Balance amount in unspent CSR account under section 135(6) (Rs.)*** | ***Amount spent in the financial year (in Rs.)*** | ***Amount transferred to a Fund as specified under Schedule VII as per second proviso to section 135(5)*** | | ***Amount remaining to be spent in succeeding Financial Years (in Rs.)*** | ***Deficiency, if any*** |
| | | | | | ***Amt Outstd*** | ***Dt of Tr.*** | | |
| 1. | FY-1 | | | | | | | |
| 2. | FY-2 | | | | | | | |

8. Whether any capital assets have been created or acquired through Corporate Social Responsibility amount spent in Financial Year.

Yes / No

If Yes, enter the number of Capital assets created / acquired.

Furnish the details relating to such asset(s) so created or acquired through Corporate Social Responsibility amount spent in the Financial Year:

| ***S. No.*** | ***Short particulars of the property or assets(s) Including complete address and location of the property*** | ***Pin code of the property or asset(s)*** | ***Date of creation*** | ***Amount of CSR amount spent*** | ***Details of entity / Authority / Beneficiary of the Registered owner*** | | |
|---|---|---|---|---|---|---|---|
| ***(1)*** | ***(2)*** | ***(3)*** | ***(4)*** | ***(5)*** | ***(6)*** | | |
| | | | | | ***CSR Registration Number, if applicable*** | ***Name*** | ***Registered Address*** |
| | | | | | | | |

All the fields should be captured as appearing in the revenue record, flat no, house no, Municipal Office/Municipal Corporation/ Gram panchayat are to be specified and also the area of the immovable property as well as boundaries)

9. Specify the reason(s), if the company has failed to spend two per cent of the average net profit as per sub-section (5) of section 135.

| | | |
|---|---|---|
| Sd/- (Chief Executive Officer or | Sd/- (Chairman CSR Committee). | Sd/- [Person specified under clause (d) of sub-section (1) of section 380] Managing Director or Director). (Wherever applicable)." |

**CASE LAWS**

***Technicolor India (P.) Ltd. v/s Registrar of Companies, CP NO. 124 (BB) OF 2019, JANUARY 31, 2020.***

In the instant case, the Company has spent some amount as per the CSR Policy of the Company during the fiscal year 2017-18, which remain below the threshold mentioned in Section 135(5) of Companies Act, 2013 read with Companies Rules, 2014. Due to human lapse, the concerned department misreported the amounts spent on CSR, which mentioned in the CSR Annexure to the Directors' report for the fiscal year ended Company 31st March, 2018 as against the amount reported in the audited financials. Therefore, the Board of Directors of the Company, in their meeting held on 21st September, 2018 approved the draft Directors' report for the year ended 31st March, 2018 which mentioned the amount spent on CSR and associated details incorrectly, due to receipt of an incorrect input from the relevant department.

In the AGM held on 28-9-2018, the shareholders have adopted the audited financial statements for the year ended 31st March, 2018 including the audited balance sheet as on 31st March 2018, the statement of profit and loss account with the report of the board of directors and auditors. The amount spent on the CSR and associated detail is incorrectly captured in the annexure to the Director's report for the fiscal year ended 31st March, 2018 as against the amount recorded in the Audited financial against CSR activity and the issue was discovered during the pre-scrutiny stage of filing of the audited financials of the year. Therefore, the Board has taken a call to set the things right with the suo motu intent to make application under section 131(1)(b) to rectify the error in the Board's report. The Board thus has authorised to make this application.

The NCLT passed the following order:

- The Petitioner Company is permit to revise the Board's report, as sought for, as per Annexure-4 and with a direction to follow all the extant provisions of section 135 of the Companies Act, 2013, the Company (CSR) Rules, 2014 amended from time to time, and also rule 77 of NCLT Rules, 2016.
- This order is passed without prejudice rights of the Statutory Authorities to initiate any proceedings against the Company, for violation of any provisions of the Companies Act, which includes alleged violation of section 135 of the Companies Act, 2013.

## Display of CSR Activities on its Website

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

## LESSON ROUND-UP

- Corporate Social Responsibility is also called Corporate Citizenship or Corporate Responsibility. Generally, CSR is understood to be the way firms integrate social, environmental and economic concerns into their values, culture, decision making, strategy and operations in a transparent and accountable manner and thereby establish better practices within the firm, create wealth and improve society.
- Every company having net worth of rupees five hundred crore or more; or turnover of rupees one thousand crore or more; or a net profit of rupees five crore or more during the **immediately preceding financial year** shall constitute a Corporate Social Responsibility Committee of the Board **consisting of three or more Directors**, out of which **at least one director shall be an independent director**.
- The CSR Committee shall **formulate and recommend to the Board, an annual action plan** in pursuance of its CSR Policy.
- The Board of every company after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy.
- The Board of every company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

## GLOSSARY

**Annual Action Plan:** The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR Policy.

**CSR Committee:** The Corporate Social Responsibility Committee is appointed by the Board of Directors to promote a culture that emphasizes and sets high standards for corporate social responsibility and reviews corporate performance against those standards.

**CSR Policy:** The CSR Committee shall formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII; recommend the amount of expenditure to be incurred on such activities and monitor the Corporate Social Responsibility Policy of the company from time to time.

**CSR Spending:** The Board of every company specified in Section 135 (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years.

**Administrative Overheads:** The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.

**Default in compliance – Penalty on the company**: If a company is in default in complying with the provisions of section 135(5) or (6), the company shall be liable to a penalty of-

- twice the amount required to be transferred by the company to the Fund specified in Schedule VII; or
- the Unspent Corporate Social Responsibility Account; or
- one crore rupees,

whichever is less.

**Default in compliance -Penalty on the officers of the company:** Every officer of the company who is in default shall be liable to a penalty of –

- one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII; or
- the Unspent Corporate Social Responsibility Account; or
- two lakh rupees

whichever is less.

**Need Assessment:** Needs assessment is a systematic process for determining and addressing development needs or gaps between current conditions and desired conditions. The discrepancy between the current condition and desired condition must be measured to appropriately identify the development needs of community.

**Impact Assessment:** Impact assessment may be defines as a means of measuring the effectiveness of organisational activities and judging the significance of changes brought about by those activities.

**Sustainable Development Goals (SDGs)**: The Sustainable Development Goals (SDGs) were developed at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, 2012. The purpose was to create a set of global goals, related with the environmental, political and economic challenges that we face as humanity.

SDG India Index NITI Aayog has constructed the SDG India Index spanning across 13 out of 17 SDGs (leaving out Goals 12, 13, 14 and 17).

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Whether private limited companies are required to constitute a CSR Committee?
2. Whether a company can do CSR Expenditure on an activity which is covered under Schedule VII, but not covered by the CSR Policy approved by the Board?
3. Whether there is any limit on the administrative overheads of total CSR expenditure of the company for the financial year?
4. What do you mean by United Nation’s Sustainable Development Goals (SDGs)?
5. Discuss about the composition of the CSR Committee?

**LIST OF FURTHER READINGS**


- Corporate Social Responsibility Law & Practice by Rajesh S. Kadakia’s, Publisher: Taxmann
- Corporate Social Responsibility by KAMAL GARG Edition 2023, Publisher: Bharat
- Corporate Social Responsibility in India : A Practitioner’s Perspective by Nirbhay Lumde
- A Handbook On Corporate Social Responsibility by Dr.Mahesh Thakur
- Corporate Governance Business Ethics and CSR- With Case Studies and Major Corporate Scandals by Sharma

# Green Initiatives

Lesson 15

## KEY CONCEPTS

■ SDGs relating to pollution ■ Pollution Abatement ■ Circular Economy ■ Green Bonds ■ Green Energy Corridor ■ Production Linked Incentive (PLI) Scheme ■ International Solar Alliance ■ Digital Water Management ■ Wastewater Processing ■ Advanced Filtration ■ Decentralized Infrastructure ■ Desalination ■ Domestic Waste ■ Industrial Wastes ■ Agricultural Wastes ■ Commercial Wastes ■ Autoclaving ■ Incineration ■ E-Waste Management

## Learning Objectives

**To understand:**

- Background on climate change
- Discussions on climate change in COP 26 and COP 27
- Scenario of increasing pollution and its perils
- Renewable energy scenario
- Water management scenario
- Waste management techniques
- Practical scenarios of waste management
- Other pertinent concepts

## Lesson Outline

- Pollution abatement and testing
- Reduction in Carbon / CHG Emissions
- Resource efficiency
- Renewable Energy Intensity
- Water Management
- Waste Management
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

Climate change is a global phenomenon and all the countries and various global forums are paying utmost attention to it, as rising GHG (Green House Gas) emissions are hazardous for both people as well as planet. The global temperature has already soared 1.1°C above the pre-industrial level, with glaciers melting and the sea level rising. Impacts of climate change also includes flooding and drought, displacing millions of people, sinking them into poverty and hunger, denying them access to basic services, such as health and education, expanding inequalities, stifling economic growth and even causing conflict.

Taking urgent action to combat climate change and its devastating impacts is therefore an imperative to save lives and livelihood, and key to making the 2030 Agenda for Sustainable Development and its 17 Goals, i.e., the blueprint for a better future a reality.

The following developments contributing to a gloomy ecosystem triggers the need for espousing green initiatives –

(i) The global annual mean temperature is projected to rise beyond 1.5°C above pre-industrial levels in at least one of the next five years.

(ii) Global carbon dioxide (CO2) emissions declined by 5.2 per cent in 2020 due to lowered energy demand caused by COVID-19-induced social and economic disruptions. But with the phasing out of COVID-related restrictions, energy-related CO2 emissions for 2021 rose by 6 per cent, reaching their highest level ever.

(iii) Climate finance provided and mobilized by developed countries totalled $79.6 billion in 2019, up from $78.3 billion in 2018. It is estimated that $1.6 trillion to $3.8 trillion will be needed each year through 2050 for the world to transition to a low-carbon future and avoid warming exceeding 1.5°.

(iv) About one third of global land areas will suffer at least moderate drought by 2100.

(v) The sea level could rise 30 to 60 centimetres by 2100, even if greenhouse gas emissions are sharply reduced and global warming is limited to well below 2°C.

(vi) About 70 to 90 per cent of warm-water coral reefs will disappear even if the 1.5°C threshold is reached; they would die off completely at the 2°C level.

(vii) 3 billion to 3.6 billion people live in contexts that are highly vulnerable to climate change.

(viii) By 2030, an estimated 700 million people will be at risk of displacement by drought alone.

Now coming to Indian scenario on climate change, there seems to be a light at the end of the tunnel by observing the rank it has secured in Climate Change Performance Index (CCPI). India has been ranked amongst top 5 countries in the world, and the best among the G20 countries, based on its Climate Change performance. India jumps 2 spots higher, and is now ranked 8th as per Climate Change Performance Index (CCPI, 2023) published by German Watch, New Climate Institute and Climate Action Network International based in Germany. The latest report of CCPI, released at COP 27 in November 2022, shows Denmark, Sweden, Chile and Morocco as the only four small countries that were ranked above India as 4th, 5th, 6th and 7th respectively.

India earned a high rating in the GHG Emissions and Energy Use categories, while a medium for Climate Policy and Renewable Energy. The aggressive policies of India towards rapid deployment of renewables and robust framework for energy efficiency programs have shown considerable impact. As per the CCPI report, India is on track to meet its 2030 emissions targets (compatible with a well-below-2°C scenario).

But despite an optimistic scenario, India has to go a long way in tackling the growing menace of GHG Emissions and pollution, as manifested from the following vital facts:

(a) India has sizeable and growing energy needs, and with this, comes the prospect of spiralling greenhouse gas emissions (GHGs).

(b) The country has made huge strides in improving energy access, but needs to continue to develop the energy network and diversify its fuel mix.

(c) The country's path to decarbonization could be a net-positive one if it turns to low- and no-emissions technologies.

(d) Any successful models it develops can be replicated in other economies, producing a beneficial effect for billions of people.

As per a study, it is expected that sometime in 2023, India will cross China in population and will become the country with largest population. A country with mammoth population and is witnessing industrialisation at an astounding pace, will have a huge demand for energy and with this there is a high probability of green house gas emissions. One of the biggest challenge for India is that on the one hand it is grappling with the issue of trying to quickly develop equitable economic growth to meet the changing needs and lifestyle hopes of its 1.4 billion people and on the other hand accomplishing national and international climate targets. However, it encouraging to see that India has been at the forefront of driving global action on climate change.

The need for having a congenial environment drives from the fact that more than 1.2 billion employment relies on a stable environment. In this regard, green initiatives act as a fulcrum in ensuring safe environment and conservation of natural resources. According to International Labour Organisation (ILO) Green Initiative throws light on the following three areas –

(i) Advance research and understanding of the challenges and opportunities for the world of work arising from a green transition.

(ii) Forge policy responses from the world of work in all sectors to ensure decent work and social justice for all.

(iii) Build strategic partnerships at national, regional and international levels.

With the surge in pollution, i.e., air, water, soil etc., the world has witnessed climate change. Even though enforcement of the environmental laws has assisted in abating the environment related issues to some extent but they have also engendered a rise in the economic costs of products and services. These developments has encouraged policy makers to explore the relationship between environmental laws, industry competitiveness, and the organisations social responsibilities. In this regard, experts have concentrated on various factors exerting an impact on critical facets of environmental efficiencies like, public policies, energy policies and technological innovations. However, in view of substantial variations existing within the organisations that can affect the environment and its related factors, the researchers have commenced with the task of exploring the role of organisational structures in improving environmental efficiency.

With the onset of industrial revolution, numerous nations have embraced the process of industrialisation but they have paid the environmental cost as well. With the enhancement in industrialisation, people became more conversant with environmental-related matters. Similarly, along with rising environmental concerns, the organisations started to lay emphasis on improving the environmental efficiency. Therefore, it resulted into mounting pressure on the business enterprises or companies from all corners of the society, especially, civil society, environmentalists, to fulfil their obligations pertaining to environmental safety and protection. In this way, corporate social responsibility gained steam and become a norm for companies to conduct business activities.

Talking about 'Green Investment', an element of 'Green Initiative', there are two school of thoughts, first the traditional school of thought states that green or environmental investment is purely a cost and the modern school of thought opines that environmental investment can bring future prosperity. In recent times, green investment has become an integral component of the firm's environmental strategy.

In view of the significance of the green investment by companies in protecting the environment, various factors have been considered as enabler of green investment, including green fees, eco-innovation, environmental technologies, waste discharge fees, pollution penalties, and so on.

With the passage of time, a significant relationship that has gained prominence is between corporate governance and green innovation. Modern day firms have become more focused about investing in green research and development activities that would lead them towards the trajectory of eco-innovations. However, it is to be noted that going green is relatively a newer concept that demands a shift in the firm's research and development culture, the introduction of new production techniques, investment in green technologies , and encouragement to novel ideas.

## POLLUTION ABATEMENT AND TESTING

Pollution abatement refers to technology applied or measure taken to reduce pollution and/or its impacts on the environment. The most commonly used technologies are scrubbers, noise mufflers, filters, incinerators, waste-water treatment facilities and composting of wastes.

In other words, Pollution abatement refers to any measure taken to reduce, control or eliminate pollution from a given environment. Abatement measures can be technological, like catalytic converters on vehicles to reduce air pollution, or they may be regulatory, like laws limiting the amount of solid waste a sewage management facility can release into a waterway. Abatement measures may also be behavioural, like turning down a home thermostat a degree or two in winter to reduce electricity consumption and greenhouse gas emissions.

The need to espouse pollution abatement may be linked to the United Nations Environment Assembly of 2017, wherein to fight the pervasive impact of pollution on society, the environment ministers of the globe gathered to express their political commitment to work towards a pollution free planet. Governments also embraced resolutions targeting specific facets of pollution- air quality, water pollution, soil pollution, marine litter and microplastics, chemicals and wastes.

An implementation plan as devised, cutting across all these resolutions, with the aim to promote accelerated action, enhance capacities to address pollution and achieve the Sustainable Development Goals. The Environment Assembly welcomed the Plan and recognized it as the key vehicle for prompt implementation. It encouraged all Member States and relevant stakeholders to contribute to its effective implementation.

The Sustainable Development Goals (SDGs) pertaining to pollution is provided in table 1 below-

**Table 1**

**SDGs relating to Pollution**

| ***Goal Number*** | ***Goal Title*** | ***Goal Description*** |
|---|---|---|
| 1 | No Poverty | Cleaner environments improve worker health and productivity and increase the number of days worked. |
| 2 | Zero Hunger | Better soil quality and uncontaminated land will reap higher quality harvests and help protect humanity's food sources. |
| 3 | Good Health and Well-Being | Action on pollution substantially reduces the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination. |

| Goal Number | Goal Title | Goal Description |
|---|---|---|
| 4 | Quality Education | A clean environment enables high-quality education, and education enables acquisition of the knowledge and skills needed to promote sustainable development and lifestyles. |
| 5 | Gender Equality | Pollution reduction can promote gender equality, for example through reduced burden of fetching clean water, cleaner indoor air quality and better health. |
| 6 | Clean Water and Sanitation | Addressing the contamination of water sources will help provide clean water and sanitation for all. |
| 7 | Affordable and Clean Energy | The development and dissemination of affordable, clean and efficient sources of energy and transport are key to cleaning the air. |
| 8 | Decent Work and Economic Growth | Improved worker health and well-being and toxin-free workspaces lead to increased productivity and economic growth. |
| 9 | Industry, Innovation and Infrastructure | Pollution avoidance through the adoption of green technologies and ecosystem-based solutions fosters innovation and sustainability in the industry and infrastructure sectors. |
| 10 | Reduced Inequalities | Pollution governance and actions can ensure that no group or community bears a disproportionate share of the harmful effects of pollution. |
| 11 | Sustainable Cities and Communities | Sustainable transport, waste management, buildings and industry lead to cleaner air in cities. |
| 12 | Responsible Consumption and Production | Proper management and disposal of chemicals and waste, and reduced food losses contribute to sustainable consumption and production practices. |
| 13 | Climate Action | Clean energy and low-carbon policies reduce air pollution and mitigate the impact of climate change |
| 14 | Life Below Water | Plastic and chemical pollution is causing great harm to all marine life and threatens life below water. |
| 15 | Life on Land | Thriving ecosystems require clean land and water sources. Tackling pollution is essential to protecting life on land. |
| 16 | Peace, Justice and Strong Institutions | Good Pollution-related governance reduces environmental burdens and injustices and can enhance the availability of 'saved' resources for the undeserved. |
| 17 | Partnerships for the Goals | Global partnerships to address pollution can have positive impacts on health, jobs, worker productivity the environment and well-being. |

***Source:*** *Beat Pollution, UN Environment Programme*

Industrialization, use of pesticides and nitrogen-based fertilizers, crop residues in agriculture, urbanization, forest fires, desert dust, and inadequate waste management have intensified environmental health risks and pollution, especially in low-and-middle-income-countries. At the same time, the global economy relies on deeply intertwined supply chains, sustained by more than 100 billion tons of raw materials entering the system each year. Intensive material consumption depletes natural resources and causes negative environmental impacts at every stage of the product life-cycle including production, use phase, and end-of-life. In light of the soaring wastes, the global waste is expected to increase to 3.4 billion tons by 2050.

Now before moving to pollution abatement initiatives at both global and Indian levels, it is essential to comprehend the concept of pollution testing.

## Pollution Abatement – Global and Indian Initiatives

### Indian Initiatives

Over the past several years, central and state government/agencies have launched several policies and programmes to combat the growing pollution levels across land, air and water. For example, in August 2019, the National Green Tribunal released an order to retrofit all operational DG sets with devices to reduce particulate matter (PM) emissions by at least 70%. Similarly, in January 2019, the central government launched the 'National Clean Air Programme' to reduce air pollution levels in 102 cities over the next five years.

Increasing levels of pollution and government policies/programmes to control the same have created business opportunities for established companies and start-ups. Numerous companies have ventured into this space with significant success, wherein a few companies expanded their existing product portfolios to meet the rising demand for air/water purifiers, while others established their businesses based solely on the demand for pollution reducing/recycling products and services. The sector of pollution control and waste recycling is highly under penetrated in the country has offers huge growth potential.

Another significant development that is a harbinger of India's determination towards pollution abatement is launching of long-term carbon development strategy at the COP-27 (UNFCCC COP 27). A Global call for Mission LiFE (Lifestyle for Environment) was given by Prime Minister of India, while delivering India's National Statement, at CoP26, held at Glasgow in October-November, 2021. Subsequently, Mission LiFE was launched at Ekta Nagar by Prime Minister of India, on 20 October 2022, in the presence of United Nations Secretary General, Mr Antonio Guterres. India participated in COP 27, with focus on mainstreaming the theme of LiFE - Lifestyle for Environment.

The Indian Pavilion at COP 27 highlighted the theme of LiFE in various ways – models, audio visual displays, activities and 49 side events with participation of various central government ministries, state governments, UN and multilateral organizations, public sector undertakings, think tanks, private sector, international organizations and civil society organizations. India invited all countries to join the LiFE movement which is a pro-people and pro-planet effort, seeking to shift the world from mindless and wasteful consumption to mindful and deliberate utilization of natural resources.

In continuation to the aforesaid noteworthy initiative, other vital measures taken by the government to provide a fillip towards pollution abatement are as under:

**(i)** ***Fostering Circular Economy***: Waste to Wealth: Honourable Prime Minister, in his address to the nation on the occasion of 75th Independence Day on 15.08.2021, highlighted India's action on 'Mission Circular Economy'. NITI Aayog constituted 11 Committees for development of circular economy (CE) action plans for different categories of wastes.

Circular Economy Action Plans for 10 waste categories (Lithium-ion batteries; E-waste; Toxic and hazardous industrial waste; Scrap metal (ferrous and non-ferrous); Tyre and Rubber; End of Life

Vehicles; Gypsum, Used Oil, Solar Panels and Municipal Solid Waste have been finalized, and are under implementation. Respective Nodal Ministries are coordinating on progress of implementation of these action plans. Ministry of Environment, Forest and Climate Change is the Nodal Ministry for Circular Economy Action Plan for Tyre and Rubber and stakeholder ministry in other CE Action Plans.

Regulations on market based Extended Producer Responsibility (EPR) principle have been notified for four categories of wastes i.e. plastic packaging waste, battery waste, e-waste and waste tyre.

''Extended Producer Responsibility (EPR) for Waste Tyre, 2022'' on 21.07.2022.

"Guidelines on EPR for Plastic Packaging on 16.02.2022.

''Battery Waste Management Rules, 2022'' on 22.08.2022.

''E-Waste (Management) Rules, 2022'' on 02.11.2022.

In EPR for Plastic Packaging, targets for minimum recycling, minimum use of recycled content and use of rigid plastic packaging in identified sizes have been mandated. In rules incorporating EPR principle that have been notified/amended this year, different targets of minimum recycling, minimum recovery percentage and minimum use of recycled content have been given lead times to start with. The optimum level will be reached over a period of time. This has been done to provide time to the industry as well as recyclers for the development of systems and recycling infrastructure. Regulations to bring in EPR for end-of-life vehicles is under development.

The Waste-to-Wealth Mission/ Mission Circular Economy is bound to create new business models as well as new employment opportunities. This will also result in integration of informal sector. Participation of industry is of critical importance to make the Waste-to-Wealth Mission a success. This will result in moving away from mindless consumption to mindful utilisation and will help achieve the vision of Mission LiFE - Lifestyle for Environment given by Honourable Prime Minister.

**(ii)** ***National Clean Air Programme (NCAP):*** The Ministry of Environment, Forest and Climate Change (MoEF&CC) has been implementing since 10th January, 2019, a National Clean Air Programme (NCAP) as a national-level strategy outlining the actions for reducing the levels of air pollution at city and regional scales in India. Rs. 7100 crore have been released to 131 cities till date under NCAP & XVFC for implementing actions stipulated under city action plan. Fixed city wise year wise targets for improvement in air quality for FY 2021-22 to 2025-26 for this MoUs have been signed with NCAP cities between CPCB, SPCB and ULB and 42 MPCs between the MoEF&CC, State government and Urban local bodies under XVFC.

The national level plan: a comprehensive action plan has been prepared from 7 line ministries under NCAP which includes the action plans of different Ministries/ Departments of Government of India. This includes convergence of schemes/ programmes of different Ministries/ Departments.

State Action Plans are under process and received from 10 States/ UTs so far. City Action Plans are prepared by cities for implementation of activities which assists in air quality improvement. 88 Institute of Reputes (IoRs) are assigned to 131 NACs for capacity building and for effective implementation of City action plans.

MoEF&CC conducted regional workshops for sensitization, knowledge sharing and capacity building of the stakeholders in the State (3 regional workshops have been conducted so far and a National Conference on VAYU in Odisha).

MoEF&CC has also launched "PRANA" a portal for monitoring implementation of NCAP on the occasion of International day of clean air for blue skies on 7th September 2021 and in 2022 released brochures/ booklets on Guidelines for Capacity Building & Public Outreach.

Guidelines for release of funds under NCAP, Operational Guidelines for release of grants under Fifteenth Finance Commission along with that released booklets on best practices undertaken by various cities in sectors for abatement of emissions from waste and biomass dumping and burning, for abatement of vehicular emissions, Road dust and construction & demolition waste management, capacity building & monitoring network etc.

The Swachh Vayu Survekshan guidelines for Ranking of cities under NCAP has been issued to cities- 9 cities are awarded with a cash prize of 5 crores under 3 categories on 3rd December 2022 during VAYU conference in Bhubaneswar, Odisha.

An overall improvement in ambient air quality has been observed in 95 cities during 2021-22 as compared to 2017. 18 cities were found to be within the prescribed National Ambient Air Quality Standard (PM10 less than 60^g/m3) in 2019-20 which has increased to 20 in year 2021-22.

**(iii)** ***Establishment of Asia's largest Ramsar Sites network***: On the eve of 76th Independence Day (15th August 2022), India added ten wetlands to the List of Wetlands of International Importance (also called Ramsar Sites) within the framework of the Ramsar Convention, taking the total number of Ramsar Sites in India to incredible 75, the highest in Asia, in the 75th year of its independence.

India ratified the Ramsar Convention in 1982. Keoladeo National Park (in Rajasthan) and Chilika (in Odisha) were the first two sites to be placed on the Ramsar List by the Government of India. Till 1990, only four more sites were added to the list, and another 20 over the following two decades. Since 2014, Ramsar Site designation has received a significant policy push from the MoEFCC, and 49 wetlands have been added to the list. The network of Indian Ramsar Sites currently covers 1.33 million ha, which is approximately 8% of the known wetland extent of the country.

Ramsar Sites form an international network of wetlands which are important for conserving global biological diversity and sustaining human lives through the maintenance of their ecosystem components, processes and services. The international significance of these sites is indicated by their fulfilling at least one of the nine criteria set by the Convention. With 2,455 sites spanning 255.8 million ha, the Ramsar sites represent the world's largest protected area network.

The Ramsar sites in India are highly diverse. The contribution that Ramsar sites make to biological diversity can hardly be over emphasised. A recent compilation of faunal diversity of 42 Indian Ramsar Sites by the Zoological Survey of India enlists 6200 species. For several of the faunal groups, these wetlands represent a significant share of the known diversity (for example, over one-third of recorded mammalian species, one-fifth of reptiles, and about two-thirds of known bird species). While the smallest Ramsar Site is just 19.75 ha in the area (Vembannur), the largest, the Sunderbans, spans 0.42 million ha.

Ramsar Sites are one of the three pillars of the Ramsar Convention, the other two being working towards the wise use of wetlands and cooperating internationally on transboundary wetlands, shared wetlands and shared species. The Ramsar Convention's pillar of wetlands wise use is very well aligned with L.I.F.E., international mass movement launched by Prime Minister Narendra Modi towards "mindful and deliberate utilization, instead of mindless and destructive consumption" to protect and preserve the environment.

Since 1986, the MoEFCC has been implementing a national scheme (presently known as the National Plan for Conservation of Aquatic Ecosystems) to assist state governments in preparing and implementing integrated management plans for Ramsar sites and other priority wetlands. Ramsar sites receive legal protection under Wetlands (Conservation and Management) Rules, 2017. Each Ramsar site needs to have a management plan which outlines the pathway to wise use. A diagnostic approach for developing such management plans has been prescribed by the Ministry. In June 2022, the Ministry also formulated the 'Sahbhagita Guidelines' outlining an "all of society" approach and governance framework for wetlands conservation in the country.

**(iv)** ***Ban on identified Single Use Plastics from 1 July 2022 and Plastic Waste Management***: India has taken resolute steps to reflect its commitment to eliminate single use plastics that are not biodegradable and have an adverse impact on environment. The strategy adopted by the Government to tackle unmanaged and littered plastic waste has two pillars – ban on single use plastic items which have high littering potential and low utility, and implementation of extended producer responsibility on plastic packaging.

The country has taken a defining step to eliminate single use plastics. A ban has been imposed on identified single use plastic items from 1st July 2022. The ban was notified on 12th August 2021.

Ear buds with plastic sticks, plastic sticks for balloons, plastic flags, candy sticks, ice-cream sticks, polystyrene (Thermocol) for decoration; Plates, cups, glasses, cutlery such as forks, spoons, knives, straw, trays, wrapping or packing films around sweet boxes, invitation cards, and cigarette packets, plastic or PVC banners less than 100 microns, stirrers. Thickness of Plastic carry bags increased to 75 microns (30.9.2021) and to 120 microns (31.12.2022).

The introduction and use of alternatives to banned single use plastic items have led to creation of new employment opportunities, promote innovation and development of new business models. The manufacturing of alternatives with eco-friendly material in the MSME sector will further support development of Atmanirbhar Bharat.

India had piloted a resolution in 2019 for addressing pollution caused by single use plastics which was adopted by the 4th meeting of United Nations Environment Assembly in 2019.

To develop alternatives to single use plastics "India Plastic Challenge – Hackathon 2021" was organized by the Ministry of Environment, Forest and Climate Change, for start-ups and students of colleges and Universities. Two startups in the area of alternatives to single use plastics were awarded. A completely biodegradable alternative to thermocol from paddy straw waste (Parali) has been developed. This innovation will use Parali and also replace thermocol. Packaging material from seaweed has been developed as innovative alternative to single-use plastics.

National Expo on Eco-Alternatives to single use plastic and start up conference 2022 held on 26th and 27th September 2022 in Chennai. More than 150 manufacturers of eco-alternatives from across the country are participating in the Expo. The eco-alternatives included material made from sea-weed, bagasse, rice and wheat bran, rice stubble, plant and agricultural residue, banana and areca leaves, jute and cloth.

Prakriti - Messenger of the Earth was launched as a mascot of sustainability and protection of environment spread awareness amongst general public. A public movement is being built on elimination of single use plastics by NSS, NCC and more than 100,000 eco-clubs in schools and colleges. Puneet Sagar and Swachh Sagar Surakshit Sagar Campaign have showcased the importance of collective action in maintaining clean beaches and coasts.

The Guidelines for Extended Producer Responsibility on plastic packaging are unique and have led to the establishment of world's biggest framework for EPR implementation on plastic packaging. The implementation of EPR on plastic packaging will lead to reduction in littered and unmanaged plastic waste in the country, promote circular economy of plastic packaging waste promote development of new alternatives to plastics and development of new business models move towards sustainable plastic packaging. The EPR framework is implemented through a centralized online portal ensuring ease of doing business.

The Guidelines for EPR in plastic packaging promote an environmentally conscious lifestyle that focuses on 'mindful consumption' through the reuse of rigid plastic packaging and sustainable plastic packaging instead of 'mindless and destructive consumption' of single-use plastics. The Guidelines for EPR in plastic packaging give a push for reducing plastic footprint in packaging through the use of recycled plastic content in manufacturing of plastic packaging material.

**(v)** ***Budgetary Approach*****:** The Union Budget 2023-24 has espoused a futuristic approach towards environment. The approaches are as under:

(a) Mangrove Initiative for Shoreline Habitats & Tangible Incomes', MISHTI, to be taken up for mangrove plantation along the coastline and on salt pan lands, through convergence between MGNREGS, CAMPA Fund and other sources.

(b) Green Credit Programme to be notified under the Environment (Protection) Act to incentivize and mobilize additional resources for environmentally sustainable and responsive actions.

(c) Amrit Dharohar scheme to be implemented over the next three years to encourage optimal use of wetlands, enhance bio-diversity, carbon stock, eco-tourism opportunities and income generation for local communities.

(d) Looking at the previous union budget 2022-23, the Ministry of Environment, Forests and Climate Change has been allocated Rs. 3,030 crore, which is a 20% increase over the revised estimates in 2021-22.

**(vi)** ***Green Bonds***: The Government of India has given approval for the sovereign green bonds framework which in turn has provided impetus to India's commitment towards its Nationally Determined Contribution (NDCs) targets, adopted under the Paris Agreement, and help in attracting global and domestic investments in eligible green projects. The proceeds generated from issuance of such bonds will be deployed in Public Sector projects which help in reducing carbon intensity of the economy.

The Framework comes close on the footsteps of India's commitments under "Panchamrit", as explained by the Honourable Prime Minister at COP 26 Glasgow in November 2021. The approval for green bonds is a metaphor of the fulfilment of the government's announcement in the Union Budget 2022-23 that sovereign green bonds will be issued for mobilising resources for green projects.

## REDUCTION IN CARBON / GHG EMISSIONS

Discussing about reduction in carbon / GHG emissions, it is imperative to comprehend the concept of climate change and its related developments, as carbon and GHG emissions are major contributors towards climate change. Climate change refers to a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere.

Studies indicate that the amount of greenhouse gases including carbon dioxide, methane, and nitrous oxide in the atmosphere have increased rapidly over the last few centuries as a result of human activities. The increased concentration of greenhouse gases in the atmosphere has led to a rise in global temperatures leading to other changes in global climate, such as erratic rains, floods, and cyclones.

According to the Intergovernmental Panel on Climate Change (IPCC), the average global temperature is estimated to have increased by 0.85°Celsius (°C) between 1880 and 2012. At the end of the 21st century, the increase in global temperature is likely to exceed 1.5°C as compared to pre-industrial levels (1850 to 1900). However, in August 2021, the IPCC estimated that a 1.5°C increase may happen much earlier, by 2040.

This could lead to a reduction of the snow cover, increase in heat waves, extreme precipitation, intensification of tropical cyclones and increase in sea levels. Over the years, several international efforts have been made for global co-operation to address issues of climate change. In 1992, the United Nations Framework Convention on Climate Change (UNFCCC), an international framework for cooperation was established to stabilise greenhouse gas concentrations in the atmosphere.

The European Union (EU) has dedicated a modernisation fund to support 10 lower-income EU Member States in their transition to climate neutrality. 11 Further, EU has also proposed that at least 25% of its expenditure will contribute to climate action during 2021-27. The United States of America (USA) has called for the preparation of a Climate Finance Plan, to focus on international climate finance. USA intends to double its annual public climate finance to developing countries by 2024.

After India's announcement of additional targets at COP26, experts have estimated that India will require over Rs. 700 lakh crore to meet its goal of net zero emissions by 2070. Of this, investment of over Rs. 600 lakh crore will be required to shift to renewable energy sources. This financing called for significant actions across all the ministries.

To combat the menace of growing carbon emission substantial investment is needed in India for implementing measures relating to climate change. The Economic Survey (2020-21) observed that India is relying on domestic resources to implement adaptation and mitigation action for climate change. It noted that the financing considerations will remain critical as the country had increased its targets substantially. Preliminary estimates provided by the NDC indicate that India's climate change actions till 2030 will require financial resource of USD 2.5 trillion (at 2014-15 prices). It recommended a clearer assessment of the financial requirement for implementing the NDC for appropriate allocation of resources. Further, the possible sources for meeting these requirements should also be devised.

The silver lining is that currently 100% Foreign Direct Investment is allowed in renewable energy sector. India attracts $13 bn FDI in non-conventional energy sector. As per the estimates India could attract close to $10 bn in renewable energy investment in 2023. India ranks 3rd in renewable energy country attractive index in 2021 and 3rd largest energy consuming country in the world. India stands 4th globally in Renewable Energy Installed Capacity (including Large Hydro), 4th in Wind Power capacity & 4th in Solar Power capacity (as per REN21 Renewables 2022 Global Status Report, *https://www.ren21.net/gsr-2022/*).

India has already set an ambitious target of accomplishing a capacity of 175 GW of renewable energy by 2022, which expands to 500 GW by 2030. It is to be noted that this is the world's biggest expansion plan in renewable energy.

India's installed renewable energy capacity has increased 396% in the last 8.5 years and stands at more than 159.95 Giga Watts (including large Hydro), which is about 40% of the country's total capacity (as on 31st March 2022). The installed solar energy capacity has increased by 19.3 times in the last 8 years, and stands at 56.6 GW as of 1st June 2022. The installed Renewable energy capacity (including large hydro) has increased from 76.37 GW in March 2014 to 159.95 GW in May 2022, i.e. an increase of around 109.4%. The installed power capacity in the country is around 408.72 GW as of 30th November 2022.

India achieves 166GW of renewable energy capacity till October 2022. India has achieved its NDC target with total non-fossil based installed energy capacity of 159.95 GW which is 41.4% of the total installed electricity capacity. The installed capacity of renewable energy is provided in table 2 below-

**Table 2**

**Installed Capacity of Renewables**

| *Sl. No.* | *Source of Renewable Energy* | *Installed Capacity* |
|---|---|---|
| 1 | Wind Power | 41.2 GW |
| 2 | Solar Power | 59.34 GW |
| 3 | Biomass/Co-generation | 10.2 GW |

| Sl. No. | Source of Renewable Energy | Installed Capacity |
|---|---|---|
| 4 | Small Hydro Power | 4.88 GW |
| 5 | Waste To Energy | 0.47 GW |
| 6 | Large Hydro | 46.85 GW |

India has set a target to reduce the carbon intensity of the nation's economy by less than 45% by the end of the decade, achieve 50% cumulative electric power installed by 2030, and achieve net-zero carbon emissions by 2070. Low-carbon technologies could create a market worth up to $80 bn in India by 2030.

India has been ranked amongst top 5 countries in the world, and the best among the G20 countries, based on its Climate Change performance. India jumps 2 spots higher, and is now ranked 8th as per Climate Change Performance Index (CCPI, 2023).

India's target is to produce 5 MT of green hydrogen by 2030. Green Hydrogen target is set at India's electrolyzer manufacturing capacity is projected to reach 8 GW per year by 2025. The cumulative value of the green hydrogen market in India could reach $8 bn by 2030 and India will require at least 50 gigawatt (GW) of electrolysers or more to ramp up hydrogen production.

As the concept of net-zero emissions is becoming a top priority across the globe. Numerous countries are introducing schemes and campaigns to encourage the adoption of climate-smart actions. India is the 4th largest emitter of carbon dioxide, and is fortunately geared to tackle this issue by bringing forth multiple projects. In this regard, the Indian corporate sector is contributing substantially to reduce carbon emission. Sixty-four businesses based in India are already preparing strategies to achieve the goal of net-zero emission. These companies have made commitments to support the government's climate protection schemes. Some popular names include Mahindra & Mahindra, Wipro, HDFC banks etc.

Several Indian companies have partnered with the Confederation of Indian Industry (CII) to set targets to cause no net biodiversity loss. They have committed to addressing air pollution and working towards a circular economy, while also removing the commodity-driven deforestation in the sector of supply chains. There has been an increase in transparency regarding the environmental footprints of businesses. Companies that support green operations are advancing with greater finance and valuation.

Investors today show interest in comprehending the tracks of past emissions and future carbon footprint estimates of companies. This change has been encouraging many businesses to build eco-friendly strategies. However, several businesses find it hard to perform eco-friendly investments, hindering them from achieving their goals.

## RESOURCE EFFICIENCY

Resource efficiency means using the Earth's limited resources in a sustainable manner while minimising impacts on the environment. It allows us to create more with less and to deliver greater value with less input.

Resource efficiency stands for the relationship between natural raw materials or technical-economic materials and the benefits gained from their use, whether in production or consumption. The aim is to maximize the benefits of products or services while minimizing consumption and waste. The less energy and material required to produce a product the better.

Continued worldwide population growth is resulting in a global increase in demand for products and associated resources. Currently, our society consumes more resources than the earth can provide and renew. Improved efficiency can counteract the soaring consumption of raw materials.

At this juncture, it will be interesting to know the ways to improve resource efficiency in business organisations-

**(i)** **Application of waste hierarchy**: The Waste Hierarchy ranks waste management options according to what is best for the environment, with prevention being the most desirable option and disposal being the least. To put this in place, one should identify what type of waste the business creates, if any of this waste can be re-purposed, if recycling more waste materials is possible, and if any organic waste (e.g. food/garden waste) can be used to create renewable energy or composted.

**(ii)** **Waste assessment**: Assessing waste will not only help the organisation to apply waste hierarchy, but also to identify problem areas and develop a plan of action. The management might discover that a particular process is causing more waste than realised, or that a different material can be used in place of a less efficient one.

**(iii)** **Controlling of waste:** By enhancing accuracy, improving communication, and providing the appropriate tools and training, the management can assist its team in reducing wastages, thereby saving cost and also contribute substantially towards preserving the environment.

**(iv)** **Implementation of Environmental Management System**: Environmental management systems, such as ISO 14001, are becoming increasingly popular for businesses looking to reduce their environmental impact. These management systems can help an organisation to improve its environmental performance, reduce environmental liability, and decrease costs.

**(v)** **Reduce Energy Consumption:** By reducing the consumption of energy, an organisation can save both energy as well as costs. Some of the ways to reduce energy consumption include turning off lights and equipment when not in use, use cold water rather than hot water where possible, and utilising power saving functions in usage of various machines and other electrical gadgets.

**(vi)** **Increase Energy Efficiency:** Not only the business organisation can take steps to reduce energy consumption in the workplace, but can also make changes in order to improve energy efficiency. For example, the business enterprise could change its lights to LEDs which use up to 90% less energy than traditional incandescent bulbs.

**(vii)** **Communication with staff:** It is essential that management communicate the organisation's goals clearly to its human capital for enhancing efficiency and reduce waste in the workplace. Further, clarity in communication assist in creating an awareness among the team members as to what is expected from them by the management.

Participative management style needs to be embraced wherein the human capital employed at various levels of the hierarchy are consulted in order to obtain their views / suggestions on improving efficiency in production and reducing wastages.

**(viii)** **Using Re-use and Refill Approach:** According to the United Nations Environment Programme, only about 9 percent of the 9.9 billion tons of plastic generated globally since the 1950s has been recycled. And almost half of the plastic waste poisoning marine life, contaminating food, and clogging waterways and sewers comes from consumer packaging. As citizens and governments wake up to this plastic pollution problem, they're turning to business to solve it. In response, companies are trying to craft new approaches to plastic, whether reducing over packaging or rolling out biodegradable materials made of seaweed and corn-starch. But one solution – the reuse and refill business model – stands out for its potential to shift consumer behaviours while unlocking new revenue streams and cost savings for companies.

In leading companies, the concept of sustainability has been around a long time. Procter & Gamble, for example, has been making its Tide bottles with 25 percent recycled plastic for more than two decades. SodaStream, PepsiCo's sparkling water–making home appliance, which provides consumers with a fun, healthy, and eco-friendly experience. With reusable bottles and compressed CO2 in returnable cylinders, consumers can make their own flavored sparkling water at home. As a bonus, they can help a brand that aims to eliminate 67 billion plastic beverage bottles by 2025.

Some reuse models, already woven into the culture and lifestyle of developing countries, are making their way into mature markets. In bustling Mumbai, the 130-year-old dabbawalla lunch system serves as many as 200,000 meals per day to the city's workers in metal lunchboxes and then collects the empty containers for reuse.

**(ix)** **Reduce Wasteful Office Practices:** Going by the waste hierarchy, the best-case scenario is to prevent waste, even if it is recyclable. With this in view, the management may review the office practices to find ways to limit waste. Printing is one of the biggest culprits for unnecessary waste in the office – to combat this the management may discourage printing of long documents and prefer e-version of the documents as far as possible.

**(x)** **Understand the Legislation:** It is essential that to comprehend the regulatory framework that governs the waste generated by the organisation. In this regard, the business organisations may adopt the following:

(a) Keep waste to a minimum.

(b) Sort and store waste correctly.

(c) Complete waste transfer notes.

(d) Ensuring registration of waste carrier.

(e) Ensuring that waste carrier disposes off the waste legally.

## RENEWABLE ENERGY INTENSITY

Energy intensity is the amount of energy required to produce one unit of gross domestic product (GDP). Going by this definition, it may be opined that the intensity of renewable energy is increasing both at global and at national levels. The ensuing paragraphs highlights the growing intensity of renewable energy.

By 2024, almost 33 percent of the world's electricity is forecast to come from renewables, with solar photovoltaic (PV) accounting for almost 60 percent (or at least 697 gigawatts) of expected growth, according to Renewables 2019, a report from the International Energy Agency published in November 2019. Onshore wind (309 GW), hydropower (121 GW), offshore wind (43 GW) and bioenergy follow (41 GW).

Drastically lower production costs, growing concern around climate change, evolving global energy policies and increased pressure from investors on companies to adopt environmental social governance (ESG) polices are pushing renewables into the mainstream.

To comprehend the renewable energy intensity scenario at global level, the following economies have been referred as sample-

**(i)** ***Canada***: Riding the momentum of the Pan-Canadian Framework, by 2023, 85% of Canada's electricity will be produced by non-emitting sources–giving most Canadians the ability to power their lives with the clean energy of their choice. The Framework aims to support a transition to a clean electricity future by increasing the amount of electricity generated by renewable and non-emitting sources, connecting clean power with places that need it, modernizing electricity systems, and reducing northern and remote communities' reliance on diesel. Its goal is to have 90% of the country's electricity coming from non-emitting sources by 2030.

(ii) ***USA***: Natural gas will become the biggest source of electricity on the US grid, allowing renewables (solar, wind, hydropower, geothermal and biomass) to rise along with it, regularly outproducing coal in U.S. electric power generation by 2023.

(iii) ***South Africa***: With sporadic power outages the norm and the country's power crisis growing on the heels of a struggles at Eskom, the country's main electricity supplier, the Department of Energy will accelerate its alternative energy program. The department will do it by encouraging private investment into solar plants for consumption by Eskom. As a result, coal will be responsible for 60% of the national power sector's electricity generation, down from more than 85% currently.

(iv) ***Portugal***: Portugal's 15-year biomass energy installations scheme, boosted by a recent €320 million received from the European Commission, will serve as the new blueprint for how Europe produces biomass energy as a way to reduce dependence on coal and mitigate natural disaster risk.

(v) ***Malaysia***: On the heels of the country's expanding manufacturing capacity for renewables and declining production costs, Malaysia will begin maximising its strategic location for solar generation ahead of schedule: The country will increase its energy generation from renewable sources from 2% in 2018 to 25% by 2023.

## India's Renewable Energy Scenario

With a population of 1.3 billion, India has a massive demand for energy to fuel its rapidly growing economy. From a power deficit nation at the time of Independence, the efforts to make India energy-independent have continued for over seven decades. Today, we are a power surplus nation with a total installed electricity capacity of over four lakh MW.

Keeping in mind the sustainable development goals, India's power generation mix is rapidly shifting towards a more significant share of renewable energy. Today, India is the world's third largest producer of renewable energy, with 40% of its installed electricity capacity coming from non-fossil fuel sources.

As a developing nation at the time of Independence, India relied heavily on coal to meet its energy demands. However, India has always been committed to looking for more alternative energy sources for sustainable development. The beginning was made with hydropower, with major hydroelectric power projects appearing on the scene of India's energy arena. Over the years, many policy and regulatory initiatives have promoted hydropower development and facilitated investments. Today, we are 5th in the world regarding usable hydropower potential.

Bhabha Atomic Research Centre (BARC) was founded in the 1950s to secure the country's long-term energy independence. Today, we are the only developing nation with indigenously developed, demonstrated and deployed nuclear reactors for electricity generation. This was made possible through several decades of extensive scientific research and technology development.

Work on wind energy started in India during the 1960s when the National Aeronautical Laboratory (NAL) developed windmills, primarily for supplying irrigation water. Today, we have the 4th largest wind power capacity in the world, blessed with a constant movement of wind, especially in the Southern, Western and North Western regions.

Solar energy-based applications have benefited millions of Indians by meeting their cooking, lighting and other energy needs in an environment-friendly manner. Having achieved large-scale success in solar energy solutions, India has spearheaded the International Solar Alliance (ISA) which is an action-oriented, member-driven, collaborative platform for increased deployment of solar energy technologies. The membership of the ISA is open to all member-states of the United Nations, and 107 countries are signatories to the ISA Framework Agreement at present. The Alliance aims to efficiently utilise solar energy to reduce fossil fuel dependence, thereby creating a greener planet.

Biomass has also been an essential source of energy for India. It is renewable, widely available, carbon-neutral and has the potential to provide significant employment in rural areas. Rapidly evolving technology has enabled thermal power plants to have more economical and energy-efficient operations. India has co-fired biomass in thermal plants across the country to reduce its CO2 footprint in thermal power generation. biomass power/co-generation programme since mid-nineties. Over 800 biomass power and bagasse/non-bagasse cogeneration projects have been installed in the country for feeding power to the grid.

Even though it supports the second largest population in the world, India's sustained efforts have ensured that its per capita CO2 emissions are much lower than the global average. The US emits 14.7 tonnes per capita, China emits 7.6 tonnes per capita, while India's CO2 emissions amount to 1.8 tonnes per capita.

India has always shown its willingness in leadership to fight climate change. The country's vision is to achieve Net Zero Emissions by 2070, in addition to attaining the short-term targets which include:

- Increasing renewables capacity to 500 GW by 2030.
- Meeting 50% of energy requirements from renewables.
- Reducing cumulative emissions by one billion tonnes by 2030.
- Reducing emissions intensity of India's gross domestic product (GDP) by 45% by 2030.

### Proclivity of corporates towards renewable energy

Tech majors such as Amazon, Meta and Google have been the largest investors in clean energy, including wind and solar power. According to a report by an industry group, named the American Clean Power Association, Amazon, Facebook's parent company Meta and Google which is a subsidiary of Alphabet have been listed as the top three corporate buyers of wind and solar energy.

In India too, corporate houses are showing inclination towards usage of renewable energy in their business processes. According to a report published by WWF (World Wide Fund for Nature) revealed that 69% of the top 100 companies in NSE by market capitalisation procure renewable energy in some form and 22 percent have clean energy procurement targets.

The Central Electricity Authority or CEA predicts 66% share of India's total electricity production by 2030 will be consumed by commercial or industrial customers, compared to 50% in 2018. So, RE adoption by India Inc. is key to the country's success in its climate commitments, energy security and reduction of carbon footprint.

## WATER MANAGEMENT

Access to safe water, sanitation and hygiene is the most basic human need for health and well-being. Billions of people will lack access to these basic services in 2030 unless progress quadruples. Demand for water is rising owing to rapid population growth, urbanization and increasing water needs from agriculture, industry, and energy sectors.

Decades of misuse, poor management, over extraction of groundwater and contamination of freshwater supplies have exacerbated water stress. In addition, countries are facing growing challenges linked to degraded water-related ecosystems, water scarcity caused by climate change, underinvestment in water and sanitation and insufficient cooperation on trans boundary waters.

Water management is the activity of planning, developing, distributing and managing the optimum use of water resources. Water is a basic necessity. No living creature can live without water. There's a scarcity of water. To avoid this scarcity, water is saved and managed efficiently.

The private sector is increasingly reporting water as a material risk. Water risks like scarcity, floods and droughts can cause operational and supplier disruptions, higher operational costs, brand damage and heightened regulatory uncertainty. These risks pose threats not only to businesses themselves, but the people who rely on them for employment and services.

In a water-stressed world, there's a powerful business case for companies to manage this essential resource sustainably, engage in water stewardship and drive collective action. As a shared resource, water provides diminished benefits to all if each user acts only in their own self-interest. Addressing today's acute water problems – including droughts, dwindling groundwater and failing infrastructure – will require coordinated, collective responses.

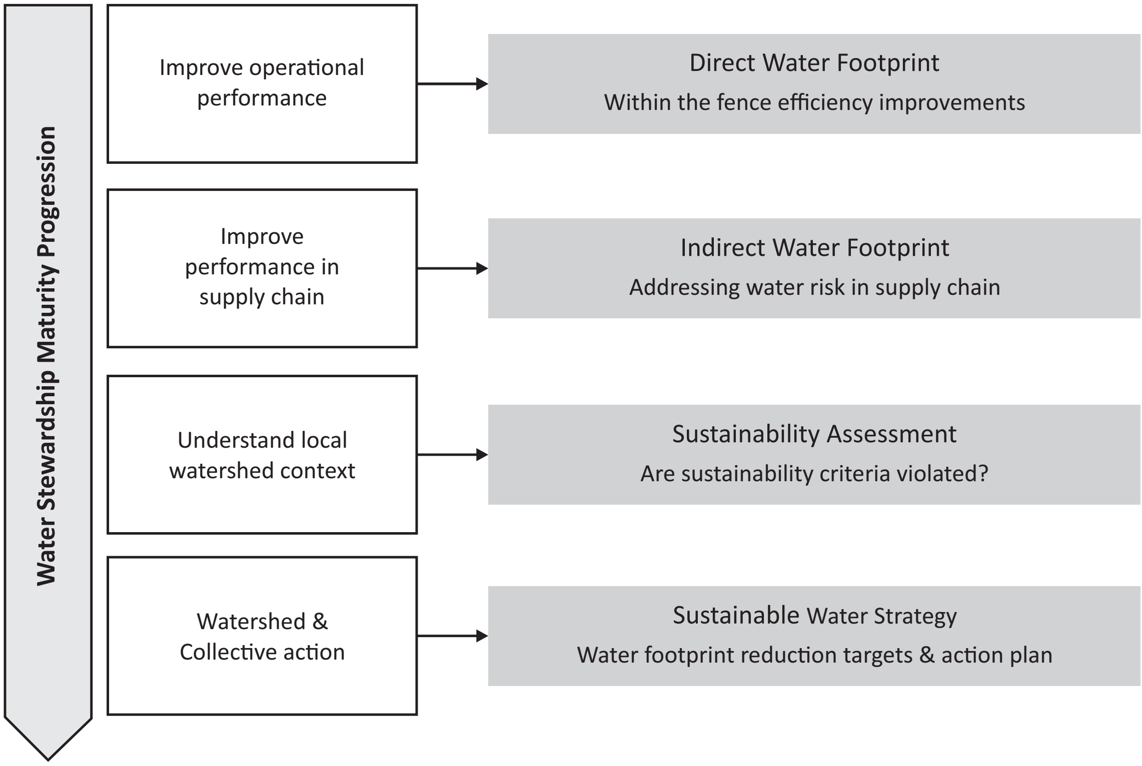
Companies across sectors, non-profits, disclosure initiatives, industry associations and investor groups recognize this challenge and have responded with a range of water stewardship frameworks. Water stewardship is defined as using water in a way that is socially equitable, environmentally sustainable and economically beneficial. This is achieved through a stakeholder inclusive process that involves site and catchment based actions.

The global sustainable water supply is estimated to be 4,200 $km^3$ per year. In 2000, global water use stood at 3,950 $km^3$. For 2030, global water demand is projected to be 6,900 $km^3$, exceeding the sustainable supply by 40 per cent. The Organisation for Economic Co-operation and Development (OECD) forecasts that global water demand for manufacturing industries will increase by 400 per cent from 2000 to 2050.

Water stewardship is a collaborative and multi-stakeholder approach that aims to achieve social, environmental and economic benefits. By using Water Footprint Assessment, a company can ensure that all stakeholders are well informed and good river basin governance is developed.

Please refer exhibit 1 for water stewardship maturity progression.

**Exhibit 1**
**Water Stewardship Maturity Progression**




**Source:** Water Footprint Network

With reference to Global Water Standard, in 2014, the Alliance for Water Stewardship (AWS) launched the world's first international standard to promote freshwater use in a way that is socially beneficial, environmentally responsible and economically sustainable. WWF, with multiple stakeholders, led the establishment of AWS and the creation of the standard with the vision of helping companies to become better stewards and demonstrate leadership in conserving the planet's limited fresh water.

Through the Alliance for Water Stewardship (AWS), WWF partners with global leaders in sustainable water management to promote the use of fresh water in a way that is socially, economically, and environmentally beneficial.

As one of the founding board members, WWF worked alongside the following organizations to establish the AWS as an independent non-profit organization dedicated to advancing water stewardship:

- The Nature Conservancy
- Water Stewardship Australia
- Pacific Institute
- CDP
- United Nations Environment Programme
- UN Global Compact's CEO Water Mandate
- European Water Partnership
- Water Environment Federation
- Water Witness International

As part of AWS's Secretariat, WWF led the development of the International Water Stewardship Standard 1.0, the first global framework to promote sustainable fresh water use, following ISEAL's Codes of Good Practice.

The Standard defines criteria for good water stewardship and was designed to align with other sustainability initiatives and support independent certification with varying levels of recognition. It was developed through a four-year, multi-stakeholder, global water roundtable process that included a diversity of business, public sector and civil society interests from around the world, as well as pilot projects held in seven countries.

## Top Water Management Trends

At this juncture it will be of paramount academic interests to explore top water management trends that are as under:

1. **Digital Water Management:** Increasing global water demand and the need to maintain aging infrastructure necessitate the growth in digital water management. Technologies such as AI, IoT sensors, and advanced meters enable water quality and quantity control as well as remote asset management and responsible water use.

   Also, geographical information systems (GIS), digital twins, and augmented and virtual reality (AR/VR) technologies visualize and model situational scenarios to identify anomalies and prevent potential damage. 5G, blockchain and cloud technologies ensure speed and data security for water management solutions. This way, digital technologies improve the decision-making and efficiency of water utilities.

2. **Wastewater Processing:** Large amounts of wastewater are discharged without prior adequate treatment. Lack of control over water wastage in industrial and residential activities causes pollution of freshwater reserves. Emerging innovations in wastewater processing are trying to effectively recover spent water in different industries.

Technologies such as advanced oxidation processes, adsorption/biosorption, and biological and anaerobic remedies demonstrate promising results. In combination with solar irradiation, they effectively absorb pollutants from wastewater and reduce the amount of produced sludge via microbial decomposition. This way, wastewater processing solutions mitigate contaminants to meet water demands.

3. **Advanced Filtration:** Due to the pressing water scarcity problem, startups are paying more attention to fresh and creative methods of water filtration. Nanotechnology advances are enabling the development of filtration membranes that remove hard-to-capture micro pollutants.

   Since nanocomposite membranes have improved chemical properties, they provide higher flux, permeability, and selectivity than conventional solutions. Another important technology is biological filtration which uses bacteria to purify water while converting energy from oxidation into electricity. Together with natural and self-cleaning filters, new advancements contribute to energy-saving and cost-effective water filtration.

4. **Flood Prevention:** Global warming increases the likelihood of extreme droughts and floods. Recent advances involve not only improved device designs but also include solutions that facilitate monitoring, forecasting, and catastrophe modelling. Enhanced water gates, property protectors, dams, and flood blocks guarantee rapid response to the disaster.

   Further, drone and satellite-based systems capture vital data through clouds and other obstacles. In combination with LiDAR mapping and weather radars start-ups measure wind directions to predict rainfalls. Apart from these, advanced catastrophe modelling provides potential financial consequences for a more holistic picture. Overall, these technologies rethink traditional flood measures to deliver better risk management.

5. **Water-saving Technology:** Facing growing challenges with freshwater availability, there is a growing global demand for water-saving technologies. This trend is impacted by water reuse, recycling, intelligent irrigation, and home conservation. To achieve circularity, startups design water-saving toilets, taps, and shower heads.

   They control water flow, limit the quantity of water used, and redirect it for other purposes. Besides, new recycling technologies extract valuable resources and nutrients for practical repurposing. Efficient irrigation techniques are another important direction that advances precision farming by measuring and minimizing overwatering. This way, startups are using a range of approaches to save water in different settings.

6. **Decentralized Infrastructure:** The interest in decentralized water infrastructure is growing as a measure that improves the resilience of communities. Modular and mobile electrocoagulation treatment makes users independent of centralized systems that are unavailable in remote regions.

   Further, personalized water systems include off-grid supply, facilitated by real-time digital technologies and tracking apps. Meanwhile, in-home water solutions offer alternative hydration methods by converting air into water. In this way, the distributed practice reduces rising costs and risks associated with old infrastructure, which ultimately improves general resilience.

7. **Innovative Materials**: Recent progress in material science provides new opportunities to overcome water supply challenges. Innovative materials such as modular adsorbents, electrode-based reactors, photo catalysts, and nanoparticles are key technologies that are advancing this trend. Their beneficial chemical and mechanical properties offer a smaller footprint while improving selectivity, efficiency, and reliability. By integrating materials with various properties, start-ups are developing multifunctional systems that achieve multiple functions in water management.

8. **Desalination:** Water desalination is an industrial process that requires huge amounts of chemicals and energy to proceed. Therefore, start-ups are focused on developing innovative and eco-friendly solutions that reduce costs. New desalination approaches use renewable energy such as solar power to reduce carbon emissions.

   Other methods employ biomimicry by which plants and fish extract seawater with minimal energy. Additionally, innovative aquaporin-based technology targets and blocks salt out of water. This way, novel seawater desalination shifts beyond traditionally expensive and fossil-based methods.

## Cases of Water Management by Corporate Sector

1. **Water conservation initiatives of DS Group**: The Dharampal Satyapal Group (DS Group) has been working in the water stressed areas of the country to ensure long term availability of water through geographic-specific conservation measures and judicial utilization of resources. The Group supports multiple water conservation and replenishing projects across Rajasthan, Madhya Pradesh, Uttar Pradesh, Himachal Pradesh, Uttarakhand and Gujarat, benefitting millions of people from the marginalized communities.

   These projects involve construction of recharging and storage structures, renovation of existing defunct and underutilized water bodies, soil conservation measures, introduction of efficient irrigation practices and institutions building for long-term sustainability.

   The work has significantly impacted the availability of water at surface and sub-surface level, which has led to increased irrigated area and improved crop productivity resulting in better economic conditions of the communities in the intervention areas.

2. **Water conservation by JK Tyre and Industries Limited (Kankroli)**: The various strategies adopted by the company for recycling and reusing water included working for zero discharge, developing hydrophobia for water in unwanted places, eliminating all open drains, optimising/loading cooling towers to their 100%, reducing evaporation losses, radiator/air cooling, eliminating flash losses in steam usage, eliminating wastage, treating sewage and rain water harvesting. As a result of these efforts, the specific and per capita water consumption reduced and overall availability of water improved significantly. This work won the CII-GBC National Award (Within the Fence Category) for Excellence in Water Management in 2008.

3. **PepsiCo and Water Management**: PepsiCo a Food and Beverage Company, has substituted transplanting of paddy with direct seeding technology that reduces water consumption by 30 per cent. In 2014, PepsiCo India brought over 16,000 acres of land under direct seeding and saved more than 11.2 billion litres of water in Punjab, Haryana, Uttar Pradesh, Tamil Nadu and Karnataka. The company also provide assistance to the farmers in water scarce areas of Maharashtra, Gujarat, Karnataka and Haryana with drip irrigation methodology.

4. **Water Conservation by Hindustan Unilever**: The country's largest consumer goods company Hindustan Unilever has been able to reduce its water use by regular metering, monitoring and controlling of utilities consumption at all its manufacturing sites.

   Rainwater harvesting has been implemented in more than 50 per cent of HUL's own units. More than 75 per cent of HUL's manufacturing sites are zero-discharge. Some of the other initiatives have been better run-time strategies for lower use of cleaning water, identifying dry areas in the shop-floor, recovery and re-use of process condensate water and using recycled water instead of fresh water for operations.

5. **Water Management at ITC**: The company developed watershed development programme to cover 1 million acres of land by 2018. The company, which has been water positive for over 13 years, has brought soil and moisture conservation to half a million acres of land apart from monitoring water use at its plants.

6. **Water Management at SAIL**: With a view to minimise water consumption as well as to conserve water resource across the plants, actions have been/are being taken up to achieve the long-term goal of "Zero Liquid discharge" through treatment and recycling of effl uent being discharged through the outfalls at the plant boundary. in this regard, waste water treatment and recycling facilities at the outlet B&c of BSp have been installed during the fi nancial year 2021-22, as a result of which, around 8250 m3 /hr. of effl uent after treatment is re-circulated and reused at Bhilai Steel Plant (BSP).

Further, the following measures that may be in place in various industries, may be considered for efficient water management in business organisations, especially manufacturing sector based companies or organisations:

**(i) Water Audit:** The first step in Water Conservation and Management Programme is comprehensive water Audit to arrive at a realistic water balance for the entire factory and colony. Water audits at regular intervals help the management to take stock of the situation and act before the problem escalates and threatens closure due to non-availability of water. The objectives of carrying out a water audit is not only to identify areas of excessive use (and its abuse) but also assess the quality of water being supplied for each application and compare it with the actual requirement and optimize the cost of treating water. This involves following exercise –

- Measurement of water consumption at user points by calibrated instruments. Flow through closed pipes can be measured by an Ultrasonic flow measuring instrument and flow through open channels through V-Notch weirs.
- The quality and quantity of effluents generated from each section should also be assessed. Conscious efforts shall be made to effect savings in cost of treating the effluent.
- The next step is to establish bench marks for water consumption based on international practices for similar industries and identify areas of excess consumption.
- An action plan should then be drawn for reducing the consumption of water in those areas. With good housekeeping discipline and perseverance it should be possible to achieve the results.

**(ii) Conservation of Water for Cooling:** A major portion of industrial water is utilized for cooling applications in majority of industries and hence provides an opportunity to conserve the water by optimizing the operations of cooling towers and following the best practices as given below-

- It is essential to check the cooling water treatment programme, which enables us to operate the tower at optimum cycles of concentration. The quantity of make-up water decreases significantly with increasing cycles of concentration. Water meters should be installed at cooling water make-up as well as blow down line.
- Loss of water due to evaporation is around 2% of the water in circulation and hence in areas of water scarcity, the feasibility of using air cooled towers should be explored.
- Side stream filtration should be adopted to keep cooling water free of suspended solids. Backwash water from side stream filter can be recovered by installing a plate type clarifier. The quantum of water recovered can be significant in large industries like fertilizer, steel etc.

**(iii) Water Conservation in Pre-treatment Plant:** Almost all the plants utilizing surface water will have a clarifier and filter beds. Blow down from the clarifier must be treated through the sludge thickener and sludge dewatering unit (centrifuge / filter press).

The clear water from sludge thickener and the filtrate from sludge dewatering unit should be pumped back to the clarifier. This will not only help in water conservation but also reduces the cost incurred in sludge handling and disposal. The entire quantity of water used for backwashing the filters must be collected and returned to the clarifier.

**(iv) Water Conservation in Softening Plants:** Softening plants offer scope both for water conservation as well as for a reduction in salt consumption by opting for salt recycling. Salt recycle is effectively used in almost all the power stations in Maharashtra as the entire quantity of water used for cooling is softened and the salt consumption is high. For salt recycling, it is necessary to install an additional brine measuring tank (BMT 2) identical to the existing one (BMT 1) and modify the frontal piping.

Part of the water used for slow rinsing and practically the entire quantity used for final rinsing can be recovered and reused partly for preparation of salt solution and partly for slow rinse. Salt recovery can be made by collecting the latter half of the effluent during salt injection in a separate brine measuring tank and using it to partially regenerate the resin during the next cycle.

**(v) Water Conservation in Demineralization Plant:** Demineralization by the ion exchange process generates strong effluents which require dilution with fresh water or other streams low in dissolved solids prior to discharge. However water can be recovered from the effluents generated in a DM plant by installing a water recovery plant for reuse in the plant. Some plants use the strongly acidic effluents in cooling water for pH control in place of acid. There is considerable scope to conserve water in DM plant which can be achieved by following measures-

- Almost all the final rinse water during Mixed Bed regeneration can be recycled back to the filtered water tank. Part of the water used for final rinsing can be recycled back to the raw water tank as soon as its conductively reaches the value equal to that of raw water.
- Good housekeeping can significantly contribute to conservation of water in a DM plant. Leaky valves and taps must be fixed immediately. Water flowing through pH and conductivity sensors must be routed to the raw water tank.
- Whenever rinse water volumes increase, the reasons for long rinse should be ascertained and action must be taken to fix the problem either by addition of some equipment or change over to non-fouling resins or both.
- Presence of non-reactive (colloidal) silica in boiler feed water high pressure boilers may result in increased blow-down. In case presence of excessive amount of colloidal silica is suspected it may be prudent to remove it from boiler feed water by installing an Ultra filtration unit after the Mixed Bed. In case the raw water is high on organics as well, the ultra-filtration unit may be located ahead of MB unit to take care of both issues.

**(vi) Treatment of Condensate:** Conservation of condensate not only saves water but also the huge cost incurred in high purity water production and chemical conditioning. This can be achieved by arresting the leakages in the lines and installing suitable treatment units (condensate polishing units) for removal of undesirable components. Condensates with traces of hydrocarbons can be treated through the use of Oil Coalescers or specially designed Activated Carbon Filters.

**(vii) Effluent Treatment:** Use of water in the industry produces an effluent which needs to be treated before it can be discharged into a public sewer or a receiving stream. Treatment of effluent is necessary to protect the receiving water bodies and ensure safe water availability to the downstream habitation. Moreover, the effluent after minimal treatment can be utilized for low end applications.

Efforts should be made to treat, recycle, and reuse the effluent in the premises so that the industry could approach towards zero liquid discharge concepts and uninterrupted water supply for production can be ensured. Often it is possible to recover a valuable byproduct for reuse in the process and remaining effluent is now more amenable for recovery of water economically.

For instance, in Tirupur, group of industries had installed a combined effluent treatment plant for treating their effluents with an option to recover the salt ($Na_2SO_4$) and water which is again recycled back to the process. This approach not only solved a potential problem of high TDS effluent disposal but also resulted in practically 'Zero-Discharge' with significant savings in the cost of treatment of effluent.

**(viii)** **Water Conservation in Offices and Residential Colonies:** As far as possible, electronically operated proximity devices or at least press to open type of valves should be provided to reduce wastage. These types of installations result in water consumption of around 30%.

Supply of potable water to residential colony and other user points should be under gravity by installing water tanks on roof tops. Supply under gravity (through overhead storage tanks) will minimize wastage through splashing. Again restricting the supply to fix periods will also help in conserving water.

Almost all colonies housing the factory employees will have a dedicated sewage treatment plant. Water can be recovered by installing a tertiary treatment plant and can used for low end applications like green belt development, gardening, flushing the toilets etc., thus conserving fresh water.

Needless to say this will involve separate storage and plumbing to ensure that there is no accidental contamination with potable water in other lines like washbasins and shower fountains. The recovered water can also be used as cooling tower make-up by installing membrane Bio reactor that will produce clear filtered water.

**(ix)** **Rain Water Harvesting:** Rain water harvesting is yet another opportunity for the industries to ensure that the ground water gets recharged and the borewells do not run dry. The system is relatively inexpensive and the benefits are many. Water falling on the roof top is collected through channels, filtered and infiltration wells.

Water is a scarce resource and it needs to be treated with all the respect it deserves. Conservation, recovery and reuse must be practiced by all industries on a continuous basis to ensure availability of adequate quantity of fresh water for use. With the available technologies the fresh water consumption can be minimized and is not very much difficult.

## WASTE MANAGEMENT

Waste management refers to the various schemes to manage and dispose of wastes. It can be by discarding, destroying, processing, recycling, reusing, or controlling wastes. The prime objective of waste management is to reduce the amount of unusable materials and to avert potential health and environmental hazards.

The process of managing unwanted waste items that have served their purpose but are no longer useful is referred to as Waste Management. It is to be noted that modern concept of waste management covers 7 R's-Rethink, Refuse, Reduce, Reuse, Recycle, Regulate and Research.

Wastes include dead and decaying plant and animal remains, metabolic by-products (faecal remains, excreta, etc.), discarded materials from homes, workplaces, businesses, restaurants, factories, hospitals, pesticides, herbicides sprayed on fields, and many more. This article will teach students about solid waste management, including the many trash management methods and their benefits. The various sources of wastes have been briefly discussed as under:

**(i)** ***Domestic Waste***: The waste materials produced from our households in our daily activities are called domestic waste. These include:

- Kitchen waste like vegetables, fruits, and other food waste.
- Sewage-human excreta and waste from bathrooms and kitchens.
- Garbage-newspapers, rags, hair, house dust.
- Others-plastic bags, bottles, tins, etc.

**(ii)** ***Industrial Wastes***: All Industries generate waste materials. The wastes typically comprise of ashes, rubbish, building material wastes, toxic wastes, metal containers, plastic containers, paints, oils, and other complex synthetic materials.

- Mining operations leave tailings (rocks of little or no value) as waste.
- Metallurgical industries release waste like slag and scrap metal.
- Paper and pulp mills release effluents containing wood chips, bits of bark, cellulose fibres, and a number of chemicals.
- Oil refineries and petrochemical units release a mixture of wastes containing hydrocarbons, organic acids, and sulphur compounds.
- Food processing units such as dairy, breweries, and meatpacking units release organic wastes.

**(iii)** ***Agricultural Wastes***: Modern methods employed in agriculture and the use of a variety of chemicals have contributed to the production of large quantities of agricultural waste.

1. Agricultural wastes include crop residues like husk and straws, farm animal waste, and chemicals like pesticides, rodenticides, fungicides, herbicides, and fertilizers.
2. These wastes can enter the water table as runoff from agricultural fields.
3. Chemicals used in agriculture are toxic in nature.

**(iv)** ***Commercial Wastes***: Substantial waste is generated from commercial establishments such as restaurants, hotels, markets, offices, printing shops, auto repair shops, medical institutions, and hospitals.

There are mainly two kinds of wastes- Biodegradable waste and Non-biodegradable waste.

**(A)** ***Biodegradable waste***- Those wastes that can be decomposed by the action of micro-organisms is known as biodegradable waste. For instance, domestic sewage, newspapers, and vegetable matter are biodegradable and undergo rotting. Biodegradable wastes may be managed by embracing the following approaches:

1. **Segregation of wastes**: Garbage or waste may be in the form of fruit or vegetable peels, discarded objects, wrapping materials, wasted food as household garbage, or discarded chemicals and fertilizers washed into rivers, domestic sewage, etc. These wastes can be segregated into biodegradable and non-biodegradable.

   Wastes that rot (undergo degradation) by the action of decomposers (tiny organisms found in the soil) are called biodegradable wastes. Dead plants and animals and their products (e.g., fruit and vegetable peels, paper, and leaves) decay very easily. These wastes mix with the soil and produce manure.

   Depending on the type of wastes, two garbage bins–one for biodegradable wastes and other for non-biodegradable wastes should be used. This will help in easy sorting and recycling of wastes to make beneficial products.

Green bins are for biodegradable wastes like vegetables and fruit peels, spoilt food, tea leaves, egg shells, tissue paper, leaves, hair, etc. Blue bins are for recyclable wastes like glass bottles, plastic wastes, old batteries, chocolate wrappers, polythene bags, etc.

2. **Composting**: Since biodegradable or organic wastes like vegetable peels, waste food, leaves, dead flowers, and egg shells can be recycled, they are converted into manure by burying them in compost pits. Recycling of organic wastes like vegetable peels, waste food, leaves, etc., by burying them in compost pits is called composting.

   Composting is a simple and easy process of recycling. The biodegradable wastes are degraded by the action of small organisms like bacteria and fungi. There is also a different kind of composting where a kind of earthworm called red worms (or red wrigglers) act on wastes and degrade them. This type of composting with the help of a type of earthworm called red worms, is called vermicomposting. Red worms break down the organic matter into nutrient-rich manure which increases soil fertility.

3. **Landfills**: Large areas used for waste disposal are called landfills. Landfill is another method to manage huge amount, of biodegradable waste. In a landfill, garbage is buried in such a way that it does not damage the environment. Garbage buried inside landfills stay here for a long time as it decomposes very slowly. After a landfill is full, it can be converted into a park.

**(B)** ***Non-biodegradable waste***- The wastes which cannot be decomposed easily are called non-biodegradable wastes. These wastes do not undergo rotting. For example, polythene bags, plastics, glass, aluminium cans, iron nails, and DDT. Plastic waste management is the need of the hour.

It is to be noted that leaving non-biodegradable waste untreated may prove to be menacing for the environment. Some of the issues may include uncontrolled landfills that may cause an unhygienic environment, leading to diseases among the people residing nearby. Plastics and other such waste can cause pipe blockages and groundwater contamination. Other waste like chemicals, biomedical and plastics can pollute water bodies as well. Thus, solid waste management is essential to overcome the challenges posed by non-biodegradable waste.

The following techniques may be espoused for management of non-biodegradable wastes.

1. **Recycling**: It is one of the best and popular methods employed for non-biodegradable waste management. The waste such as plastic, paper, glass, iron materials and cloth can be recycled and has economic value as well. It also helps in reducing the waste being sent to landfills, supports deforestation and saves energy.

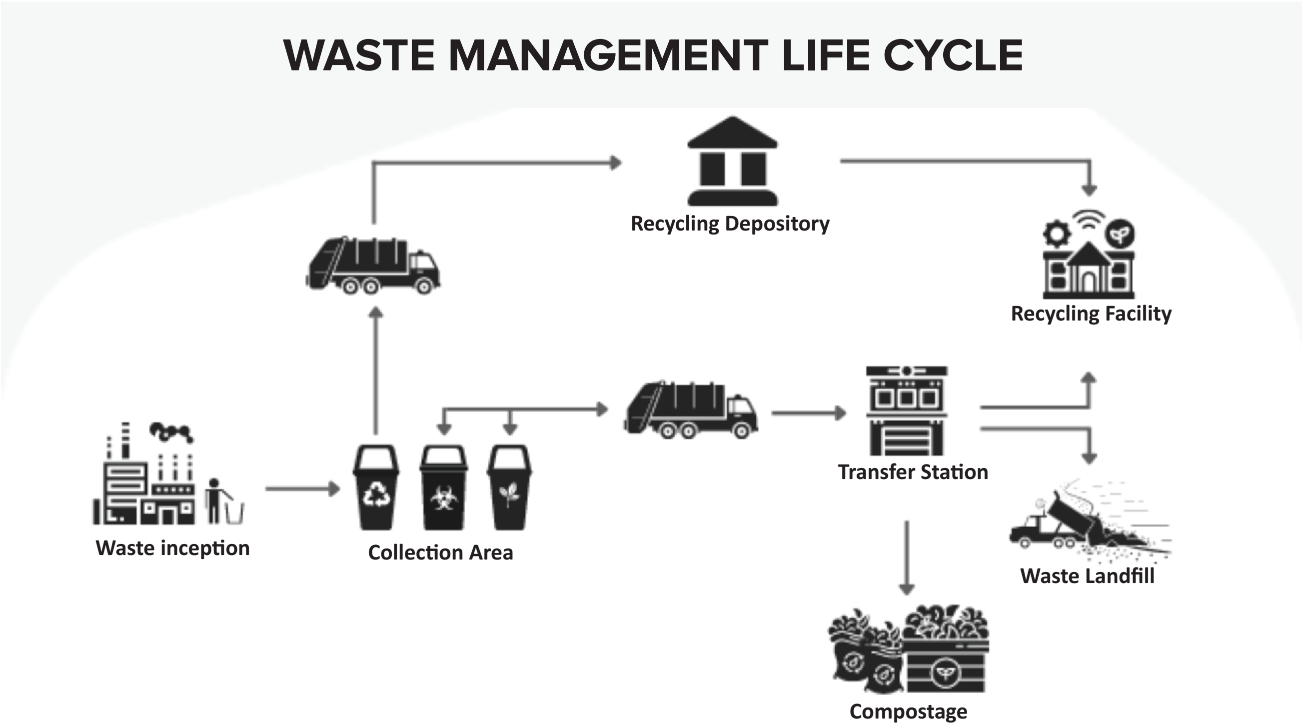
2. **Incineration**: It is widely used to manage non-biodegradable waste, which is non-recyclable as well. It involves waste decomposition using temperatures above 5000 Degree Celsius and can help minimize the trash volume.

3. **Individual management**: Individual management of waste is the first step to efficacious non-biodegradable waste management. Separation of biodegradable and non-biodegradable waste in separate bins and following recycling practices whenever possible are some measures that can be taken at the individual level.

At this juncture, it is important to comprehend the waste management system. Waste management system is the strategy an organization uses to dispose, reduce, reuse, and prevent waste. Possible waste disposal methods are recycling, composting, incineration, landfills, bioremediation, waste to energy, and waste minimization. The waste management life cycle is provided in exhibit 2.

**Exhibit 2**

**Waste Management Life Cycle**




**Source**: Safety Culture

## Forms of Waste Management

There are various types of waste management, however mainly the three forms of waste management are as under:

1. Solid Waste Management
2. Liquid Waste Management
3. Biomedical Waste Management
4. E-Waste Management

1. **Solid Waste Management**: At global level, waste generation rates are rising. In 2020, the world was estimated to generate 2.24 billion tonnes of solid waste, amounting to a footprint of 0.79 kilograms per person per day. With rapid population growth and urbanization, annual waste generation has been expected to increase by 73% from 2020 levels to 3.88 billion tonnes in 2050.

   Compared to those in developed nations, residents in developing countries, especially the urban poor, are more severely impacted by unsustainably managed waste. In low-income countries, over 90% of waste is often disposed in unregulated dumps or openly burned. These practices create serious health, safety, and environmental consequences. Poorly managed waste serves as a breeding ground for disease vectors, contributes to global climate change through methane generation, and can even result into urban violence.

   Managing waste properly is essential for building ecological and liveable cities, but it remains a challenge for many developing countries and cities. Effective waste management is expensive, often comprising 20%–50% of municipal budgets. Operating this essential municipal service requires integrated systems that are efficient, sustainable, and socially supported.

Few cases of solid waste management are as under:

**(a) Sustainable Waste Management in Bangalore- Case Study of Environmental Support Group**

To address the peril of increasing waste in Bangalore and in light of the failure of civic authorities to resolve the mentioned issue, a civil society group named Environmental Support Group situated in Banashankari II Stage, Bangalore came forward and worked diligently with the Bruhat Bangalore Mahanagara Palike (BBMP), the city's body of government dealing with civic infrastructures, as well as other NGO's, since the early 1990's to bring about change in the state of waste management in Bangalore.

The mentioned efforts delivered positive outcomes. Through their campaign on waste segregation and better working wages for waste pickers, the group have brought a new conversation of waste management in the city. Further, Bangalore has witnessed a significant increase in awareness among the masses regarding waste management issues and the Environmental Support Group is still working relentlessly to create more meaningful, intentional strides in the arena of waste management.

Various approaches espoused by the Environment Support Group that is, educational reforms, public posters, commercials, trips to schools, and even Public Interest Litigation cases, assisted immensely in bringing out meaningful change in the domain of sustainable waste management.

**(b) Solid Waste Management- Case of Tata Steel Limited**

Tata Steel has been pioneering in value creation from waste and by-products in its quest to contribute to a sustainable ecosystem in the iron and steel industry. Tata Steel aims for a 'Zero Waste' goal using the 3R (Reduce, Reuse & Recycle) principles of circular economy. The company handled 15 MnTPA of by-products spanning across 25+ product categories comprising more than 250+ Stock Keeping Units (SKUs).

These value-added by-products serve as key raw materials for various industries like cement, chemical, construction, etc. In FY 2021-22, Tata Steel Jamshedpur and Tata Steel Kalinganagar achieved 100% solid waste utilisation and horizontal deployment of best practices in Tata Steel Meramandali helped to achieve 97% solid waste utilisation.

**(c) Solid Waste Management- Case of Steel Authority of India Limited**

Steel Authority of India Limited (SAIL) exhibits its commitment to reduce solid waste generation and maximise its utilisation to achieve 100% and has adopted the "4r's policy" (reduce, recover, recycle and reuse) across all its processes. With a view to enhance utilisation of Bof Slag, a R&D project proposal on "development of Steel Slag based cost eff ective eco-friendly fertilizers for sustainable agriculture and inclusive growth" has been taken up through ICAR-indian agricultural research institute, under the guidance of the Ministry of Steel. The project will ensure symbiotic growth of steel industry and agriculture.

as a green initiative and in compliance with the "Solid Waste Management (SWM) rules, 2016", Bhilai Steel Plant (BSP) has set up a Solid Liquid resource Management (SLRM) centre. The waste is handled in a scientific and hygienic way at the centre. The integrated facility has separate systems for segregation of wastes, converting green waste into manure and turning plastic waste into useful by-products and can handle 50 tonne of waste every day.

2. **Liquid Waste Management**: Liquid waste can be defined as such Liquids as wastewater, fats, oils or grease (FOG), used oil, liquids, solids, gases, or sludges and perilous household liquids. These liquids that are hazardous or potentially harmful to human health or the environment. They can also be discarded by commercial products classified as "Liquid Industrial Waste" such as cleaning fluids or pesticides, or the by-products of manufacturing processes.

   The forms of liquid wastes are as under:

   (a) ***Household Liquid Waste***: The source of this waste are households. Most of it comes from all the cooking and cleaning activities that takes place at homes. Household liquid wastes can be further classified into two categories- Sullage and Sewage. Sullage refers to the grey water. This waste comes from the kitchen and bathroom disposal system. This excludes waste water or excreta from the toilet.

   Sewage typically contains sullage and blackwater – wastewater that has excrement.

   (b) ***Commercial Liquid Waste***: Most commercial centres have number of restaurants and eateries. Waste from commercial areas varies from household waste because of its magnitude and content like grease.

   (c) ***Industrial Waste***: This waste comes from industrial activities. Industrial waste can be dangerous or non-perilous. Industrial wastes is often released into nearby water bodies. It could be acidic, alkaline or lacquers. On a much larger scale, mega operations like fracking and oil supply can leave major liquid waste due to spillage and toxic runoff.

   (d) ***Stormwater***: This is weather related waste that is contaminated with pollutants. The are available at hard surfaces such as roads, footpaths, driveways and roofs. Stormwater is not treated like waste water before they reach water bodies like rivers, creeks and the ocean.

   Few cases of liquid waste management are as under:

   (a) **Environment Management at Indian Oil:** In the course of refinery operations, waste water, flue gases, fugitive emissions and solid wastes are generated. Refineries are also significant consumers of scarce resources like water and energy. Thus, pollution control and resource conservation activities are a priority area for environment management at Indian Oil. Effective treatment of wastewater and recycling, energy conservation and pollution abatement are examples of integrated activities that result in both pollution control and resource conservation.

   The installations including refinery units strive to ensure the following:

   - Minimize adverse environmental impact from refinery activities, products and services by using processes, practices, materials that avoid, reduce or control pollution;
   - Conserve scarce natural resources by continually optimizing their consumption.

   Other significant initiative towards liquid waste management at Indian Oil includes, waste water management wherein the usage of water and quality of effluent discharged are carefully monitored. The refineries are equipped with a network of underground sewers for segregated collection of various wastewater streams, which are subjected to precise treatment in well-designed effluent treatment (ETP) facilities involving physical, chemical and biological processes.

   State of art equipment have been provided in the ETPs like Tilted Plate Interceptor (TPI), Dissolved Air Floatation (DAF), Bio-tower, activated sludge basins, dual media filters for treating oily wastewater and hydrogen peroxide / wet air oxidation treatment for spent caustic streams etc. These treatment facilities are backed by sophisticated instrumentation and real time monitoring systems for close and precise monitoring. In Marketing and Pipeline locations, effluent water is routed through oil water separator.

(b) **Liquid Waste Management at Bharat Petroleum:** The water control pollution measures of the company are as under:

- A state- of -art Effluent Treatment Plant for maximized recycle of wastewater
- Installation of oil containment boom for control of oil spills in surface water runoff are installed.
- Oil skimmers for control of oil spills in surface water runoff are installed.
- Real Time Emission Monitoring Systems installed for monitoring quality of treated water
- State-of-art well equipped laboratory capable of comprehensive environmental analysis

3. **Bio-medical Waste Management:** Bio-medical waste means "any solid and/or liquid waste including its container and any intermediate product, which is generated during the diagnosis, treatment or immunization of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps.

Biomedical waste poses hazard due to two principal reasons – the first is infectivity and other toxicity.

Bio Medical waste consists of

- Human anatomical waste like tissues, organs and body parts
- Animal wastes generated during research from veterinary hospitals
- Microbiology and biotechnology wastes
- Waste sharps like hypodermic needles, syringes, scalpels and broken glass
- Discarded medicines and cytotoxic drugs
- Soiled waste such as dressing, bandages, plaster casts, material contaminated with blood, tubes and catheters
- Liquid waste from any of the infected areas
- Incineration ash and other chemical wastes

The following approaches are generally used for disposal of bio-medical wastes –

(i) ***Autoclaving***: The process of autoclaving involves steam sterilization. Instead of incineration, which can be expensive, autoclaving simply introduces very hot steam for a determined amount of time. At the end of the process, micro-organisms are completely destroyed. This process is particularly effective because it costs much less than other methods, and doesn't present any personal health risks.

(ii) ***Incineration***: The major benefits of incineration are that it is quick, easy, and simple. It effectively removes the waste entirely, and safely removes any microorganisms. However, when burning hazardous materials, emissions can be particularly hazardous.

(iii) ***Chemicals***: When it comes to liquid waste, a common biomedical waste disposal method can be chemical disinfection. Chlorine is generally used for this process, and is added to the liquid waste in order to kill microorganisms and pathogens. Chemical disposal can also be used for solid wastes, but it is recommended that they be grinded first to ensure maximum decontamination. Liquid waste, once decontaminated, is then disposed into the sewer system.

**(iv)** ***Microwaving***: During this process, waste is shredded, mixed with water, and then internally heated to kill microorganisms and other harmful elements. One of the main benefits of this process is the shredding aspect; it lowers the volume of biomedical waste, and it is reportedly more energy efficient to use this method than to incinerate.

**4.** **E-Waste Management**: E-waste is electronic products that are unwanted, not working, and nearing or at the end of their "useful life." Computers, televisions, VCRs, stereos, copiers, and fax machines are everyday electronic products.

Electronic waste (e-waste), is a generic term used to describe all types of old, end-of-life or discarded electrical and electronic equipment, such as household appliances; office information and communications equipment; entertainment and consumer electronic equipment; lighting equipment; electric and electronic tools; toys; and leisure, sports and recreational equipment that are powered by electricity. E-waste contains both valuable and hazardous materials that require special handling and recycling methods.

Due to the sheer expansion of the IT and communications industries, the use of electronic equipment has increased dramatically across India. According to a Market Research report, the Indian e-waste management market is rapidly expanding and is expected to grow at a CAGR of 14.25 percent in terms of revenue and 8.24 percent in terms of volume between 2021 and 2026. According to the report, rising government initiatives, raising awareness, and environmental concerns are driving the market's growth.

In India, government has embraced numerous initiatives to formalise the e-waste recycling sector of the country. The E-Waste (Management) Rules, 2016 provide for compulsory authorisation of the dismantling and recycling units from the concerned State Pollution Control Boards (SPCBs)/ Pollution Control Committees (PCCs).

CPCB has issued guidelines/SOP for processing of e-waste. The CPCB and SPCBs have been monitoring the units and necessary steps have been taken to mainstream and modernise the recycling industry with the help of Ministry of Electronics and Information Technology.

Following steps have been taken by the government in the direction of finding out solution to the problems related to E-Waste:

(i) The management of e-waste is being carried out under the frame work of E-Waste (Management) Rules, 2016 and amendments there off. The Rules, are effective from 1st October, 2016. The rules provide for followings:

- Applicable to every manufacturer, producer, consumer, bulk consumer, collection centres, dealers, e-retailer, refurbisher, dismantler and recycler.
- Under the EPR regime, producers have to obtain EPR Authorization from CPCB for implementing their EPR and details of their dismantlers/recyclers.
- Notified EEE are twenty-one (21) and listed in Schedule-I of the above said Rules.
- Under EPR regime, producers of notified EEE have been given annual E-Waste collection targets based on the generation from the previously sold EEE or based on sales of EEE as the case may be.

(ii) Ministry has notified the E-Waste (Management) Rules, 2022 on 2nd November, 2022. These rules will replace E-waste (Management) Rules, 2016 and will be effective from 1st April, 2023. These rules will launch a new Extended Producer Responsibility (EPR) regime for e-waste recycling. The salient feature of new rules is as under:

- Applicable to every manufacturer, producer, refurbisher, dismantler and recycler.
- All the manufacturer, producer, refurbisher and recycler are required to register on portal developed by CPCB.
- No entity shall carry out any business without registration and also not deal with any unregistered entity.
- Authorization has now been replaced by Registration through online portal and only manufacturer, producer, refurbisher and recycler require Registration.
- Schedule I expanded and now 106 EEE has been include under EPR regime.
- Producers of notified EEE, have been given annual E-Waste Recycling targets based on the generation from the previously sold EEE or based on sales of EEE as the case may be. Target may be made stable for 2 years and starting from 60% for the year 2023-2024 and 2024-25; 70% for the year 2025-26 and 2026-27 and 80% for the year 2027-28 and 2028-29 and onwards.
- Management of solar PV modules /panels/ cells added in new rules.
- The quantity recycled will be computed on the basis of end products, so as to avoid any false claim.
- Provision for generation and transaction of EPR Certificate has been introduced.
- Provisions for environment compensation and verification & audit has been introduced.
- Provision for constitution of Steering Committee to oversee the overall implementation of these rules.

Under the E-Waste Management Rules, provision for reduction of hazardous substances in manufacturing of Electrical and Electronic Equipment (EEE) has been provided. It mandates that every producer of EEE and their components shall ensure that their products do not contain lead, mercury and other hazardous substances beyond the maximum prescribed concentration.

The E-Waste (Management) Rules also provide for recognition and registration, skill development, monitoring and ensuring safety and health, of workers involved in dismantling and recycling of e-waste.

At global level, the United Nation's Solving the E-waste Problem (StEP) Initiative, founded in 2007, is a global consortium of companies, research institutes, governmental agencies, international organisations and NGOs dedicated to advancing the management and development of environmentally, economically and ethically sound e-waste resource recovery, reuse and prevention. The StEP Initiative does not endorse any specific products and seeks instead to provide science-based but applied recommendations towards a sustainable solution to the e-waste issue.

Measures to reduce e-waste are as under –

**(i)** **Reduce purchases and organise them accordingly**: The most common source of e-waste is the purchase of goods. In view of this, the organisations can organize their existing electronic devices and avert purchasing anything that cannot be reused or destroyed by the maker. Choosing recyclable or long-lasting electrical products is a long-term strategy for e-waste management. Even after wiping out electronic devices, personal information of human capital is still stored on them, which is another reason to keep them. Before recycling device, recycling facilities can clean it, thereby protecting the data from hackers.

**(ii)** **Cloud Storage:** Business organisations may not buy a large server or storage system for personal or commercial use. Cloud data solutions provide server that are ideal for archiving and synchronizing data across multiple devices.

**(iii) Donate and Re-sold:** In case any electronic device is not required in a business organisation then the management may think of donating it to some individual or institution. Similarly, the business organisations may buy electronic gadgets on buy-back scheme, wherein the buyer will have the option to resell the electronic gadgets after expiry of its useful life and buy a new electronic gadget in lieu of it.

5. **Plastic Waste Management:** Plastic was first invented in 1907, and given that it was cheaper and more convenient than other materials, it soon found use in varied ways in our daily lives. Plastic products have become an integral part in our daily life as a basic need. Today, plastic is present in almost everything, from our money to electronic appliances, and it is used across multiple sectors, including packaging, building, construction, transportation, industrial machinery and health among others.

However, the lack of sustainable plastic waste management (PWM) poses a serious threat to our environment and natural ecosystem globally. Plastic Waste, in particular, is a key contributor to the unsustainable surge in waste being generated, due to its wide-scale use across industries combined with the short life-span of its products, including single use plastics, packaging, consumer goods and clothing. Indeed, plastic consumption across the world has quadrupled over the last few decades, and global plastic waste is expected to nearly triple by 2060(according to OECD).

Plastic waste has numerous implications on the environment and health. The plastic in food and water can cause severe health issues such as genetic disorders, and endocrine system damage. According to the United States Environmental Protection Agency, all the plastic waste ever generated is still present on Earth today, this makes sustainable management of plastic waste important.

*Environmental issues on disposal of Plastic Waste:*

Indiscriminate littering of unskilled recycling/reprocessing and nonbiodegradability of plastic waste raises the following environmental issues:

- During polymerization process fugitive emissions are released.
- During product manufacturing various types of gases are released.
- Indiscriminate dumping of plastic waste on land makes the land infertile due to its barrier properties.
- Burning of plastics generates toxic emissions such as Carbon Monoxide, Chlorine, Hydrochloric Acid, Dioxin, Furans, Amines, Nitrides, Styrene, Benzene, 1, 3- butadiene, $CCl_4$, and Acetaldehyde.
- Lead and Cadmium pigments, commonly used as additives are toxic and are known to leach out.
- Non-recyclable plastic wastes such as multilayer, metalised pouches and other thermoset plastic poses disposal problems.
- Littered plastics give unaesthetic look in the city, choke the drain and may cause flood during monsoon.
- Garbage mixed with plastics interferes in waste processing facilities and also cause problems in landfill operations.
- Recycling industries operating in non-conforming areas are posing threat to environment to unsound recycling practices.

The regulatory framework for combating plastic waste is as under:

| Regulatory Framework for Combating Plastic Waste | |
|---|---|
| 1 | Recycled Plastic Manufacture and Usage Rules in 1999<br>***(Manufacturing and usage of Plastic carry bags. It is specifiedthe minimum thickness of plastic bags)*** |
| 2 | Plastic Waste (Management and Handling) Rules, 2011<br>***(Laid down certain conditions for manufacturing, stocking,sale and use of plastic carry bags and sachets)*** |
| 3 | Plastic Waste Management Rules, 2016<br>***(Thrust on plastic waste minimization, source segregation, recycling, involving waste pickers, recyclers and wasteprocessors in collection of plastic waste and adopt polluter pays principle for the sustainability)*** |
| 4 | 1st Amendment in March, 2018-Plastic Waste Management(Amendment) Rules, 2018<br>***(Every producer or brand-owner Registration with CPCB)*** |
| 5 | 2nd Amendment in August 2021- Plastic Waste Management (FirstAmendment) Rules, 2021<br>**(*Ban on "Single-use plastic commodity")*** |
| 6 | 3rd Amendment in September 2021-Plastic Waste Management (Second Amendment) Rules, 2021<br>***(Use of Recycled Plastics)*** |
| 7 | 4th Amendment in February 2022- Plastic Waste Management(Third Amendment) Rules, 2021<br>***(Guidelines on Extended Producer Responsibility for PlasticPackaging)*** |
| 8 | 5th Amendment in July 2022 (PWM Rules On EPR) |
| 9 | 6th Amendment in April 2023-PWM Amendment Rules 2023 |
| 10 | 7th Amendment in October, 2023 -PWM Second Amendment<br>2023 ***(Each plastic packaging shall contain the specifiedinformation, printed in English)*** |
| 11 | 8th Amendment in March 2024 -Plastic Waste Management (Amendment) Rules, 2024. ***(Filing of Quarterly Report and Annual reports)*** |

*Key initiatives by India on Plastic Waste Management*

Plastic has multiple uses and the physical and chemical properties lead to commercial success. The Ministry had initially notified the Recycled Plastic Manufacture and Usage Rules in 1999, which was mainly on manufacturing and usage of Plastic carry bags. It is specified that the minimum thickness of plastic bags should be of 20 microns. However, the indiscriminate disposal of plastic has become a major threat to the environment. In particular, the plastic carry bags are the biggest contributors of littered waste and every year, millions of plastic bags end up in to the environment vis-a-vis soil, water bodies, water courses, etc and it takes an average of one thousand years to decompose completely.

Therefore, to the address the issue of scientific plastic waste management, new regulations namely, the Plastic Waste (Management and Handling) Rules, 2011 were notified in 2011, which included plastic waste management. The Plastic Waste (Management and Handling) Rules, 2011 laid down certain conditions for manufacturing, stocking, sale and use of plastic carry bags and sachets, which were required to be monitored and implemented by the State Pollution Control Boards/ Municipal Authorities. It specified that the minimum thickness of plastic bags should be of 40 microns. This was to facilitate its collection and recycle. However, the implementation of these rules was not so effective.

To implement these rules more effectively and to give thrust on plastic waste minimization, source segregation, recycling, involving waste pickers, recyclers and waste processors in collection of plastic waste and adopt polluter pays principle for the sustainability of the waste management system, The Government has notified the Plastic Waste Management Rules, 2016, in suppression of the earlier Plastic Waste (Management and Handling) Rules, 2011 and as a part of the revamping of all Waste Management Rules to achieving the vision of our Prime Minister of Swacchh Bharat and cleanliness is the essence of health and tourism, The Plastic Waste Management Rules, 2016 aim to:

- Increase minimum thickness of plastic carry bags from 40 to 50 microns and stipulate minimum thickness of 50 micron for plastic sheets also to facilitate collection and recycle of plastic waste.
- Expand the jurisdiction of applicability from the municipal area to rural areas, because plastic has reached rural areas also;
- To bring in the responsibilities of producers and generators, both in plastic waste management system and to introduce collect back system of plastic waste by the producers/brand owners, as per extended producers' responsibility;
- To introduce collection of plastic waste management fee through pre-registration of the producers, importers of plastic carry bags/multilayered packaging and vendors selling the same for establishing the waste management system;
- To promote use of plastic waste for road construction as per Indian Road Congress guidelines or energy recovery, or waste to oil etc. for gainful utilization of waste and also address the waste disposal issue; to entrust more responsibility on waste generators, namely payment of user charge as prescribed by local authority, collection and handing over of waste by the institutional generator, event organizers.
- The Environmental Compensation shall be levied based upon polluter pays principle, on persons who are not complying with the provisions of these rules, as per guidelines notified by the Central Pollution Control Board.
- Every producer or importer or brand-owner shall for the purpose of one –time registration makes an application through the centralized online portal.
- Each plastic packaging shall contain the specified information, printed in English, namely, name and registration certificate number for producer or importer or brand owner generated through centralized online portal.
- Filing of Quarterly Report and Annual reports by every person engaged in recycling or processing of plastic waste, by every manufacturer and importer of plastic raw material, by every person engaged in the sale of plastic raw material.

## Extended Producer Responsibility

The Extended Producer Responsibility (EPR) model is based on the polluter-pays principle, which aims to include producers of material goods in the management and treatment of waste and keep raw materials and goods in the economic cycle. The integration of EPR schemes in national legislation then sets clear objectives for circular economy: consumer waste prevention, eco-design of materials, optimization of waste collection with local authorities and development of new circular economic systems.

Thus, the structuring of an EPR sector has several advantages; it allows the involvement of all actors, whether public authorities, industries or consumers, in a structured and sustainable framework dedicated to circularity and reduction of carbon emissions. At an international level, EPR deepens the social and environmental responsibility of companies, thanks to the traceability of the value chain and the better coordination of everyone's actions.

According to OECD, Extended Producer Responsibility (EPR) schemes are organizational mechanisms for the prevention and management of waste that concern certain types of products and are primarily based on the polluter-pays principle.

This principle emphasizes the idea of extended producer responsibility, according to which producers, i.e., the legal persons responsible for placing certain products on the market (namely producers, brand owners and importers), with government oversight, are made responsible for financing and organizing the prevention and management of waste from these products at the end of their life.

In that respect, it should be remembered that the EPR scheme is not a tax. Contributions from producers are thus directly used by the Producer Responsibility Organisation (PRO). Thus, this contribution didn't require additional budgetary resources from State, and is not "absorbed" into the overall public expenditure.

In order to meet the principles of EPR, producers usually organize themselves collectively to fulfil their obligations within the framework of PROs, whether non-profit or for profit. The mission of these PROs is to meet the challenges of reduction, reuse and recycling in the circular economy, thus playing a key role to the fight against climate change, the preservation of resources and biodiversity, and the reduction of carbon impact of product placed on the market.

To do this, the PROs meet several principles described in this note in order to fulfil their missions, in conjunction with all the stakeholders in the value chain from product to waste (including brand owners, retailers, recyclers, municipalities.).

They thus have several complementary missions:

- waste-prevention and awareness-raising among private consumers;
- limiting littering via collecting and subsequently recycling packaging waste;
- improving eco-design of the combination of product and packaging – in order to meet the climate-biodiversity challenges of life-cycle analyses and new consumer habits;
- collection and sorting in cooperation with the municipalities and waste management companies depending on the administrative, territorial and demographic structures;
- support for the development of new circular economy sectors focusing on reduction, reuse and recycling by R&D to enhance the material value chain from collection to recycling.

International bodies have been addressing the issue of combating plastic waste pollution (G7 in Charlevoix in 2018, G20 in Osaka in 2019). PROs from all over the world welcome the commitment of civil society, companies and governments to work together to define and build common responses to this global challenge.

International cooperation has reached an important milestone with the adoption on 2 March 2022 by the United Nations Environment Assembly of a resolution to end plastic pollution and to reach a legally binding international agreement by 2024. In the wake of these growing concerns, on 28 July 2022, the UN General Assembly adopted a resolution declaring that all people on the planet have the right to a healthy environment, a right that the circular economy can help make real, everywhere and for everyone.

The “Business Coalition for a global plastics Treaty”, coordinated by WWF and Ellen MacArthur Foundation, has created a first group of policy and scientific recommendations for future negotiations. This work will be made by bringing together NGOs, financial institutions and professional organizations from the plastics value chain.

In this context, the Extended Producer Responsibility (EPR) model has a key role to play. EPR systems are an essential instrument to finance the collection and environmentally sound treatment of waste, as well as to support the design and production of goods that consider and facilitate the efficient use of resources throughout their life cycle, including their repair, reuse, dismantling and recycling. PROs, in particular those in charge of household packaging, help to improve the management of the end-of-life of plastic products and packaging but also to encourage reduction at source as well as eco-design.

The first PROs already benefit from more than 30 years of experience in implementing EPR, and visibility on the actions taken and their impacts. This knowledge of the benefits of EPR encourages the deployment of this model on a global level, as it meets many needs. From the start, EPR systems were born out of the need to respond to the challenges of increasing quantities of waste, increasing costs to taxpayers, and the loss of resources that untreated waste represents. Today, their actions allow them to:

- Define, in conjunction with industry/producers national and local authorities, minimum targets for reuse, recycling or recovery when and where relevant;
- Introduce EPR fees at the time of placing on the market to cover the costs of end-of-life management of packaging;
- Modulate EPR fees with incentives and disincentives bonuses and/or penalties, in a way that reflects defined environmental criteria of the product - for example its recyclability - to promote to producers to design their products / packaging. It will facilitates the sorting for inhabitants and the treatment, re-use or recycling in the next steps so that the material stay in the economic cycle;
- Involve companies in the circular economy of their packed products: they are the ones who eco-design the packaging, finance a large part of its collection, sorting, recycling and reuse to turn it into new resources;
- Generate sustainable funding for the waste management service while boosting its efficiency;
- Gain economies of scale and efficiencies to help control costs to consumers;
- Include consumers in this transition to the circular economy by providing convenient separate collection opportunities, encouraging sorting, good consumption practices and supporting them in new uses;
- In relevant cases, educate consumers about the effects of littering. As such, EPR can encourage municipalities to develop more solutions on littering and waste collection;
- Whenever legally bound to, cooperate with recyclers in order to return the recycled materials to the companies that first placed them on the market in order to enable them to include recycled content;
- In view of the growing relevance of online sales, EPR can develop legal frameworks that force Marketplaces to equally contribute to the prevention and management of waste.

## Extended Producer Responsibility (EPR) in India

If someone identified as Producer, Importer and Brand Owners (PIBO) and have PIBO operations in India that uses plastic packaging as part of its operation, irrespective of your turnover or scale of operations then PIBO fall under the obligation of Extended Producer Responsibilities (EPR) Under the current framework of EPR, PIBO are responsible to:

1. Register at EPR Portal of Government of India
2. Submit their Action plan
3. Fulfill obligations for: -
    a. Recycling
    b. Use of Recycled content
    c. Reuse
    d. End of life disposal
    e. Optional engagement in collection and recovery of the plastics
    f. Submit annual returns
    g. Provide proof of certificates (Plastic credits)
    h. PIBOs can engage with PRO's or other agencies separately to fulfill their targets but reporting and responsibility to fulfill the obligations is completely of PIBO.

## Case Study on Plastic Waste Management in India

India generates 15 million tonnes of plastic waste every year but only one fourth of this is recycled due to lack of a functioning solid waste management system. This leads to burden on the landfills and poor socio- economic conditions of the waste pickers, mostly women.

United Nations Development Programme (UNDP) India, in partnership with Hindustan Coca-Cola Beverages Private Limited (HCCBPL), Hindustan Unilever Limited (HUL), HDFC Bank & Coca Cola India Foundation (CCIF) is building on existing systems to reduce the impact of plastic waste on environment in India. The partnership promotes collection, segregation and recycling of all kinds of plastics to move towards a circular economy.

This project aims to:

- Create a socio-technical model for taking plastic waste management from informal to formal economy.
- Establish Material Recovery Centres for sustained practices in waste management.
- Institutionalize Swachhta Kendras within governance framework structures and improved socio-economic conditions of waste pickers.
- Develop technology-supported knowledge management: Promote Cloud-based traceability, accountability and digital governance along waste value chain through our technical partner Mindtree through field implementing partners.

*Achievements:*

- The project is currently operational in 36 cities, with 22 Material Recovery Centres (Swachhta Kendras) established for sustainable waste management practices.
- The plastic collected and processed so far has already crossed 66,000 metric tonnes.

- Through these centres, the project has reached out to 5500 Safai Sathis, in an effort to institutionalize workers from the informal sector.
- UNDP was felicitated as a key partner by the Ministry of Housing & Urban Affairs at the Swachh Survekshan Awards 2020 under the Swachh Bharat Mission.
- With a strong approach towards providing social security to the Safai Sathis, Utthaan, a social protection programme was launched to help 9000 safai sathis on with regular workshops organised for them at Swachhta Kendras, where they are given assistance with opening bank accounts, enrolling for Aadhar cards, availing health check-up, and several other personal training sessions.

## EXEMPLARS OF GREEN INITIATIVES IN INDIA

❖ **Bharti Airtel Limited**

(1) The Company is committed to helping meet the goals of the Paris Accord and has identified 'Climate Change, Energy Efficiency and Emission Reduction' as a critical material issue. The Company has accordingly taken various public targets and initiatives to reduce its carbon foot prints.

Some of the green initiatives taken by the Company during FY 2020-21 includes:

- -284 MWh energy saved during the year
- 49% Reduction in network emission intensity for mobile
- 28% Reduction in $CO_2$ emission per square feet in its facilities
- 24% Reduction in $CO_2$ emission per rack in its data centers
- 82,917 MWh Renewable energy consumed.

❖ **HDFC Limited**

- To strengthen the Green & Sustainability culture with the firm, the Corporation has initiated a campaign on ESG for employees and their families called, 'Hope Begins at Home'. The objective is to encourage climate conscious decisions in daily lives and create more ESG Champions in the organization with the belief that small changes through collective efforts make a material difference.
- The Corporation has undertaken extensive learning and development initiatives to up skill employees on current and developing best practices on ESG & Sustainability. These include:
  - ➢ Creating bespoke training modules on ESG & Sustainability;
  - ➢ Training new recruits on ESG & Sustainability;
  - ➢ Systematic and consistent re-enforcement of ESG Best practices by inviting External ESG to Speak with ESG Champions;
  - ➢ ESG Champions work on Train the Trainer approach to further train their colleagues at the Corporation's PAN India Branches;
  - ➢ The Corporation's Library Team disseminates weekly media updates related to ESG € Sustainability;
  - ➢ ESG Appraiser training and development to assess Environment and Social impact while evaluating projects;

- ➢ Systematic engagement at the functional level to reinforce climate consciousness; and
- ➢ Involved a Big4 consulting firm to undertaken an ESG Diagnostic exercise.

❖ **Tata Chemicals Limited**

- The Company's plant at Mambattu started with a renewable source of energy and is using 100% of biomass and has achieved zero liquid discharge.
- The Company's plant at Mithapur has achieved ZERO dependence on Groundwater
- The Company has set up a waste management plant at Mithapur and plastic waste collected is used as a fuel in their cement plant.
- The Company has fully (100%) utilized its Fly ash waste.
- The Company continues its biodiversity plantation covering almost 150 acres of land.
- The Company has its own Bio-diversity Policy.
- The Company monitors its progress through the Responsible Manufacturing Index and is committed to the Science Based Target Initiative and has recently got its targets Validated.

❖ **Tech Mahindra Limited**

- Reduction of 25,000+ MTCO2e through RE and energy-efficient equipment.
- The Company has reduced its scope 1+2 emissions by 31% against FY 2019-20
- The Company has reduced energy intensity by 47.23% from FY 2019-20.
- The Company has reduced its Food wastage by 93%.
- The Company recycled 25% (804 tons) of food waste by converting it to manure through organic Waste Converters (OWCs) and Vermicomposting units. Also, Leaf Waste has been converted to manure.
- The Company has reduced paper consumption by more than 85% Since FY 2019-20.

❖ **Hindustan Unilever Limited**

- The Company has created a cumulative water conservation potential of about 1.3 trillion litres of water across India through improved supply and demand water management to ensure that people continue to have access to water even as the climate crisis looms.
- The Company in its manufacturing operations has reduced water consumption (in metric tons of production) by 54% against the 2008 baseline.
- Since 4 2018, the Company has facilitated safe disposal of more than 150,0000 tons of post-consumer use plastic waste with the help of collection and disposal partners across India.
- The Company has further announced that from 2021 onward it will be collecting and process more plastic packaging waste than the plastic in packaging used by it.
- The Company's laundry brand Surf Excel introduced Surf excel Matic Liquid using 100% biodegradable actives in formulation and with 50% recycled Plastic in Packaging.
- The Company has reduced $Co_2$ emission per ton of its production by 91% Compared to 2008 baseline.

- All factories, Offices, R€D facilities, data centers, warehouses and distribution centers of the company are powered by 100% renewable grid electricity.

❖ **AU Small Finance Bank Limited**

- The Bank has introduced digital visiting cards to reduce the wastage of paper while discontinuing and discouraging the printing of physical visiting cards since FY 2020-21
- The Bank launched Video Banking in Q3 FY21 With a vision of offering all its services virtually through video- enabled chat with branch executives, eliminating the need for branch visits.

❖ **Mindtree Limited**

- The Company has recycled 94.6% of the waste.
- The Company's 74.8% of energy requirement is met through renewable resources (PAN India).
- The Company's Pune location, a Zero- discharge location, upgraded STP to newer technology and utilized treated water for flushing and landscaping.
- The Company's Bengaluru East location is now a Zero-waste site, with recycling more of the rejected waste, and no burden on the landfill.
- The Company's Pune location reduced incineration by recycling used oil.
- The Company's Bengaluru locations have stopped external sourcing of water.
- The Company's all India locations are ISO 14001:2015 certified.

❖ **Rallis India Limited**

The Company has a Zero liquid discharge program to minimize the impact of factories on the environment and tracking the use of natural resources.

❖ **Syngene International Limited**

- The Company has sourced 82% of the energy consumed (63 million KWh) from green energy sources resulting in a reduction of -53280 MT of $CO_2$.
- The Company's site is maintained as 'Zero Liquid Discharge facility' and treated water is used for utilities and secondary purposes.
- The Company has achieved 21% (21290KL) reductions in its freshwater usage as compared to FY-20.
- The Company has eliminated use of all types of single use plastic, carrier bags, waste bottles inside the facility and introduced starch-based biodegradable bags.
- The Company has established a dedicated Central waste yard for effective segregation, storage and disposal of different types of waste begin generated from its operations.
- The Company Practices Green Chemistry concepts to replace Hazardous Chemicals to environmentally sound materials in its R€D operations.
- 100% closed loop collection of effluents generated from its operations ensures no effluent/ waste are discharged on soil.
- The Company has introduced Waterless urinals to reduce the generation of sewage.
- The Company has introduced 4 Electric vehicles for movement of materials inside the premises.

❖ **Tata Elxsi Limited**

- Rooftop Solor PV based electricity generation;
- Procurement of Electric Two-wheeler Vehicle;
- Use of Variable Frequency Drives (VFDs) in Air Handing units;
- Specialized agencies are hired to carry out the e-waste disposal, etc.

❖ **EPL Limited**

The Company has targeted to become 100% recyclable- ready by 2025. The Company has partnered for supplying 100% recyclable plating tubes for packing of FMCG Products.

❖ **Happiest Minds Technologies Limited**

CARBON (Clean, Assured and Responsible Building of Outcomes towards Neutrality) team has been formulated to ensure that the Company is in the path to be carbon neutral by 2023.

❖ **DLF Cyber City Developers Limited**

- The Company's buildings are Leadership in Energy and Environmental Design (LEED) Platinum Certified which is an ecology – Oriented building certification program run under the auspices of the U.S. Green Building Council (USGBC).
- Global Real Estate Sustainability Benchmark (GRESB), an international organization considered a Global standard for ESG benchmarking and reporting, has recognized DCCDL as Regional Sector Leader for its developments across the office space. DCCDL achieved the highest ranking of 5 star rating and has been Ranked # 2 in Asia in the Regional sector for its development across the unlisted office space by GRESB>.

❖ **Mahindra Intertrade Limited**

- Under the brand name 'CERO' which means 'Zero' in Spanish, the Company has set up state-of-the-art Vehicle scrapping centers at Greater Noida, Chennai and Pune.
- The Company has been set up with twin objectives of 'making the scrap steel imports'.
- CERO is India's first government authorized vehicle recycling facility.

❖ **Power System Operation Corporation Limited**

- 197 conventional lights replaced with LED Lights. This resulted in energy saving of approx. 25,272 Units. Reduction in $CO_2$ emissions was approx.23,77KG $CO_2$.
- Solar rooftop photo Voltaic systems installed which is helping minimize fossil fuel burning by distribution utilities.

❖ **Tata Consulting Engineers Limited**

- The Company is working towards net Zero in Close collaboration with TERI/CII and Indian Green Building Congress.
- The Company has established Eco first services Limited, a 100% Subsidiary with core focus on sustainable practices.

## EUROPEAN GREEN DEAL

As it is a widely accepted fact that climate change and environmental degradation are an existential to Europe and the globe, in view of this, to overcome these challenges, the European Commission embraced 'The European Green Deal', a roadmap for making the EU's economy sustainable by turning climate and environmental challenges into opportunities across all policy areas and making the transition just and inclusive for all.

The European Green Deal aims to transform the EU into a modern, resource-efficient and competitive economy by ensuring:

- No net emissions of greenhouse gases by 2050.
- Economic growth decoupled from resource use.
- No person and no place left behind.

The chronology of the important developments relating to European Green Deal is provided in the table below-

**Chronology of the Significant Developments Pertaining to European Green Deal**

| *Dates* | *Developments* |
|---|---|
| 11 December 2019 | Presentation of the European Green Deal |
| 14 January 2020 | Presentation of the European Green Deal Investment Plan and the Just Transition Mechanism |
| 4 March 2020 | Proposal for a European climate law to ensure a climate neutral European Union by 2050 |
| 10 March 2020 | Adoption of the European Industrial Strategy, a plan for a future-ready economy |
| 11 March 2020 | Proposal of a Circular Economy Action Plan focusing on sustainable resource use |
| 20 May 2020 | Presentation of the EU Biodiversity Strategy for 2030 to protect the fragile natural resources on our planet.<br>Presentation of the 'Farm to fork strategy' to make food systems more sustainable |
| 8 July 2020 | Adoption of the EU strategies for energy system integration and hydrogen to pave the way towards a fully decarbonised, more efficient and interconnected energy sector |

| Dates | Developments |
|---|---|
| 17 September 2020 | Presentation of the 2030 Climate Target Plan[1] |
| 14 October 2020 | Renovation wave[2]<br>Methane Strategy[3]<br>Chemicals strategy for sustainability[4] |
| 19 November 2020 | Offshore renewable energy[5] |
| 9 December 2020 | European Climate Pact[6] |
| 10 December 2020 | European Battery Alliance[7] |
| 18 January 2021 | New European Bauhaus[8] |
| 24 February 2021 | New EU strategy on adaptation to climate change[9] |
| 25 March 2021 | Organic Action Plan[10] |
| 12 May 2021 | Zero pollution Action Plan[11] |
| 17 May 2021 | Sustainable blue economy[12] |
| 14 July 2021 | Delivering the European Green Deal |
| 15 September 2021 | New European Bauhaus: new actions and funding[13] |
| 17 November 2021 | Proposals to stop deforestation, innovate sustainable waste management and make soils healthy[14] |
| 14 December 2021 | New transport proposals target greater efficiency and more sustainable travel[15] |
| 15 December 2021 | Commission proposals to remove, recycle and sustainably store carbon |
| 15 December 2021 | Proposal of a new EU framework to decarbonise gas markets, promote hydrogen and reduce methane emissions[16] |
| 8 March 2022 | REPowerEU: Joint European action for more affordable, secure and sustainable energy[17] |

*1. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1599*
*2. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1835*
*3. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1833*
*4. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1839*
*5. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2096*
*6. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2323*
*7. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2312*
*8. https://ec.europa.eu/commission/presscorner/detail/en/IP_21_111*
*9. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_663*
*10. https://agriculture.ec.europa.eu/farming/organic-farming/organic-action-plan_en*
*11. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2345*
*12. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2341*
*13. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4626*
*14. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5916*
*15. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6776*
*16. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6682*
*17. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1511*

| *Dates* | *Developments* |
|---|---|
| 23 March 2022 | Options to mitigate high energy prices with common gas purchases and minimum gas storage obligations[18] |
| 30 March 2022 | Proposals to make sustainable products the norm in the EU, boost circular business models and empower consumers for the green transition[19] |
| 5 April 2022 | Proposals to phase down fluorinated greenhouse gases and ozone depleting substances |
| 22 April 2022 | The European Commission joins the European Climate Pact and pledges to make its operations climate neutral by 2030 |
| 18 May 2022 | REPowerEU plan: affordable, secure and sustainable energy for Europe |
| 22 June 2022 | Nature protection package |
| 20 July 2022 | 'Save gas for a safe winter' proposal[20] |
| 15 September 2022 | Proposal for an emergency market intervention to reduce energy bills for Europeans |
| 26 October 2022 | Commission proposes stronger rules for cleaner air and water |
| 27 October 2022 | The Council and the European Parliament reach a provisional political agreement on stricter CO2 emission performance standards for new cars and vans |
| 10 November 2022 | Proposal for new Euro 7 standards to reduce pollutant emissions from vehicles and improve air quality.<br>Biodiversity: Stronger measures against wildlife trafficking. |
| 15 November 2022 | EU Algae Initiative |
| 30 November 2022 | Circular Economy: Packaging and Packaging Waste Regulation.<br>Proposal for a first EU-wide voluntary framework to reliably certify high-quality carbon removals. |
| 6 December 2022 | EU agrees law to fight global deforestation and forest degradation driven by EU production and consumption |
| 9 December 2022 | New rules on applying the EU emissions trading system in the aviation sector |
| 18 December 2022 | EU agrees to strengthen and expand emissions trading, and creates a Social Climate Fund to help people in the transition |
| 24 January 2023 | Presentation of a 'A New Deal for Pollinators' to tackle the alarming decline in wild pollinating insects in Europe. |
| 13 February 2023 | The Commission sets out rules for renewable hydrogen |

*18. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1936*
*19. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2013*
*20. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4608*

| Dates | Developments |
|---|---|
| 14 February 2023 | The Commission proposes 2030 zero-emissions target for new city buses and 90% emissions reductions for new trucks by 2040 |
| 10 March 2023 | The EU agrees stronger rules to boost energy efficiency |

*Source: European Commission*

Along with the above mentioned table, it is pertinent to refer the following table also, as it elucidates the key steps initiated by European Commission as well as proposed towards 'Green Deal'.

| Dates | Key Steps |
|---|---|
| December 2019 | Commission presents European Green Deal, committing to climate neutrality by 2050 |
| March 2020 | Commission proposes European Climate Law to write 2050 climate neutrality target into binding legislation |
| September 2020 | Commission proposes new EU target to reduce net emissions by at least 55% by 2030, and add it to the European Climate Law |
| December 2020 | European leaders endorse Commission's proposed target to reduce net emissions by at least 55% by 2030 |
| April 2021 | Political agreement reached on European Climate Law by European Parliament and Member States |
| June 2021 | European Climate Law enters into force |
| July 2021 | Commission presents package of proposals to transform our economy, to reach our 2030 climate targets. European Parliament and Member States to negotiate and adopt package of legislation on reaching our 2030 climate targets |
| September 2021 | New European Bauhaus: new actions and funding |
| October 2022 | The Council and the European Parliament reach a provisional political agreement on stricter CO2 emission performance standards for new cars and vans |
| 2030 | EU to deliver a reduction of emissions of at least 55% compared to 1990 levels |
| 2050 | EU to become climate neutral |

**Key Steps towards Green Deal**

*Source: European Commission*

## The benefits of the European Green Deal

The European Green Deal will improve the well-being and health of citizens and future generations by providing:

- fresh air, clean water, healthy soil and biodiversity
- renovated, energy efficient buildings

- healthy and affordable food
- more public transport
- cleaner energy and cutting-edge clean technological innovation
- longer lasting products that can be repaired, recycled and re-used
- future-proof jobs and skills training for the transition
- globally competitive and resilient industry.

## GRI (GLOBAL REPORTING INITIATIVE) STANDARDS

For more than 25 years GRI has developed and provided globally recognized standards for organizations to communicate and disclose information placing accountability for the impact on environment, economy and people. These standards are inter-connected in a structured manner in order to provide complete disclosures.

Any organization, irrespective of size can adopt these standards. These Standards also assist stakeholders and other information users understand what is expected from an organization to report on and use the information published by organizations in various ways.

The GRI Standards are a modular system comprising of:

i) GRI Universal Standards.

ii) GRI Sector Standards.

iii) GRI Topic Standards.

These Standards consist of structured disclosures, which can include requirements or recommendations. Requirements specify the information a company should provide and comply with. Recommendations include a voluntary course of action that is encouraged but not made voluntary.

**GRI Universal Standards**: This Standard applies to all organizations and consists of the following:

(a) ***GRI 1: Foundation 2021*** provides the conceptual understanding like the purpose of these Standards, critical concepts, and clarification for using the Standards. It comprises of principles such as accuracy, balance and verifiability.

(b) ***GRI 2: General Disclosures 2021*** consists of disclosures like organizational structure, governance, policies, practices, strategy, stakeholder engagement etc. They provide insights into the organization's profile and scale and help in providing a context for understanding an organization's impacts.

(c) ***GRI 3: Material Topics 2021*** provides the steps through which an organization can determine the topics that are of most relevance to it in terms of impact. It provides the use of sector standards in this process. It also provides disclosures pertaining to material topics, the method of assessing the materiality and the management of every material issue.

**GRI Sector Standards:** These Standard are sector-specific in nature and are created with the intention of increasing the quality, completeness and consistency of reporting by organizations. These Standards have been developed for 40 sectors and they are significant for organizations operating in that particular sector.

They indicate the disclosure requirements on sector-specific issues. If an applicable Sector Standard is available, an organization is obliged to use it when reporting with the GRI Standards.

**GRI Topic Standards:** These Standards provide disclosures for specific topics. This section include Standards for topics like waste, occupational health and safety, and tax. The organizations can select the Standards that are related to the material issues that have been identified and the associated impacts.

As the lesson has focused on green initiatives, so the following exhibit have covered the GRI Standards pertaining to Environmental dimension.

**GRI Environmental Standards**

| ***Sl. NO.*** | ***GRI STANDARDS NUMBER*** | ***GRI STANDARDS*** | ***DESCRIPTION*** |
|---|---|---|---|
| **ENVIRONMENTAL (GRI 300)** | | | |
| 1. | GRI 301 | Materials 2019 | It addresses the topic of materials. The inputs used to manufacture and package an organization's products and services can be nonrenewable materials, such as minerals, metals, oil, gas, or coal; or renewable materials, such as wood or water.<br>The disclosures in this Standard can provide information about an organization's impacts related to materials, and how it manages these impacts. |
| 2. | GRI 302 | Energy 2016 | It addresses the topic of energy. An organization can consume energy in various forms, such as fuel, electricity, heating, cooling or steam.<br>The disclosures in this Standard can provide information about an organization's impacts related to energy, and how it manages them. |
| 3. | GRI 303 | Water and Effluents 2018 | It addresses the topic of water and effluents. Access to fresh water is essential for human life and wellbeing, and is recognized by the United Nations (UN) as a human right.<br>The Sustainable Development Goals, adopted by the UN as part of the 2030 Agenda for Sustainable Development, include key targets related to sustainable water management under Goal 6: 'Ensure availability and sustainable management of water and sanitation for all'.<br>The disclosures in this Standard are designed to help an organization better understand and communicate its significant water-related impacts, and how it manages them. |
| 4. | GRI 304 | Biodiversity 2016 | It addresses the topic of biodiversity. Protecting biological diversity is important for ensuring the survival of plant and animal species, genetic diversity, and natural ecosystems. |

| Sl. NO. | GRI STANDARDS NUMBER | GRI STANDARDS | DESCRIPTION |
|---|---|---|---|
| | | | The disclosures in this Standard can provide information about an organization's impacts related to biodiversity, and how it manages them. |
| 5. | GRI 305 | Emissions 2016 | It addresses emissions into air, which are the discharge of substances from a source into the atmosphere.<br>Types of emissions include: greenhouse gas (GHG), ozone-depleting substances (ODS), and nitrogen oxides (NOX) and sulfur oxides (SOX), among other significant air emissions. |
| | | | The reporting requirements for GHG emissions in this Standard are based on the requirements of the 'GHG Protocol Corporate Accounting and Reporting Standard' ('GHG Protocol Corporate Standard') and the 'GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard' ('GHG Protocol Corporate Value Chain Standard'). |
| 6. | GRI 306 | Effluents and Waste 2016 | It addresses the topic of effluents and waste. This includes water discharges; the generation, treatment and disposal of waste; and spills of chemicals, oils, fuels, and other substances.<br>The disclosures in this Standard can provide information about an organization's impacts related to effluents and waste, and how it manages these impacts. |
| 7. | GRI 306 | Waste 2020 | It addresses the topic of waste. Waste can be generated in the organization's own activities, for example, during the production of its products and delivery of services.<br>It can also be generated by entities upstream and downstream in the organization's value chain, for example, when suppliers process materials that are later used or procured by the organization, or when consumers use the services or discard the products that the organization sells to them.<br>The disclosures in this Standard are designed to help an organization better understand and communicate its waste-related impacts, and how it manages these impacts.<br>The disclosures require information on how the organization prevents waste generation and how it manages waste that cannot be prevented, in its own activities and upstream and downstream in its value chain. |

| Sl. NO. | GRI STANDARDS NUMBER | GRI STANDARDS | DESCRIPTION |
|---|---|---|---|
| 8. | GRI 308 | Supplier Environmental Assessment 2016 | It addresses the topic of supplier environmental assessment.<br>An organization might be involved with impacts either through its own activities or as a result of its business relationships with other parties.<br>Due diligence is expected of an organization in order to prevent and mitigate negative environmental impacts in the supply chain.<br>These include impacts the organization either causes or contributes to, or that are directly linked to its activities, products, or services by its relationship with a supplier.<br>The disclosures in this Standard can provide information about an organization's approach to preventing and mitigating negative environmental impacts in its supply chain. |

**LESSON ROUND-UP**

- Pollution abatement refers to technology applied or measure taken to reduce pollution and/or its impacts on the environment.
- SDGs relating to pollution are- No Poverty, Zero Hunger, Good Health and Well-Being, Quality Education, Gender Equality, Clean Water and Sanitation, Affordable and Clean Energy, Decent Work and Economic Growth, Industry, Innovation and Infrastructure, Reduced Inequalities, Responsible Consumption and Production, Climate Action, Life Below Water, Life on Land, Peace, Justice and Strong Institutions and Partnerships for the Goals.
- Resource efficiency means using the Earth's limited resources in a sustainable manner while minimising impacts on the environment. It allows us to create more with less and to deliver greater value with less input.
- Energy intensity is the amount of energy required to produce one unit of gross domestic product (GDP). Going by this definition, it may be opined that the intensity of renewable energy is increasing both at global and at national levels.
- Water stewardship is a collaborative and multi-stakeholder approach that aims to achieve social, environmental and economic benefits. By using Water Footprint Assessment, a company can ensure that all stakeholders are well informed and good river basin governance is developed.
- Water desalination is an industrial process that requires huge amounts of chemicals and energy to proceed. Therefore, start-ups are focused on developing innovative and eco-friendly solutions that reduce costs.
- Waste management refers to the various schemes to manage and dispose of wastes. It can be by discarding, destroying, processing, recycling, reusing, or controlling wastes. The prime objective of waste management is to reduce the amount of unusable materials and to avert potential health and environmental hazards.

## GLOSSARY

- **Biodegradable:** Something capable of decaying into its basic components.
- **Carbon emissions:** Pollution released into the atmosphere from carbon dioxide and carbon monoxide; often produced by motor vehicles.
- **Climate change:** Significant change in climate including temperature, precipitation, or wind that lasts for an extended period.
- **Climate positive:** Exceeding achieving carbon neutrality by removing additional carbon dioxide from the atmosphere; also referred to as carbon negative.
- **Eco-conscious:** The mentality to focus on reducing harm to the environment wherever possible.
- **Ecological footprint:** Measurement based on the amount of nature it takes to support something.
- **Global warming:** The average increase of temperature of the troposphere.
- **Grey water:** Domestic wastewater including wash water from the bathroom, kitchen, and laundry.
- **Greenhouse effect:** When excessive heat is trapped and built up in the troposphere by a blanket of gases.
- **Greenwashing:** Misrepresenting something as being "green" when it's not environmentally sound.
- **Reforestation:** Planting of forests on lands that were depleted.
- **Wish-cycling**: An aspirational approach to recycling items without knowing if they're recyclable but expecting them to be properly dealt with.
- **Sustainability**: Environmental practices that protect natural resources needed by future generations for a positive quality of life.
- **Commingle:** To blend together similar recyclable materials such as mixed brown, green, and clear glass – but separate from disposable materials in the waste stream.
- **Cradle to Cradle: In cradle to cradle production all material inputs and outputs are seen either as technical or biological nutrients. Technical nutrients can be recycled or reused with no loss of quality and biological nutrients composted or consumed.**
- **Brown Power:** Electricity generated from the combustion of fossil fuels, such as coal, oil, and natural gas, which generates significant amounts of greenhouse gases.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)*

1. What is the purpose of green initiatives?
2. How do you promote green initiatives?
3. What are the barriers to successful green innovation?
4. What are the barriers to green infrastructure?
5. What are the 3 pillars of sustainability?
6. What is sustainable technology?
7. What is the goal of sustainable development?

## LIST OF FURTHER READINGS

- Corporate Governance Values & Ethics Book for MBA by Dr Neeru Vasishth, Dr Namita Rajput, Taxmann
- Concepts of Environmental Management for Sustainable Development by M C Dash
- The Age of Sustainable Development by Jeffrey D Sachs and Ki–moon Ban
- Environmental Ecology, biodiversity And Climate Change: Towards Sustainable Development by H M Saxena
- Sustainable Development: Linking Economy, Society, Environment by Tracey Strange and Anne Bayley

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# Governance Influencers

Lesson 16

## KEY CONCEPTS

■ Corporate Governance ■ Governance Influencers ■ Investor Associations ■ Proxy Advisory Firms ■ Retail Investors ■ FIIs ■ Institutional Investors ■ Impact Investing ■ ESG ■ Green Bonds ■ ESG Bonds

## Learning Objectives

**To understand:**

- Governance Influencers
- Investor Associations
- Proxy Advisory Firms
- Institutional Investors
- ESG Investment

## Lesson Outline

**A. ICSI-Corporate Leader in Corporate Governance**

- ICSI's initiatives towards fostering Corporate Governance

**B. Investor Associations**

- Introduction
- Role in Corporate Governance

**C. Proxy Advisory Firms**

- Introduction
- Emergence of Proxy Advisory Firms
- Functions of Proxy Advisory Firms
- Role in Corporate Governance
- Issues and Challenges
- Indian Regulatory Regime

**D. Institutional Investors**

- Meaning of Institutional Investors
- Types of Institutional Investors
- Importance of Institutional Investors
- Role in Corporate Governance
- Issues and Challenges

**E. ESG Investment**

- Introduction / Meaning of ESG Investment
- Evolution of ESG Investment & Recent Trends
- Benefits and challenges in ESG investment
- ESG Investment as an influencer of good Corporate Governance
- Lesson Round-up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## PART A. ICSI-CORPORATE LEADER IN CORPORATE GOVERNANCE

The Institute of Company Secretaries of India (ICSI) is the apex body and only recognized professional body in India to develop and regulate the profession of Company Secretaries in India. It is a premier national professional body set up under an act of Parliament, the Company Secretaries Act, 1980. ICSI functions under the jurisdiction of the Ministry of Corporate Affairs, Government of India.

ICSI has over the years undertaken numerous efforts to foster the development of corporate governance practices and encouraged their implementation in true letter and spirit.

ICSI has risen as a corporate leader in corporate governance and some of the efforts ICSI towards this end are highlighted below:

### ICSI'S MOTTO, VISION AND MISSION STATEMENT

*Motto:*

Satyma Vada Dharamam Chara - Speak the Truth, Abide by the Law

*Vision:*

To be a global leader in promoting Good Corporate Governance

*Mission:*

To develop high calibre professionals facilitating good Corporate Governance.

### ICSI - CENTRE FOR CORPORATE GOVERNANCE, RESEARCH AND TRAINING (CCGRT)

ICSI- Centre for Corporate Governance Research and Training (CCGRT) is the National Research and Training Centre of the Institute of Company Secretaries of India, a statutory body incorporated under an Act of Parliament functioning under the administrative jurisdiction of the Ministry of Corporate Affairs. It has been serving the society since May, 1999 through various professional development programmes, research and high- end training with focus on corporate governance. ICSI-CCGRT has contributed remarkably in the past through its various initiatives towards Academics inputs, Corporate Training and Research. The ICSI officials at CCGRT are actively engaged in publishing research related to the profession and inculcating research acumen amongst students and members.

### ICSI – PMQ COURSE IN CORPORATE GOVERNANCE

ICSI has introduced many post membership courses as a source of specialization for its members in their chosen field. One such PMQ course is in corporate governance. The PMQ Course is conducted in 4 stages and it provides in-depth understanding of various corporate governance facets.

### ICSI'S SECRETARIAL AND AUDITING STANDARDS

ICSI has issued various secretarial standards some of which are mandatory in nature while the others are recommendatory. ICSI has also issued a number of guidelines on various corporate matters to enhance understanding of its members and acts as a guide in implementation of best management practices. ICSI has also recent issued standards on Auditing.

### ICSI AWARDS

ICSI is committed to good Corporate Governance and has played a pivotal role in creating awareness on various issues impinging upon corporate governance. One of the important initiatives of the Institute to good Corporate Governance is the ICSI National Awards for Excellence in Corporate Governance which was instituted in the year 2001 to promote good governance practices among the corporate and to recognize those companies worthy of being exemplified.

**IMPLEMENTATION OF BEST PRACTICES IN CORPORATE GOVERNANCE**


*Source: https://www.icsi.edu/media/webmodules/180825022_AboutTheAwards.jpeg*

Besides the above, ICSI has also instituted various other awards which foster the spirit of corporate governance. These include:

- **ICSI CSR Excellence Awards**
- **ICSI Best Secretarial Audit Report Award**
- **ICSI Best PCS Firm Award**
- **ICSI Business Responsibility and Sustainability Awards**

## ICSI SEMINARS / CONFERENCES / WORKSHOPS

ICSI, on a continuous basis, organizes in India and abroad various programmes in the form of seminars, webinars, conferences etc. to educate and empower its students, members and other professionals and corporate to understand the various nuances of law to ensure their effective implantation and practice.

## PART B. INVESTOR ASSOCIATIONS

Investor Associations as the name recommends are non profit organisations that are formed and function for the benefit of investor community. These associations are formed to educate individual investors about stocks, bonds, mutual funds, and other financial instruments, about investors' rights, remedies and to create awareness amongst investors.

There are many SEBI recognized Investor Associations in India and their list is available on the website of SEBI.

As per SEBI's conditions of Operation of Investors' Associations:

1. **Formation**

   a. A society registered under the Societies Registration Act, or formed as trusts or incorporated companies are eligible for recognition as an investor association.

   b. The society / trust/ company shall be in existence for a minimum period of at least two years.

      i. provided that SEBI shall grant exemptions in exceptional cases.

ii. The primary objective establishment shall be -offering bona fide protection of interests of the investors / consumers and other allied services.

**2. Membership**

a. The Association shall have a minimum of 100 members.

b. The eligible members of the Association shall be

i. individual shareholders

ii. non profit organizations

iii. Provided that the Association shall discontinue the membership granted to any body corporate or institution within three months of obtaining recognition.

**1. Management & Governance**

a. The Association shall have rules, regulations and /or bye-laws for the governance and management of the Association.

b. The rules, regulations and or bye-laws of the Association shall be in conformity with the conditions for recognition.

c. The Association shall be managed by a Governing Board/Management Committee with not less than 7 members, directors in case of incorporation as a company.

d. The election of members of the Governing Board / Management Committee shall be held at least once in 3 years.

e. In case of a company, the provisions of the Companies Act relating to appointment / election of Directors shall apply.

f. None of the members of the Governing Board / Management Committee / Board of Directors or any other office bearer shall be a person registered as an intermediary with SEBI or shall be a director (other than independent professional director) on the Board of any body corporate whose shares are listed on a recognized Stock Exchange(s).

## ROLE OF INVESTOR ASSOCIATIONS IN CORPORATE GOVERNANCE

Individual investors including small investors generally come to know about investment opportunities in corporate securities from write ups in business newspapers and financial journals. They may subscribe to initial public offers of debt equity on the basis of newspaper reports or on the advice of brokers, commission agents, and invest in existing shares on the basis of market trends, their track record, dividend payment, etc. These investors need to be protected against losses that they are likely to suffer on account of lack information and various lacunae, lapses, and malpractices in the securities market and corporate functioning.

Investor Associations exist to establish strength and unity in working toward the common goal of their members. They are non-profit organizations formed to promote the economic well being of their members.

Investor Associations act as representative of their members and voice their concerns to appropriate authorities. They work towards creating awareness among their members about best investment practices and act as a link between investee companies and their member investors. They create solutions to meet the emerging needs of the investors and provide a collective voice and representation on behalf of the investor's community to the highest levels in financial institutions, regulatory bodies government authorities in India and globally.

Individual investor may not have resources to understand the various nuances of financial markets, functioning of companies, modalities of making investments etc. These associations not only impact knowledge and education but also serve as representatives of their members to redress their grievances.

These associations act as the platform to address needs and grievances of Investors and take their voice to the respective forums or regulatory bodies. They also work to facilitate growth by improving the general conditions of operating investments to facilitate access and investment opportunities within and beyond local boundaries to ensure the availability of human and financial resources. Their function includes providing assistance and know-how to investors to address their grievance and bring justice to them.

Due to their collective strength, they are in position to exert influence over companies and steer them in the right path of corporate governance and protection of investor rights.

They monitor the decisions of the Board and help in building effective corporate governance practices in the investee companies.

## PART C. PROXY ADVISORY FIRMS

### INTRODUCTION

Proxy advisory firms are independent entities that conduct research and provide voting recommendations to their clients. Proxy advisory firms are relatively new institutions in the corporate landscape but they play an imperative role and have gained popularity among institutional investors.

As per Regulation 2(1)(p) of the SEBI (Research Analysts) Regulations, 2014, ***"proxy advisor' refers to any individual or any organization that prepares recommendations and gives advice for the institutional investors or shareholders so as to aid them in the casting of their vote in respect of any policy issues or a public offer."***

Generally, only the directors decide upon the everyday issues of the company but as shareholders are the real owners of the company, they vote on the crucial matters of the company. Some shareholders are mainly concerned about the profits (dividends, interests, etc) and thus are not well-acquainted about the issues, policies, and notices of the company and thus need an independent analyst to evaluate the decision taken by the company and here the proxy advisory firms act as a helping hand and provide recommendations to shareholders according to which they can cast their vote on issues such as executive compensation, corporate governance, etc.

Shareholder activism in India is still in a nascent stage, however, today's shareholders are very much active in the governance related decision of the company and they cast their vote in a wise manner. For this they need to be well informed about the policies and performance of the company.

Proxy advisory firms analyse important corporate issues such as: a) Mergers and Acquisitions b) Important Leadership Appointments c) CEO pay d) Shareholders who should vote in Annual General Meetings (AGMs), Extraordinary General Meetings (EGMs) and court convened meetings. The recommendations provided by proxy advisory firms also concern the corporate governance related matter like the election of the board of directors, approval of equity-based compensation programs, advisory approval of management compensation, acceptance of deposits and other management-and shareholder-sponsored initiatives regarding board structure, compensation design, and other governance policies and procedures which are brought before investor at shareholder meetings.

India has home-grown proxy advisory firms such as Institutional Investor Advisory Services (IiAS), In Govern and Stakeholder Empowerment Services (SES) that provide these services.

### EMERGENCE OF PROXY ADVISORY FIRMS

The concept of proxy advisory firms emerged along with the rise in investment by institutional and foreign investors. This mechanism of voting evolved according to the needs of society and the proxy advisory firms came into the picture that acted as third-party consultants and provided expert advice and recommendations on whether to vote 'for' or against' a motion. The main aim of these firms is to provide counseling to the shareholders but they can also be given the right to vote if they are expressly authorized by the stockholders.

The system was prevalent in the USA's financial market from the 1980s but in India the concept came much later. The proxy advisory industry has grown over the past thirty years as a result of various market and regulatory developments. In 1988, the U.S. Department of Labour took the position that the voting of proxies of shares of stock owned by a pension plan was part of the plan's fiduciary duty to manage employee benefit plan assets. This development prompted managers of employee retirement plan assets to seek help from the proxy advisory industry to satisfy their fiduciary responsibilities to vote proxies in the best interests of their clients.

In the Indian context, due to the mishaps that took place in the year 2009 including the Satyam's matter, SEBI incorporated several steps to prevent such malpractices and one such measure was the passing of the Securities and Exchange Board Of India (Mutual Funds) (Amendment) Regulations, 2010 in July 2010. This regulation demanded more transparency in the voting and disclosure of the norms followed to determine the voting right of the shareholders.

The first proxy advisory firm to come up in India was 'InGovern Research Services' started by Mr. Shriram Subramanian in June 2010. Since then several firms like the Institutional Investors Advisory Services (IIAS), Stakeholders Empowerment Services (SES), etc have been incepted and enormous growth of these firms has been recorded. However the growth of proxy advisory Industry in India may not be similar to that of USA as ownership pattern of listed entities in India are different from that of USA.

## FUNCTIONS OF PROXY ADVISORY FIRMS

Proxy Advisory Firms are independent research outfits that weigh all the pros and cons of any decision and thus provide research and voting recommendations for their clients. Many institutional investors across the globe are voting based on the recommendations of proxy advisory firms. The decisions on whether to vote for or against various resolutions by shareholders at the annual general meetings is increasingly being driven by what the proxy advisor recommends. Also, voting is largely done by the custodians on behalf of the institutional investors, based on recommendations of the proxy advisors. Institutional investors who are the shareholders of various companies cannot keep track of the policies and performance of all companies. This has created the demand of proxy advisory firm's services.

If shareholders themselves attend all meetings and cast their votes based on their own understanding of the long-term financial beliefs, proxy advisory firms would not be necessary. However, practically things are different. Not all shareholders are interested in voting and many don't have the time, resources and understanding to attend every corporate meeting and vote thereon.

This led to creation of independent, knowledge based entities that have the time and resources to analyse and offer advice to investors on decisions to be taken by a company. This is where proxy advisory firms fit in.

Proxy advisory firms put out detailed reports that advise shareholders on how they can safeguard their interests. They also provide independent voting recommendations. In return, they charge fees from institutional investors for their services.

As an investor, there can be many questions for which answer may not be evident. For example, should the CEO get a pay hike of 25% this year, or is it a good decision for the company to merge with its competitor? A proxy advisory firm does all the legwork and evaluates the pros and cons of such important corporate matters.

Some of the functions of proxy advisory firms are given below:

- The major task is proxy advisory i.e. advising on the intricate matters of the company.

- They aid shareholders in exercising their voting rights in the company in significant decisions like the appointment of the directors, changes in the policies of the company, etc.
- They provide a report that is basically a scorecard or rating on the corporate governance of the entity.
- They also conduct the Environmental, Social, and Governance (ESG) analysis. ESG analysis is done to study all the factors (environmental, social, and governance) of the company to calculate all the prospective growth opportunities and threats. It helps the company and shareholders to prepare accordingly.
- They monitor risks and protect the interests of the investors.
- They ensure participation of investors in corporate decision making.

## ROLE OF PROXY ADVISORY FIRMS IN CORPORATE GOVERNANCE

The implementation of the Companies Act, 2013 and enhanced corporate governance standards under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, has made the role of proxy advisors very significant in the corporate governance landscape.

These proxy advisory firms act as the shaping tool that helps in complying with the stringent corporate governance norms. Investors are drivers of corporate governance and they are assisted by these proxy firms to understand the agendas of the company, to provide them with analysis of different proposals and voting decisions for the company. Basically, they can guide them in every decision that is to be taken by the investors regarding the company. Corporate bodies also need to adhere to these recommendations otherwise it could negatively impact their reputation and adversely affect the confidence of the investors which may lead to a decline in share price, fewer funds, etc.

There are several instances where the proxy advisors' recommendations helped in the administration of better governance policies in the companies. For example -

1. Global Funds advised against the appointment of Mr. Deepak Parekh as the non-executive chairman of HDFC as he was already on board of 8 companies as they were of the view that he would not be able to handle all positions judiciously at the same time.
2. InGovern advised against the appointment of Mr. B.C. Prabhakar as independent Director in Wipro, against Mr. Shardul Shroff in IDFC, and against mr. S.H. Khan as Independent Director of IDBI stating that they are in the same position for several years and remarked that their relationship is like, 'if they are married to the company'.

Another reason for such negative recommendations was the introduction of clause 49 in the Equity Listing Agreement between SEBI and listed companies.

Thus, proxy advisors through their recommendations ensure the efficient functioning of a company and foster good corporate governance.

Their reports help the companies to build their reputation and trust among the shareholders. If the report showcases a positive report of the company regarding their decisions and legal compliance, then this would attract investor's confidence in the company. This helps in more investments in the company. Thus, companies tend to follow good governance policies so that the recommendations drafted by the proxy advisors favor them. Generally, it is seen that shareholders like to invest in the companies that fall under the jurisdiction of these advisory firms because they could access insider information and the status of the company which would otherwise not have been available for the investors.

Proxy Advisory Firms keep a check on companies whether they are adhering to the rules and regulations and working in the interest of shareholders. Earlier investors only acted as passive members in the companies and as such they were not able to analyze the pros and cons of the changes made in the organization and this affected them adversely. But this whole situation has been transformed by these advisors as now any matter that is against the interests of the shareholders can be called out by them and the same has to be considered by the company. For example in the case of Lavasa, where Mr. Ajit Gulabchand was receiving the salary much more than what was allowed by the Central government without any express sanction of the shareholders, this scenario was analyzed by the proxy advisory firms and finally, he was ordered to refund all the excessive amounts that had been received by him over the years.

## ISSUES AND CHALLENGES FACED BY PROXY ADVISORY FIRMS

Despite the important role played by proxy advisory firms and there being huge potential in this industry to boom, there are still some hindrances before them. There are concerns regarding the policies followed by the proxy advisory firms while conducting their research and issuing recommendations. Further, excessive level of standardisation practiced by the advisory firm in their approach is also deemed counterproductive. Taking the earlier examples where InGovern suggested voting against Wipro's BC Prabhakar as the Independent director, against Shardul Shroff as Independent director of IDFC and against SH Khan as the Independent Director. The firm's opinion on the matter was that the candidates who were contesting for the position of Independent directors were in a long association with the company and hence not advisable. On the contrary Companies Act, 2013 and SEBI (LODR) say an Independent Directors can serve for not more than two terms of five years each on the Board of the Company subject to the maximum tenure of ten years.

Another issue related to proxy advisory is the related party transaction. The law on related party transactions requires a 'majority of the minority' voting in approving material transactions wherein the promoters are deprived of voting rights on that decision. Under the new laws, minority shareholders have become extremely powerful, following the introduction of legal provisions, which took away the rights of controlling shareholders to influence RPTs. The situation becomes worse when the majority shareholding is in the hand of foreign portfolio investors. A group of shareholders, accounting for 3.77% of the company's equity, voted to embarrass the $104 billion Tata Group by making sure the related-party proposals worth 1,170 crore were rejected.

Proxy Advisory companies give their recommendation based on their research, however in rendering their services they become prone to litigation. ITC had slapped Rs. 1,000-

crore defamation suit against proxy firm Institutional Investors Advisory Services (IIAS), for allegedly making defamatory comments against one of its directors in a note to investors. IIAS had questioned ITC's remuneration proposal for its non-executive chairperson Mr. Yogesh Deveshwar.

Unawareness among the shareholders about the good corporate governance and the services provided by the proxy advisor is another challenge faced by proxy Industry in India.

Some of the other hurdles faced by the proxy industries are as follows:-

- **Passive attitude of shareholders -** The shareholders, most of the time, are unaware and indifferent about the norms of corporate governance and importance of their voting right. Awareness is required to be created so that shareholder's activism can get a boost which will in turn help in the rise of the proxy advisory industry. Many bodies like the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, and even SEBI have come forward to create awareness about them.
- **Lack of trust –** These firms started facing resistance from the corporate entities before they could even win the confidence of the investors. Many allegations of having personal interest, not following proper research practices, lack of concern towards companies, and misleading investors through unreliable recommendations became very common. These allegations hampered their growth at the nascent stage itself.

- **High competition / limited scope -** The limited scope of the firms is another drawback. In the USA also, the advisory industry mostly remained as a monopoly or duopoly only for the practical working of the market. Thus, where the space is limited there exists cut-throat competition in the market to establish themselves.
- **Lack of Expertise -** There was no specialized programs curated for the employees of such firms to cater to the needs of this industry. The companies were hiring engineers based on their logical reasoning and then training them to induct them. Thus, it is a huge issue because there is a lack of desired human resources with expertise in this field.

## INDIAN REGULATORY REGIME

SEBI (Research Analysts) Regulations 2014 (the 'RA Regulations') were the first laws that explicitly brought proxy advisers under the legal radar.

Proxy advisory firms were defined under regulation 2(i)(p) of these regulations as below:

***"Proxy adviser" means any person who provide advice, through any means, to institutional investor or shareholder of a company, in relation to exercise of their rights in the company including recommendations on public offer or voting recommendation on agenda items.***

Although the regulations were elementary, they mandated:

- registration with SEBI to undertake the proxy advisory business in India;
- disclosures in the recommendations made by proxy advisers;
- formation of internal policies and procedures for functioning; and
- Maintenance of records of the recommendations made.

RA Regulations talk about the eligibility norms, Capital adequacy, registrations, and management of conflict of interest and disclosure requirements apart from other aspects relating to functioning of Proxy Advisory firms in India. Regulation 23 deals with the specific disclosures to be made by the proxy advisory firms.

In November 2018, SEBI formed a working group to provide inputs and insights into the 'issues related to proxy advisers'. The working group was required to review the provisions of the RA Regulations and functional areas of proxy advisers, including rights and obligations. The working group was also expected to reflect on other matters pertaining to proxy advisers.

In May 2019, the working group issued its report. In 4$^{th}$ August, 2020, SEBI issued Procedural Guidelines for Proxy Advisors and on same day issued a circular for Grievance Resolution between listed entities and proxy advisers.

The Procedural Guidelines were developed for regularizing the powers of proxy firms and came into force on January 01, 2021. The salient features of these guidelines are:

1. Proxy advisory firms have to disclose policies on the recommendation of voting and these are to be reviewed every year.
2. The report should be shared simultaneously with the company and investors and if there are any clarifications or comments that the company wants to suggest, the same could be sent by the company to proxy advisors within the timeline decided beforehand and the needful changes can be made in the report .
3. If the opinion of the company varies from that of the proxy advisor's report and it could not be justified by minor amendments then the needful changes can be done by issuing additional reports or adding an addendum depending on the issue.

4. If there are any discrepancies, false information, or material revisions are required to be done, the same should be disclosed to clients within 24 hours of realizing such an error.
5. The methodologies, procedures, and sources that were being referred to or followed, to formulate the report should also be disclosed to the clients.
6. An explicit framework is to be set up to handle and resolve any conflict of interest that arises during the course of ancillary services; like if the firm provides consultancy service in addition to the advisory services which could lead to a biased point of view the same should be disclosed to the clients also.
7. Firms need to clarify the situations in which the firm will not provide voting recommendations in its voting recommendation policy.
8. They also need to mention adequate reasons if they are suggesting any higher standard in their recommendations than generally stipulated by law.
9. The stated communication process between clients and the listed company should be developed so as to interact and inform the clients regarding recommendations and to get reviews on the same.

Apart from these disclosure measures for the proxy advisors, a mechanism has been set up by SEBI which will redress the issues faced by listed companies and provide relief for the same. Under this, the aggrieved company that has a contrary opinion than that of the recommendations provided by proxy firms can report to SEBI about their grievance. The SEBI will act as an arbitrator between the two and after examination of the issue, will discharge the case accordingly. This system is based on natural justice as this provides the company with the right of being heard in case they are being exploited by the policies and recommendations formed by the proxy advisors.

The Indian stock market is growing day by day and investors have become more engrossed in the intricacies of the matter than before. This surely has created an apt situation for the growth of the proxy industry in India. The proxy advisory firms have revolutionized the concept of corporate governance as they play a vital role in the working of the company. Now the annual meetings are not dictated by a few people only, instead, the directors of the company have to tune themselves and work according to the suggestions by proxy advisors because they are the guiders of the institutional investors. The firms ensure the system of transparency, check, and balances for the investors in the companies as the minute happenings in the company are notified to them which in some cases could go unattended. This could help in the better understanding of the situation and in turn aids in the formulation of the decisions by the shareholders. No doubt still the role of the proxy industry in India is very small as compared to the USA because India is the hub of family-owned businesses and the shareholders are in minority because of which the authority cannot be challenged easily. But this role of proxy advisors will likely change over the next decade because of an increase in startups that would have diversified shareholding and the firms could benefit from that and they will play a pivotal role in giving vent to investor concerns by engaging positively with the companies.

## PART D. INSTITUTIONAL INVESTORS

### MEANING OF INSTITUTIONAL INVESTOR

An Institutional Investor is a legal organization that pools funds of a large number of individual investors or other legal entities, and invests in different financial instruments such as stocks, bonds, commodities or any other investment options. In other words, an institutional investor is an organization that invests on behalf of its members.

Institutional Investors are large institutions that trade securities in the market in large quantities on behalf of their investors. Since the number of investors in such an entity is large, the size of the trades is automatically large and are they able to enjoy preferential treatment and lower commissions in the market as compared to the retail investors.

An entity pools money from various investors and individuals making the sum a high amount which is further provided to investment managers who invest such huge amounts in various portfolio of assets, shares, and securities, which is known as institutional investors and it includes entities like insurance companies, banks, NBFC, financial institutions, mutual funds, etc. having competitively higher creditworthiness and solvency.

Institutional Investors invest on behalf of their clients as they are considered highly sophisticated investors who possess extensive investment knowledge and experience. Institutional investors are less likely to make poor investment decisions, as they are capable of in-depth analysis, including risk and returns forecasts and are able to develop sophisticated financial models as compared to individual investors. Their approach and strategies to the financial markets are very different from the individual investors.

Institutional Investors usually have their own teams looking at each aspect of the markets that they trade in. They enjoy less regulatory protection because they have enough knowledge to understand the risk of the markets. However, the market regulator ensures that the powers are not exploited and keeps them in check in order to have a fair and transparent market for all participants.

## TYPES OF INSTITUTIONAL INVESTORS

The characteristics of institutional investors can be understood as follows:

- It is a legal entity, and it is important to understand that an institutional investor is an enterprise managing a fund (e.g., a mutual fund), but not the mutual fund itself.
- The basis of an institutional investor's activity is professional, and it manages assets based on the interests and goals of its clients.
- An institutional investor always manages a significant number of funds.

Institutional investors are broadly divided into Foreign Portfolio Investors [FPI] and Domestic Institutional Investors [DII] depending on whether the investments are from domestic or foreign institutions in the Indian financial markets. Domestic institutional investors form a major part of the market's movement and the volume of trades.

There are several different types of institutional investors in the market depending upon their specialization in specific asset classes and the investment strategies they follow. Few are listed as below:

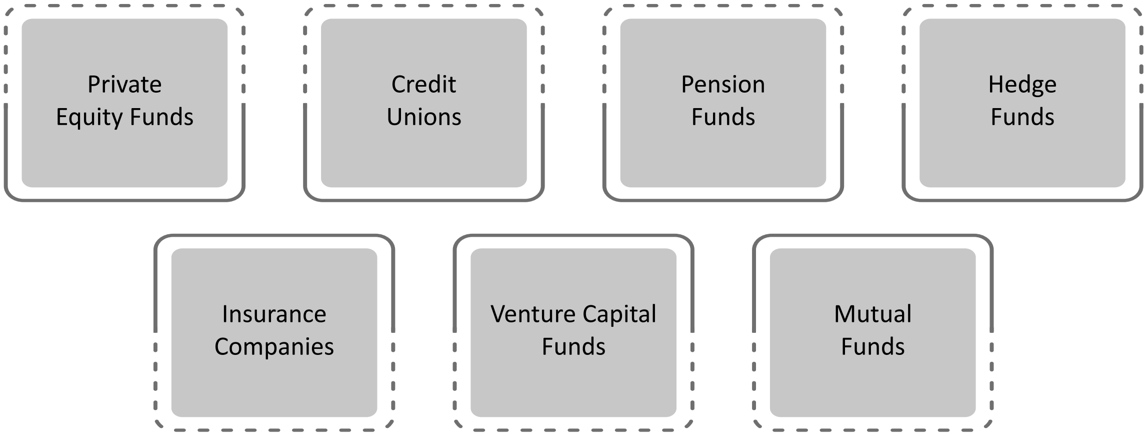


**FIG. 1 – TYPES OF INSTITUTIONAL INVESTORS**

1. **Hedge Funds:**

   Hedge funds are one of the most well-known types of institutional investors in the financial world. Hedge fund investors are locked into the investment for a longer period of time without the freedom to cash out and exit. In addition, hedge funds typically use a concentrated investment strategy, where funds are directed to a few assets in larger proportions, making it more susceptible to larger gains and losses. Hedge funds are hence considered to be a more aggressive and riskier asset class.

2. **Mutual Funds:**

   Mutual funds are a well-diversified form of investment across different industries and sectors available in the market. They are designed to mitigate the risk of capital losses for their investors through diversification. Mutual funds typically do not have entry requirements for investors and are open to individual or retail investors even with a small investment size. Mutual Funds are considered as one of the most attractive and less riskier options for beginner investors.

3. **Insurance Companies:**

   Insurance companies are one of the high impact institutional investors. The premium these insurance companies receive from investors is very well managed and invested in securities, returns of which are used to repay the investors. Due to the considerable amount of premium received and invested they become one of the important institutional investors directing the markets.

4. **Endowment Funds:**

   Endowment funds are generally established by universities, hospitals, charitable foundations, or other non-profit organizations to manage their money. The income generated from investment activities is typically required to be used to finance the beneficiaries' activities, such as to provide scholarships etc.

5. **Pension Funds:**

   Pension funds are funds established using monetary contributions from pension plans. Both employee and employer can contribute to the pension plans. The accumulated capital is typically allocated to income generating and stable investments, fulfilling the whole purpose of pensions, i.e. generating stable and regular income.

6. **P/E Funds:**

   Private Equity funds are pooled investment vehicles with a structure of a Limited Partnership and a fixed term of usually ten years. These funds provide equity financing to private entities that are unable to raise capital from the public. These investments are illiquid in nature. P/E funds carry a high risk, and therefore investors expect a high return on their investment. The high risk is associated with the non-public nature and small size of the investee companies.

6\. **Venture Capital Funds:**

   Venture Capitals (VC) mostly invest in small private companies with a very high growth potential and failure rate. The suppliers of VC usually take part in the management of the company the shares of they purchased.

## Individual Investors vs. Institutional Investors

Retail Investor is an individual who deals in securities via brokerage firms or other facilitators, whereas Institutional Investors invest on behalf of retail investors.

Institutional Investors have access to securities and markets of all kinds even to few private investment options, which is typically not open for the retail investors, such as institutional real estate, or private stock placements.

Retail investors invest on behalf of themselves hence the investment amount tends to be much lower in size compared to the investment amount made by institutional investors.

Institutional Investors heavily impact the demand and supply of securities, directly affecting the price movements of the securities as compared to retail investors due to the obvious difference in the investment size.

Retail investors are more susceptible to emotional biases compared to institutional investors.

An individual can invest in any assets that are available to them on the exchange. An institutional investor can also buy assets but is oriented more on long-term investing.

Institutional investors also access large operational activities due to corporate opportunities. With substantial capital and licensing, large institutions secure access to many assets that are not available to private individuals.

They include foreign securities, government business loans, changed banking policies, interest rates, and more. If individuals work as retail investors, institutional investors are more likely to conduct wholesale purchases.

## IMPORTANCE OF INSTITUTIONAL INVESTORS

Domestic and foreign institutional investors are pivotal sources of capital and also provide the volume of trades for the markets to thrive.

Institutional investors often provide not only money but also advice, networking, and other assistance (smart money) to the companies raising funds. Besides, they allow retail investors to invest in capital markets — thus getting better returns than the bank deposit would grant them — without need to gain expertise in financial markets and with reduced risk exposure. This means not only better opportunities to save money but also much higher chances of the income since the money managed by fund experts is working better.

Let us further understand their importance through the points below:

- **Important Sources of Capital** – Institutional Investors are a very important source of capital in the economy. They provide large chunks of capital to companies that fulfill their requirements without having to depend on a large number of small investors. Often before an IPO, investment banks ask institutional investors to buy the shares in order to ensure that the IPO is well subscribed. It reduces their dependency on retail investors.
- **Benefits to Individual Investors –** Institutional Investors have just pooled investment vehicles wherein a number of investors pool their money to form a large size entity that can invest on their behalf. Since not all investors are able to take positions in securities that require large capital commitments, they can enjoy those benefits through institutional investors. Also, they have their own teams of highly qualified personnel that study the securities and track the markets. They have professional management at every level. Individual Investors who lack all these skills get the benefit of highly knowledgeable expert management of their money.
- **Preferential Treatment –** Since Institutional Investors can influence the market because of their large size of investments, they get preferential treatment in terms of lower transaction costs, fast execution of their orders, etc. This saves time and money and ultimately benefits the investors who are a part of the investment pool.

## ROLE IN CORPORATE GOVERNANCE

There is a mutual relationship between institutional investors and the corporate governance of a company. The corporate governance practices followed by a company are very important to determine the number of institutional investors who would like to invest in it and the extent to which they would like to invest. This acts as a great motivator for companies to follow good corporate governance practices.

According to a survey conducted by McKinsey, it was found out that institutional investors were willing to pay higher premium for good governance because they felt that these practices would lead to superior performance of the company and consequently higher returns.

The survey conducted by McKinsey in 1996 concluded that institutional investors were willing to pay an average of 11% more for well governed companies. A subsequent survey, in 1999-2000, revealed a relative premium between 20- 27% in the selected Asian countries; 18-22% in Europe and the US and 21-28% in Latin America. Vice versa, if there is a strong institutional investor base in a company it would lead to better monitoring consequently leading to better corporate governance of the company.

Institutions with corporate governance mechanisms in place are better to invest in as this would mean decreased monitoring costs. Most governance sensitive institutional investors would like to invest in firms which already have their governance mechanisms in place. The institutional investors would not have to play a proactive role in monitoring the practices followed by the company.

At the heart of the issue about institutional investors and corporate governance is the fact that there is something called an agency problem that creeps up with professionally managed organizations. What this agency problem indicates is that managers have conflicting responsibilities to themselves and the organization and in most cases; they seek to promote their interests at the expense of the organization's interest.

Managers by nature seek to maximize their benefits in relation to the profits and hence there is a need for counterbalancing this with other forces. These forces or the countervailing balance is brought about by the institutional investors who have an interest in promoting the longer term health of the company. By actively pursuing the boards of organizations to follow effective corporate governance, institutional investors would ensure that the corporates put the longer term interests of the organization as well as ensure that organizations put shareholder interest over the interests of the managers.

The agency dilemma is important from an ethical, practical, and economic standpoint. It is one of the most important aspects of corporate governance. Asymmetric knowledge occurs because investors are unable to routinely supervise every decision performed by firm management, resulting in ethical hazards and a lack of agreement. It adheres to the principles of agency cost theory. The duties of institutional investors become critical when it comes to maintaining strong corporate governance and ensuring that agency conflicts can be controlled.

Grossman and Hart state that it is cost ineffective for smaller shareholders to monitor the company since they do not have any incentive to do the same. But, larger investors, such as institutional investors, can address agency problems in the company because they have

(1) an incentive to monitor firm management due to the size of their holdings, and

(2) have the ability to effect change because of their voting blocks.

Investor activism seeks to influence corporate policy and practises by leveraging an investor's ownership position. The strategy is advantageous, and it is one of the most important corporate governance techniques for bridging the gap between management and investors. Previous study has demonstrated that institutional investors' activism has a major influence on the companies in which they invest since it may create excellent governance, exert good behaviour, and increase business value.

Institutional investors have a substantial presence and rising impact in the world's financial markets. Because of the growing size of their worldwide assets, they may exert some influence over the actions of the companies in which they have invested by monitoring those activities. In general, institutional investors who are unsatisfied with the performance or management of a company may either sell their shares ("exit") or interact with the companies in which they have invested ("voice"). Yet, since the "exit" option is costly, significant institutional investors often collaborate with their investee businesses to remedy unfavourable governance systems and poor performance. Institutional investors' participation with their investee businesses, known colloquially as "investor activism," may take several forms, including consultations, voting, shareholder resolutions and recommendations, priority lists, and governance rating systems.

Institutional investors often represent large chunks of shareholders and hence they can be an effective check to the tendency of the managerial class to put their own interests first. The other aspect relates to the way in which they can monitor the health of the organization because they have the necessary expertise and knowledge in running organizations since they sit on the boards of other companies as well.

Another aspect of institutional investors is that they are more effective than minority shareholders or small shareholders. In most annual general meetings, we can see small investors raise questions related to corporate governance. In some cases, these concerns are addressed whereas in most cases, the small shareholders despite voicing objections are overruled because they do not have the numbers. This is where institutional investors come into the picture since they represent big number of shareholders and hence have the bargaining power needed to make a difference. Of course, the flipside to this is that institutional investors do not usually pursue radical changes and instead focus on maintaining the financial and operational efficiencies of the organization and promoting good corporate governance.

Institutional investors can be a rock of stability in turbulent times as was evident during the recent crisis over Coal India. This case where the PSU was trying to override many objections of the shareholders was thwarted in its attempts because of the activism of the institutional investors. Further, in the case of Vedanta, institutional investors made sure that the company followed social and environmental norms and did not ride roughshod over its obligations to society and the government.

Often called market makers, institutional investors exert a large influence on the price dynamics of different financial instruments. The presence of large financial groups in the market creates a positive effect on overall economic conditions. The institutional investors' activism as shareholders is thought to improve corporate governance because the monitoring of financial markets benefits all shareholders. In addition, institutional investors can access and they know how to explore a variety of investment instruments not available for private investors.

Institutional investors are crucial to financial markets as they provide capital to businesses along with providing liquidity to the financial securities they trade in the market. They carry significant power in the financial market (due to the considerable size of money involved), hence are able to exert large influence over the price dynamics of traded securities. Due to large monetary commitments, institutional investors develop expertise in tracking and monitoring the investments, playing an active role in improving corporate governance practices.

## ISSUES AND CHALLENGES

Institutional investors have an undue advantage over the market and sometime they can be at a position where an advantage can be taken. Let us understand the criticisms or issues with such investors through the explanation below:

- **High Dependency** – As we mentioned before, Institutional Investors provide large chunks of capital to companies that reduce their dependency on retail investors. But at the same time, it increases their dependency on Institutional Investors. If they decide to exit a position, it may severely impact the price of that security since the market might perceive that as a warning sign.
- **Influence in Market** – Institutional Investors hold a huge amount of influence in the market since they can manipulate the prices of security by entering or exiting a position in that security. They can sometimes use this influence to move the market or the price of a particular security in their favor.
- **Loss of control -** It is much harder to gain the trust of Institutional Investors as bigger funds are at stake. Companies need to demonstrate a satisfactory risk/returns profile to get their attention. Besides, most

of the organizations participate in the company management as they have shares of this business. That's why another challenge is reducing the amount of control over the company or the equity stake given away to them.

## PART E. ESG INVESTMENT

### INTRODUCTION

ESG is short for environmental, social and governance. ESG investing is a term used to describe investment strategies that focus on these factors. This type of investing entails buying the debt and/or equity of companies that embrace sustainable practices and exhibit ethical behavior across the ESG spectrum. At a high level, these companies are characterized as follows.

ESG Investing, also known as "socially responsible investing," "impact investing," and "sustainable investing", refers to investing which prioritizes optimal environmental, social, and governance (ESG) factors or outcomes. ESG investing is widely seen as a way of investing "sustainably"—where investments are made with consideration of the environment and human wellbeing, as well as the economy. It is based upon the growing assumption that the financial performance of organizations is increasingly affected by environmental and social factors.

ESG Investing can be understood as the consideration of environmental, social and governance factors alongside financial factors in the investment decision-making process.

It is a blanket term for investments made in firms that adopt ethical practices to make profits. ESG investors don't invest in stocks of companies that do not meet some of the environmental, social, or corporate governance standards. For instance, chemical companies causing heavy pollution or companies that have poor labor practices. ESG investing has slowly started gaining popularity around the world, as many investment funds have started adopting this model in recent years.

There are few (if any) areas of business operations where ESG is not relevant. However, not all ESG issues are given equal weight when it comes to investing. Just as every investor in the market has different values and motivations, it is unlikely that an organization will prioritize all ESG issues in their business strategy. Those that are prioritized by investors and organizations are determined by the environmental, social, and economic circumstances of the time, and what is deemed more important and material to a company, given their industry, geography, and specific circumstances. Some prominent ESG issues influencing investors include:

- Organizations' efforts to mitigate climate change and other environmental disasters such as biodiversity loss. For example, have they achieved or are they on the way to achieving net-zero emissions?
- Human rights issues within an organization's supply chain. For example, have they published a Modern Slavery Statement or disclosed supply chain details within annual reports?
- Workplace diversity and equal opportunities. For example, what proportion of the organization's employees identify as underrepresented groups? How diverse is management? Is there equal representation at the executive and C-suite levels?

#### Characteristics of ESG Investing

- Environmentally inclined companies that work to conserve the natural world and avoid activities that harm it.
- Socially inclined companies that make a concerted effort to treat all people (internal and external stakeholders) with decency and respect while maintaining policies that foster inclusivity and diversity.
- Governance focused companies that maintain a highly organized and responsive system to manage their operations in an ethical, legally compliant and risk-minded fashion.

## EVOLUTION OF ESG INVESTMENT AND RECENT TRENDS

The principles of ESG investing are nothing new. Hundreds of years ago, religious and ethical beliefs influenced investment decisions. Muslims established investments that complied with Sharia law, which included prohibitions on weapons. The first ethical unit trusts in the US and UK were developed by Quakers and Methodists. Thereafter, the growing prominence of corporate social responsibility (CSR) and social sustainability led to increased investor awareness about ethical participation in the market.

ESG investing is growing exponentially as more investors and issuers utilize ESG and climate data and tools to support their investment decision-making. The practice of ESG investing began in the 1960s as socially responsible investing, with investors excluding stocks or entire industries from their portfolios based on business activities such as tobacco production or involvement in the South African apartheid regime.

ESG investing may have officially entered mainstream investing discourse following the release of the Principles for Responsible Investments (PRI) in 2006 – a set of United Nations guidelines for the incorporation of ESG factors into business policy and strategy. The PRI have over 2,000 signatories and are widely considered the official point of reference for all things ESG investing.

Recent years have seen a significant expansion of ESG investing around the globe as organizations and individuals increasingly recognize the interdependencies between social, environmental, and economic issues.

The COVID-19 pandemic encouraged this trend notably. Market disruption and uncertainty caused by the pandemic in 2020 led many investors to turn to ESG funds for increased resiliency. The first three months of 2020 saw $45.6 billion USD flow into these funds globally. $30.7 trillion currently sits in sustainable investment funds worldwide, and it is predicted this could rise to around $50 trillion in the next two decades. More investors are looking to fund organizations and products that support and promote sustainability, and comply with emerging regulations such as climate change regulations. This demand has been met with increased action on ESG issues in the business world, as well as progressively higher returns on investment for ESG funds due to their resilience against conventional market disruptions. Portfolios incorporating ESG and sustainability also frequently perform better in the long-term than those that don't. For example, US financial services firm Morningstar found that over a period of 10 years, 80% of blend equity funds investing sustainably outperform traditional funds. They also found that 77% of ESG funds that existed 10 years ago have survived, compared with 46% of traditional funds.

Today, ethical considerations and alignment with values remain common motivations of many ESG investors but the field has expanded to consider financial materiality as well. Many investors now look to incorporate ESG factors into the investment process alongside traditional financial analysis.

Although ESG investing is a nascent concept for Indian investors, there are nearly 3,000 ESG schemes available for investment globally. Many sustainability challenges have been observed for a few years, such as flood risk, the rise of sea levels, privacy threats, data security issues, demographic shifts, regulatory changes, etc. These, in turn, bring in new risk factors for investors. As companies started facing rising complexities on a global scale, investors started reevaluating traditional investment approaches and this gave rise to ESG investing.

## BENEFITS OF ESG INVESTMENT

There can be many approaches to ESG investing for retail and institutional investors where investors can look for specific investments that meet their sustainability criteria or exclude companies that may be in the high-risk grade. One of the approaches can be negative screening where investors do not invest in companies that do not meet the ESG parameters. Another approach to ESG investing can be actively scouting for companies specifically or funds that are centered on doing the research and including the prime candidates that meet the ESG parameters.

Some of the prime reasons for investing in ESG funds are highlighted hereunder:

**Reduced risk -** Companies with strong ESG practices may be better positioned to manage risks related to environmental and social issues. This could reduce their exposure to potential regulatory, legal, or reputational risks.

**Long-term returns potential -** Some ESG funds have shown strong long-term performance which indicates that companies with strong ESG practices may be better positioned to weather risks and take advantage of opportunities.

**Increasing demand -** The demand for ESG investments is growing across the globe and in India as well. This could drive up the value of these funds in the future as more investors seek to align their investments with their personal values.

**Alignment with personal values -** Investing in ESG funds allows the investors to have an alignment of the investments with their personal values and beliefs enabling them to support companies with positive environmental and social impacts.

**Improved corporate behavior -** By investing in ESG funds, corporates can sense the pulse of the investors that their environmental and social performance matters to investors, which could encourage better corporate behavior over time.

## CHALLENGES FACED BY ESG INVESTMENTS

There are many challenges that ESG investments currently face in India. Some of them are as listed below:

**Absence of quality data:** Concrete data about a company's social, environmental, or governance performance is often procured through an analyst or a fund manager. An organization's sustainability report can also provide details on such information. Other documents where additional data on ESG can be found in annual reports, news articles, media releases, etc. For investors, finding concrete data on ESG of any company can be tedious and often inaccurate. Thus, the credibility of available information continues to be a hindrance in the growth of ESG investments in India.

**Absence of measurement standards:** The Indian market currently lacks standardisation around ESG investing. Investors often use different names such as impact investing, sustainable investing, socially responsible investing, and also responsible investing. For further growth of this form of investing, there is a need for standardization in data collection, measurement standards, and methodology used while reporting.

**Traditional mindset:** Many investors and fund managers find ESG to be an additional expense that is not essential. This aspect too curbs the growth of ESG investing in India.

**Limited track record of ESG funds:** In India, ESG funds have started emerging in the past 2-3 years. Hence, there is also a lack of track record of ESG funds which may put off many investors from exploring this investing option.

**Lack of awareness:** ESG investing is slowly gaining popularity among investors, but there's not much awareness among many about this aspect. More and more investors need to be made aware of the benefits of ESG investing to broaden the market horizon of the same.

## ESG INVESTMENT AS AN INFLUENCER OF GOOD CORPORATE GOVERNANCE

In today's conscious investing, investors are constantly looking for companies that are built on sustainability. They yearn to understand the different aspects that contribute to the stability and continuity of the companies that they invest in. There is greater demand for businesses that survive severe impacts of any crisis and constantly incorporate Environment, Social, and Governance factors within their daily functioning.

ESG investing is being accepted fast by investors and is especially seeing an accelerated demand since COVID-19 crisis. This can be seen with the influx of ESG thematic funds in recent years such as AXIS AMC, ICICI Prudential & Quantum India AMC coming up with their ESG Funds. SBI Mutual Fund has also reclassified its equity fund as an ESG Fund.

Companies that follow good practices are believed to eventually generate higher profits through brand building and continued customer patronage. One of the examples of responsible companies in India is the Tata Group. It set an example through an initiative to provide accommodation at Taj Hotel to healthcare staff members and other frontline workers during the initial days of the Covid-19 pandemic. In the long run, such actions by companies can cause better profits and increased brand loyalty.

A company that follows ESG in the long term can emerge as a sustainable establishment. This is the major reason why ESG investing is also called sustainable investing.

Companies with better ESG performance have a better track record on issues such as human rights, climate change, environmental sustainability, social responsibility, ethics, and transparency, and hence are more resilient against future risks. It has become absolutely essential for companies to have comprehensive ESG policies in place.

ESG is no longer an emerging risk for organisations – it is a fundamental, front-line issue for boards in the current climate. ESG plays a major role in the governance framework of an organisation, and it is integral that directors are aware of their duties in terms of addressing ESG issues facing their companies.

ESG investing is used to screen investments based on corporate policies and to encourage companies to act responsibly. Investors have, in recent years, shown interest in putting their money where their values are.

ESG investing focuses on companies that follow positive environmental, social, and governance principles. Today, investors are increasingly eager to align their portfolios with ESG-related companies and fund providers, making it an exciting area of growth that also has positive effects on society and the environment.

Socially conscious investors and other stakeholders including employees, customers, regulators, suppliers and distributors want to know about a company's stance on socioeconomic factors, its sustainability efforts and its corporate governance processes. While passing the investor and stakeholder test and setting up a successful ESG plan may seem challenging for any business, a well-conceived ESG strategy can help lead to various business benefits.

Companies that adhere to ESG principles can attract and retain more customers by being transparent and effectively communicating their ESG efforts to customers. Companies investing in ESG initiatives can sustain and adapt to an ever-changing landscape. For example, businesses that properly integrate ESG principles into their core operations are better able to identify cost-saving opportunities and enjoy lower energy consumption, reduced resource waste and an overall reduction in operational costs.

The economy, businesses, and nature are all linked in an intricate way. Nature provides an important part of the global economic output, contributing around $44 trillion in economic value mainly from sectors like construction, agriculture, and forestry. Investors can reduce their investment risks by understanding the risks of biodiversity and nature loss and its effect on the economy and investments.

Investing in companies that practice ESG (environmental, social, and governance) principles can help reduce overall investment risks, since these companies have better governance practices and more ethical business practices. The UN's Principles for Responsible Investment (UNPRI) seeks to incorporate ESG factors into investment decisions, while stock exchanges like Security Exchange Board of India (SEBI), Hong Kong (HKEX) and Singapore (SGX) require listed companies to file annual ESG reports.

The ultimate value of ESG investing will depend on whether they encourage companies to drive real change for the common good, or merely check boxes and publish reports. That, in turn, will depend on whether the investment flows follow ESG tenets that are realistic, measurable, and actionable.

ESG in today's world applies to all businesses and companies are increasingly realising its contribution. With more and more investors, shareholders, employees, clients, regulators clamoring for greater transparency in the system, ESG investing is becoming indispensable. Especially in the new normal, ESG investing will undoubtedly play a more significant role and change the way businesses are conducted in India and across the world. This would eventually help the business community and everyone else.

## LESSON ROUND-UP

- Governance is a system that provides a framework for managing organisations. It identifies who can make decisions, who has the authority to act on behalf of the organisation and who is accountable for how an organisation and its people behave and perform.
- An influencer is a person or group that has the ability to influence the behaviour or opinions of others.
- This chapter highlights the role of some of the major institutions / associations that act as influencers of governance.
- ICSI has over the year with its tremendous and unyielding efforts has risen as the corporate leader in corporate governance.
- Investor Associations are group of investors that represent investors before various bodies and work towards investor rights and awareness.
- Proxy advisory firms grew along with the concept of institutional investing and professional acumen in corporate decision making. The concept is still evolving, especially in the Indian context.
- Institutional Investors such as Mutual Funds, Banks, Hedge Funds etc. also act as influencers of governance due to their size and impact on the financial markets.

## GLOSSARY

**Governance:** Governance is the process of making and enforcing decisions within an organization or society.

**Corporate Governance:** Corporate governance is the system by which companies are directed and controlled. (Cadburry Report, 1992).

**Influencer:** One who exerts influence : a person who inspires or guides the actions of others.

**Association** - a group of people or organizations who work together for a particular purpose.

**Investor -** a person or organization that puts money into financial schemes, property, etc. with the expectation of achieving a profit.

**Proxy -** A proxy is an individual, legally allowed to act on behalf of another party or a format that would allow a participant to vote without being physically present at the meeting.

**Proxy Advisory firms** - A proxy firm provides services to shareholders to vote their shares at shareholder meetings of, usually, listed companies.

**Institutional Investors -** An institutional investor is an entity that makes investments on behalf of someone else. Examples include pension funds, mutual funds, insurance companies, university endowments, and sovereign wealth funds.

**Foreign Institutional Investor -** A foreign institutional investor is an investor in a financial market outside its official home country.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Do you think corporate governance practices can be influenced by external parties? If yes, give some reasons in support of your understanding.
2. List out few initiatives undertaken by ICSI towards corporate governance?
3. What do you understand by Proxy Advisory Firms? Write a note on their role as a Governance Influencer.
4. Institutional Investors influence corporate governance practices of organisations. Do you agree? Give reasons in support of your answer.
5. What is ESG investment? How does it benefit the cause of corporate governance?

**LIST OF FURTHER READINGS**


- Institutional Investors - By E. Philip Davis and Benn Steil
- Corporate Governance: Principles, Policies And Practices, Third Edition by A.C. Fernando, K.P. Muraleedharan and E.K. Satheesh, Publisher: Pearson
- Governance: Issues And Challenges by Abhay Prasad Singh and Krishna Murari, Publisher: Pearson India
- ESG Matters: How to Save the Planet, Empower People, and Outperform the Competition by Debra Brown and David Brown
- Rethinking Good Governance: Holding to Account India’s Public Institutions by Vinod Rai


**OTHER REFERENCES**


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# Empowerment of the Company Secretary Profession

Lesson 17

## KEY CONCEPTS

■ Company Secretary & Governance Professionals ■ Sustainability ■ CSR ■ Board Governance ■ ESG

## Learning Objectives

**To understand:**

- Past, current and evolving role of Company Secretaries
- Role of Company Secretary in Employment and in Practice
- International legislative aspects on the role of company secretary
- Company Secretary and Board Governance
- Role of Company Secretary in ESG
- Regulatory frameworks governing Company Secretary Profession
  - The Company Secretaries Act, 1980
  - The Company Secretaries (Regulations) 1982
  - Companies Act, 2013

## Lesson Outline

- Introduction
- Genesis-CS profession
- Company Secretaries in practice and company secretaries in employment
- Evolving Role of Company Secretary in 21st Century –International Perspective
- Law applicable to Governance professionals in different jurisdictions
- Innovation in Board Governance-Role of Company Secretary
- Company Secretary and ESG
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## INTRODUCTION

Company Secretary (CS) professionals are recognized as Key Managerial Personnel (KMP) under the Companies Act, 2013, wherein they are entrusted with a senior-level position in the management and are an intrinsic part of the Board of corporate entity. Since past five decades, Professionals have witnessed a substantial and spectacular growth and development made by Institute of Company Secretaries of India (ICSI) especially in the areas of recognitions obtained from various Agencies/ Government for the benefit of its members. The ICSI provides top-quality education to the students of Company Secretaryship (CS) Course and has set best quality standards at each level. CS as hardcore professionals have developed core competence in compliances and corporate governance. They are specialized professionals in the matter of compliance enjoined under various statutes and rules, regulations, bye-laws, guidelines made thereunder.

The dynamics of an emerging eco-system, the complexities of modern business, the expectation of the multifarious stakeholders that a Corporate Entity should discharge its societal obligations responsibility, the collapses of large Corporations in jurisdictions on account of governance failures have all contributed to the Company Secretary playing a structural role in the echelons of corporate hierarchy. That the fraternity has acquitted itself well in such an environment bears testimony to its resilience and its constant endeavour towards being a torch - bearer to the corporate governance movement. As the opportunities are getting increased on account of changed economic, commercial, legal and digitalised environment, among various professions, CS is a preferred Professional.

*Corporate Secretaries are key managerial personnel occupying pivotal positions in their companies. They have a central role in fostering good governance practices and supporting the development of highly functioning Boards. The Corporate Secretary is a resource and confidante to the Board and senior management, providing advice and counsel on Board responsibilities and duties. They are integral to the company's corporate governance as the glue behind effective decision-making and advancing priorities. The Corporate Secretary is the guardian of the company's reputation, playing a pivotal role in maintaining the company's legal and social license to operate. Aware of the dynamic interaction between all players within the Board room, Corporate Secretaries can play a critical role in increasing the level of attention and ownership of sustainability by the Board. As a member of the management team, the Corporate Secretary shares overall responsibility with the CEO, c-suite, executive management and relevant specialist functions for ensuring the Board is aware of sustainability trends and best practices and that it identifies and takes account of sustainability in its stewardship and oversight of the company. From keeping the Board informed on governance issues, to ensuring corporate policies approved by the Board are followed, to helping safeguard the corporate reputation and helping directors contribute to effective decision-making, the Corporate Secretary is a strong catalyst for implementing good governance in a company's business practices, organizational culture and strategic affairs. As such, they are well-placed to support the Board to address the rising risks and opportunities generated from sustainability.*

**Excerpts from Discussion Paper titled "The Essential Role of the Corporate Secretary to enhance Board Sustainability Oversight" by United Nations Global Compact**

## GENESIS-CS PROFESSION

### Recognition of Company Secretary Profession – A fascinating journey

In 1887, Lord Justice Esher made the remarks on the duties of the Company Secretary while writing out his judgment in The Court of Appeal in *Barnett Hoares & Co. v South London Tramways Co. (18 QBD 1887)* that, company secretaries could not be assumed to have authority for anything. A Secretary is a mere servant, his position is that he is to do what he is told.

It took 90 years for the Judiciary to take note of the emergence of the Company Secretary in the Corporate World. The remarks made by the celebrated Lord Denning, M.R *in Panorama Developments (Gilford) Ltd v Fidelis Furnishing Fabrics Limited (1971) (3 All ER 16) (CA)* observed as under:

> *"........ times have changed. A Company Secretary is a much more important person nowadays than he was in 1887. He is an Officer of the company with extensive duties and responsibilities. This appears not only in the modern Companies Act but also by the role which he plays in the day to day businesses of companies. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf which come within the day to day running of the company's business. So much so that he may be regarded as held out as having authority to do such things on behalf of the company.........".*

The above acknowledgement in the status of the company secretary coming as it did from no less a person of the stature of His Lordship was most definitely a defining moment announcing his arrival as an important cog in the wheel where a corporation was concerned. The growth in his stature was in keeping with the greater and wider acceptance of the corporate form of business, the emergence of corporate laws, bringing in its wake, the requirements of a host of compliances.

The Corporate Governance movement which was in its embryotic stages of growth around that point in time was also given a major fillip in the UK through the recommendations of the Report of the Committee headed by Sir. Adrain Cadbury. The UK Companies Act also made it necessary for every company to appoint a Company Secretary. This was a shot in the arm for the profession –the grant of its legitimate legal status.

## The Companies Act – Growth Saga for Profession

- Section 383A of the Companies Act, 1956 was introduced by the Companies (Amendment) Act, 1974 with effect from 1.2.1975 to provide, inter alia, that companies having the prescribed threshold capital shall appoint a whole time Secretary and in cases where the Board of a company comprised of only two directors, neither of them could be the Secretary. Further sub-section (1A) imposed a penalty on the company and its officers in default in case of failure which was of a continuing nature to comply with the above requirements.
- Another major development which took place after the insert of Section 383A was, the requirement to provide for the issue of a Secretarial Compliance Certificate to be issued by a Company Secretary in Practice in respect of those companies which had a paid-up share capital exceeding rupees ten lacs but not in excess of rupees fifty lacs which did not have a Secretary on its rolls.

  > The Constitution of the Institute of Company Secretaries of India as a statutory body under an Act of Parliament was another positive development which provided a further impetus to the growth of the profession. It is more than five decades, when on 4th October, 1968 the profession of Company Secretaries (CS) was born, being the date on which Institute of Company Secretaries of India (ICSI) was incorporated.

- Section 2(45) was introduced by the Companies (Amendment) Act, 1988 effective from 1.12.1988 to define a Secretary as a Company Secretary within the meaning of section 2(1)(c) of The Company Secretaries Act, 1980. The duties of the Secretary, apart from ministerial or administrative duties, were left open-ended to cover such areas as are identified under the Companies Act, 1956.
- The Companies Act, 2013 largely captures the nuances of the changes that were recommended by the Dr. J.J. Irani Expert Committee on Company Law. The new Act recognizes the company Secretary as a Key Managerial Personnel (KMP) under Section 2(51). The Company secretary stands shoulder to shoulder to other senior personnel in the corporate echelons. For the first time in the statute, the functions and responsibilities of the Company Secretary have been identified under Section 205 of the Act.
- The statutory recognition accorded to the Secretarial standards-1 and 2 under the Act helped standardize Board practices in the matter of holding meetings of the Board and general meetings of members, set

up new benchmarks for furthering the cause of corporate governance and made the presence of the company secretary in the Board room incredible.

## Positive Game Changer Committees for Profession

SEBI set up under the Chairmanship of the Kumar Mangalam Birla, a Committee to promote and raise the standards of corporate governance. This marked the first and comprehensive endeavor to evolve a Code of Corporate Governance in Indian Companies as also in the growing capital markets. The recommendations of the Committee culminated in the inclusion of Clause 49 in the Listing agreement which listed companies had to enter into, in the year 2000. Clause 49, inter alia, provided for an optimum composition of the Board comprising of both independent and non-independent directors. That apart, the company secretary's role was recognized in the form of his acceptance as the Compliance Officer.

The requirements relating to Corporate Governance were spruced up and elevated further in the wake of recommendations contained in the Naresh Chandra Committee which revisited issues such as auditors' independence, conflicts of interest, and enhanced financial disclosures-all of which were areas in which the company secretary had a key and proactive role to play. The Report embraced substantially the issues addressed in the Sarbanes-Oxley Bill (Popularly referred to as SOX) which was the immediate fallout of Enron bankruptcy and other colossal corporate failures.

The Narayana Murthy Committee submitted its Report in February 2003 and the main thrust in the Report were in the areas of strengthening the areas of responsibility of the Audit Committee, improving the quality of financial disclosures, including disclosures on related party transactions, etc. Each time an endeavor was initiated to up the ante in so far as corporate governance was concerned, the company Secretary's position and role became more and more significant since he had to be the prime mover and carry forward the agenda of change.

## SEBI regulations-Recognitions to Profession

SEBI Regulations recognize the company Secretary as the Compliance Officer. He is also now considered as part of the Senior Management and is responsible inter alia, for timely and truthfully disseminating information on material issues concerning the company, apart from being the guide to the Board.

The Secretarial Audit Report as also the Certificate on compliance and on Corporate Governance issued by the Company Secretary in Practice have provided to the Board, the much needed assurance as regards statutory compliances by companies. The Secretary also has to ensure that there is no abusive use of price-sensitive information and has lately been taken to task by the Judiciary for acts of indiscretion.

## COMPANY SECRETARIES IN PRACTICE AND COMPANY SECRETARIES IN EMPLOYMENT

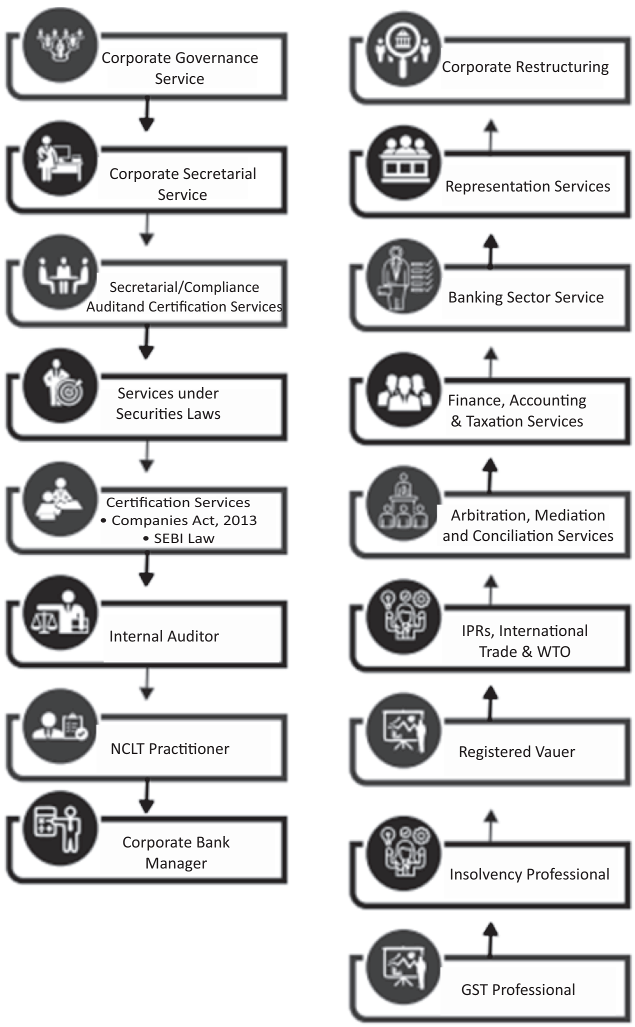
A student who has passed the Professional Programme examination of the Institute and has undergone prescribed training or exempted therefrom on the basis of experience is eligible to apply for Associate membership of the ICSI. After receiving the membership of the ICSI, member is entitled to be engaged either in employment or in practice. A Company Secretary in employment is a robust professional aiding the efficient management of the corporate sector by playing the role of a Key Managerial Personnel (KMP) or Compliance Officer of a company. The Company Secretary has become to be accepted by all as an independent and indispensable professional. The role of Company Secretary in employment has transformed itself into a full-fledged Governance Professional occupying a critical place in the company's organizational hierarchy balancing the interests of the Management, Board, Shareholders and other stakeholders. Alternatively, a Company Secretary may also practice independently as a professional after obtaining a Certificate of Practice (CoP) as provided in the Company Secretaries Act, 1980. Not merely concentrating on Corporate laws, Company Secretary in practice is the preferred professional who is finding depth in the areas of Intellectual Property, Business advisory, International laws, Commercial laws, Economic growth & Development projects, etc.

**A birds eye view of the role of CS in employment and CS in practice is as under:**

**Recognitions to Company Secretary in Employment**

- Companies Act, 2013
- SEBI (LODR) Regulations, 2015
- SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
- IFSCA (Issuance and Listing of Securities) Regulations, 2021
- PNGRB (Gas Exchange) Regulations, 2020
- IRDA (Registration of Indian Insurance Companies) Regulations, 2000
- IRDA (Corporate Governance) Guidelines for Insurers in India, 2016
- Life Insurance Corporation General Regulations, 2021

**Core areas for Company Secretary in Practice**



# EVOLVING ROLE OF COMPANY SECRETARY IN 21ST CENTURY –INTERNATIONAL PERSPECTIVE

## Changing role of Company Secretary –How different Governance Institutes across globe perceive?

### 1. Chartered Secretaries Southern Africa

***Company Secretary and AI***

- AI will abolish the repetitive and administrative tasks, which still form part of the Company Secretary's role.
- AI will reduce the manual workload and will automate lower level functions of the Company Secretary, thereby improving due diligence and providing assistance with compliance procedures.
- AI should be seen as an opportunity rather than a threat, to improve the overall knowledge base and fiduciary controls within the company.
- AI will not eliminate the strategic and advisory functions performed by Company Secretary, however, it will assist the Company Secretary in expediting these functions.

***Preparedness for future***

Following are some of the duties of Company secretaries that may be subject to automation subject to the level of complexity associated therewith:

- Lodging documents with regulatory bodies: this is a repetitive task which comprises routine, methodological and fact-based work and may be automated.
- Filing and distributing document such as annual financial statements of the company: As the task requires filing financial statements via XBRL, it is of repetitive nature and be automated efficiently with minimal supervision.
- Distributing minutes of the meeting: distribution of minutes of the meeting to all committee members via email can be easily automated using an algorithm.
- Drafting and distribution of the agenda and notice of the meeting: an agenda and notice will often follow the same format with same members and time so it can be easily automated with further inputs by the Company Secretary.
- Distributing board packs for meeting: Board packs are distributed electronically via digital platforms. Further, tasks like attendance response, scheduling events and conducting survey can be automated leaving Company secretary with quality time to spend on analyzing the issues to be raised and research on relevant topics prior to the meeting.
- Taking minutes of meetings and noting resolutions taken, and recording them in electronic format: Robots present in the meeting alongside company secretary can lead to more productive and informed meetings by providing information on statistics, data etc. This will provide quality time to company secretaries to provide valuable insight into complex and critical issues.
- Drafting and reviewing mandatory and repetitive clauses in contracts and company policies: Reviewing contract can be automated. However, drafting of complex clauses of a contract which require though and precision needs to be drafted by qualified humans with requisite intellect.
- Performing role of trusted advisor to the board and advising on associated risks: The advisory role of company secretary is a complex and challenging role which requires knowledge, opinion, judgment and emotional intelligence which a robot lacks. Thus this duty is unlikely to be automated and firmly lies with the Company Secretary.

- Conducting board evaluation and inducting new directors: Board evaluation questionnaires can be easily automated but conducting interviews with directors require human elements of judgment. Therefore induction would still be a human function.

- Distinction between confidential information and the one which is not: This requires the application of judgment and reason as to what constitutes confidential and what is not confidential. Therefore, as a trusted advisor of the board such tasks performed by a company secretary cannot be automated.

***Way Forward***

- The automation of repetitive and administrative tasks would enable the Company Secretary to focus more time on more complex tasks.

- AI should be seen as an opportunity for company secretaries which will reduce their time on administrative and repetitive tasks and allow them a greater voice within an oragnisation by having more time to focus on ensuring that the company is good corporate citizen and legally compliant.

## 2. Governance Institute of Australia: Future of Governance Professional, August 2019

***Impact of Technology disruption:***

- AI and Machine learning (ML) would change the role of the Company Secretary by making the role more interesting. But there would still be a need for humans to oversee machines and to make qualitative judgments.

- Machines don't have the same emotional intelligence and creativity as humans. Machines also lack the ability of humans to see nuances, read facial expressions or grasp boardroom dynamics.

- As governance issues are often neither black nor white, therefore, machines would not be as good as humans in dealing with that 'grey' zone that requires intuition and 'gut feel'.

- Machine lacks the value of wisdom and experience, which are often undervalued in today's cut-throat commercial world, but still forms a very important part in the success of an organisation.

## 3. Grant Thornton: Is the role of Company Secretary fit for future?

**Impact of technology on the role of Company Secretary:**

- Board pack circulation: the vast majority of organisations reported a change to the governance role through the impact of technology. Many of them now use some kind of electronic board pack circulation (this ranged from email to the use of more sophisticated board apps).

- Technology had fundamentally changed the administration part of the role of Company Secretary. Through the use of electronic board apps, board packs can be sent more securely and easily.

## 4. ICSA- Future Proofing: Technological innovation, the company secretary and implications for Corporate Governance

AI as a potential disruptor but a potential benefit also keeping in view the following points:

- Minute-taking devices, using algorithms and machine learning area potential disruptor to the profession of Company Secretary. These applications use 'speech to text' technology to create meeting minutes.

- Human supervision and oversight will still be essential to ensure accuracy, content and style but it is certain that the deployment of these applications will grow and become an accepted tool.

- This technology is a disruptor but at the same time a potential benefit also to the profession. As this will lead to the necessary evolution of the role of company secretarial and governance profession from focusing on compliance and administration to adding value through our knowledge, technical ability and strategic oversight

## 5. ICSA-Next Generation Governance

- The focus of company secretaries across all age demographics for safeguarding high quality governance remains on the core elements of procedures and controls, stakeholder engagement and communication.
- Three important social issues could be relevant to governance in the future:
  - demographic change;
  - technological change; and
  - environmental sustainability
- *Demographic changes*: Millennial expect organisations of all types to play a part in dealing with economic, environmental and social challenges – not just the organisations that would typically address these issues as their raison d'être.
- *Technological changes*: the potential for technology to create a more unstable job market could develop into a prominent governance issue.
  - Some tasks may be streamlined by technology, but it would involve a considerable amount of additional work – for example, taking into account ethics and privacy.
  - Ethical considerations are emerging as a consequence of technological change, with little ownership being taken over as to how to address them.
  - The negative side of recent technological developments is becoming more apparent from controversies surrounding social media firms to an increased awareness of the environmental damage caused by technology – for example, a global annual average of 50 million tonnes of e-waste.
  - Learning algorithms based on neural networks –is a more complex form of machine learning that makes it significantly harder to trace the basis on which AI makes its decisions, meaning errors cannot be explained or rectified.
  - the ability of forms of AI to interpret and store emotional insights from 'affective data' (such as facial expressions or voice intonation) could give rise to sophisticated forms of manipulation or imbalance in many stakeholder relationships – for example, as a form of power over employees or consumers.
- *Environmental sustainability*: Environmental sustainability may seem most relevant to the governance of large organisations with significant carbon footprints or sector specific exposure to the impact of extreme climate events.
- Other factors that have impact on the quality of governance:
  - Procedures and controls
  - Social purpose
  - Communication

- Diversity
- Stakeholder engagement
- Equitable pay policies

The challenge for governance professionals going forward will be to ensure that organisations' procedures and controls go far enough – covering how decision making, authority and accountability are exercised within the organisation in relation to issues of social concern that might once have been considered outside the traditional remit of governance for that type of organisation.

Sustainability and social responsibility are more embedded terms, encompassing how a company will be functioning in ten or twenty years' time and what it is doing to ensure that this will be the case.

## ROLE OF COMPANY IN BOARD GOVERNANCE

The company secretaries are identified as conscience of the company for quite sometime and is documented in Corporate Secretaries Tool Kit by IFC, World Bank Group. While the expanding role of Company Secretaries include functions beyond compliances including ESG strategies, ESG integration to the business, the functions are closely associated and linked to Board Governance. Board Governance include Board processes, Meeting management, Board Independence and conflict management, reporting of financial and non-financial aspects. The functions of Company secretary starts from the appointment process, induction of directors, training, advisory role on ESG and business strategies, meeting process, agenda management, committee constitution, establishment of Board portal and so on.

### Discussion paper titled "The Essential Role of the Corporate Secretary to Enhance board sustainability Oversight: A Best Practices Guide" By the United Nations Global Compact, highlighting the role of Corporate Secretary in Board Governance

This discussion paper mapped the role of Corporate Secretary's role with Corporate sustainability which is as under:

| *Overview of traditional duties and responsibilities of the Corporate Secretary* | *Suggested connections to corporate sustainability governance* |
|---|---|
| **Governance processes and Governance Committee**<br>● Maintain relevant governance processes and structures through regular reviews and updates to the Board Manual and other Governance Documents<br>● Keep current on evolving practices in corporate governance and advise the Governance Committee and the Board<br>● Serve as chief expert and advisor on all corporate governance matters for Directors and employees<br>● Serve as executive liaison to the Governance Committee<br>● Administer the corporate code of conduct and other Board policies | Monitor the external environment to remain fully informed of corporate sustainability governance trends, emerging issues and best practices – especially those of relevance to the sector or key issues. Inform the Governance Committee on trends and changes in best practice corporate sustainability governance and regulator expectations. Determine and implement amendments to governing documents, processes and structures to incorporate sustainability oversight roles for the Board. Ensure executive and key employees understand the emerging trends in corporate sustainability governance. Along with other executives, ensure the Board regularly reviews, updates, and monitors compliance with corporate sustainability policies. |

| *Overview of traditional duties and responsibilities of the Corporate Secretary* | *Suggested connections to corporate sustainability governance* |
|---|---|
| **Board roles and responsibilities**<br>● Advise the Board on its roles and responsibilities (possibly a shared role with legal counsel)<br>● Draft and maintain roles and responsibilities for the Board and Directors | Include 'sustainability oversight' within the Board and Director roles and responsibilities. |
| **Chairperson and Committee Chairperson liaison**<br>● Support the Chairpersons' effectiveness | Inform the Chairperson or Committee Chairperson of trends and best practices in corporate sustainability governance. |
| **Management liaison**<br>● Support management's relationship with the Board | Inform the CEO of trends and best practices in corporate sustainability governance, as a shared responsibility with the sustainability prime. Support the company's sustainability prime to effectively bring sustainability risks and opportunities to the Board's attention. |
| **Meeting agendas**<br>● Prepare the Board agenda in consultation with the CEO and Chairperson; advise the Chair, CEO and Committee Chairs of items that should be brought to the attention of the Board.<br>● Prepare and assemble briefing material to permit Directors to properly prepare for meetings | Include sufficient time for sustainability discussions on regular Board agendas, ideally embedded in all relevant discussions. Include reports of the sustainability committee (if there is one) during the main agenda, and not at the end of the meeting when time is short. Ensure meeting packages include sufficient information of sustainability impacts, risks and opportunities, including stakeholder considerations, for the Board to make informed decisions. |
| **Meeting documentation**<br>● Oversee the drafting and maintenance of meeting minutes | Record Board discussions of sustainability and stakeholder considerations in meeting minutes. |
| **Director recruitment and Nominating Committee**<br>● Serve as executive liaison to the Nominating Committee<br>● Help the Board develop recruitment criteria for new Directors (skills, experience, attributes, diversity) | Support the Board to include diversity as a Board composition factor, increasing the number of women on the Board and greater diversity of skills, ethnicity, cultural background and age. Recommend that sustainability be included in the skills matrix and that at least one Director have skills / experience in corporate sustainability including executives from corporations with a successful track record on sustainability or topic experts. Ensure Director search firms have sustainability networks and insights. |

| *Overview of traditional duties and responsibilities of the Corporate Secretary* | *Suggested connections to corporate sustainability governance* |
|---|---|
| **New Director orientation**<br>● Facilitate the orientation of new Directors | Include sustainability within the new Director orientation, including 1) an overview of sustainability risks, opportunities, strategy, performance, standards, policies and key stakeholders and their priorities, etc.; and 2) sessions with sustainability leaders in the organization. Include a copy of the company's most recent sustainability report in the orientation manual. |
| **Board and Director training and education**<br>● Establish and facilitate ongoing education for the overall Board and individual Directors to improve Director and Board effectiveness | Secure time during Board and Committee meetings for education and in-depth review of sustainability risks, opportunities, impacts, trends and dependencies, including stakeholders and their key issues, to ensure the Board has the proper information and knowledge. Include sustainability education sessions in the Board calendar. Identify sustainability education opportunities for Directors.<br>*All Board members should have generic sustainability skills and knowledge such as basic awareness of sustainability and how it affects the organization; basic understanding of what is corporate sustainability; ability to identify at a high level the most material sustainability impacts of and on the organization, its value chain, industry and operating context; knowledge of key stakeholders and their priorities and issues; understanding of how poor sustainability performance can create reputational and other risks; ability to articulate how sustainability relates to the purpose and strategy of the organization; understanding of sustainability trends generally and as they affect the industry and their impact on the company; knowledge of the company's business case for sustainability, including how sustainability can contribute to long-term value creation such as the ability to attract and retain talent and stimulate innovation.* |
| **Board, Chair, Director and Committee evaluation**<br>● Advise and support effective formal performance assessments | Ensure the Board's evaluation processes assess Board and Director sustainability skills, experience and contribution (e.g. do Directors feel informed about sustainability trends and issues as they impact the company, its value chain, industry and operating context; effectiveness of the Board's role in monitoring the company's sustainability performance; whether the Board demonstrates a commitment to sustainability in its decisions and |

| *Overview of traditional duties and responsibilities of the Corporate Secretary* | *Suggested connections to corporate sustainability governance* |
|---|---|
| | actions; whether Director demonstrates knowledge of the sustainability policy and strategy and their application to the business, the degree to which sustainability is considered in Board decisions, etc.); use results to inform training, procedures or recruitment. |
| **Disclosure and reporting**<br>● Draft for Board approval an annual report of the company's governance practices | Include disclosure on corporate sustainability governance practices in annual and sustainability reports following internationally accepted reporting standards (e.g. Global Reporting Initiative Guidelines). |
| **Board communications**<br>● Manage Board communications with shareholders and other external stakeholders<br>● Coordinate the annual general meeting | Include sustainability in shareholder communications and ensure effective Board- stakeholder relations (for example, through the establishment of an expert sustainability or stakeholder advisory committee to the Board). Disclose sustainability results at annual general meetings (e.g. via a sustainability or annual report). |
| **Board operations**<br>● Coordinate Board meetings, venues, accommodations, meals, travel arrangements, gifts, etc. | Incorporate sustainability practices into meeting arrangements. |
| **Personal performance planning**<br>● Manage personal performance and professional development plans | Incorporate corporate sustainability governance within the Corporate Secretary's job description, performance and professional development plans and performance evaluations. |

In addition to these formal roles, the Corporate Secretary has informal roles to bring sustainability into the Boardroom. Informal roles include:

- The Corporate Secretary can leverage the Governance Committee relationship by raising the corporate sustainability governance topic with the committee.
- Through relationships established with the Board and committee chairs, the Corporate Secretary can informally bring up the topic of corporate sustainability governance as an emerging governance trend and best practice.
- Given the proximity to the C-suite, the Corporate Secretary can bring these ideas to management's attention.

The Corporate Secretary can support the sustainability prime in securing a spot on the Board's agenda, preparing the sustainability report to the Board and making Board presentations.

## COMPARATIVE ANALYSIS OF LAW APPLICABLE TO GOVERNANCE PROFESSIONALS IN DIFFERENT JURISDICTIONS

### Malaysia

The responsibility of the company secretary has evolved from merely advising on administrative matters to advising boards on governance matters. The company secretary through the Chairman, plays an important role in good governance by helping the board and its committees function effectively and in accordance with their terms of reference and best practices.

The roles and responsibilities of a company secretary include, but are not limited to the following:

- Manage all board and committee meeting logistics, attend and record minutes of all board and committee meetings and facilitate board communications;
- Advise the board on its roles and responsibilities;
- Facilitate the orientation of new directors and assist in director training and development;
- Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;
- Manage processes pertaining to the annual shareholder meeting;
- Monitor corporate governance developments and assist the board in applying corporate governance practices to meet the board's needs and stakeholders' expectations; and
- Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

A suitably qualified company secretary possesses the knowledge and experience to carry out his functions. These may include knowledge in company and securities law, finance, governance and other areas of compliance such as the listing requirements. The company secretary should undertake continuous professional development.

### Vietnam

***Corporate Secretary-***

*Corporate Secretary* - a senior management position in a public company. The corporate secretary plays an essential role in a company's governance and administration by providing critical support to enable the Board of Directors and other key governing bodies of the company to perform their duties and responsibilities. This position has a wide range of responsibilities that cover the four main areas: Governance, Advice, Communication and Compliance.

The Board shall appoint a professionally qualified Corporate Secretary who is accountable directly to the Board of Directors on all matters to do with the proper functioning of the Board.

*Recommended Practices:*

The modern Corporate Secretary is normally a senior management position of the company and is now expected to provide professional guidance to shareholders, boards, individual directors, management, and other stakeholders on the governance aspects of strategic decisions.

The Corporate Secretary typically would act as a bridge for information, communication, advice, and arbitration between the board and management. The Corporate Secretary would also act as a bridge between the company and its shareholders and stakeholders, however in big companies this is the job of an "investor relations officer".

The roles and responsibilities of a Corporate Secretary include, but are not limited to the following:

(a) Manage all board and committee meeting logistics, attend and record;

(b) Minutes of all board and committee meetings and facilitate board communications;

(c) Advise the board and board committees on its roles and responsibilities;

(d) Facilitate the orientation of new directors and assist in director training and development;

(e) Advise the board on corporate disclosures and compliance with company and securities regulations and listing requirements;

(f) Manage processes pertaining to the annual shareholder meeting;

(g) Monitor corporate governance developments and assist the board in applying governance practices to meet the board's needs and stakeholders' expectations; and

(h) Serve as a focal point for stakeholders' communication and engagement on corporate governance issues.

To carry out his/her role effectively, a corporate secretary needs to act with the highest integrity and independence in protecting the interests of the company, its shareholders, and others with a legitimate interest in the company's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the company operates as well as of the laws, rules, and regulations that govern its activities. The Corporate Secretary should undertake continuous professional development and maintain neutrality and objectivity in supporting the Board and relevant bodies in its work.

## COMPANY SECRETARY – INTERNATIONAL PERSPECTIVE

### The UK Corporate Governance Code 2012, 2014 and 2018

According to UK Corporate Code 2012, the Supporting Principles mentioned that under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non- executive directors, as well as facilitating induction and assisting with professional development as required. The company secretary should be responsible for advising the board through the chairman on all governance matters.

As mentioned in the Supporting Principle of the UK Governance Code 2014, the company secretary should be responsible for advising the board through the chairman on all governance matters. Further, the Code Provision B.5.2 of the mentioned code states that all directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole.

The UK Corporate Governance Code, 2018 states that the board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently. Moreover, as per Provision 16, all directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. Both the appointment and removal of the company secretary should be a matter for the whole board.

## ROLE OF COMPANY SECRETARY IN ESG

The complexities of modern business have given rise to the growth of newer areas of specialization for the fraternity. Apart from the provisions of the Companies Act, 2013, which has substantially increased the scope of practice for a CS and expectations of the regulator from Company Secretaries, both in employment and in practice, considering the impact created by the profession in guiding the corporates in governance and compliances as also shaping the regulatory framework beyond the boundaries of Company Law in areas such as FEMA, Competition Law, Securities Law, Insolvency, Valuation, Taxation Laws, Arbitration etc., it can be said that CS is the preferred professional with multi-disciplinary focus in the field of Corporate Laws.

The demand for CS professionals continues to grow with increasing expectations from the Corporates and the Regulator. The expectations from the Company Secretaries, as they are increasingly being referred to as "governance professionals" now also extend to the areas of Corporate Social Responsibility (CSR), Business Responsibility and Sustainability Reporting (BRSR) and Environment Social Governance (ESG), all of which put together highlights the focus on sustainability, where the CS has infinite opportunities to excel as a preferred professional.

In the Indian context, some of the initiatives where the CS, whether in practice or in employment, is the ideal professional to advise the corporates, investors, social enterprises etc. as also the stakeholders, are in the areas such as:

### 1. Environment, Social and Governance (ESG) and CS

Environment, Social and Governance (ESG) are important non-financial metrics. Investors nowadays analyse the risks and opportunities giving due weightage to the non-financial metrics as well in addition to the financial metrics before taking investment decisions.

The disclosure requirements in the wake of emerging ESG landscape are rapidly as well as dynamically changing and these are quite challenging for any company. CS being at the centre-stage with respect to reporting to the Board and their committees on various non-financial metrics as part of his / her responsibilities towards governance is in an ideal position to provide internal support to the various sustainability initiatives.

### 2. Business Responsibility and Sustainability Reporting (BRSR) and CS

Business Responsibility and Sustainability Reporting (BRSR) ushered in a contemporary corporate world replacing the conventional Business Responsibility Reporting (BRR) guidelines by SEBI in 2021 with the aim of augmenting ESG disclosures and reporting, thus leading to enhanced transparency and accountability. Business Responsibility and Sustainability Reporting (BRSR) was adopted by SEBI as a new reporting framework in 2021 replacing Business Responsibility Reporting (BRR). It is mandatory for companies listed in the top 1,000 markets in India on the basis of their market capitalization to report on their BRSR. Climate change, biodiversity, water management, and supply chain sustainability are just some of the ESG issues companies are required to report on under the BRSR framework which seems to be much wider in scope than BRR (SEBI, 2021). Moreover, companies are required to report their commitment to the Paris Climate Agreement and to the Sustainable Development Goals of the UN. A business's environmental, social, and governance (ESG) practices and the impact they have on stakeholders and the environment are disclosed through Business Responsibility and Sustainability Reporting (BRSR).

The scenario promises good prospects in the form of exciting opportunities to a new generation of ESG professionals where a CS (both in employment and in practice) may well find themselves to be "the preferred professionals" considering their exposure to Governance and Compliance Management systems in the corporate world, which will give them a definite edge over other professional.

### 3. Social Stock Exchange (SSE) and CS

The Concept of Social Stock Exchange (SSE) was floated in the early part of this century with a view to provide a platform for channelising investments focusing on social objectives. In India, the proposal for setting up an electronic fund-raising platform in the form of SSE under the regulatory framework of SEBI was announced in the Union Budget presented in July 2019. The role of SSE as a platform that allows investors to buy shares in a social enterprise. A SSE, could perform the following functions such as serving as a mediator between social enterprises that need funding and investors who are willing to invest their money, providing investors with procedures for simpler investment in social projects and providing investors with procedures for simpler investment in social projects etc.

CS is better equipped on structuring of enterprises, registration procedures with the SSE, listing procedures and compliances and will naturally be the preferred professional, as these new opportunities come up in the emerging scenario. Though areas such as impact analysis and social audit are new areas for the CS, the ability of the profession to network and co-ordinate / lead a multidisciplinary team should motivate the CS.

## 4. Social Audit and CS as Social Auditor

At this juncture, it is also pertinent to discuss about social audit. The term social audit refers a formal review of a company's endeavours, procedures, and code of conduct regarding the company's social responsibility and the company's impact on society. The objectives of social audit is that of accurate identification of requirements, prioritization of developmental activities as per the requirements, proper utilization of funds coupled with conformity of the developmental activity with the stated goals along with quality of service. The examples of activities covered under the scope of social audit are- Environmental impact resulting from the company's operations, Community development and financial contributions made by the company, Charitable contributions made by the company, Work environment including safety, free of harassment, Equal opportunity etc.

Since ICSI has come out with 'Social Auditing Standards', it has created new opportunities for Company Secretaries as Social Auditor. The social auditing standards of ICSI are as under:

1. Social Audit Standard on eradicating hunger, poverty, malnutrition and inequality (ICSI SAS-01).
2. Social Audit Standard on promoting health care including mental healthcare, sanitation and making available safe drinking water (ICSI SAS-02).
3. Social Audit Standard on promoting education, employability and livelihoods (ICSI SAS-03).
4. Social Audit Standard on promoting gender equality, empowerment of women and LGBTQIA+ communities (ICSI SAS-04).
5. Social Audit Standard on ensuring environmental sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation (ICSI SAS-05).
6. Social Audit Standard on protection of national heritage, art and culture (ICSI SAS-06).
7. Social Audit Standard on training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports (ICSI SAS-07).
8. Social Audit Standard on supporting incubators of Social Enterprises (ICSI SAS-08).
9. Social Audit Standard on supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building (ICSI SAS-09).
10. Social Audit Standard on promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector (ICSI SAS-10).
11. Social Audit Standard on slum area development, affordable housing and other interventions to build sustainable and resilient cities (ICSI SAS-11).
12. Social Audit Standard on disaster management, including relief, rehabilitation and reconstruction activities (ICSI SAS-12).

13. Social Audit Standard on promotion of financial inclusion (ICSI SAS-13).
14. Social Audit Standard on facilitating access to land and property assets for disadvantaged communities (ICSI SAS-14).
15. Social Audit Standard on bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection (ICSI SAS-15).
16. Social Audit Standard on promoting welfare of migrants and displaced persons (ICSI SAS-16).

## 5. Corporate Social Responsibility (CSR) and CS

Though some large corporate houses in India were voluntarily spending a portion of their profits towards social causes, given the gaps in the needs of the social sector, these initiatives were far too insufficient vis-à-vis the needs. Section 135 of the Companies Act, 2013 read with Schedule VII thereto along with the Companies (Corporate Social Responsibility Policy) Rules, 2014 contain the framework for CSR, which becomes applicable to a company (listed as well as unlisted) based on thresholds of Profits, Turnover and Net Worth.

The CS (both in employment and practice) is already actively involved in the compliances related to CSR. CS in employment being a KMP has to ensure that the provisions of Section 135 along with Schedule VII of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 are complied in letter and spirit. He / She plays an active role in the conduct of the proceedings of the CSR committee, in the evolving of the CSR policy, in its implementation and co-ordination of the various aspects of the compliances with different departments of the company. Companies not required to employ a whole time CS invariably look to a CS in practice for advisory and consultancy services relating to CSR compliances.

## 6. CS as Chief Risk Officer

Section 134(3)(n) of the Companies Act, 2013 mandates every company to include the following in its Board's Report:- a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;

A large number of companies are found to be compliant of the aforesaid statutory requirement merely by way of including a small statement in the Board's Report, without actually identifying the risk or simply considering the financial risk as the only risk for which is not an ideal situation. Risk identification and their mitigation is a significant activity and it should not be taken so casually. Even a single adverse event can damage the company and its reputation. Thus, risk management being an indispensable element of business provides immense scope for the Company Secretaries in the capacity of a Chief Risk Officer. As Chief Risk Officer, the Company Secretary may be entrusted with the task of risk identification, risk measurement, risk mitigation, risk related disclosures etc. Moreover, different forms of risks such as compliance risk, legal risk, country risk, operational risk, etc., requires varying risk management approaches and in view of this, Company Secretary can play a pivotal role in efficient risk management of companies.

## 7. Climate Change and the Corporate Secretary

As investors, regulators and other stakeholders increasingly challenge companies to demonstrate an integrated, strategic approach to addressing climate change risks and opportunities, the role of the Corporate Secretary is critical to ensuring that Boards are equipped with the right tools to make the best possible decisions to appropriately address climate risks and opportunities.

Taking cognizance of the aforesaid facts, it is pertinent to discuss the CSIA and PwC Survey conducted in the third quarter of 2020 to explore as to how organisations are addressing climate change from a governance perspective, and particularly its impact on the role of the Corporate Secretary.

The key objectives of the survey were to gain insights into:

- the measures regulatory authorities have taken to manage and respond to climate change risks.
- the extent to which entities have adopted regulatory guidance/principles on climate change and embedded them into their corporate culture.
- the allocation of responsibilities (including delegations) within the entity with regards to climate change.
- the role of the Corporate Secretary (or other equivalent position) in influencing corporate governance practices that address climate change.
- the current overall awareness of climate change and maturity of the organisation.
- the current knowledge, skills and expertise of both the Corporate Secretary (or other equivalent position) and the Board specifically relating to climate change.
- current training received by both the Corporate Secretary (or other equivalent position) and the Board on the topic of climate change and related matters (i.e. climate change risks and opportunities, emerging trends and issues) as well as identifying training needs.
- the extent to which climate change is reported on, the frequency of internal and external reporting and the extent to which related disclosures on climate change are made.
- the risk management process and the extent to which climate change risks are identified, responded to, mitigated and monitored.

This survey highlighting the role of the Corporate Secretary on climate change and ESG matters, it stated that If a Corporate Secretary is involved in major decision-making with respect to business expansion and investment proposals, they can always contribute to responsible decision making that is informed by detailed analysis of proposals and expansion programmes that align with the culture, vision and mission of the organisation.

As Corporate Secretaries, are aware of the SDG and the MDG goals as adopted by the United Nations, and as responsible professionals, they can advise the Board to match up their business objectives with a greater vision for the world. This not only ensures higher ESG contribution to the country, but makes organisations stand out as role models for others throughout the world.

## 8. Climate Governance and the Company Secretary

The board has a fiduciary duty and accountability for the company's long-term sustainability and resilience with respect to potential changes in the business model that may result from climate change. Board meeting time is valuable, but climate change has to be on the board's agenda from a compliance standpoint as a result of the disclosure requirements stipulated in the ESG Reporting Guide.

Given the governance role of company secretaries, they are critically positioned to advise boards on the significance of the potential impacts that climate change may have on business operations. They can also ensure discussion among board members of key climate-related issues, and promote a proactive effort by the board to address stakeholders' increasing need for climate-related disclosure information by implementing the TCFD recommendations.

Depending on the impact of climate change issues on the company's operations, the level of its commitment and the maturity of its climate change management, company secretaries may assist the implementation by phases as recommended in the TCFD Status Report 2020.

Five key ways that company secretaries can assist in climate governance and help implement the TCFD recommendations are explored below.

1. **The Company Secretary as climate governance professional**

   Company secretaries can assist organisations in building their climate governance infrastructures, including putting in place structures, policies and procedures for managing climate-related risks and opportunities. They can also help by improving the boards' and management's understanding of their roles and responsibilities in creating a good culture for effective climate governance. Some practical ways in which company secretaries can assist with climate governance are:

   - ensure climate-change related oversight roles and responsibilities are incorporated in board and subcommittees' mandates.
   - advise the board to set up a dedicated subcommittee to manage climate change issues if their impacts are financially material to the company.
   - ensure climate-change elements are embedded in the board and corporate culture and values.
   - ensure the board is well informed of the latest climate-related trends through continuous training.
   - help the board understand how management identifies, assesses and manages climate-related risks and opportunities.
   - assist in capacity building by advising the board and the nomination committee to consider including climate-related expertise in their composition, and
   - ensure that management takes up its role in assessing and managing climate-related issues.

2. **The Company Secretary role in strategy**

   The uncertain and dynamic nature of climate change may affect the long-term viability of a company. It is therefore crucial that the board regularly assesses the resilience of the company's strategy and operations with regard to climate change under different scenarios and related mitigating measures. Company secretaries should ensure that there are adequate strategic discussions on climate change issues at board meetings. These meetings should cover, but not be limited to, the following:

   - trends in sustainability or decarbonisation practices in the industry
   - the type of climate-related risks and opportunities that the company is facing
   - the potential financial impact and priority of these material risks and opportunities on business strategy, model, operations, sectors and geography
   - the estimation of when these material climate-related financial impacts may materialise
   - resilience of the company's strategy regarding climate change under different climate scenarios, and
   - regular updates on scenario analysis and related assumptions by management.

   Company secretaries should also ensure that the discussions are in line with the company's long-term strategic goals and objectives, and in the best interests of the company. If the discussion results in significant business decisions being made, such as making changes to the business model or closing or acquiring business units in response to climate change, the company secretary should facilitate the board's engagement with shareholders on the proposed changes. The company secretary should also ensure that the strategic planning and decisions made by the board are well documented for future reference.

**3. The Company Secretary's role in risk management**

Climate change will give rise to a set of new risk factors, including both physical and transition risks, affecting the company's operations. The board must take a leadership role in the management and oversight of climate-related risks and opportunities. Traditionally, the audit committee has been assigned with the responsibility for oversight of risk management and internal controls. In the context of climate change, the audit committee's role may include:

- initiating the identification of financial risks that arise as a result of physical and transition risks, which will facilitate comprehensive valuation of financial risk
- incorporating a climate change lens across the three lines of defense: business ownership, risk management and oversight of internal audits, and
- validating and incorporating climate-related financial disclosures within the remit of corporate disclosure.

**4. The Company Secretary's role in monitoring risks and opportunities**

The TCFD recommendations necessitate the disclosure of metrics and targets that will be used by the board to monitor climate-related risks and opportunities, and to measure performance against the targets set. Company secretaries should advise their boards to hold management accountable for climate-related performance by incorporating performance metrics into remuneration to incentivise the C-suite and executives. The role of the company secretary may also include:

- coordinating with management or the ESG function to suggest appropriate metrics and targets on key climate-related risks and opportunities for the board's consideration
- ensuring the board has discussed and approved relevant metrics and targets
- analysing metrics performance information and comparing against targets, and reporting to the board for regular monitoring and formulating measures to close any gaps, and
- ensuring disclosure of accurate metrics and targets information.

**5. The Company Secretary's role in disclosure**

Company secretaries have the primary responsibility for drafting the governance section of the company's annual and ESG reports. In the context of implementing the TCFD recommendations, as part of the ESG report, company secretaries should:

- coordinate and oversee the ESG/sustainability working group in collecting the relevant information required from different internal stakeholders for disclosure
- ensure the quality and accuracy of climate-related disclosure by obtaining independent assurance of the company's compliance with reporting principles and disclosure requirements
- ensure the disclosure of climate-related issues and that figures are appropriate and comply with TCFD recommendations requirements, and
- ensure that disclosures are reviewed and signed off by management and the board before distribution.

## COMPANY SECRETARY: PROTECTING CORPORATE GOVERNANCE PRINCIPLES

There is a huge responsibility casted on the Company Secretary to ensure good governance and protect the interest of all stakeholders. If they fail to perform their duty diligently, they will fall into the category of "officer in default" under the eyes of law.

Sometimes due to, varied reasons it engenders friction between the board and Company Secretary over the due compliance of the applicable laws, and such confrontation puts them in a bind. Under such a scenario, one can rarely imagine the situation where Company Secretary went to the court or quasi-judicial body against the Board or other stakeholders in a bid to perform his duties.

The National Company Law Tribunal (NCLT), Chennai Bench, dealt with a similar matter where Company Secretary approached it as his last resort for ensuring the due compliance. The order was pronounced by the NCLT Chennai Bench on 01st July, 2022 in the matter of *Mayank Agarwal vs. M/s. Technology Frontiers (India) Private Limited*

**Brief About the Case:**

The matter is pertaining to compliance with the Significant Beneficial Ownership provisions, initially Mr. Sriram Srivatsan (Company Secretary) issued a notice to the company whose holding in their company falls under the threshold of Significant Beneficial Ownership provisions and asked them to disclose their ultimate beneficial owner.

As per the Significant Beneficial Ownership provisions, upon issuance of the notice, the company is required to disclose its ultimate beneficial owner. In the instant case, the Company Secretary went to NCLT as the company was not complying with the regulatory requirements.

The nominee director (Mr. Mayank Agarwal) of the respondent company refuted the stance by filing an Interlocutory Application, by arguing that the Company Secretary does not have a locus stand to file the petition as the board has not authorized him to file the same and the Companies Act, 2013 does not empower him to supersede the Board of Directors.

**Historical Instances:**

Mr. Mayank Agarwal (Applicant) is a nominee director appointed by M/s Crest Investment Holdings Pvt. Ltd. on the Board of Directors of the M/s. Technology Frontiers (India) Private Limited and Mr. Sriram Srivatsan is a Company Secretary (Respondent) of M/s. Technology Frontiers (India) Private Limited.

Mr. Mayank Agarwal (Applicant), filed an Interlocutory Application before NCLT Chennai Bench and following were the prayers as main relief:

(a) To declare that the Company Petition is not maintainable and dismiss the company petition at the outset;

(b) Direct Mr. Sriram Srivatsan, Company Secretary to solely bear all cost associated with the present petition.

The main petition was filed by Mr. Sriram Srivatsan, Company Secretary for ensuring compliance of mandatory requirements mentioned under the provisions of the Companies Act, 2013.

**Section 90 of the Companies Act, 2013 states that**:

"(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five percent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control (herein referred to as "significant beneficial owner"), shall make a declaration to the company in form BEN-1, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed. Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section."

"………….(4) Every company shall file a return of significant beneficial owners of the company in Form BEN-2 and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(4A) every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe–

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice shall be given by the concerned person within a period not exceeding 30 days of the date of the notice.

(7) The company shall, —

(a) Where that person fails to give the company the information required by the notice within the time specified therein; or

(b) Where the information given is not satisfactory,

apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed."

In this case, Company Secretary Mr. Sriram Srivatsan had sent the notice to the Applicant's company on 03rd May, 2021 along with the form to disclose their Ultimate Beneficial Ownership of the shares held.

The applicant filed this application to adjudicate the maintainability of the main petition filed by the Company Secretary.

**Applicant (Mr. Mayank Agarwal) Contentions in this Case:**

– The Company {M/s. Technology Frontiers (India) Private Limited} alone is empowered to apply to NCLT under section 90(7) of the Companies Act, 2013 and the company acts through its board of directors and Company Secretary has not taken any approval from the board of directors to file the present petition and there is no Board Resolution nor has any delegated authority to present the present petition.

– That any suit or any other legal proceedings can be instituted by a director or officer of the company such as Company Secretary only on the strength of valid Board Resolution duly passed authorizing them to do so and in absence of such board resolution if any suit or legal proceedings is instituted then there has to be a board resolution ratifying the defect, failing which the suit or legal proceedings cannot be maintained.

- That the Company Secretary has no locus standi to file a petition under section 90 and is not empowered by section 205 or any other provisions of the Companies Act, 2013 to bypass or supersede the Board of Directors of a company and substitute the authority and powers of the Board of Directors in Company Secretary's own wisdom.
- Certain aspects on professional misconduct on part of Company Secretary was also alleged by the applicant.
- Written Submissions by the Respondent Company Secretary (Mr. Sriram Srivatsan) in this case:
- It was submitted that he has the locus standi on account of board resolution duly passed by the board of directors at the time of his appointment which states that he is appointed as the Compliance Officer of the company and he is required to perform the duties as required under the Companies Act, 2013 and any duties assigned by the board of directors from time to time.
- The respondent also quoted Order 29, Rule 1 of the Civil Procedure Code, 1908 which states that in suits by or against a corporation, any pledging may be signed and verified on behalf of the Corporation by the security of by any director or other principal officer of the corporation who is able to dispose to the facts of the case.
- That the Company Secretary being an officer as per the above quoted rule have the authority to enter into pleadings on behalf of the Company in absence of a formal authorization from the Board of the company more significantly to ensure compliance by or on behalf of the Company in which he has been appointed in that capacity.
- The respondent also refer the provisions of the Companies Act and the rule wherein he submits that by virtue of Section 205 of the Companies Act, 2013 he is authorized to represent and it is his duty to do so. Section 205 states the Functions of Company Secretary which include that it is his duty to report the board about compliance with the provisions of this Act, rules made there under and other laws applicable to the company and to ensure that the company complies with the applicable secretarial standards.
- The respondent also states that Rule 10 (4) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states that Company Secretary can represent before various regulators and other authorities under the Act in connection with discharge of various duties under the Act.

**NCLT Observations:**

The Bench observed that the Company Secretary is the secretary of the Company and not the Secretary of the shareholders. He is appointed under the Companies Act, 2013 pursuant to a board resolution in respect of which appointment is given effect by filing the prescribed form with the Registrar of Companies so as to ensure statutory compliances failing which he is the only Officer who receives the Show Cause notice from the Registrar of Companies so also the Company. He would be required to face the penal consequences in the event of failure of compliances. He is answerable to the violations of the compliance requirement.

Company Secretary are the watchdog of protecting corporate governance principles and ensuring the interest of all stakeholders and not a bloodhound. He has to ensure that the company complies with all regulations, and in case of any failure on the part of the board, he should approach the competent authority.

The bench further stated that the era in which the Company Secretary occupied the position of a glorified clerk in Companies has expired consequent upon evolution of corporate governance and the various compliance requirement in a complex regime so as to protect the interest of the company as well as its various stakeholders.

The bench also noted that the Company Secretary acted diligently by approaching the appropriate authority.

**Pronouncement:**

The Bench dismissed the Interlocutory Application and held that being Company Secretary falls under the definition of the Key Managerial Personnel (KMP) under Section 2(51) of the Act, and officer in default under Section 2 (60) of the Act and power enshrined to them under Section 205 (1)(c) of the Act, read with Rule 10 clause 4 of the Companies (Appointment and Remuneration of the Managerial Personnel) Rules, 2014, he has the power to represent the company before various regulators and other authorities in the discharge of the various duties under the Act and has locus standi in present case to file such application. NCLT being a quasi-judicial authority the Company Secretary can very well represent before the same.

**Conclusion:**

This judgment and case throws the light on evolved duties of the Company Secretaries and expectations of the regulators from the Company Secretary. From the order, it is inferred that for the regulators, the diligent act is not by putting the compliance requirement over a mail, this will not absolve them from the officer in default. The regulators expect a leap beyond it by approaching the respective regulatory authority.

**LESSON ROUND-UP**

- AI and Machine learning (ML) would change the role of the Company Secretary by making the role more interesting.
- The company secretaries are identified as conscience of the company .
- While the expanding role of Company Secretaries include functions beyond compliances including ESG strategies, ESG integration to the business, the functions are closely associated and linked to Board Governance.
- Environmental sustainability may seem most relevant to the governance of large organizations with significant carbon footprints or sector specific exposure to the impact of extreme climate events.
- Sustainability and social responsibility are more embedded terms, encompassing how a company will be functioning in ten or twenty years' time and what it is doing to ensure that this will be the case.

**GLOSSARY**

- **Governance**: The system by which entities are directed and controlled. It is concerned with structure and processes for decision making, accountability, control and behavior at the top of an entity.
- **Technological changes:** The potential for technology to create a more unstable job market could develop into a prominent governance issue.
- **Stakeholder engagement**: Stakeholder engagement is the process by which companies communicate and get to know their stakeholders. By getting to know them, companies are able to better understand what they want, when they want it, how engaged they are and how the companies' plans and actions will affect their goals.
- **Algorithm**: A procedure or formula used to solve a problem, or a series of instructions which tell a computer how to transform a data set into useful information. Algorithms are used widely throughout all areas of information technology.
- **Artificial Intelligence (AI):** The ability of machines and systems to acquire and apply knowledge, and to carry out intelligent behavior.

**TEST YOURSELF**

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation)*

1. How Artificial Intelligence and other technological developments are going to change the role of Company Secretary in future?
2. How the dynamics of emerging eco-system is going to change the role of governance professionals?
3. What are the three social issues that could be relevant to governance in the future?

**LIST OF FURTHER READINGS**

- Corporate Governance: Principles, Policies and Practices, Third Edition by A.C. Fernando
- Corporate Governance: Principles and Practices by Sandeep Goel
- Company Secretarys Handbook 3rd/edition by Helen Ashton, Kogan Page India Pvt. Limited
- KSK Publishers Be An Outstanding Company Secretary A Practical Guide For Success In Exams & Life by Ritesh Kalra Edition 2018

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- https://www.frc.org.uk/getattachment/59a5171d-4163-4fb2-9e9d-daefcd7153b5/UK-Corporate-Governance-Code-2014.pdf
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- https://www.pwc.co.za/en/assets/pdf/csia-pwc-climate-change-survey.pdf
- https://www.bdo.com.hk/en-gb/insights/articles/climate-governance-and-the-company-secretary#:~:text=The%20company%20secretary’s%20role%20in%20risk%20management&text=In%20the%20context%20of%20climate,comprehensive%20valuation%20of%20financial%20risk

# PART II

# RISK MANAGEMENT

# Risk Management

Lesson 18

## KEY CONCEPTS

■ Risk Analysis ■ Cyber Risk ■ Social Risk ■ Financial Risk ■ Market Risk ■ Internal Audit

## Learning Objectives

**To understand:**

- Risk Management
- Risk Identification
- Risk Analysis
- Risk Measurement
- Risk Mitigation
- Risk Elimination
- Importance of Risk Management Committee
- Role of Internal Audit
- Internal control, Material Risk and Opportunity Assessment
- Reputation Risk, Climate Risk, Fraud Risk Management
- Business Continuity Plan with Case Study
- Risk Related Disclosures
- Crisis Management, Disaster Risk Management
- Relationship between Business Continuity Plan, Crisis Management and Disaster Recovery Plan
- ESG Risk assessment
- Cyber Risk Management
- Fundamentals of cyber security threats and countermeasures
- Identifying most critical assets and threats
- Assessing Cyber Security Risks and
- Implementing a Cyber Risk Management Programme
- Role of CS in Risk Management
- Case studies in Risk Management

- Introduction
- Risk Management
- Advantages of Risk Management
- Steps in Risk Management Process
- Risk Mitigation
- Need for a CRM Framework in India
- Fraud Risk Management
- Fraud risk management processes
- Role of Company Secretary in Risk Management
- Internal Control
- Crisis Management
- ESG Risk Assessment
- Cyber Risk Management
- Case Studies
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

# INTRODUCTION

## Key Concepts

*"Today's fast-paced business environment encounters a complex and ever-changing risk landscape that may negatively impact the organizational value. The only way to respond to it is by having a dynamic and holistic perspective of risk management approach to ensure business continuity."*

***– Jack Zahran, President, Pinkerton***

Most businesses now consider risk management to be essential. However, even within the same industry, organisations can have diverse structures for risk management. What then is risk? The term "risk" has come to be used in the business world to refer to anything that prevents an organization from achieving its goals.

According to the Oxford Dictionary- "Risk is Exposure to the possibility of loss, injury, or other adverse or unwelcome circumstance; a chance or situation involving such a possibility'.

While there is some risk in every business, organisations and entrepreneurs must be willing to take risks because there can be no significant return without them. Risk cannot be avoided, like stress, and one must learn to deal with it. Risk can, at most, be controlled or reduced. This does not suggest taking a risk only for the purpose of taking a risk, but to reap the final benefits, risk management must be understood at every stage. However, both internally and externally, the cost of poor risk management is still frequently underestimated. This cost also includes the time required to manage a situation where risks were poorly assessed and managed. It might be accurate to state that no sustainable advantage is achievable without "risk management."

The risk can be defined from various perspectives the below is the definition of risk from Finance Perspective: 'The probability that an actual return on an investment will be lower than the expected return'.

# RISK MANAGEMENT

The phrase "risk management" is used to refer to the procedures that help organizations identify, understanding, assessing, and managing their risks will increase the likelihood of their success while minimising the consequences and chances of failure. Effective risk management helps a company or organisation validate its compliance with corporate governance principles and reassures shareholders, customers, employees, other stakeholders, and society at large that a business is being managed properly governing principles.

All organisations, no matter how big or little, should practise risk management. Effective risk management procedures promote accountability, performance evaluation, and compensation, and they can boost productivity throughout the entire organisation at all levels. A thorough knowledge and comprehension of the organisation (internally and externally) and the business processes are necessary for risk management.

Better risk management strategies offer early warning signs so that the problem can be solved quickly. Traditional concepts solely viewed natural disasters like fires, earthquakes, and floods as risks, and they presumptively reduced those risks by maintaining safeguard equipment and other measures. However, new and different kinds of hazards have evolved as a result of the fast-paced developments in technology, business dimensions and complexity, regulatory changes, and environmental concerns. Therefore, managing different forms of risks has become crucial in the age of the rapidly evolving global economy, numerous regulatory compliances, cross-border commercial activities, and the need to maintain the survival, viability, and sustainability of businesses.

The company strategy incorporates risk management. It is an essential management tool for protecting company assets so they can be used productively. The goal of risk management is to enable an organisation to minimise losses and maximise possibilities by establishing the context, detecting, analysing, assessing, treating, monitoring, and communicating risks connected with any action, function, or process.

## ADVANTAGES OF RISK MANAGEMENT

Strategic planning involves risk management heavily. It is crucial to effective project management. The main objectives of a successful risk management strategy are to detect and evaluate potential hazards. Following are some of the main benefits of risk management:

- In the long run, risk management always saves a large amount of money and reduces the need for firefighting. It creates solid contingency plans.
- It can aid in making plans and getting ready for chances that present themselves throughout a project or business.
- Strategic and corporate planning is enhanced by risk management. By reducing legal action or avoiding breakages, it lowers costs.
- It establishes greater dependability among the interested parties, resulting in increased reputation.
- Reliable Risk Management procedures comfort significant stakeholders across the entire firm.

## STEPS IN RISK MANAGEMENT PROCESS

The process of risk management consists of the following sequential steps:

- Risk Identification
- Risk Analysis
- Risk Assessment
- Handling of Risk

### Risk Identification

Effective risk management depends on accurate risk identification, hence this is the first stage of the risk management strategy. Risk managers will not be able to control these unidentified risks if they are unsuccessful in recognising all potential losses or gains that pose a threat to the firm. Classifying organisational risks based on their various categories is the first responsibility of risk management. Establishing the essential surveillance areas both inside and outside of the organisation is the first stage in planning the implementation of the risk management function. Then, specific risk identification tasks must be delegated to the departments and employees.

Ensuring that all potential project risks are detected is the goal of the risk identification process. The ultimate goal of risk identification is to maximise the benefits of project possibilities while minimising the negative effects of project setbacks and threats. The team is better able to accomplish the project's time, schedule, and quality goals when they are aware of potential project risks, which lowers the amount of surprises during project delivery. Finally, the goal of risk identification is to supply data for the following stage of the risk management process.

### Process of Risk Identification

Taking an inventory of the potential project risks that can have an impact on project delivery is the first step in the risk identification process. For effective risk management throughout the project, this stage is essential. Project managers' uncertainty is decreased by the outputs of the risk identification process, which are used as an input for risk analysis. Throughout the course of a project, this iterative process must be continuously repeated. To ensure that all potential dangers are found, the procedure must be rigorous. The following actions should be taken as part of an efficient risk detection process:

1. **Creating a systematic process** - The risk identification process should begin with project objectives and success factors.
2. **Gathering information from various sources** - Reliable and high-quality information is essential for effective risk management.
3. **Applying risk identification tools and techniques** - The choice of the best suitable techniques will depend on the types of risks and activities, as well as organizational maturity.
4. **Documenting the risks** - Identified risks should be documented in a risk register and a risk breakdown structure, along with its causes and consequences.
5. **Documenting the risk identification process** - To improve and ease the risk identification process for future projects, the approach, participants, and scope of the process should be recorded.
6. **Assessing the process' effectiveness** - To improve it for future use, the effectiveness of the chosen process should be critically assessed after the project is completed.

## Risk Analysis

The analysis of the risk, which comes after the identification of the risk factors, aids in the detection and management of prospective issues that could jeopardise important business efforts or projects.

To do a risk analysis, first list the potential dangers and then calculate the likelihood that they'll come to pass. The analysis ought to be impartial and sector-specific. The scenario-based analysis may be used inside the industry, taking into account potential outcomes and alternative strategies for achieving the specified goal.

Risk analysis can be difficult since it calls for the use of specific data, including project plans, financial data, security measures, marketing projections, and other pertinent data. However, it's a crucial tool for planning and one that could save time, money, and reputations.

Risk analysis is useful in many situations like:

- While planning projects, to help in anticipating and neutralizing possible problems.
- While deciding whether or not to move forward with a project.
- While improving safety and managing potential risks in the workplace.
- While preparing for events such as equipment or technology failure, theft, staff sickness, or natural disasters.
- While planning for changes in environment, such as new competitors coming into the market, or changes to government policy.
- When all the permutations-combinations of possible events/ threats are listed while analyzing the risk parameters and the steps taken to manage such risks, the risk matrix is designed / popped-up before the decision making and implementing authority.

### Process of Risk Analysis

**The risk analysis includes the following two process:**

1. Identify Threats
2. Estimate Risk

**Identify Threats:** Identification of current and potential hazards is the first stage in risk analysis. These might originate from a wide range of sources. For example, they might be:

- *Human* – Illness, death, injury, or other loss of a key individual.

- *Operational* – Disruption to supplies and operations, loss of access to essential assets, or failures in distribution.
- *Reputational* – Loss of customer or employee confidence, or damage to market reputation.
- *Procedural* – Failures of accountability, internal systems, or controls, or from fraud.
- *Project* – Going over budget, taking too long on key tasks, or experiencing issues with product or service quality.
- *Financial* – Business failure, stock market fluctuations, interest rate changes, or non-availability of funding. l Technical – Advances in technology, or from technical failure.
- *Natural* – Weather, natural disasters, or disease.
- *Political* – Changes in tax, public opinion, government policy, or foreign influence.
- *Structural* – Dangerous chemicals, poor lighting, falling boxes, or any situation where staff, products, or technology can be harmed.

**Estimate Risk:** After threats have been identified, it is necessary to determine their likelihood of materialising as well as their potential impact. Making the best assessment of the likelihood that the event will occur and multiplying it by how much it will cost to get things back on track are two methods of doing this. "Risk Value is the product of Event Probability and Event Cost".

## Risk Assessment

Businesses determine the importance of each risk to achieving their overall objectives through risk assessment. Enterprises need a practical, long-lasting, and simple risk assessment procedure in order to achieve this. It's important to keep the process organised and disciplined. It must be properly scaled for the size, complexity, and geographic reach of the company.

It's critical to identify if a risk is inherent, residual, or both when evaluating it. The risk to an entity that exists even in the absence of any management activities that might change the likelihood or severity of the risk. The risk that remains after management has addressed the problem is known as residual risk.

## Process of Risk Assessment

1. **Develop Assessment Criteria**

   The first step in the risk assessment process is to create a standard set of evaluation standards that will be used by all business units, corporate departments, and major capital projects. The impact and possibility of risks and opportunities are often considered while evaluating them. Many businesses understand the value of considering risk along other dimensions like vulnerability and onset speed.

2. **Assess risks**

   Using the established criteria, values are assigned to each risk and opportunity as part of the risk assessment process. Prior to treating the most significant risks and opportunities that lend themselves to quantification, the risks and opportunities are first initially screened using qualitative methodologies (not all risks are meaningfully quantifiable). Each danger and opportunity is evaluated using the descriptive scales established in the preceding section as part of a qualitative assessment. Using information from various sources, quantitative analysis involves numerical numbers for both impact and likelihood.

   The most popular qualitative assessment methods are benchmarking, questionnaires, cross-functional workshops, interviews, and scenario analysis. Benchmarking, scenario analysis, creating forward-looking point estimates (using deterministic models), and finally creating forward-looking distributions are all examples of quantitative approaches (probabilistic models). Causal at-risk models used to project gross profit margins, cash flows, or earnings over a certain time horizon at specified confidence levels are among the most effective probabilistic models from an enterprise-wide perspective.

3. **Assess risk interactions**

   Risks don't exist by themselves. Businesses now understand how crucial it is to manage risk interactions. Even risks that seem modest on their own have the capacity to provide big opportunities or great harm when they interact with other circumstances and events. Because of this, businesses are inclining toward a holistic or integrated view of risks utilising tools like risk interaction matrices, bow-tie diagrams, and aggregated probability distributions.

4. **Prioritize risks**

   The next stage, prioritising for risk response and reporting to various stakeholders, can be accomplished by viewing the risks as a whole portfolio once they have been assessed and their interconnections have been documented. By comparing the degree of risk to predetermined target risk levels and tolerance limits, risk prioritisation establishes the priorities for risk management. The prioritising aids in giving senior management and the board focus when addressing and paying attention to key risks, even though each risk captured may be significant to management at the function and business unit level.

5. **Response to Risks**

   The outcomes of the risk assessment process are then used as the main input for risk responses, where accept, minimise, share, or avoid response choices are considered, cost-benefit evaluations are carried out, a response strategy is defined, and risk response plans are created.

6. **Effective and sustainable risk assessment process**

   To be effective and sustainable, the risk assessment process needs to be simple, practical, and easy to understand. People aren't enough. To be efficient, they must be supported by the right technology.

## Handling of Risk

Risk ownership needs to be distributed. The people handling risks need to have their responsibilities and accountability allocated. When a danger materialises, the affected parties should note it and inform the appropriate authorities so that prompt action can be taken to reduce it. Risk management options include the following:

**1) Risk Avoidance**

Risk Avoidance means to avoid taking or choosing of less risky business/project. For example one may avoid investing in stock market due to price volatility in stock prices and may prefer to invest in debt instruments.

**2) Risk Retention/absorption**

Because insurance cannot be acquired for this sort of risk or because it may be too expensive to cover the risk, the company handles the inevitable risk internally instead, which is far more cost-effective. Retained dangers typically occur more frequently but are less serious. Since a deductible is a small risk that can reduce insurance premiums for greater risks, it is a typical example of risk retention to save money. There are two different retention techniques for limiting losses, as follows:

– Active Risk Retention: When a risk is kept in mind when developing a management strategy after carefully considering potential losses and their sources.

– Passive Risk Retention: where risk retention happened because of carelessness. Such a risk is unknown, or the risk taker either doesn't understand the risk or thinks it's less of a risk than it is.

**3) Risk Reduction**

Physical risk reduction, also known as loss prevention, is frequently the most effective way to handle any risk situation, and in most cases, it is possible to take precautions to lower the likelihood of loss. The planning stage of any project is the optimal time to consider risk reduction methods because new project when a significant improvement may be made with little or no additional expense. The cautious remark regarding risk reduction is that expenditures should, to the extent possible, be tied to potential savings in losses and other risk costs in the future; in other words, risk prevention generally should be evaluated in the same way as other investment projects.

**4) Risk Transfer**

The cost of certain possible losses are being legally assigned to another party. As it deals with risks that may be transferred to a company that specialises in absorbing them for a fee, "risks insurance" is to occupy a significant position. Typically, there are three main ways to transfer losses:

- By Tort
- By contract other than insurance
- By contract of insurance.

The main method of risk transfer is insurance.

## RISK MITIGATION

Taking action to lessen negative impacts is referred to as risk mitigation. The practise of reducing or eliminating unacceptable risks associated with an organization's activities is known as risk mitigation. Risk mitigation strategies can be used to lessen the seriousness of the effects of the risk, lessen the likelihood that the risk will materialise, or lessen the exposure of the organisation to the risk. The risk mitigation stage entails creating plans for managing, removing, or reducing risk to a manageable level.

Once risks have been identified and assessed, the strategies to manage the risk fall into one or more of the following categories:

**1) Transfer Risk**

Execution is typically fought with hazards in project assignments or diverse exercises. When working together, various agencies make sure to transfer risks in their respective fields to another agency that is more suited to handle them for a fee. This is where the idea of core competence comes into play, and anytime a certain agency, person, or corporation discovers that it is dealing in a field that it lacks the core competence to handle, it seeks the assistance of another agency that has the particular core competence to transfer its own risk. The risk, which might take the shape of reputational damage or poor performance, is managed through transfer.

**2) Risk Retention or Tolerate Risk**

Retaining the risk is what it is. Accepting a loss as it happens is doing so. This type of insurance includes true self-insurance. For tiny risks where the cost of insurance would outweigh the overall losses incurred over time, risk retention is a practical strategy. By default, all risks that are not eliminated, diminished, or transferred are preserved. This covers hazards that are so significant or catastrophic that they cannot be covered by insurance or whose premiums are unaffordable.

**3) Reduce Risk**

There will be a much higher number of risk in this category. The goal of treatment is more likely to control the risk to a tolerable level than to completely eliminate it. Internal controls are initiatives taken within the organisation that are intended to limit risk to acceptable levels, even though their consequences may be felt outside the organisation.

If the outsourcer can show greater capacity at managing or lowering risks, outsourcing could serve as an example of risk reduction. In this situation, businesses only outsource a portion of their departmental needs. For instance, a business might manage its own operations while contracting out solely its software development, hard good manufacturing, or customer service requirements to another organisation. With less concern for the manufacturing process, the corporation can focus more on commercial development.

**4) Avoid Risk**

The exposure to loss due to a certain risk is entirely eliminated as a result of this strategy. It can be proven by refraining from taking on the dangerous endeavour or ceasing an activity to prevent risk. This indicates that no projects involving risk are carried on. As an alternative, a project might be abandoned in the middle to lessen risk.

It is not engaging in a potentially dangerous activity. An illustration would be to refrain from purchasing a property or company in order to avoid the associated liability. Another option would be to avoid flying altogether to avoid the chance of an aircraft hijacking. Avoidance may seem the answer to all risks, but avoiding risks also means losing out on the potential gain that accepting (retaining) the risk may have allowed. Not entering a business to avoid the risk of loss also avoids the possibility of earning profits.

**5) Combine Risk**

When a company is exposed to two or three dangers, they work together to lower the overall risk. This tactic works best when dealing with financial risk. To lower risk, various financial instruments, such as shares and debentures, are combined into one portfolio.

**6) Sharing Risk**

Insurance is a method of sharing risk for a consideration. For example by paying insurance premium the company shares the risk with companies and the insurance companies themselves share their risk by doing re-insurance.

**7) Hedging Risk**

Exposure of funds to fluctuations in foreign exchange rates, prices etc., bring about financial risks resulting in losses or gain. The downside risk is often taken care.

## Fraud Risk Management

Fraud is a deliberate action to deceive another person with the intention of gaining some things. Fraud can loosely be defined as "any behavior by which one person intends to gain a dishonest advantage over another". In other words, fraud is an act or omission which is intended to cause wrongful gain to one person and wrongful loss to the other, either by way of concealment of facts or otherwise.

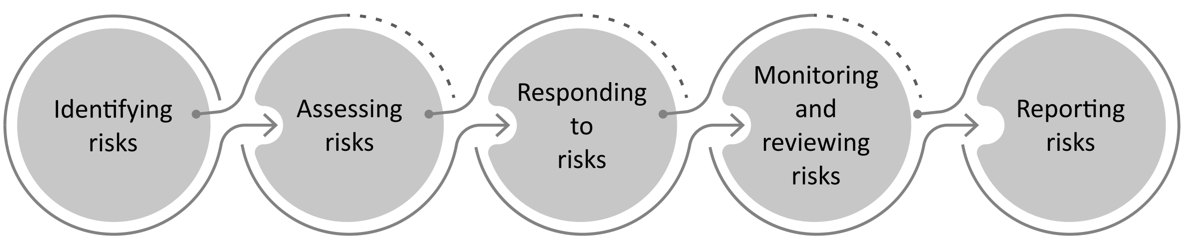
A structured approach to lowering fraud in an institution is called fraud risk management. For scams to be discovered at an early stage, a business should have a fraud risk management procedure. Fraud rates can be significantly decreased with the aid of a well-executed fraud risk management procedure. When fraudulent conduct is discovered, the appropriate and essential steps must be taken to address it. It's referred to as fraud risk management. In other words, identifying internal and external fraud risks in a firm and then creating an anti-fraud programme in order to stop fraudulent actions before they happen constitute fraud risk management.

## Need of Fraud Risk Management

Modern advancements in technology provide fraudsters a variety of chances nowadays. Even though technological advancements might facilitate fraud risk management for businesses, it is a fact that these advancements also provide opportunities for con artists. PWC's 2022 Global Economic Crime and Fraud Survey found that 46% of questioned organisations had experienced fraud incidents in the previous two years. Over 1200 CEOs from 53 countries and regions participated in the survey.

Organizations' reputations could be damaged by fraud cases within their organisations. Additionally, it might damage the public's perception of their brand. All of these result in a decline in patron loyalty and trust. Customers that lose faith in the company can eventually quit doing business with it. Companies and organisations run the risk of losing prospective new customers in addition to their current clients. Fraud charges may cause businesses to lose clients due to reputational damage.

### Fraud risk management processes:




**Identifying Risks**

For a corporation to effectively manage its fraud risk, it is absolutely essential to identify risks. It is important to determine which workers and departments are most likely to perpetrate fraud and what strategies they might take. Risk identification calls for employee brainstorming. Prioritizing the risks comes next after risk identification. Prioritizing risks is crucial when there isn't enough time or money to mitigate the effects of current risks. As a result, businesses tackle hazards that require prompt attention and stop losses.

**Assessing Risks**

Based on several examples, organisations should recognise problems and develop appropriate solutions in order to resolve them. Although this is a good and legitimate technique to handle problems, businesses need to go above and above. They should start by attempting to identify the causes of the hazards. The root causes of the risk should be addressed. They should also consider how those risks might impact the company.

**Responding to Risks**

After recognising and evaluating the risks, companies should take the best action they can. They must develop risk-mitigation plans and choose who will be in charge of carrying them out. Additionally, they should take the appropriate steps to stop the risks from happening again. Additionally, businesses should consider what to do in the event that same risks recur in the future.

**Monitoring and reviewing risks**

The process of managing fraud risk is ongoing. Risk assessment is therefore never carried out. To be able to adjust simply and swiftly to changing situations and environments, businesses need to continuously monitor and analyse their fraud risk management. Additionally, new dangers could materialise at any time, so businesses should be ready for them as soon as possible.

**Reporting risks**

Companies can reduce the risk of losing important information and receiving questionable findings by adopting an effective fraud risk management strategy. When reporting concerns, one should act objectively, take concrete steps, and offer advise on how to reduce the likelihood of fraud.

## RESPONSIBILITY OF RISK MANAGEMENT

- Section 134(3) (n) of the Companies Act, 2013 provides that a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.
- SEBI (LODR) Regulations, 2015 also provides that company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.
- The Risk Management Plan must include all elements of risks. The traditional elements of potential likelihood and potential consequences of an event must be combined with other factors like the timing of the risks, the correlation of the possibility of an event occurring with others, and the confidence in risk estimates.
- Risk management policies should reflect the company's risk profile and should clearly describe all elements of the risk management and internal control system and any internal audit function. A company's risk management policies should clearly describe the roles and accountabilities of the board, audit committee, or other appropriate board committee, management and any internal audit function.
- A company should have identified Chief Risk Officer manned by an individual with the vision and the diplomatic skills to forge a new approach. He may be supported by "risk groups" to oversee the initial assessment work and to continue the work till it is completed.
- Regulation 21 of SEBI (LODR) Regulations, 2015, requires that every listed company should have a Risk Management Committee (details are provided undr the chapter of Board Committees).

## ROLE OF COMPANY SECRETARY IN RISK MANAGEMENT

The Company Secretaries are governance professionals whose role is to enforce a compliance framework to safeguard the integrity of the organization and to promote high standards of ethical behaviour. He has a significant role in assisting the board of the organization to achieve its vision and strategy. The activities of the governance professional encompass legal and regulatory duties and obligations and additional responsibilities assigned by the employer. However, in essence, the functions of a Governance Professional include:

- Advising on best practice in governance, risk management and compliance.
- Championing the compliance framework to safeguard organizational integrity.
- Promoting and acting as a 'sounding board' on standards of ethical and corporate behaviour.
- Balancing the interests of the Board or governing body, management and other stakeholders.

The listing agreement also provides for the establishment of the Risk Management Committee as per Regulations. Since it is the part of the Corporate Governance norms and non-compliance of the same is to be reported by the Company Secretary.

In terms of Section 203(1)(ii), a Company Secretary is a Key Managerial Person. Hence being a top level officer and board confidante, a Company Secretary can pay a role in ensuring that a sound Enterprise wide Risk Management [ERM] which is effective throughout the company is in place. The board of directors may have a risk management sub-committee assisted by a Risk Management Officer. As an advisor to the board in ensuring good governance, a Company Secretary shall ensure that there is an Integrated Framework on which a strong system of internal control is built. Such a Framework will become a model for discussing and evaluating risk management efforts in the organization. Risk and control consciousness should spread throughout the organization. A Company Secretary can ensure that this happens so that the risk factor will come into consideration at the every stage of formulation of a strategy. It will also create awareness about inter-relationships of risks across business units and at every level of the organization.

A Company Secretary can ensure that the following questions [an illustrative list] are effectively addressed at the board level:

- What is the organization's risk management philosophy?
- Is that philosophy clearly understood by all personnel?
- What are the relationships among ERM, performance, and value?
- How is ERM integrated within organizational initiatives?
- What is the desired risk culture of the organization and at what point has its risk appetite been set?
- What strategic objectives have been set for the organization and what strategies have been or will be implemented to achieve those objectives?
- What related operational objectives have been set to add and preserve value?
- What internal and external factors and events might positively or negatively impact the organization's ability to implement its strategies and achieve its objectives?
- What is the organization's level of risk tolerance?
- Is the chosen risk response appropriate for and in line with the risk tolerance level?
- Are appropriate control activities (i.e., approvals, authorizations, verifications, reconciliations, reviews of operating performance, security of assets, segregation of duties) in place at every level throughout the organization?

- Is communication effective — from the top down, across, and from the bottom up the organization?
- How effective is the process currently in place for exchanging information with external parties?
- What is the process for assessing the presence and performance quality of all eight ERM components over time?

### Reputation Risk

Reputation Risk as the risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt-holders, market analysts, other relevant parties or regulators that can adversely affect a bank's ability to maintain existing, or establish new, business relationships and continued access to sources of funding (e.g. through the interbank or securitisation markets).

This risk do not usually have direct and immediate financial impact on the business, but the consequences are very serious and later do have significant financial impact if the risks is not controlled at the initial stage.

Loss of Reputation has long lasting damages like:

- It destroys the Brand Value.
- Steep downtrend in Share Value.
- Ruined of Strategic Relationship
- Regulatory relationship is damaged which leads to stringent norms.
- Recruitment to fetch qualified staff as well the retention of the old employees becomes difficult.

### Reputation Risk Management

For managing the reputation risk, the following principles are worth noting:

- Integration of risk while formulating business strategy.
- Effective board oversight.
- Image building through effective communication.
- Promoting compliance culture to have good governance.
- Persistently following up the Corporate Values.
- Due care, interaction and feedback from the stakeholders.
- Strong internal checks and controls Peer review and evaluating the company's performance.
- Quality report/ newsletter publications.
- Cultural alignments.

## INTERNAL CONTROL

Internal control is essential to the smooth operation and daily operations of a firm and it helps the organisation accomplish its corporate goals. The range of internal control is extensive. It includes all controls included into the strategy, governance, and management processes, including the full spectrum of activities and operations carried out by the organisation and not simply those directly associated with financial operations and reporting. Its scope encompasses all facets of a business, including those that could be broadly categorised as compliance matters as well as aspects related to performance.

Control must not be viewed as a burden on business but rather as a tool for maximising business prospects and minimising possible losses brought on by unfavourable circumstances. Successful businesses should also avoid being complacent or oblivious to their own success. There are many instances of businesses whose success has been at risk due to a lack of or flaws in internal controls.

### Scope of risk management and internal control

It is the responsibility of each business to put in place risk management and internal control systems that are suitable for the circumstances.

In a group, the parent company must make sure that each of its subsidiaries has internal control and risk management procedures in place. These systems must be modified to account for the unique traits of the subsidiaries and their interactions with the parent company.

A parent company should take care to consider the possibility of familiarising itself with and reviewing its affiliate's measures regarding risk management and internal control when it has a sizable equity interest and significant influence over an affiliate.

Risk management focuses on identifying threats and opportunities, while internal control helps counter threats and take advantage of opportunities. Proper risk management and internal control assist organizations in making informed decisions about the level of risk that they want to take and implementing the necessary controls to effectively pursue their objectives. Successful organizations integrate effective governance structures and processes with performance-focused risk management and internal control at every level of an organization and across all operations.

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The risk profile of a company may be represented through a Risk Register, a suggestive template of which is illustrated below:

| ***S. No.*** | ***Risk Area*** | ***Key Risks*** | ***Root Cause*** | ***Mitigation Measures*** |
|---|---|---|---|---|
| 1. | Business Risk | Decreasing market share | Lack of innovation, market survey, etc. | Keeping a vigil on latest developments and continuous monitoring |
| 2. | Financial Risk | Leveraging capital structure and the cash flows | Inability to assess the appropriate funding requirements | Adopting Resource planning policy |
| 3. | Regulatory and Compliance Risk | Non-compliance of applicable laws | Not keeping abreast of the latest changes in the Regulatory environment | Knowledge updation and maintenance of a robust compliance check list |

## INTERNAL AUDIT

As defined in scope of the Standards on Internal Audit, Internal Audit means "An independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system".

## Applicability of Provisions of Internal Audit

As per section 138 of the Companies Act, 2013 the following class of companies (prescribed in rule 13 of Companies (Accounts) Rules, 2014) shall be required to appoint an internal auditor or a firm of internal auditors, namely-

(a) every listed company;

(b) every unlisted public company having-

  (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

  (ii) turnover of two hundred crore rupees or more during the preceding financial year; or

  (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

  (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

  (i) turnover of two hundred crore rupees or more during the preceding financial year; or

  (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

It is provided that an existing company covered under any of the above criteria shall comply with the requirements within six months of commencement of such section.

## Importance of Internal Audit

An internal audit is essential to maintain operational efficiency and financial reliability and to safeguard the assets. It provides independent assurance that an organization risk management, governance, and internal control process are operating effectively. The following are the importance of Internal Audit:

1. **Increase productivity:** Internal audit is an objective assurance and consulting activity designed for add value and improve business operation. Internal audit can help an organization accomplish its strategic objectives by bringing a systematic, discipline approach to evaluating and improving the effectiveness of risk management, control and governance process. By continuously monitoring and reviewing the organization processes, internal auditor can identify the control recommendation to improve the efficiency and effectiveness of these processes and they also help to an organization to dependent on processes rather than on people.

2. **Evaluate Risk and protect the assets:** A regular internal audit assess a company control and help to uncover evidence of frauds, help to identify any gaps in the environment and allow for a remediation plan to take place. Internal audit program will help to an organization to track and document any changes that have been made to environment and ensure the mitigation of any found risks.

3. **Quality Control:** Internal auditor help the organization how well system and process are designed and keep the company goals on track and also provide the consulting on how to improve those system and processes if and when necessary.

4. **Independent and unbiased insight:** Internal audit provides unbiased view into how effective internal

controls of your business. If an organization has limited resources and they are unable to setup an independent audit team, they could cross-train employees to audit each other's departments.

5. **Good Corporate Governance:** Internal audits evaluate a company's internal controls, including its corporate governance and accounting processes. They ensure compliance with laws and regulations, accurate and timely financial reporting and data collection. They also help maintain operational efficiency by identifying problems and correcting lapses before they are discovered in an external audit.

## ROLE OF INTERNAL AUDITOR IN STRENGTHENING INTERNAL AUDIT

The internal audit department is responsible, within the scope of its duties, for assessing the operation of the internal control system and for making recommendations to improve it.

It helps raise awareness and train management personnel in internal control, but is not directly involved in the design or the day-to-day running of the system.

As part of its work plan approved by executive management, it examines compliance with laws and regulations, ensures that executive management's instructions are properly carried out and verifies the proper functioning of the company's internal processes relating to the reliability of reporting channels and information systems.

The internal audit manager draws up a work programme in light of the main risks incurred by the company and reports the significant findings of work carried out to executive management and, in accordance with the procedures defined by each company, to the board.

Ensuring the success of an organization and bridging the gap between the board of directors and the corporate management team is a key performance indicator. Below are some of their specific responsibilities and duties:

i. Evaluating risk management activities within the organization.

ii. Determining the organization's compliance with relevant laws and regulations.

iii. Evaluating and making recommendations that can assist in improving internal control.

iv. Investigating fraud via a fraud risk assessment that uses fraud deterrence principles.

v. Offering an objective source of independent advice to help reach the goal and achieve legality and validity.

vi. Performing audit assignments assigned to them

vii. Learning and studying the organization's policy and guidelines.

viii. Identifying audit scope and developing annual plans within the organization.

ix. Gathering, analyzing, evaluating, and presenting accounting documentation, reports, data, and flowcharts.

x. Following up the audits to monitor the managements' intervention.

xi. Promoting ethics and identifying improper conduct within the company.

## CRISIS MANAGEMENT

Crisis Management is an organization's process- and strategy-based approach for identifying and responding to a threat, an unanticipated event, or any negative disruption with the potential to harm people, property, or business processes.

Dealing with crises in a way that limits harm and helps the impacted business to recover swiftly is the goal of crisis management. Public relations for a corporation may benefit greatly from handling a crisis effectively. There are many different types of crises, hence it is advised that a corporation develop a crisis management plan in advance.

**Types of Crisis**

There are several different types of crises that can be faced by a firm. Analyzing the different scenarios has led to some of the companies' most frequently occurring mishaps. Few of them have been listed below:

**Natural Disasters**

These kinds of mishaps fall under the category of "acts of God" and take place spontaneously without any human interference. A broad geographic area can be impacted by floods, earthquakes, tsunamis, storms, droughts, or any other circumstance, endangering the enterprise based there.

These are the most difficult from a managerial standpoint to foresee and counteract. When one of these natural disasters puts the company's resources in danger, the crisis management teams need to know what to do.

**Technological Crisis**

Every human's life includes technology in some way. However, if technology is used improperly, the negative effects it can have can sometimes outweigh the positive ones. Data breaches, malware, spyware, and other problems can hinder a company's growth. Managers must be well informed of what transpires in these circumstances and take strong action to limit damage.

**Organizational Misdeeds**

Sometimes, a crisis can be caused by the wrong steps taken by a firm. The manager devising the crisis management strategy should know about all the decisions taken by the firm. They must ensure every company's action is legally and ethically correct to avoid any mishap in the future.

**Confrontational Crisis**

Different departments might be found within a single corporation. They might even have various governments in the case of any kind of multinational enterprise. These groups could clash due to differences in beliefs, ideologies, and requirements. So that no party is favoured and the situation does not worsen, the company must have preparations for how to address the problem. These crises can include blockades, sit-ins, union boycotts, etc.

**Rumours**

When the competition between rival businesses heats up, some competitors may try to win by making false accusations against the opposition. This starts to damage the company's reputation and causes losses for it. The crisis management plan must quickly compile the appropriate certificates and other supporting evidence to demonstrate to the public how untrue the rumours are.

## Crisis Management Plan

The following guidelines are recommended for establishing good crisis management plans:

- Identify an individual from your workforce to take over the crisis management role as a manager. Or a firm can employ a professional crisis manager who can help you in planning crisis management processes.
- Initiate frequent training and refresher courses on handling crises. Drills and practice operations must frequently take place to keep refreshing stakeholders on emergency responses to crises.
- Form a crisis team to work under the leadership of a crisis manager. When a crisis occurs, this is the team that should be able to respond quickly. A veteran of several training sessions and drills for such

occurrences, it is expected to be on the frontline in directing other stakeholders on what to do and where to assemble to avoid further damage.

- Planning responses and crisis management processes for various potential crises is highly recommended. It takes several approaches and processes to address different crises.
- Initiate systems that can effectively monitor or detect foreseeable crises signals early enough in order to tackle the situation before it gets out of hand. Examples of such systems are smoke detectors that can detect potential fire long before it gets out of hand.
- Provide a list of key persons in case of a crisis and their contact information. The contact information must be displayed where anyone can see it and easily access them.
- Identify the ground person to be notified immediately when a crisis occurs. Apart from a crisis manager, there must be a coordinating person among employees who possesses first-hand news on a looming crisis. This should be a person who can be trusted by his colleagues with vital information during any suspected crisis.
- Identify a central point where employees can assemble and the exit points to use in case of a crisis. Emergency exit doors with ease of opening them must be labeled well and an emergency central gathering place identified and properly labeled as well.
- Regular testing of the crisis management process and emergency equipment and updating them frequently or as needed.

## ESG RISK ASSESSMENT

ESG is an acronym for environmental, social, and governance. Investors are increasingly using these non-financial factors as part of their analytical process to identify significant risks and growth opportunities. ESG metrics are not typically included in mandatory financial reporting, despite the fact that businesses are increasingly revealing information in their annual report or a separate sustainability report. To make it simpler to incorporate these factors into the investment process, many organizations—including the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), and the Task Force on Climate-related Financial Disclosures – are working to develop standards and define materiality (TCFD).

1. **Environmental Risks**

   These risks include environment-related issues such as Greenhouse gas emissions (GHG), deforestation, pollution, water usage, biodiversity, waste, etc.

2. **Social Risks**

   These include factors such as customer relations, human rights, labor rights, employee relations, occupational safety and health, supply chains, diversity, inclusion, etc.

3. **Governance Risks**

   These risks include issues such as succession planning, board management practices, executive compensation diversity among board and management, corruption, fraud, data hygiene, security, equity, etc.

### Significance of ESG Risk Assessment

1. **Enhanced Sustainability**

   With a better understanding of ESG risks, companies can effectively utilize their resources, tackle rising operation costs, make safe investments, improve employee retention and adhere to regulations easily.

Recognizing these potential risks and effectively managing them not only makes the organization resilient to future challenges but also provides a competitive advantage.

2. **Improved Regulatory Compliance**

   With the growing stakeholder demands for accountability, there is also an increase in the regulatory obligations for ESG.

   Integrating ESG factors as a part of the risk management structure makes communicating effectively with governing authorities easier thereby, minimizing the resource burden and requirement for legal intervention.

3. **Increased Investment Potential**

   Socially aware investors are now seeking the integration of ESG values into their portfolios to ensure sustainable investments. Those organizations that have well-established ESG risk management systems fare better in attracting investors.

4. **Better Employee Productivity**

   Organizations with the highest employee satisfaction had ESG scores 14% higher than the global average, likely due to their strong environmental performance [Marsh & McLennan].

   An ESG-conscious organization can enhance employee productivity, motivation, and retention by inculcating a sense of purpose among the workforce.

   Additionally, organized ESG risk management promotes employee well-being through considerations such as health & safety, work schedules, diversity, and inclusion. This not only enhances employee experience but also stimulates better performance.

5. **Greater Profitability**

   Mitigating ESG risks not only makes a company favorable for investments but also enhances its profitability.

   According to McKinsey research, ESG strategies can affect operating profits by as much as 60%. ESG responsive organizations are more likely to attract customers and top talent thereby, promoting their top-line growth.

## ESG RISK MANAGEMENT

Like other risk forms, ESG risk management also involves the same three steps – Identify the risk, quantify the risk, and manage it for better organizational sustainability.

With this new focus on ESG factors in risk analysis, decision-makers need to quantify the ESG risks for effective risk management.

ESG risks are quantified and reported in the form of a company's ESG risk score or rating. A low-risk rating indicates effective risk management and a high-risk score signifies inconsistencies in ESG risk management.

Every company is vulnerable to ESG risks and requires ESG risk management to avoid financial or reputational damage. Irrespective of the size of the company or organization, incorporating ESG risk factors in the decision-making process amounts to effective risk management.

## ENVIRONMENTAL RISKS

The risks with which this report is concerned are all in some way 'environmental'. They arise in, or are transmitted through, the air, water, soil or biological food chains, to man. Their causes and characteristics are, however, very diverse. Some are created by man through the introduction of a new technology, product or chemical, while others, such as natural hazards, result from natural processes which happen to interact with human activities and settlements. Some can be reasonably well anticipated, such as flooding in a valley or pollution from an industrial smelter. Others are wholly unsuspected effects at the time the technology or activity was developed, such as the possible effects on the earth's ozone layer of fluorocarbon sprays or nitrogen fertilizers

While being diverse in themselves, environmental risks, as defined here, share a second common feature in addition to being transmitted through environmental media. They cause harm to people who have not voluntarily or specifically chosen to suffer their consequences, and thus they require regulation on the part of some authority above that of an individual citizen - that is, they require managing. These consequences can fall on other groups in the future as well as today, as for example in the mismanagement of natural resources. In this report, environmental risks exclude personal choices such as smoking, rock-climbing or tampering with electrical circuits. The immediate consequences of this latter group fall upon the individual who is voluntarily accepting such risks and the government role is usually to educate the public rather than to regulate or control the risks. Even in these cases, the transmission of risk to others through environmental media can be of concern. The risks of smoking to non-smokers present, for example, is probably small but it is the subject of current risk assessment and changes in public policy.

Environmental risks are receiving more attention from investors and consumers as people become more conscious of climate change, greenhouse gas emissions, resource usage, and biodiversity protection. The potential for an organisation to have a detrimental impact on the environment is known as environmental risk. The followings are the few of the example of the environmental risks:

- Impact of climate change on GHG emissions
- Security and use of water
- Reducing waste and recycling
- Pollution control and prevention
- Deforestation
- Safeguarding thriving ecosystems
- The effect on biodiversity
- Safeguarding maritime resources
- Making the switch to a circular economy
- Techniques for environmental management

Please elaborate this point, as it appears to be incomplete and lacks synchronization). Apart from energy oriented enterprises, also cover other forms of enterprise/s that give birth to environmental risk.

## SOCIAL RISK

The following are some instances of social risks: product recalls, labour violations, boycotts, and treatment of employees. All parties involved in the firm, from suppliers and local communities to employees and customers, may be affected at once by these difficulties since they are numerous, complicated, and pervasive. Maintaining positive relationships with these stakeholders is essential to a company's long-term success, especially if that business depends on the confidence of the general public.

Examples of societal risks are:

- Inclusion, equity, and diversity

- Workplace and safety circumstances
- Observing human rights
- Development of the workforce and training
- Data security
- Community participation
- Fair labour standards for vendors and suppliers

All parties involved in a firm are typically impacted by social issues. For a business to maintain long-term competitive advantages, it can be crucial to be able to prevent tarnishing its reputation and relationships.

## GOVERNANCE RISK

"Governance is the culture, values, mission, structure, layers of policies, processes and measures by which organizations are directed and controlled".

Governance defines how the organization should perform, describing through policies what is acceptable and unacceptable and compliance is the area responsible for inspecting and proving that they are adequately, being implemented and followed.

Governance is also responsible for risk and compliance oversight, as well as evaluating performance against enterprise objectives. The board acts as an active monitor for shareholders' and stakeholders' benefit, with the goal of Board oversight to make management accountable, and thus more effective.

Properly implemented compliance oversight is proactive and regularly monitors and evaluates the organization's Content Management System with the emerging regulatory landscape. Accordingly, governance should be able to understand and foresee the organization's vulnerabilities and, hence make decisions to reduce them. Also, governance should distribute power to provide insight and intelligence, at the right time, so that the right people in the management can make risk-aware

decisions in accordance with key business objectives. Risk-awareness is possible through the close proximity that governance should have with risk management, which may provide very useful information in strategy setting and decision making.

Governance needs to touch every part of the organization. It needs to be at the heart of corporate culture when in today's complex global ecosystems, risks are becoming more interconnected.

Although most investors are aware of strong governance principles, no one solution works for all. Finding out where and how best practices might impact corporate performance can be challenging. Risks associated with governance include:

- Corporate morals and ethics
- Conduct and practices that are anti-competitive
- ESG regulation compliance (including emerging regulations)
- ESG transparency
- Open communications
- Grievance policies and processes
- Preventing fraud and corruption
- Compensation for executives

- Diversity of the Board of Directors
- Corruption and extortion
- Standards and regulations
- Paying taxes

**PNB Scam- Case Study**

On 14 February 2018, PNB revealed that fraudulent transactions by billionaire jeweler Nirav Modi and related entities amounted to 110 billion rupees (US$1.77 billion). The key accused in the case were jeweler and designer Nirav Modi, his maternal uncle Mehul Choksi, and other relatives and some PNB employees. Nirav Modi and his relatives escaped India in early 2018, days before the news of the scam became public.

Nirav Modi and the companies linked to him colluded with bank officials to get guarantees or letters of undertaking to help fund buyer's credit from other overseas banks. Multiple fake LoUs were opened in favour of branches of Indian banks for import of pearls for a period of one year, for which Reserve Bank of India guidelines lay out a total time period of 90 days from the date of shipment but the guidelines were ignored by overseas branches of Indian banks. They failed to share any document/information with PNB, which were made available to them by the firms at the time of availing credit from them.

The Enforcement Directorate (ED) recovered bank token devices of the foreign dummy companies used by the fugitive diamond trader to transfer the fraudulent funds. The probe agency found that Nehal Modi, brother of Nirav Modi had destroyed the devices and had even secured a server located in the United Arab Emirates (UAE) soon after the scam broke out. These dummy firms had been receiving the fraudulent PNB LoUs and were based out in British Virgin Island and other tax havens.

This case was a result of the mismanagement from the internal regulatory bodies within the PNB itself and also from the side of the Reserve Bank of India (RBI). This is not the only instance in itself where the public sector banks have failed to perform their duties and therefore major changes need to be incorporated into the regulatory mechanisms to prevent such frauds.

In the aftermath of this case, RBI has directed banks to integrate SWIFT and core banking systems. It has also constituted a committee to look into the reasons for high divergence observed in asset classification, various incidents of fraud and necessary interventions (also in terms of information technology) to prevent such frauds.

The government passed the Fugitive Economic Offenders Act (2018) which came into force on 21st April 2018. The Act was enacted to prevent economic offenders in the ilk of Nirav Modi from escaping the country.

**ESG Risk Management**

ESG is a specialised aspect of risk management, although having a broad range of potential applications. ESG assurance is less intimidating than you may think if you take a sound strategy and use the right tools, just as in every other area of risk management. ESG risk management is essential for identifying, managing, and reducing all associated risks. Be on the lookout for ESG software that can automate some of the steps necessary to evaluate your business or your clients' degree of ESG practise.

When evaluating ESG risks, there is no one universal strategy. Global regulators have not yet established a single standard that would apply to all countries or harmonise all ESG components. A corporation should be able to define ESG and the specific risks to which they may be exposed through data gathering and analysis. To review the business processes and determine whether they are in line with ESG objectives, a thorough risk assessment must be completed, just like for any other form of risk.

**Climate Risk**

Globally, weather and climate-related risks, which potentially cause loss and damage, have increased dramatically over the past few decades. The most recent climate projections indicate a significant increase in the frequency, duration and intensity of extreme weather events as well as severe slow-onset climate related changes. These pose a growing risk to sustainable development of communities and countries. Internationally there is an increasing recognition that adaptation and mitigation may not be enough to manage the impacts of climate change and both climate science and the international climate negotiations stress the urgent need to develop and implement effective climate risk assessment and management approaches in order to avert, minimize and address losses and damages.

So far there has been no accepted official definition of loss and damage. The working definition of Loss and Damage (L&D) as defined by UNFCCC is as follows:

"Loss and damage refers to negative effects of climate variability and climate change that people have not been able to cope with or adapt to."

**Climate Risk Management Process**

The six step climate risk management (CRM) process operationalises climate risk management at scale (see Figure 1).

1. Assess and match information needs with risk management objectives.
2. Define System of Interest.
3. Develop context-specific methodology.
4. Risk identification to identify low and high-levels of climate-related risk.
5. Risk evaluation to identify acceptable, tolerable and intolerable risks.
6. Assessment of risk management options.

**Need for a CRM Framework in India**

According to India's 2nd National Communication to the UNFCCC, a majority of its population is vulnerable to climate change and its impacts. The economy is closely tied to climate sensitive sectors such as agriculture, forestry and water among others, as well as to its natural resource base, thereby increasing its exposure and sensitivity to changes in existing climatic conditions. Exposure and sensitivity to climate change is exasperated by the fact that nearly 18% of the world's population is occupying only 2.3% of the world's land area. Thus, there is an immense stress to harness indigenous resources efficiently while ensuring a sustainable development pathway. The country's distinct topography and geographic features results in a wide range of climatic conditions across different regions. These climatic aspects continue to influence the biological, cultural and economic conditions. However, the climatic variability and geographic features also result in various forms of disaster occurrences such as cyclones, earthquakes, landslides and flooding among others. Thus, given the confluence of climatic vulnerabilities and disaster risks, there is a clear and present need for India to develop a robust CRM framework which can be utilized to help make decisions in tackling both these issues.

**Business Continuity Plan (BCP):**

A business continuity plan (BCP) is a document that outlines how a business will continue operating during an unplanned disruption in service. It is a system of prevention and recovery from potential threats to a company.

A business continuity plan (BCP) can be tailored to specific departments such as finance, HR, and marketing operations.

With respect to finance operations, a BCP would focus on maintaining financial systems and processes, ensuring that the company has access to sufficient financial resources, and maintaining financial reporting and regulatory compliance. The plan would outline procedures for securing financial data, restoring critical financial systems, and ensuring that key financial personnel are available to respond to the crisis.

For HR operations, a BCP would focus on maintaining personnel resources and ensuring that the company is able to continue to pay its employees and provide benefits. The plan would outline procedures for securing personnel data, maintaining payroll and benefits systems, and ensuring that key HR personnel are available to respond to the crisis.

For marketing operations, a BCP would focus on maintaining marketing systems and processes, ensuring that the company is able to continue to promote its products and services, and maintaining the company's image and reputation. The plan would outline procedures for securing marketing data, restoring critical marketing systems, and ensuring that key marketing personnel are available to respond to the crisis.

In each case, the BCP provides a framework for the department to follow in the event of a crisis, and it helps to ensure that the department can respond effectively and maintain its operations during the crisis.

features of an effective business continuity plan (BCP)

The components of business continuity are:

- **Strategy**: Objects that are related to the strategies used by the business to complete day-to day activities while ensuring continuous operations
- **Organization**: Objects that are related to the structure, skills, communications and responsibilities of its employees
- **Applications and data**: Objects that are related to the software necessary to enable business operations, as well as the method to provide high availability that is used to implement that software
- **Processes**: Objects that are related to the critical business process necessary to run the business, as well as the IT processes used to ensure smooth operations
- **Technology**: Objects that are related to the systems, network and industry-specific technology necessary to enable continuous operations and backups for applications and data
- **Facilities**: Objects that are related to providing a disaster recovery site if the primary site is destroyed

**Steps to Creating a Business Continuity Plan**

*Step 1: Assemble a Business Continuity Management Team*

The makeup of your team depends on your continuity objectives and the size of your company.

A good BCP should detail what your staff needs to do in the event of a disaster, what communication methods are required, and the timeframe in which critical IT services need to be available.

- Create a contact list of key people involved in your company's BCP, including names, titles, and communication info (both work and personal) such as phone numbers, email addresses.
- Provide a detailed overview of their roles and responsibilities so that everyone knows what is expected of them in an outage event.
- Have a process in place for how your BCP will be updated and how these updates will be communicated to the team.

This team will prepare standards for the project and train additional team members. They will also identify clear processes to improve project flow.

*Step 2: Ensure the Safety and Wellbeing of Your Employees*

- When planning, you must prepare to **prioritize the safety of your employees** amid a crisis. They will look to you, their community, and the government for guidance. Be proactive and transparently address their concerns. Right now, many companies have to decide to initiate or expand remote work arrangements and other policies that allow employees to work flexibly.
- Depending on your industry, you'll want to reallocate resources and reorganize teams, as well as establish employee wellbeing programs and procedures that **support a safe working environment**.
- Make sure you have proper communication channels in place to get in touch with all of your employees at the same time. Sending an email may not be sufficient if the wifi is down. Consider implementing a BC Planning software with an integrated emergency messaging tool to ensure all business processes are continuous, and everyone is safe. Communicate with your teams early and regularly. You want to engage your employees as you navigate through the current crisis.

*Step 3: Understand the Risks to Your Company*

Once your business continuity management team is assembled, you must conduct a business impact analysis (BIA).

This type of analysis will help you identify specific threats to financial performance, operations, supply chains, reputation, employees. It can serve as a starting point when identifying risks.

You and your team should brainstorm a list of threats and potential risks to your business. Then discuss how the risks mentioned above could affect business operations.

*Step 4: Implement Recovery Strategies*

Once a disaster occurs, and financial losses begin to grow, it can be challenging to get back on track without a BCP in place. Consider the following questions as you discuss options with your team:

- Do you have a way to get sales, HR, manufacturing, and support personnel back to work after a disaster to continue operating your business?
- How will you continue to meet the demand for products or services if your equipment or facility is damaged?
- If your facilities are impacted, will your employees work remotely at home or from an alternate location?

*Step 5: Test, Test Again and Make Improvements*

No matter how long you spend perfecting it, a business continuity plan is never truly finished—just as the risks and requirements of your industry are never set in stone.

Testing your business continuity plan allows you to validate it as you manage risks. While 88% of companies test their strategies to identify gaps, 63% of them do so to validate their plans.

**Crisis Management Plan (CMP)**

The process of handling and reacting to a sudden, unexpected occurrence that poses a serious threat to an organization is known as crisis management. A **crisis management plan** (CMP) is a specific type of BCP that focuses on the procedures and protocols for dealing with a crisis, such as a public relations crisis or a safety emergency.

Crisis management can involve different roles and responsibilities for finance, marketing, and HR managers, depending on the specific crisis and the company's operations.

For a finance manager, crisis management may involve overseeing the company's financial response to the crisis, ensuring that the company has access to sufficient financial resources, and maintaining financial reporting and regulatory compliance. The finance manager may also work with the company's legal and regulatory teams to ensure that the company follows all relevant laws and regulations as it responds to the crisis.

For a marketing manager, crisis management may involve overseeing the company's marketing response to the crisis, ensuring that the company is able to continue to promote its products and services, and maintaining the company's image and reputation. The marketing manager may also work with the company's public relations team to manage the company's image and reputation during the crisis.

For an HR manager, crisis management may involve overseeing the company's personnel response to the crisis, ensuring that the company is able to continue to pay its employees and provide benefits, and maintaining personnel resources. The HR manager may also work with the company's legal and regulatory teams to ensure that the company is in compliance with all relevant laws and regulations as it responds to the crisis.

In each case, the manager plays a crucial role in the company's response to the crisis, and their actions and decisions can have a significant impact on the company's ability to maintain its operations and recover from the crisis.

**Here cover features of Crisis Management Plan**

Need for Crisis Management

- Crisis Management prepares the individuals to face unexpected developments and adverse conditions in the organization with courage and determination.
- Employees adjust well to the sudden changes in the organization.
- Employees can understand and analyze the causes of crisis and cope with it in the best possible way.
- Crisis Management helps the managers to devise strategies to come out of uncertain conditions and also decide on the future course of action.
- Crisis Management helps the managers to feel the early signs of crisis, warn the employees against the aftermaths and take necessary precautions for the same.

Essential Features of Crisis Management

- Crisis Management includes activities and processes which help the managers as well as employees to analyze and understand events which might lead to crisis and uncertainty in the organization.
- Crisis Management enables the managers and employees to respond effectively to changes in the organization culture.
- It consists of effective coordination amongst the departments to overcome emergency situations.
- Employees at the time of crisis must communicate effectively with each other and try their level best to overcome tough times.

| **YES Bank Crisis- Case study** |
| --- |
| YES Bank was once the country's fifth-largest private lender by market capitalization. YES Bank had been founded by Rana Kapoor and Ashok Kapoor in 2004. The bank was ranked number 1 bank in the Business Today-KPMG Best Banks Annual Survey 2008. YES Bank was the first institution globally to receive funding through IFC's Managed Co-Lending Portfolio Programme and the first Indian bank to raise loan under IFC's A/B loan facility. |

**What has led to a crisis at YES Bank?**

The bank's loan book on March 31, 2014, was Rs 55,633 crore, and its deposits were Rs 74,192 crore. Since then, the loan book has grown to nearly four times as much, at Rs 2.25 trillion as on September 30, 2019. While deposit growth failed to keep pace and increased at less than three times to Rs 2.10 trillion. The bank's asset quality also worsened and it came under regulator RBI's scanner. Yes bank was lending aggressively disregarding the risk limits and also under-reporting the bad loans. They were lending to corporates that were already in very risk businesses and facing some challenges in their business like the Anil Ambani-led Reliance group, DHFL and IL&FS. All this happened in Rana Kapoor's (Founder of Yes Bank) tenure. The exposure of loans to such bad performing companies was huge in Yes Bank's case, and to add up they were hiding the NPAs (Non-performing assets) or misreporting the same. After the above fiasco, Ravneet Gill took charge of Yes Bank but struggled to revive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidence in the market. The tipping point came when one of the bank's independent directors Uttam Prakash Agarwal, resigned from the board in January 2020 citing governance issues.

Several reasons behind the crisis of YES bank were:

1. NPAs: YES Bank ran into trouble following the central bank's asset quality reviews in 2017 and 2018, which led to a sharp increase in its impaired loans ratio and uncovered significant governance lapses that led to a complete change of management. The bank subsequently struggled to address its capitalisation issues. YES Bank suffered a dramatic doubling in its gross NPAs between April and September 2019 to Rs 17,134 crore.

2. NBFC crisis: The crisis in India's shadow-banking space started with the unravelling of Infrastructure Leasing & Financial Services (IL&FS) and then extended to Dewan Housing Finance Limited (DHFL). YES Bank's total exposure to IL&FS and DHFL was 11.5 per cent as of September 2019. In April 2019, the bank had classified about Rs 10,000 crore of its exposures, representing 4.1 per cent of its total loans under watch list, as potential non-performing loans over the next 12 months.

3. Governance issue: YES Bank faced several governance issues that led to its decline. On January 10, independent director Uttam Prakash Agarwal quit citing deteriorating corporate governance standards and compliance failure at the lender. In 2018-19, the bank under-reported NPAs to the tune of Rs 3,277 crore, prompting RBI to dispatch R Gandhi, one of its former deputy governors, to the board of the bank.

   Rana Kapoor, who was instrumental in building YES Bank from scratch, was asked to step down as chief executive in January 2019.

4. Excessive withdrawals: YES Bank's financial condition dissuaded many depositors from keeping funds in the bank over a longer term. The bank showed a steady withdrawal of deposits, which burdened its balance sheet and added to its woes. The bank had a deposit book of Rs 2.09 trillion at the end of September 2019.

**Steps taken by RBI against YES Bank**

1. RBI has taken over the YES Bank management

2. The central has imposed a moratorium on the lender

3. RBI announced a draft 'Scheme of Reconstruction' that entails SBI investing capital to acquire a 49% stake in the restructured private lender.

**How can such conflicts between Management and Board be avoided?**

The global best practice recommends that at least three-quarters of board members should be independent, the board should have an independent chairman and not an individual who serve the role of both CEO & Chairman of the board, annual board elections should be conducted as this forces directors to make more careful decisions and be more attentive to shareholders because they can cast the vote to keep or eliminate a director each year.

Also, every year board self-assessment practices should be conducted, independent directors should annually/ quarterly meet and openly discuss various policies, management, and compensation without concerns about management influence.

Also cover a case study of any listed company in BSE /NSE.

**Disaster Recovery Plan (DRP)**

A disaster recovery plan (DRP) is a comprehensive plan that outlines the procedures and strategies that a corporation will use to restore its critical operations and services in the event of a disaster. The goal of a DRP is to ensure that the corporation can quickly and effectively recover from a disaster and return to normal operations.

In the corporate world, disaster recovery planning is a critical component of risk management and business continuity planning. Companies invest in DRPs to minimize the impact of disasters on their operations, protect their assets and data, and ensure that they can continue to serve their customers and stakeholders.

A DRP typically includes a detailed analysis of the potential risks and consequences of a disaster, as well as a plan for responding to and recovering from the disaster. This may include strategies for backing up data and systems, providing alternative means of communication, and establishing contingency operations to continue business activities.

In addition to developing the DRP, companies in the corporate world also regularly test and update their plans to ensure that they are prepared for any type of disaster that may occur. This helps to minimize the impact of the disaster on the company and ensures that the company can quickly return to normal operations.

**Here cover the features of Disaster Recovery Plan**

**Elements of Disaster Recovery Plan**

One way your organization can prepare and protect itself from disasters is to create and implement a disaster recovery plan (DRP). Organizations should create a disaster recovery plan that can address any type of disaster. The plan should be easy to follow and understand, and be customized to meet the unique needs of the organization. Typical elements in a disaster recovery plan include the following:

1. Create a disaster recovery team. The team will be responsible for developing, implementing, and maintaining the DRP. A DRP should identify the team members, define each member's responsibilities, and provide their contact information. The DRP should also identify who should be contacted in the event of a disaster or emergency. All employees should be informed of and understand the DRP and their responsibility if a disaster occurs.
2. Identify and assess disaster risks. Your disaster recovery team should identify and assess the risks to your organization. This step should include items related to natural disasters, man-made emergencies, and technology related incidents. This will assist the team in identifying the recovery strategies and resources required to recover from disasters within a predetermined and acceptable timeframe.
3. Determine critical applications, documents, and resources. The organization must evaluate its business processes to determine which are critical to the operations of the organization. The plan should focus

on short-term survivability, such as generating cash flows and revenues, rather than on a long term solution of restoring the organization's full functioning capacity. However, the organization must recognize that there are some processes that should not be delayed if possible. One example of a critical process is the processing of payroll.

4. Specify backup and off-site storage procedures. These procedures should identify what to back up, by whom, how to perform the backup, location of backup and how frequently backups should occur. All critical applications, equipment, and documents should be backed up. Documents that you should consider backing up are the latest financial statements, tax returns, a current list of employees and their contact information, inventory records, customer and vendor listings. Critical supplies required for daily operations, such as checks and purchase orders, as well as a copy of the DRP, should be stored at an off-site location.

5. Test and maintain the DRP. Disaster recovery planning is a continual process as risks of disasters and emergencies are always changing. It is recommended that the organization routinely test the DRP to evaluate the procedures documented in the plan for effectiveness and appropriateness. The recovery team should regularly update the DRP to accommodate for changes in business processes, technology, and evolving disaster risks.

In summary, an organization must develop a recovery team to create a disaster recovery plan that includes identifying and assessing disaster risks, determining critical applications, and specifying backup procedures. Other procedures may be included in the plan based on the organization. The recovery team and organization must then implement the DRP and follow through on the plan procedures. The DRP should be continually tested and maintained to consistently prepare the organization for evolving disasters and emergencies.

Also cover a case on disaster recovery plan of any company listed in BSE / NSE.

**Relationship between Business Continuity Plan, Crisis management and Disaster recovery plan in corporate world**

In the field of risk management and organizational resilience, business continuity planning and crisis management are two ideas that are closely related. A business' key operations will be maintained during and after a disruptive event, such as a natural disaster, cyberattack, or pandemic, according to a thorough document called a business continuity plan (BCP). BCP's goal is to guarantee that crucial operations and services can continue with the least amount of disruption possible and that the business can quickly recover from the incident.

The relationship between business continuity planning and crisis management is that a BCP provides the overarching framework for maintaining business operations during and after a disruptive event, while a CMP provides specific guidance for managing a crisis. Both BCP and CMP are essential components of a comprehensive risk management program, and they work together to ensure that an organization can continue to operate and recover from a disruptive event.

After the above para, please provide a table here to elaborate the relationship between Business Continuity Plan, Crisis Management and Disaster Recovery plan for ease of learning for the students. This table may be inserted after the example given below to understand the relation

**Let's understand this relation with an example: -**

Imagine that a multinational corporation is facing a financial crisis, caused by a sudden drop in demand for its products or a significant financial loss. The senior finance manager of the company is responsible for overseeing the company's financial response to the crisis and ensuring that the company's operations are maintained.

The senior finance manager immediately activates the company's business continuity plan (BCP), which outlines the procedures and strategies that the company will use to maintain its critical operations and services during the crisis. The BCP provides a roadmap for the senior finance manager and the crisis management team to follow, and it helps to ensure that the company's financial response is organized and effective.

The senior finance manager also assembles the company's crisis management team, which includes representatives from various departments, to respond to the crisis. The crisis management team uses the BCP to assess the situation and determine the best course of action. They quickly identify the critical financial systems and services that are most likely to be impacted by the crisis and prioritize their efforts to protect those systems and services.

The senior finance manager also works closely with the company's legal and regulatory teams to ensure that the company follows all relevant laws and regulations as it responds to the crisis. They also work with the company's public relations team to manage the company's image and reputation during the crisis.

In this scenario, the senior finance manager plays a crucial role in ensuring that the company's financial operations are maintained during the crisis, and that the company's response is organized and effective. The BCP and crisis management plan provide a framework for the senior finance manager and the crisis management team to follow, and they help to ensure that the company's response is as effective as possible.

We can conclude that in a crisis, the BCP provides a roadmap for the crisis management team to follow, and the DRP provides a roadmap for the recovery process. The BCP and DRP work together to ensure that the company can maintain its critical operations and services during the crisis and quickly recover from the disaster. The crisis management process helps to ensure that the company's response to the crisis is organized and effective, and that the BCP and DRP are implemented as effectively as possible.

## CYBER RISK MANAGEMENT

We have a responsibility to better understand the vulnerability and threat landscape given the rise in infections and attack scenarios. An active risk assessment method should be designed to help in the determination of how to best deploy security measures, according to risk management protocols to safeguard financial assets, information databases, and intellectual property resources. A number of methods are also available for setting up risk reduction procedures. In order to develop an effective and tenable plan for the short- and long-term protection of assets, it is necessary to consult with legal and insurance carriers.

In the modern landscape of cybersecurity risk management, one uncomfortable truth is clear—managing cyber risk across the enterprise is harder than ever.

**History of cyber security risk management**

According to Jeff Yost, in his article, *A History of Computer Security Standards*, the field of cybersecurity got its start alongside the development of the first computers, developed by the US Department of Defense in the late 1960s. Beginning with the Advanced Research Projects Agency Network (ARPANET), a pre-internet network of interconnected computers widely regarded as the first real network as we know it, governmental agencies relying on this network naturally relied on it to be secure.

As computer technology moved from private, governmental usage to public usage, this need for security continued, but it also became more complicated. Like other attacks against communication systems, such as the manipulation of tones used by the telephone system in order to gain access to the network, make free calls, or otherwise exploit telecom networks, the initial attacks waged against the early computer networks were also primarily based on seeking out and exploiting technical weaknesses.

*Cybersecurity in the 1980s*

The 1980s saw the emergence of the first commercially available antivirus software. Companies such as

Symantec, McAfee, and Trend Micro led the way in providing reliable protection against malicious programs. This period also saw an increase in computer viruses, as hackers began to target personal computers and business networks. In addition, this decade marked the rise of Internet security and the emergence of the international Computer Emergency Response Team (CERT).

*Cybersecurity in the 1990s*

The 1990s saw further development in cybersecurity, with the launch of firewalls, which act as a barrier to keep unwanted threats out. Companies such as Check Point Software Technologies created firewall systems that help protect against intrusions and malicious attacks. This decade also saw a huge increase in the number of cybercrimes, with hackers increasingly targeting critical infrastructure and corporate systems. As a result, governments around the world began to focus on improving their cybersecurity capabilities by introducing laws and regulations to protect citizens from online threats.

*Cybersecurity in the 2000s*

The start of the 21st century saw the emergence of sophisticated cyber threats. As technology continues to evolve, so too does the sophistication of malware and other malicious software. The 2000s saw a rise in phishing scams, ransomware, and zero-day attacks, prompting governments and companies to increase their investments in cybersecurity solutions. This decade also marked the beginnings of large-scale data breaches as hackers began targeting sensitive data.

*Cybersecurity in the 2010s*

The 2010s saw the emergence of cloud computing, which enabled companies to store data remotely on shared networks. However, this also created new risks, as malicious actors were now able to target multiple systems at once. To protect against these threats, businesses began investing heavily in security measures such as multi-factor authentication, encryption, and cyber insurance. This decade also saw an increase in the use of artificial intelligence (AI) and machine learning algorithms to detect potential threats before they can cause any damage.

*Cybersecurity in the 2020s*

The 2020s have brought even more challenges to the world of cybersecurity, including state-sponsored attacks, quantum computing, and the rise of 5G networks. In response, governments and companies are investing heavily in innovative technologies such as blockchain and artificial intelligence to help protect their systems from malicious actors. As cybersecurity continues to evolve, we expect to see further advances in the technology used to protect our data and networks. Cybersecurity is an ever-changing field, but with the right information and resources, we can all stay safe online.

By understanding the history of cybersecurity, businesses, organizations, and individuals can create an informed approach to security. Whether it's protecting against malicious threats or building a secure infrastructure for data storage, having a knowledge of the past can help us shape the future of cybersecurity.

**Cyber Security Risk Management Process**

**Provide genesis of Cyber Risk Management and then cover the points mentioned below**

1. Identify the risks that might compromise your cyber security. This usually involves identifying cyber security vulnerabilities in your system and the threats that might exploit them.
2. Analyse the severity of each risk by assessing how likely it is to occur and how significant the impact might be if it does.
3. Evaluate how each risk fits within your risk appetite (your predetermined level of acceptable risk).

4. Prioritise the risks.

5. Decide how to respond to each risk. There are generally four options:

   – *Treat* – modify the risk's likelihood and/or impact typically by implementing security controls.

   – *Tolerate* – make an active decision to retain the risk (e.g., it falls within the established risk acceptance criteria).

   – *Terminate* – avoid the risk entirely by ending or completely changing the activity causing the risk.

   – *Transfer* – share the risk with another party, usually by outsourcing or taking out insurance.

6. Since cyber risk management is a continual process, monitor your risks to ensure they are still acceptable, review your controls to ensure they are still fit for purpose, and make changes as required. Remember that your risks continually change as the cyber threat landscape evolves, and your systems and activities change.

**Cyber security measures**

As defined by the International Telecommunication Union Cyber security measures are classified as: legal, technical, organizational, capacity building, and cooperation aspects.

- Legal measures aim to provide legislations and an implementable regulatory framework to protect the cyber space.
- Technical measures consider the technological tools (software and hardware) to prevent, detect, mitigate, and respond to cyber-attacks.
- Organizational measures are important for the proper implementation of any type of national initiative or policy.
- Capacity building measures aim to enhance knowledge and know-how in order to promote cyber security.
- Cooperation measures aim to establish partnership between different stakeholders to increase cyber resilience of the organizations against cyber threats.

**CASE STUDY-1**

**Risk Governance and Management at TATA STEEL**

Tata Steel operates in an interconnected world with stringent regulatory and environmental requirements, increased geopolitical risks and fast-paced technological disruptions that could have a material impact across the value chain of the organisation. Tata Steel has implemented an Enterprise Risk Management (ERM) process to provide a holistic view of aggregated risk exposures as well as to facilitate more informed decision-making.

The following are the Risks faced by the Steel companies:

1. Macroeconomic Risks
2. Financial Risks
3. Regulatory Risks
4. Operational Risks
5. Market Related Risks

6. Climate Change Risks
7. People Risks
8. Strategic Risks

The followings are detailed analysis of various risks and their mitigation strategies

1. **Macroeconomic Risks**

   Overcapacity and oversupply in the global steel industry as well as increased levels of imports may adversely affect steel prices, impacting profitability.

   - Newer developments in the competitive global business environment and potential consolidation among competitors may adversely impact the Company's financial condition and prospects.
   - Slower than expected pace of growth in India, coupled with expansion in domestic steel capacity, may result in lower than expected realisations.

   **Key Mitigation Strategies**

   - Diversification of product portfolio
   - Development of alternate markets
   - Participation in industry consolidation.

2. **Financial Risks**

   - Fluctuation in foreign exchange rates due to volatility in financial markets may impact the Company's debt servicing and create uncertainties in accessing the financial markets.
   - Substantial amount of debt on the balance sheet may have an adverse impact on the Company's ability to raise finance at competitive rates.
   - Changes in assumptions underlying the carrying value of certain assets may result in the impairment of such assets.

   **Key Mitigation Strategies**

   - Maximising operational cashflow
   - Terming out debt and refinancing debt with favourable covenants
   - Appropriate foreign exchange hedging policies
   - Integration of business planning and cashflow projections with liquidity management.

3. **Regulatory Risks**

   - Non-compliance to increasing stringent regulatory environmental norms may result in liabilities and damage to reputation.
   - The Company operates leased mines. Non-renewal of mining leases may result in the Company having to purchase minerals at higher prices from the open market, impacting its profitability.
   - Removal of favourable trade measures such as anti-dumping laws, countervailing duties, etc. may impact the Company's business and prospects.

**Key Mitigation Strategies**

- Focus on compliance
- Dialogue with regulatory authorities for greater clarity and availing legal consultations for timely clearances
- Working with industry associations towards simplification of rules, a predictive policy regime and transition time for regulatory changes.

4. **Operational Risks**

- The steel industry is prone to high proportion of fixed costs and volatility in the prices of raw materials and energy. Limitations or disruptions in the supply of raw materials could adversely affect the Company's profitability.
- Failure of critical information systems/ servers that control the Company's manufacturing plants may adversely impact business operations.
- Violation of safety standards, unsafe acts and conditions may lead to Lost Time Injuries (LTIs) or fatalities, resulting in stoppage of operations, loss of personnel, and damage to assets and reputation.

**Key Mitigation Strategies**

- Enhancing in-house capability and leveraging from past learnings and expertise
- Establishing sources of supplies from alternate geographies
- Enhancing in-house capability in rail logistics and developing Deep Sea Port capacity
- "Committed to Zero" - Safety drives across the Company.

5. **Market Related Risks**

- Steel is a cyclical industry and excess volatility in the steel and raw material markets may adversely impact the Company's financial condition.
- Competition from substitute materials, or changes in manufacturing processes, may lead to a decline in product demand, resulting in loss of market share.
- Product liability claims could have an adverse impact on the Company's finances.

**Key Mitigation Strategies**

- Development of value-added products and enhanced services and solutions
- Strengthening contractual agreements.

6. **Climate Change Risks**

As of May 2018, 195 United Nations Framework Convention on Climate Change (UNFCCC) members have signed the Paris Agreement and 176 countries, including India, have become party to it. The Agreement aims to keep a check on the rising global temperatures and intensify actions required for a sustainable low-carbon future. Going forward, the steel industry will face stringent international and domestic regulations relating to Greenhouse Gas (GHG) emissions. Increasingly stringent climate control regulations may impact the Company's operations and prospects.

**Key Mitigation Strategies**

- Continued investment in environment related projects
- Collaboration with academic/research institutes for projects on climate change issues.

7. **People Risks**

- Any labour dispute or social unrest in regions where the Company operates may adversely affect its operations and financial condition.
- Loss of one or more members of the Senior Management, or inability to attract and retain employees, may affect the Company's business and prospects.

**Key Mitigation Strategies**

- Build relations with key stakeholders including local/regional influential people, interest groups and bureaucracy across levels of administrative machinery (taluka to state level) to address labour or social unrest
- Succession planning for Senior Management to ensure continuity in business
- People related policies for attracting and retaining talent.

8. **Strategic Risks**

- The Company is growing its Indian operations through organic and inorganic routes. The Company may be unable to realise the anticipated benefits of these growth plans which could have a material adverse impact on its financial condition and reputation.
- The Company may be subject to business risk relating to proposed joint venture with thyssenkrupp AG, including potential delays in completing the proposed transaction and/or the proposed transaction not consummating successfully.

**Key Mitigation Strategies**

- Strong engineering and project team to commission the expansion project within budgeted time and cost
- Ensuring that learnings from previous projects are applied for improved execution and faster ramp-up of production
- Deputation of experienced team from Tata Steel along with strong review and governance to accelerate the performance of the acquired assets
- Integrate the management of the acquired company to drive synergies. Bring Tata Steel expertise to the acquired assets in operations, maintenance and marketing to ensure high capacity utilisation, cost competitiveness and better product mix
- Experienced team driving focussed consultations with the relevant stakeholders in Europe.

## CASE STUDY-2

**Risk Management at MARICO**

**Marico is one of India's leading consumer products companies in the global beauty and wellness space. The following are the risks associated and their mitigation methods:**

**Risk management framework At Marico**

| Identify | Quantify | Plan | Implement | Monitor |
|---|---|---|---|---|
| Identify top risk for each function/ business unit level | Rate the risks on 'impact' and 'vulnerability' factors<br><br>Prioritise Top 10 risks at company level | Develop mitigation plan for each risk with relevant efforts and result metrics<br><br>Recommend plan to the Board for approval | Implement the risk mitigation plan | Examine whether the mitigation plans are on track.<br><br>Periodically review the existing risks and related metrics |

**Strategic risk**

Strategic risk refers to the internal and external events that may make it difficult, or even impossible, for an organisation to achieve their objectives and strategic goals. These risks can have severe consequences that impact organisations in the long term.

Strategic risk may arise from decisions taken by enterprise leadership or from the organization's position in its environment.

Some examples of strategic risk are:

- The introduction of new products or services by a competitor;
- Unsuccessful mergers or acquisitions;
- Evolving customer demands;
- Changes in senior leadership;
- Damage to the company's reputation;
- Poor cash flows and other financial challenges;
- Changes to the competitive or industry landscape (such as a merger of two rivals into a single, larger one);
- Supply chain issues, such as problems with suppliers or vendors;
- Technology risk.

In addition, some organizations also consider the following as sources and examples of strategic risk:

- Human resource issues, such as staffing shortages;
- Cybersecurity or IT disasters;
- Economic instability;
- Political risk;
- Exchange rate risk.

Any of these risks can affect the firm's future performance and innovation capability. They can also make it harder to respond to change and deal with supply chain and other disruptions.

| *Risk type* | *Description* | *Mitigation strategy* | *Stakeholders impacted* | *Capitals impacted* |
|---|---|---|---|---|
| **Changing consumer preference** | Demand could be adversely affected by shift in consumer preferences. Given the explosion of social media, the speed of such a shift could be unparalleled. | • Investment in consumer insighting to adapt to changing consumer preferences<br>• Actively monitor social media trends to spot early consumer trends; quickly respond to these trends with innovative offerings | • Consumers<br>• Shareholders | • Financial<br>• Social and Relationship<br>• Intellectual |
| **Competitive market conditions** | Increase in the number of competing brands in the marketplace, counter campaigning and aggressive pricing by competitors could create a disruption. | • Diversification in product offerings (entered into categories such as healthy foods, male grooming, skincare, premium haircare)<br>• Protect volumes in preference to short-term profitability<br>• Invest in brand building<br>• Agile response mechanism to counter competitive moves | • Consumers<br>• Shareholders | • Financial<br>• Social and Relationship |
| **Under performance of new product launches** | The success rate for new product launches in the FMCG sector is typically low. New products may not be accepted by the consumer or may fail to achieve the sales target. This risk is even more pronounced in cases where industry leaders invest in creating new categories. | • Invest in a new product development process with a funnel approach to ensure continuous flow of new ideas, coupled with rigorous governance around scalable innovations<br>• Prototyping approach to new product introductions for accelerated learning and adjustment<br>• Identify and invest in big-ticket new ideas in the chosen categories for driving growth<br>• Resilient presence in marketplace with adequate investments in brand building | • Consumers<br>• Shareholders | • Financial<br>• Social and Relationship<br>• Intellectual |

| | | | | |
|---|---|---|---|---|
| **Private labels** | Expansion of modern trade and e-commerce could lead to the emergence of private labels. | Invest in brand building to improve the saliency of our brands in the consumers' mind and partner with modern trade and e-commerce in category management | Consumers Shareholders | Financial Social and Relationship |

**Financial risk**

Financial risk is the possibility of losing money on an investment or business venture. Some more common and distinct financial risks include credit risk, liquidity risk, and operational risk. Financial risk is a type of danger that can result in the loss of capital to interested parties.

***Key Takeaways***

- Financial risk generally relates to the odds of losing money.
- The financial risk most commonly referred to is the possibility that a company's cash flow will prove inadequate to meet its obligations.
- Financial risk can also apply to a government that defaults on its bonds.
- Credit risk, liquidity risk, asset-backed risk, foreign investment risk, equity risk, and currency risk are all common forms of financial risk.
- Investors can use a number of financial risk ratios to assess a company's prospects.

*Pros and Cons of Financial Risk*

| ***S.No.*** | ***Pros*** | ***Cons*** |
|---|---|---|
| 1 | Encourages more informed decisions. | Can arise from uncontrollable or unpredictable outside forces. |
| 2 | Helps assess value (risk-reward ratio). | Risks can be difficult to overcome. |
| 3 | Can be identified using analysis tools. | Ability to spread and affect entire sectors or markets |

The four types of financial risks are- income risk, expenditure risk, asset or investment risk, and credit risk.

| ***Risk type*** | ***Description*** | ***Mitigation strategy*** | ***Stakeholders impacted*** | ***Capitals impacted*** |
|---|---|---|---|---|
| Volatility in interest rates | Though the FMCG sector is not capital intensive, fund requirements arise on account of inventory position building, capital expenditure undertaken or funding inorganic growth. | • Well-defined framework for capital gearing<br>• Maintain a liquidity chest for immediate working capital requirements<br>• In case offoreign currency borrowings, implement hedging as per policy | • Shareholders | • Financial |

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| | Changes in the interest regime and in the terms of borrowing could impact the financial performance of the Company. Further, this risk may also impact income on Company's investment and mark-to-mark hit on its investment portfolio. | • Manage interest rate risk to investments by implementing board-approved investment policy, which focuses on safety and liquidity, thereby mitigating short-term interest risks. | | |
| Foreign currency exposure | Marico has significant local presence in Bangladesh, South East Asia, Middle East, Egypt and South Africa. The Company is thus exposed to a wide variety of currencies. Fluctuations in these currencies could impact the Company's financial performance. | • While the 'translation risk' will continue to be unhedged, Marico has a well-defined hedging framework for managing any foreign exchange risk in India and Bangladesh. The Board-approved policy in this regard is periodically reviewed for its effectiveness. | • Shareholders | • Financial |
| Macro-economic factors | Factors such as low GDP growth and high food inflation could result in down trading from branded to non-branded or premium to mass market products. | • Focus on value-added products available to masses at affordable prices by driving aggressive cost management<br>• Focus on franchise growth in preference to short-term profitability<br>• Portfolio diversification, which is one of the pivots of the future | • Consumers<br>• Shareholders | • Financial<br>• Social and Relationship |
| Cyber and data security | Disruption in business operation due to non-availability of critical information systems through cyber-attack and loss of sensitive information due to unauthorised access. | • Identification of business critical IT systems and putting in place disaster recovery plan. The plans are tested periodically and kept relevant.<br>• Implementation of IT security practices in line with ISO 27001 standards | • Shareholders<br>• Value-chain partners<br>• Consumers | • Financial<br>• Intellectual<br>• Social and Relationship |

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| | | • Implementation of the latest cyber security technologies with preventive, detective and reactive controls | | |

**Operational risk**

Operational risk is the risk of losses caused by flawed or failed processes, policies, systems or events that disrupt business operations. Employee errors, criminal activity such as fraud, and physical events are among the factors that can trigger operational risk.

Most organizations accept that their people and processes will inherently incur errors and contribute to ineffective operations. In evaluating operational risk, practical remedial steps should be emphasized to eliminate exposures and ensure successful responses.

If left unaddressed, the incurrence of operational risk can cause monetary loss, competitive disadvantage, employee- or customer-related problems, and business failure.

The challenges witnessed in mitigating operational risks are as under:

1. The data required is not readily available.
2. Operational complexity is growing in enterprises.
3. The universe of operational risk types expands.
4. Operational risk oversteps with other risk functions.
5. Other risk functions feel threatened by what seems like duplicative risk function and don't cooperate.
6. Operations staff complain that monitoring and reporting take time away from their other responsibilities.

| ***Risk type*** | ***Description*** | ***Mitigation strategy*** | ***Stakeholders impacted*** | ***Capitals impacted*** |
|---|---|---|---|---|
| Commodity risk | Unexpected changes in commodity prices and supply could impact business margins and ability to service demand. The past few years have witnessed wide fluctuations in input prices. As a result, the overall uncertainty in the environment continues to be high. | • Commodity procurement is driven by a comprehensive process manual for each category that governs norms related to price discovery, inventory policy, supplier management, governance mechanism<br>• Company policy defines purchase of commodity in line with business requirement and in accordance with the inventory policy and does not encourage speculative buying or trading of said commodity either in physical form or in exchange | • Shareholders<br>• Value-chain partners | • Financial<br>• Manufactured |

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|---|---|---|---|---|
| Political instability in operating geographies | Unrestand and instability in countries of operation could significantly impact business results. | • A comprehensive insurance programme to hedge all insurable risks<br>• At a macro level, our country selection template emphasises geopolitical stability and robust growth prospects | • Shareholders<br>• Members | • Financial<br>• Manufactured |
| Underperformance of acquisition deliverables | Acquisitions may impose a financial burden on the parent entity. Integration of operations and cultural harmonisation may also take time, thereby deferring benefits of synergies. | A well-defined playbook for selection of targets, due diligence, value finalisation and<br>• Well-defined performance tracking systems to for monitoring progress periodically<br>• Cross-application of governance practices of the parent organisation soon after the takeover to ensure controls | • Shareholders<br>• Members | • Financial<br>• Human |

**Compliance and Governance risks**

Compliance risk is an organization's potential exposure to legal penalties, financial forfeiture and material loss, resulting from its failure to act in accordance with industry laws and regulations, internal policies or prescribed best practices. Compliance risk is also known as integrity risk.

Governance risk includes the risks related to an organization's ethical and legal management, the transparency and accuracy of company performance, and involvement in other ESG initiatives important to stakeholders.

| ***Risk type*** | ***Description*** | ***Mitigation strategy*** | ***Stakeholders impacted*** | ***Capitals impacted*** |
|---|---|---|---|---|
| Non-compliance with regulatory requirements | Inadequate compliance systems and processes can pose reputation risk for the Company. This could expose the Company to legal consequences, resulting in financial losses and penalties. | • Invest in IT-enabled compliance systems and processes<br>• Ensure all functions and units are aware of the laws and regulations to comply with<br>• Ensure adequate monitoring mechanism towards compliance<br>• Communicate periodically to reiterate the importance of compliance | • Government body<br>• Members | • Financial<br>• Social and Relationship |

| | | | | |
|---|---|---|---|---|
| Violation of ethics and business integrity | Failure to act with integrity or behave in a manner inconsistent with the Marico purpose statement and values defined, can damage corporate reputation and business results. | • Code of Conduct (CoC) and Marico Code of Business Ethics (MCoBE) outlines the Company's commitment to ethics and integrity<br>• Robust vigil mechanism, which enables the stakeholders to report concerns about unethical behaviour, fraud or violation of code<br>• Detailed personal orientation and mandatory certification on CoC for all employees<br>• Effective oversight by the Board of Directors | • Members<br>• Value-chain partners | • Financial<br>• Human<br>• Social and Relationship |

**Environmental risk**

Environmental risk is the probability and consequence of an unwanted accident. Because of deficiencies in waste management, waste transport, and waste treatment and disposal, several pollutants are released into the environment, which cause serious threats to human health along their way.

Examples of environmental hazards include:

- Air contaminants.
- Toxic waste.
- Radiation.
- Disease-causing microorganisms and plants.
- Pesticides.
- Heavy metals.
- Chemicals in consumer products.
- Extreme temperatures and weather events.

| ***Risk type*** | ***Description*** | ***Mitigation strategy*** | ***Stakeholders impacted*** | ***Capitals impacted*** |
|---|---|---|---|---|
| Disruption due to climate change events | Climate change related events that have the potential to disrupt Marico's operations, include changes in weather patterns | • Embrace climate change adaption and mitigation measures<br>• Promote scientific farming practices that are | • Shareholders<br>• Community<br>• Value-chain partners | • Financial<br>• Natural<br>• Manufactured<br>• Social and Relationship |

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| | such as increased temperatures and altered rainfall patterns.<br>This will affect the planning and day-to-day operation as the risk arises from availability of agriculture input materials, climate-related policy changes, evolving regulations and increased consumer concerns. | resilient to climate-related adverse impacts<br>• Continuous monitoring of environmental policies and regulations<br>• Investment in low-carbon technologies and equipment, and renewable and clean energy sources<br>• Adoption of CDP climate change disclosures and science based target (SBT) framework approach to minimise operational environmental footprint | • Consumers<br>• Government Body | |
| Adverse impact of energy and water scarcity | Energy and water are crucial for our business and day-to-day operations, Non-availability of these resources will lead to operational disruptions and impact production plans and product delivery. | Continuous focus on energy conservation measures<br>Investment in energy-efficient systems<br>Operationalising reduce-reuse-recycle model of water management across plants<br>Comprehensive watershed management programmes leading to harvesting and ground water recharge augmenting supply and water availability for community | • Shareholders<br>• Community | • Financial<br>• Natural<br>• Manufactured<br>• Social and Relationship |
| Handling of plastic packaging and waste | The regulatory, consumers and community response to the environmental impact of plastic wastes and emerging regulation by different state governments on ban of use of certain plastics, require us to find sustainable packaging solutions. | Adopt circular approach based on 4Rs - reduce, recycle, replace and recover<br>Investment in R&D measures to enable design innovations and reduce weight of plastic used undervalue enhancement approach by Marico | • Community<br>• Government body<br>• Value-chain partners | • Natural<br>• Social and Relationship<br>• Intellectual |

| | | | | |
|---|---|---|---|---|
| | | Strategic partnerships and collaborations to drive penetration of recyclable plastics and enhance use of recycled plastics<br>Honour obligations under the Extended Producer Responsibility (EPR) commitments<br>Continuous monitoring and tracking of plastic waste policies and regulations | | |

**Social risks**

Social risk comes from activities that affect the communities around the business. Things like labor issues, human rights issues, public health issues, and political uncertainty qualify as social risk.

| ***Risk type*** | ***Description*** | ***Mitigation strategy*** | ***Stakeholders impacted*** | ***Capitals impacted*** |
|---|---|---|---|---|
| Talent acquisition and retention | Mismatch in hiring and attrition of skilled talent the Company's ability to pursue its growth | • Marico's culture of openness, transparency and meritocracy coupled with its growth orientation helps attract top talent<br>• Marico's talent value proposition of building challenging, enriching and retaining top talent<br>• Invest in 'hiring right' and 'talent development and engagement' best practices | • Employees | • Human<br>• Manufactured |
| Community distress in operating locations | Social licence to operate refers to the level of acceptance by local communities in proximity to our operations.<br>The absence of understanding and inability to maintain a harmonious relationship with communities could | • Commitment to sustainable and inclusive growth in all social outreach programmes and initiatives with an aim to augment social infrastructure<br>• Constant engagement channels with the local community stakeholders to understand their needs | • Community | • Manufactured<br>• Social and Relationship |

| | | | | |
|---|---|---|---|---|
| | result in damage to our brand, reputation and pose risk to our operations. | | | |
| Failure to meet product quality and safety requirements | The quality and safety of our products are of paramount importance for our brands and our reputation. Any failure to meet the product quality and safety requirements reputational risk, loss of consumer trust and potential exposure to regulatory actions. | • Robust system to ensure compliance to regulatory requirements<br>• Assessment of quality and safety aspects of products at each stage in the value chain<br>• Stringent quality and safety compliance check for suppliers before inducting in the system<br>• Ingredients assessment in line with the requirements set for its usage according to the law of the land<br>• Facilitate consumer feedback on product safety and quality through dedicated Consumer Service Cell (CSC)<br>• Robust crisis management framework | • Government<br>• Consumers<br>• Value-chain partners | • Financial<br>• Manufactured<br>• Intellectual<br>• Social and Relationship |

## CASE STUDY-3

**Infosys: Mitigating water risk at India-based hubs**

For over 15 years, Infosys - provider of business consulting, IT and outsourcing services - has maintained a plan to mitigate its operational risks related to water supply. Collaboration between the enterprise risk management (ERM) and sustainability functions enables Infosys to address risks at the facility-level while conducting overall monitoring activities at the enterprise level. Implementing measures to save and monitor water availability makes Infosys a steward of its environment while also delivering value to its business and its stakeholders.

Risk of water scarcity

Infosys employs more than 200,000 people at 116 global development centers, with 40 of its largest in India. The rapidly growing Indian population and increased demand for water resources has created a growing concern over water availability in the country. Because of its large campuses in major Indian cities, Infosys considers water stress and scarcity a significant near-term risk to its business operations India.

Water supports the company's human capital (i.e., cooking, cleaning, bathrooms and drinking) at their campuses and is also necessary for landscaping and cooling towers.2 Water shortages during dry periods have the potential to halt operations at affected campuses, which would negatively impact the company's ability to fulfill contractual obligations with customers and achieve performance goals.

**Response to water risks**

To address water risks, Infosys encourages collaboration between ERM and sustainability functions. The Infosys sustainability team conducts detailed risk assessments at individual facility locations while ERM conducts assessments at the corporate level. The company undertakes an iterative process: first assessing inherent risk and subsequently applying control measures and assessing residual risk.

Infosys chooses among five risk response types in line with COSO's ERM framework: accept, avoid, pursue, reduce, escalate and share. In locations where water scarcity risk is high, avoiding or accepting the risk is not an option. In these cases, the company chooses to "reduce" the risk. Infosys uses site-based water risk assessments and root cause analyses to develop action plans for reducing risks to "low" or "moderate" levels. If actions taken do not fully mitigate the risks, Infosys may decide to reduce the impact by temporarily moving business operations or by reducing their footprint in the affected development center.

Infosys emphasizes the use of root cause analysis so that action plans focus on the underlying problem rather than symptoms. In the case of water scarcity, this approach has helped them determine what is influencing the water shortages: water access, lack of water storage or other issues. Following this analysis, the company implements mitigation measures to address the root cause and reduce risks to acceptable levels. These measures have included:

- Water conservation through reduce, recycle and reuse measures (e.g., water efficient fixtures, wastewater treatment)
- Aquifer recharge through injection wells
- Rainwater harvesting and reuse
- Construction of underground reservoirs that hold water to last for at least five days across locations
- Efficiency programs led by smart water metering program that monitors water consumption and encourages water use reduction

These measures are designed so that Indian campuses can sustain themselves for seven days using stored rainwater and potable water in the case of extreme water shortages. The sustainability team monitors water resources at all campuses and develops tailored responses at each campus.

**Monitoring water scarcity**

Sustainability and ERM work together to monitor water scarcity across the enterprise. Sustainability teams collect and use the following types of data to monitor and assess water risk at its campuses:

- Rainfall data over a 10-year period for each geographic area;
- Water table data for each geographic area;
- Storage capacity of rainwater on each campus;
- Availability and cost of water via water tankers for delivery;
- Freshwater usage from municipalities, private providers, ground water and rainwater.

Corporate ERM monitors water scarcity as an emerging risk. It tracks an enterprise-wide metric of "per capita water consumption" using information provided by sustainability teams. Per capita water consumption is calculated by dividing the average monthly water consumption at Infosys locations by the average employee count per month, which is the sum of the swipe counts for employees and support staff in the Infosys offices. Corporate ERM actively tracks this metric to determine if water risk will become a higher corporate level priority in future years.

**Business outcomes of managing water risk**

Infosys' risk management approach to water scarcity at the site and regional levels has been critical for realizing value for its customers, employees and communities. The company's water risk management strategy in India enables the company to:

- Open new campuses in locations where competitors may not be able to operate due to water shortages.
- Maintain continuity in operations using stored water in times of scarcity, which helps maintain customer confidence and profitability.

The outcomes stem from Infosys' organizational structure, which encourages sustainability to assess and mitigate risk at the local level while ERM maintains an enterprise wide view. Further, root cause analysis of local water issues empowered Infosys to develop effective responses and mitigation approaches at individual campuses.

## CASE STUDY-4

**Enterprise Risk Management in Banking**

A risk management framework and a risk appetite statement serve as the two pillars around which Toronto-based TD Bank structures its risk management. The enterprise risk framework outlines risk management procedures for identifying, evaluating, and controlling risk as well as defining the risks the bank must manage. The bank's readiness to accept risk in order to achieve its growth goals is described in the risk appetite statement. The risk committee of the company's board of directors is in charge of both pillars.

The International Organization for Standardization's (31000) standard, which has subsequently been modified, included risk management frameworks as a significant component. The standards offer general recommendations for risk management initiatives.

Also, the Committee of Sponsoring Organizations of the Treadway Commission's efforts led to the creation of risk management frameworks (COSO). The organisation was formed to combat corporate fraud, and one of its focuses was risk management.

TD moves on to the risk appetite statement after finishing the ERM framework.

The bank, which established a sizable foothold in the United States through significant acquisitions, decided that it will only take on risks that satisfy the following three requirements:

- The risk is appropriate for the company's plan, and TD can recognise and control it.
- The risk does not expose the bank to a high danger of suffering a sizable loss.
- The danger does not put the business at risk of damage to its reputation and brand.

Strategic risk, credit risk, market risk, liquidity risk, operational risk, insurance risk, capital adequacy risk, regulator risk, and reputation risk are a few of the significant hazards the bank faces. These categories are described by managers in a risk inventory.

Annual reviews are conducted of the risk framework and appetite statement, which are monitored on a dashboard against indicators including capital adequacy and credit risk.

To mitigate risk, TD employs a three lines of defence (3LOD) strategy, a technique that is well regarded by ERM professionals. These are the three lines:

- A business unit and corporate policies that implement controls, manage risk, and keep track of it.
- Rules and oversight that ensure risk monitoring, evaluation, and adherence to the risk appetite and framework.
- Internal reviews that independently confirm the effectiveness of risk-management practises.

## CASE STUDY-5

**Enterprise Risk Management in Pharmaceuticals**

Risks to drug firms include those related to consumer trust, regulatory action, and challenges to product quality and safety. ERM experts stress the significance of ensuring that strategic aims do not contradict in order to prevent these risks.

Such a dispute resulted in a breakdown in risk management for Britain's GSK, among other problems. Early in the new millennium, the corporation worked to boost profits and sales while simultaneously making sure that its products were safe and effective. Failure to adhere to current good manufacturing standards (CGMP) at the company's plant in Cidra, Puerto Rico, was one danger the business faced.

CGMP involves overseeing and controlling the manufacturing process, managing risk, and assuring the safety of both raw materials and final pharmaceutical products. Escalating repercussions for CGMP non-compliance might include warnings, recalls, and even criminal charges.

In order to resolve U.S. allegations over medications produced at the Cidra plant, which the company eventually closed, GSK's unit entered a guilty plea and made a $750 million payment in 2010. In 2004, a sacked GSK quality manager notified authorities and brought a whistleblower action. The U.S. Department of Justice stated in its announcement of the consent decree that the plant had a history of bacterial contamination and that several medications produced there in the early 2000s breached safety regulations.

The whistleblower claimed that GSK's ERM process was unable to respond to warning indicators of CGMP non-compliance in a number of ways. The U.S. Food and Drug Administration sent the corporation warning letters about the activities at the plant in 2001, but the company did not address the problems.

Also, the business disregarded the quality manager's compliance report, which recommended that GSK shut down the plant for two weeks in order to address the issues and alert the FDA. Court documents claim that plant employees simply skimmed off the top of rejected goods and sold them illegally. Also, they manually scraped the interior of an antibiotic tank to obtain more product, contaminating the product in the process.

## CASE STUDY-6

**Enterprise Risk Management in Insurance**

The Zurich Insurance Group in Switzerland recognises that risk is a given for insurers and strives to take calculated risks within a given risk tolerance.

The enterprise risk management framework of the multinational insurer attempts to safeguard capital, liquidity, earnings, and reputation. Risk management is based on governance, and the framework specifies who is responsible for accepting, managing, overseeing, and disclosing risks.

The business monitors internal and external threats to its strategy and financial plan using an unique process called Total Risk Profiling (TRP). TRP evaluates risk based on probability and severity, and aids in developing and putting into action mitigating actions.

Zurich's tolerance for risk is constrained by its desire to maintain a sufficient level of capital to receive a rating of AA from rating agencies. The business employs its own Z-ECM, or Zurich Economic Capital Model, for this. With a statistic that compares risk profile to risk tolerance, the model estimates risk tolerance.

The corporation wants to hold capital between 100 and 120 percent of capital at risk in order to keep the AA rating. Under 90 percent is below risk tolerance, while beyond 140 percent is deemed overcapitalized (therefore at risk of limiting growth) (meaning the risk is too high). The insurer considers taking mitigating action on either side of 100 to 120 percent (90 to 100 percent and 120 to 140 percent).

Regulators' expectations for the amount of capital that Zurich must maintain are heavily influenced by Zurich's estimate of risk and the characteristics of those risks. The risk matrix is a well-liked tool for risk assessment, and "Free, Customized Risk Matrix Templates" contains a number of different templates.

Zurich discovered that its biggest exposures in 2020 were market risk, including declining asset valuations and interest rate risk, insurance risk, including significant payouts for covered customer losses, which it hedges through diversification and reinsurance, credit risk in assets it holds and receivables, and operational risks, including internal process failures and external fraud.

## ADDITIONAL CASE STUDIES IN RISK MANAGEMENT

***1. Cyber Security Risk Management***

**Case study 1: A Medical Practice is Hit with Ransomware**

Medical practices are a prime target for ransomware attacks due to the amount of valuable data they hold. In addition to a potential ransom payment, personal data and credit card information can be sold by cyber criminals on dark web marketplace forums. Small individual and group practices may also lack comprehensive cybersecurity, making them an easy target for malicious attacks.

Ransomware frequently enters the system via a virus on an email attachment. It searches on the computer for data to encrypt and then spreads to other computers and files on the network. The virus encrypts the data, making it unreadable and unusable. The attacker then demands an untraceable digital payment in exchange for a decryption key. The data may or may not be released after payment.

*The Cybersecurity Challenge*

The billing department of a medical practice received a ransomware demand on their desktop screen. The practice manager contacted their IT support person. IT shut down the network and began investigating. The practice had no access to anything on their network and switched to handwritten paper records for scheduling, clinical notes and prescription writing.

The IT support provider was not able to solve the issue, and needed cybersecurity expertise to investigate and halt the attack. Cybersecurity experts determined that the virus had entered the system as an email attachment that resembled an invoice. Once it was on the computer, the virus searched for data to encrypt and then spread to the rest of the network.

Fortunately, the practice had offsite physical backup of most of the records and did not need to pay the requested ransom. The backup data was requested from storage, shipped, cleared of any remnants of the virus and then reloaded back onto the network. Unfortunately, recovery took more than a week due to the method of backup and created unexpected additional charges for recovery services.

*Recovery solutions and key takeaways*

This practice averted devastating failure by having backup data available to reload. The cybersecurity team provided disaster response, mitigation and recovery services and then implemented updates and additional protections to lessen the risk of cyber-attacks and data breaches. Many of the security products in use at the practice were unpatched and outdated and had not been reviewed for years. The team conducted a full assessment and submitted a comprehensive plan. Here are some of the changes, updates and improvements put in place:

***Technical Controls*:**

- Email filters
- Antivirus software update
- Local and cloud data backup
- Firewall updates
- Administrative access restrictions
- HIPAA policy and procedure controls addressed

***Employee Awareness Training*:**

- Recognizing suspicious emails
- Downloading from unfamiliar websites
- Recognizing phishing attempts
- Using approved portable storage devices
- New employee HIPAA security and privacy training
- Physical safeguards for data
- Updated policies and procedures enacted

***Disaster Response and Business Continuity Planning*:**

- Data backup plan
- Backup testing
- Disaster recovery plan

***Monitor Staff Usage and Practices*:**

- Phishing assessments
- User activity monitoring
- Security assessments
- Compliance requirement adherence
- Verify cybersecurity capability and knowledge of IT employees

***Insurance review*:**

- Update professional liability insurance for data breaches
- Review cyber insurance for coverage for data breaches and response

**Case Study 2: Phishing Attack and Employee Password Compromise**

Phishing attacks are a type of social engineering attack designed to steal data, login credentials and credit card numbers. Cybercriminals masquerade as a fellow employee or other trusted entity and trick users with a malicious link. The link may be used to spread ransomware in the system or get information such as passwords and logins or credit card numbers. These attacks can have devastating results, including financial loss and damage to credit and reputation, and can also be part of a scheme to gain access to a larger partner company's data.

*The Cybersecurity Attack Challenge*

An employee at a regional grocery retailer received an email from his co-worker, informing him that she was sharing a document with him. He had received documents from her before, but wasn't expecting one that day. The email was vague and had no project details, which was unusual. He clicked the link, and it opened to what looked like the usual file-sharing site the company typically uses. He was asked to enter his login and password, then got an error message. He tried again and got another error message.

The employee contacted his manager to request a password reset and report trouble downloading a shared document. He also mentioned that he called the co-worker, and she said she had not sent him anything. The manager was suspicious that this was likely a hacking incident.

*Remediation, Recovery and Awareness Training*

The cybersecurity team was contacted and immediately reset everyone's passwords. They verified that the email was a phishing attempt using a fake site. They also checked security settings for any suspicious rule changes, and informed everyone at the company about the incident. Two-factor authentication for signing into accounts was implemented to alert users to any new sign-ins from their account. The security team also scheduled security awareness training and testing for this company. Employees who receive comprehensive training are better able to spot phishing attempts by learning techniques such as checking the URLs of any suspicious emails and verifying with the sender directly about anything that appears unusual.

Thankfully, the employees alerted management right away, which helped prevent data theft and compromise. Management made the decision to engage the cybersecurity team to respond quickly, halt the attack and verify no other systems were compromised. The phishing attack alerted upper management to the need for additional security training to educate and reduce cyber risk in this area.

**Case Study 3: Infrastructure Monitoring and Weak Passwords**

An industrial thermostat manufacturer noticed unusual activity on the network. The cybersecurity team examined logs that indicated someone was logging in to networks and servers at unusual times using company credentials. No evidence of malware or Trojans was found. The cybercriminal logged in at will using a very weak, common password. After changing the password, the team investigated to determine whether anything was stolen and whether the attacker was still getting into the system.

The cybersecurity experts were able to remotely image the servers and preserve the forensic data of the incident and remediation for reporting and insurance purposes. The investigation revealed that the cybercriminals stole a large amount of data by converting it into an image and hiding it on the website. They could revisit at any time to retrieve the image without logging in.

*Incident Response and Recovery Objectives*

The data stolen was not considered confidential or protected by regulations, so no customers or regulators had to be notified. The incident did serve to highlight cyber defense weaknesses in the company's daily practices and infrastructure monitoring. A remediation plan was put in place by the cybersecurity consultants that included these items:

- Update security policy and regularly test for compliance
- Conduct regular employee security awareness training
- Regularly change strong passwords
- Monitor administrative accounts for unusual usage
- Monitor network traffic and data access
- Protect and monitor infrastructure security

***2. Financial Risk***

**Case Study : USAA**

According to the banking and compliance press, the Financial Crimes Enforcement Network (FinCEN) and the Office of the Comptroller of the Currency (OCC) fined USAA Federal Savings Bank (FSB) $140 million by for failing to implement and maintain a BSA/AML compliance program.

Deficiencies pointed out include inadequate internal controls; detection, evaluation, and reporting of suspicious activity; staffing; training, and third-party risk management, as well as significantly understaffed BSA/AML compliance departments.

This is a common practice in banking, especially when many workloads are coupled with tight deadlines. However, USAA failed to train or ensure contractors had the necessary qualifications, worsening the situation.

It has been reported that the new transaction monitoring system implemented by USAA FSB is "too sensitive and generates an unmanageable number of alerts and cases."

An important lesson from this case is that "Ignore regulatory findings at your own risk." Heavy regulatory fines do not occur by accident: They result from accumulating failures and procrastinating about implementing the necessary changes and improvements to meet regulatory requirements. Due to the difficulty and discomfort associated with transformations and change, most firms delay implementing changes in response to regulatory findings until the last minute. This may be too late, as in the case of USAA.

A weak control environment can attract fines by regulators anywhere in the world, as has happened in the US, UK, and Asia.

In Asia, for example, regulators charged banks fines totaling $5.1 billion for failing to comply with AML laws. Banks are required to review, verify, and report suspicious activity in response to regulatory findings and sanctions.

An AML risk management framework should incorporate technology and automation for detection and alerts as well as proper recording of false positives and false negatives.

Moreover, the COVID-19 pandemic changed customer and business behavior, particularly with the rise of remote transactions, which makes it more difficult for financial institutions to detect anomalies.

Fraud risk management and AML are constantly changing as new opportunities present themselves for fraudsters in new economic and business environments.

***3. Market Risk***

**Case Study 1: China Aviation Oil (Singapore) Corporation Limited's Jet Fuel Scandal (2005)**

China Aviation Oil (Singapore) Corporation Ltd. (CAO) was involved in the biggest scandal of the city-state of Singapore since the Nick Leeson case (1995), in which Baring Bank collapsed and lost around $1.3 billion in speculative trading. Following losses of around $550 million, CAO filed for bankruptcy in November 2004. Improper application of accounting principles, and inadequate risk management systems for the speculative options deal, were the major contributing factors towards CAO's failure.

CAO's major portion of business came from deals in jet fuel procurement. By 2000 it obtained 92% market share of jet fuel imported to China's civil aviation industry. A marked increase in the profits of the company was due to the monopoly CAO had in the market. Enjoying monopoly in the market the following years showed a marked increase in the profits of the company. However, wrong bets on fuel prices in 2004, by taking a bearish stance in the jet fuel market, forced the company into a scandal which cost CAO dearly.

The CEO, Mr. Chen Juilin, was held responsible for the loss and arrested and charged with fraud and failure to report losses and subsequently was fined $330,000/= and imprisoned for over 4 years.

*Trajectory to Devastation*

CAO started its option trading in 2002 . Initially, CAO used to deal only in derivatives of futures and swaps to hedge its jet fuel market risk. However, in the mid-2003, in order to bolster its profile in the market, CAO started trading in speculative derivative options.

The objective behind the speculative options trading was to generate profits from the premium. However, the risk of such trades was not properly assessed by CAO; in fact CAO did not have the proper risk management framework to handle such complex options. The PwC reports:

The fact that the company commenced speculative options trading in the first quarter of 2003, without putting in place a proper risk management environment, raised questions on the strength of its corporate governance.

Originally, CAO took a bullish view of the jet fuel market. Predicting that the market price of jet fuel would continue its upward trend, CAO took a long position in the market, and sold puts and bought calls. CAO predicted correctly. Favourable market trends resulted in CAO exercising the call options at expiry. Written put options expired worthless. CAO gained from the exercise of call options and from the premium of put options; this strategy yielded enormous profit for CAO in the first three quarters of 2003.

By the end of 2003, CAO revised its strategy to a bearish stance; CAO predicted that the trend of jet fuel prices would reverse and the prices of jet fuel would go down. The CEO signed contracts with several banks, buying put options and selling call options. But that was a wager the company lost. The prices soared well above the strike price of the call of $38 and CAO faced a large deficit.

Losses could have been floored if CAO had followed the risk management procedure, where a stop-loss limit would have affectively applied and further trading halted. However, despite mark to market losses of $30 million by mid-2004, the CEO increased the bet; he bought back the short-dated option and sold longer dated option. That was done in the hope that the jet fuel prices would eventually decline and the premium could be used to cover the losses. The move instead resulted in increased exposure for CAO.

The jet fuel price continued its upward trend and by October 2004, the mark-to-market losses increased to $180 million. By November 2004, when the losses had mounted to $550 million, CAO was required to meet the margin requirements but was not completely successful in doing so. CAO in their Scheme of Arrangement, dated the 30 November 2004, stated:

*"the company was unable to meet some of the margin calls arising from its speculative trades, resulting in the company being forced to close the positions with some of its counter parties. From 26 October 2004 to date, the accumulated losses from these closed positions amounts to approximately US$390 million. The Company is in the process of closing the remaining outstanding positions and estimates the losses from the closure of these positions to be approximately US$160 million" (China Aviation Oil).*

*Reporting*

CAO started trading options in 2002 and 2003 but the trading was not disclosed in the financial statements. Then from March 28, 2003, CAO started trading options on its own account. By not following the best accounting principles, CAO made a very crucial error in the valuation of options. CAO valued options at intrinsic value and ignored time value of money. Such erroneous valuation of the option was done throughout 2004 by CAO. That resulted in accounting errors being present in the all quarterly disclosures.

According to the assessment done PwC, CAO should have followed IAS 39 and FAS 133; two accounting standards that recognized derivatives at fair market value. Taking time value of money into consideration, losses and not profits as reported by CAO in its disclosures, were incurred for each of the quarters:

| S$ Million | 1Q** | 2Q | YTD*** June 04 | 3Q | YTD September 04 |
|---|---|---|---|---|---|
| Reported PBT* | 19.00 | 19.30 | 11.30 | 11.30 | 49.60 |
| Adjusted PBT* | -6.40 | --58.00 | -64.40 | -314.60 | -379.00 |

* PBT = Profit before tax

** Q = Quarters

*** YTD = Yield to maturity

(*Source: PricewaterhouseCoopers*)

Following such heavy losses, on December 02, 2004, COA announced it would be seeking protection from creditors to avoid bankruptcy.

**Penalties**

In August 2005, China Aviation Oil Holding, the parent company, paid an S$8 million penalty. China Aviation Oil Holding breached Singapore's insider trading laws by selling 15% shares of CAO to Deutsche Bank without informing the share holders.

In February 2006, CAO's former finance chief, Peter Lim, was sentenced two years in prison for his part in the derivatives trading scandal. He was found guilty of conspiring to cheat adviser Deutsche Bank and fined S$150,000 (US$92,000) for releasing false information.

On March 15, 2006, former CEO of CAO, Mr. Chen Juilin, pleaded guilty to six criminal charges; he was fined S$330,000 and was sentenced to 51 months in jail.

*Chronology of the Events*

| Dates | March 2003 | Last term of 2003 | Throughout 2004 | November 30, 2004 | December 02, 2004 | February & March 2006 |
|---|---|---|---|---|---|---|
| Events | Enters the speculative market with bullish strategy in jet fuel market | Took a bearish view of the jet fuel market | CAO facing significant mark-to-market losses because of jet fuel prices rising steeply | Discloses losses of $550 million | Announced it would be seeking protection from creditors | Perpetrators punished |

*Cause of Collapse*

CAO had a risk management system in place since 2002. But neither the board nor the internal audit committee had the time and the expertise to understand the system. Additionally, the system was not prepared with speculative options derivative trading in mind but was designed for swaps and futures trading. Even then when mark-to-market losses were increasing, the system provided a loss-stop limit which was blatantly ignored by CAO. CEO restructured the options more than once in the period of crises which further increased risk exposure of CAO.

The accounting methods used were not meant for complex options. The accounting methods used looked at the intrinsic value of the option and ignored the time value component; the values of options differed significantly from those of the counter parties. Additionally, losses were not reported and accounting errors were made to show favorable financial statements.

*Key Takeaways*

The scandal provides another example in which: regulatory compliance, profit reporting and bending laws took precedence over the risk management and proper accounting reporting. There was a lack of oversight and inadequate knowledge of the market. Considering this, the lessons to take away from this case study are:

1. Better control and enhancement of risk management is necessary in order to avoid sharp, unprecedented and unexpected losses.
2. An independent risk management department which provides on the ground vigilance and responsiveness to ensure risk management policies are adhered to.
3. A team which has the required expertise to manage risk.
4. Build early-warning systems, which encourage employees to find potential risks and report them to management.
5. The financial reporting must follow the best practice with frequent and detailed disclosures.
6. In order to know the loss in different scenarios stress testing must be done.
7. One should not indulge in a market one does not have good knowledge of.

Many of the factors contributing to the failure of CAO are similar and equally applicable to different business contexts so it is important to learn from it and not to repeat it

**Case Study 2: JP Morgan Chase London Whale CIO synthetic credit portfolio (SCP) debacle**

*Introduction*

JPM's CIO was responsible for investing the excess cash of the bank. The main investment was in high quality income bearing securities such as whole loans, mortgage backed securities, corporate securities, sovereign securities, asset backed securities, etc. The synthetic credit portfolio (SCP) was constructed in 2007 in order to protect the bank against adverse credit scenarios such as widening credit spreads during the financial crisis.

The synthetic credit portfolio positions were based on standardized credit default swap (CDS) indices. The positions were the purchase and sale of protection against credit events of the corporate issuers tied to the basket of CDS included in the indices. If the protection was bought (short risk positions) the cash flows were as follows:

| ***Pay*** | ***Receive*** |
|---|---|
| Periodic Premiums | Payments if and when a company included in the CDS basket defaulted, filed for bankruptcy or restructured debt. |

If the protection was sold (long risk positions) the opposite would be true – in exchange for receiving premiums, the CIO would have to pay protection if a credit event were to occur in the concerned index. Positions were in the different CDS indices & tranches (CDX, iTraxx; Investment grade and High Yield).

While the SCP performed well in 2009 netting the CIO $1 billion, the notional size of its synthetic portfolio increased significantly from $4 billion to $51 billion during 2011, in light of the European default crisis. In December 2011, following a more positive outlook for the economy, CIO was asked to reduce the exposure of SCP and the risk weighted assets of the CIO.

Given the loss estimate of $500 million for unwinding synthetic credit portfolio positions by selling them off due to current market conditions, loss of premium & execution costs, and following a chance win of $400 million on a speculative trade, the CIO instead opted to reduce RWA by implementing a hedging strategy using a portfolio of options, in line with the Comprehensive Risk Measure (CRM) of Basel 2.5, and a new VAR model to calculate the risk & limits.

The new model significantly reduced risk numbers, allowing the traders to implement the options portfolio strategy. However, the strategy did not work as expected, given that the market environment and correlation between positions were not in line with traders' expectations, and instead resulted in trading losses that continued accumulating. CIO traders tried to defend their existing positions by further growing their portfolios with huge trades to support market prices. Given the illiquidity of the markets, however, the CIO became significant market movers in these securities, thus reducing their ability to exit the markets without being impacted negatively by it.

For the first quarter financial results, CIO traders had tried to downplay mark to market losses by setting marks that were at significant variance to the midpoints of dealer quotes in order to show a better than actual MTM picture on the books. This eventually led to a restatement of the first quarter earnings and refiling of financial results. Mark to market losses grew to $5.8 billion as of *30$^{th}$ June 2012.*

*Chronology of Events*

| ***Years / Dates*** | ***Events*** |
|---|---|
| 2007 | Launch of SCP |
| 2011 Last Quarter | SCP asked to evaluate reducing RWA |
| January 2012 | Trading losses of $15 million on unwinding positions. VaR & CSBPV limit breaches. |
| 23 January 2012 | Temporary approval of VaR limit increased |

| | |
|---|---|
| 31 January 2012 | Implementation of new VaR model |
| January - March 2012 | Notional value increased to balance portfolio & defend positions |
| February & March 2012 | Issues & RWA reduction strategy not discussed in review meetings |
| 21 March 2012 | Fears that the SCP's positions leaked to market |
| 22 March 2012 | CSW 10% limits exceeded |
| 23 March 2012 | CIO head calls for SCP to stop trading |
| 29 March 2012 | Stress limits breached |
| March – April 2012 | Understatement of MTM losses |
| 5 April 2012 | CIO head informed JPM's senior management of some SCP issues |
| 6 April 2012 | London Whale article published by Bhoomingdale & WSJ |
| April 2012 | Misleading loss estimates & market recovery shared with senior management |
| 29 April 2012 | Firm wide Market Risk handed over responsibility of CIO |
| 30 April 2012 | $800 million losses over 6 trading days |
| 10 May 2012 | Discloses $2 billion losses for SCP & a reversion to the former VaR model |
| 13 July 2012 | Restatement of first quarter results |

**Absence of regulatory and corporate oversight**

The CIO was not a client facing unit of the bank. For this reason, it did not receive the same scrutiny as other portfolios would receive in terms of regulatory compliance and corporate oversight.

There were no separate portfolio limits based on market values or asset type limits set for the synthetic credit portfolio (SCP) and there was no daily reporting that was specific for the SCP to senior management. In addition, Risk committee meetings were held infrequently and did not seem to have any specific charter or mandate and were rarely attended by other than CIO personnel.

Due to the lack of oversight CIO traders were able to engage in speculative and risky derivative trades which were not in line with the CIO's traditional investment strategy of long term investments with credit derivatives for hedging purposes only.

Regulatory oversight too was lacking. The Office of the Comptroller of Currency did not follow up on previous concerns raised regarding the transparency of the CIO's investment decisions. They also did not raise the alarm when the update to a new VaR model resulted in risk numbers that were 50% lower than prior numbers, being unaware that a new model was being used.

**London Whale – Inexperienced and unqualified personnel – CIO CRO**

Risk management specifically for the credit derivatives portfolio of the CIO unit does not appear to have been a priority until after the size of the synthetic credit portfolio had already become unwieldy in January 2012. The task force assigned by JP Morgan Chase Bank to investigate CIO Losses reported that the risks of the trading strategies were neither adequately analyzed nor questioned prior to their implementation.

Prior to February 2012 the risk management function was overseen by Peter Weiland chief market risk officer who reported directly to the bank's CRO, Barry Zubrow. Mr. Zubrow, as the JPM task force report admits, did not take adequate steps to strengthen the risk and control framework for the CIO, while Mr. Weiland did not have the necessary clout to withstand the pressures from the traders and CIO management. Further, the CIO Risk team was unstaffed and did not have proper direction.

In February 2012, after the SCP had already gotten out of hand, Irv Goldman was appointed as the CIO's first CRO. For Mr. Goldman, this was his first risk management position in his career which mainly had a capital markets focus. He would not have had the necessary experience to adequately address the deteriorating risk position of SCP during the period February 2012 to May 2012 as he was still learning the ropes of his new position.

With respect to corporate governance, Mr. Goldman's appointment is itself a matter of controversy considering his lack of risk management experience, his appointed by his brother in law, Zubrow, his contentious past, having been fired from a previous position at Cantor Fitzgerald for insider trading in 2007.

**Quantitative analyst – VaR model for the synthetic credit portfolio**

The head of the European Equity and Credit unit of the International Investments Office, Javier Martin-Artajo and his Relative Value Strategic Trading head, Bruno Iksil (the London Whale) came up with a strategy to hedge the existing portfolio with a portfolio of options on the credit indices, so as to reduce the losses as well as the associated RWA of the synthetic credit portfolio.

However, at that time, the SCP was already in breach of the VaR limits set for the portfolio. The new strategy would further increase the size of the breach as the overall exposure of the portfolio would increase with its implementation.

A solution was to implement a new VaR model for setting VaR limits. The new model would also influence the amount of risk weighted assets that were being calculated for the CIO. The premise for implementing a new model was that the existing one was too conservative which lead to an overstatement of risk thus resulting in limit breaches. This new VaR model was researched and built by the CIO itself specifically by Patrick Hagan, a front office quant, who had never before built or implemented a VaR model.

While the model was built after a number of months of research, it had mathematical & operational flaws which were highlighted by the bank's Model Risk and Development Office. There were a number of additional issues that came to light much later. These included:

1. Manual updates required in EXCEL spreadsheets
2. Lowered volatility for illiquid securities based on the assumption that prices for days on which trades did not occur would be the same as the price when last traded
3. Coding errors in the calculation of hazard rates and correlation estimates
4. Use of a wrong Uniform Rate option in the built in analytics suite instead of the Gaussian Copula model option required under Basel 2.5.

The Model Risk and Development Office required that the model be automated and that illiquid positions receive increased monitoring.

However, instead of a truly independent review of the model by the model review group and the standard parallel run of the old and new model during a probationary review period, the new model was implemented under pressure & without resolving the issues highlighted in it. Further, the analytics suite that the model utilized remained untested as of the date of implementation. The new model produced results that were as much as 50% lower than the existing model which did not raise questions of its appropriateness or accuracy at that time.

**Reporting line & disclosure deficiencies**

Regular risk reporting of the CIO's risk, prior to February 2012 was made officially to the bank's CRO rather than to Ina Drew. The latter received reports being head of the CIO but was not the direct official reporting line.

Even after the appointment of the CRO, only aggregate CIO portfolio risk numbers were provided to Ina Drew. She still did not receive separate numbers for the synthetic credit portfolio positions.

There was no segregation or independent evaluation of the risk of the SCP by the bank wide risk management team. The bank's risk management team depended on the risk numbers reported by the CIO's risk team.

The CIO team was selective in communicating their strategy and portfolio position of the SCP to JP Morgan senior management in month end business reviewing meetings. In the meeting held in February 2012, for example, they mentioned that they were working on reducing RWA as tasked by the bank, but they failed to mention that their strategy required them to increase overall portfolio exposure and that the SCP was already making significant losses.

In addition to this in April 2012, senior management was misinformed about the potential losses and market recovery of the SCP positions. The analysis used to make the assessment was based on a Monte Carlo model that produced more favorable results showing losses between $-150 million to $250 million as compared to economic scenario analysis models that showed losses in the range of $750 million to $1.925 million. Further, the bank's senior management was informed that the losses were temporary and would resolve once the market behaved as per expectations.

**Conflicts of interest**

Ina Drew was the reporting line for both the investment and risk management teams. These teams would have conflicting interests, i.e. between optimizing returns from the investments for the trading team against reducing the risk for the risk management team.

The mandates given to the SCP team enhanced this conflict. CIO was tasked to reduce its RWA given the Basel 2.5 deadline. It focused on SCP because the nature of its investments made it RWA expensive and because of the bank's bullish view of the credit markets.

This came at the cost of trading losses given market conditions as well as from inadequate protection as expired protection was not replaced. While traders were asked to reduce RWA they were also asked to keep an eye on profit and loss impact of their trades by the head of the CIO.

There was no indication from the bank as to the level of tolerance for the trading losses including whether or not traders would be penalized for losing money when unwinding positions to meet the reduced RWA objective. Therefore there was nothing to benchmark the growing risk appetite of the traders in the light of more favorable risk limits following a revision to the VaR model nor their determination to continue to trade to defend existing positions so as to minimize the negative impact on PNL.

PNL was negatively impacted by mark to market losses of their existing portfolio position as the portfolio was not behaving as it was designed. Short and long positions in the portfolio were meant to neutralize the Credit Basis Point Value of the portfolio for credit moves. Instead, the long positions in investment grade credit indices were losing money while short positions in high yield indices were not generating as much return to cover these losses.

In addition, as the securities in the SCP were fairly illiquid and because the CIO was a significant part of the market any attempt to sell would cause prices to dip thus worsening the position.

The focus of the SCP seems to have blurred from the original motivation of setting up the SCP which was to hedge the credit risk of the long term income bearing portfolio of the CIO. Traders' focus had shifted from hedging to profit making, particularly following the implementation of the revised VaR model. In order to reduce the negative impact on PNL, the SCP team started making speculative high risk trades as well as defending their positions against adverse price movements by buying and growing (instead of reducing) the portfolio.

An additional conflict was that the new VaR model was constructed by a quantitative analyst whose direct reporting head was the CIO head trader responsible for the trades. The timeline and the depth of research and resources expended for construction and implementation were dictated by the demands of the traders rather than the standard practice of a thorough review and testing of the model.

**Inadequate controls**

VaR works well for liquid markets because of the existence of a credible price history- it may not be appropriate for illiquid markets with numbered institutional investors where price history is more fragmented and less frequent. Credit Spread Basis Point value and Credit Spreading Widening inform of the sensitivity to the portfolio to changes in the credit spread. The former is appropriate for small moves in credit spread but does not account for the convexity present in more complex portfolios.

Limits were not granular enough, being reported only at the aggregate CIO portfolio level instead of also separately for the SCP. Further, there were no limits on portfolio composition or asset concentration or by risk factor as well as no limits on the actual market value of the SCP.

In addition, these limits were not hard limits, i.e. they did not automatically lead to action by the CIO to reduce risk, and from a post mortem of the debacle, do not appear to have been taken seriously most of the time. There were over 300 hundred breaches during the early months of 2012 and the SCP's losses steadily built up as these were ignored. Most of the risk metric breaches were not fast tracked to the CIO head and as mentioned earlier, separate risk numbers, exposure or daily trade data for the SCP were not communicated to Ina Drew. Further, in some instances instead of addressing the increased risk, limits were inflated so that the trades/positions would no longer be in breach.

While a new VaR model was implemented, limits related to the VAR metric were not reassessed until May 2012 and the same limits structure that was set based on the existing model (which produced higher VaR numbers and thus limits), was allowed to continue.

**Pricing deficiencies**

Due in part to the illiquid nature of the indices, traders had too much flexibility when setting prices to be used as marks for the mark to market process. Highly subjective judgment and inconsistent selection processes were used to determine the most favorable marks. Instead of averaging the midpoints of bid ask prices from several different dealers with significant trades in the instruments, only those that were favorable were chosen by the traders to set the prices. As long as these were within its allowable pricing thresholds, the Valuation Control Group (VCG) of the CIO deemed that they were okay to use.

However, no one questioned the validity of the VCG's assessment given that:

1. JP Morgan Chase Bank's internal audit had already identified that the VCG was using untested and poorly documented models and setting weak allowable pricing thresholds
2. The marks set by the CIO often were at significant variance to the mid-point quotes from the dealer, thus not representing good faith estimates of the prices.

JP Morgan Chase & Co. (an Investment Banking firm)'s Chief Investment Office in London tried to sidestep capital regulation laws of risk management by fulfilling the bare minimums of regulatory requirements. Traders were given the incentive to score big, so instead of focusing on simplicity, traders focused on the complexities of derivative markets. Chief Investment Office did everything including misguiding the authorities by placing trust upon untested models which showed less risk (which in turn provided freehand for traders to try to exploit riskier options) and ignoring all the danger signals provided by the stress testing.

The simplest and fastest way to cut risk was to sell positions but it would have had cost them $516 million. Under Drew's direction, the London traders embarked, instead, on a strategy to reduce the appearance of risk for regulatory purposes. They also hedged investments with securities that moved in the opposite direction. The London-based traders amassed a large, complex financial portfolio (consisting significantly of Credit Default Swaps) in the hope that doing so would help the bank avoid the loss.

**London Whale – Timeline of Events**

The traders started to substantially increase their investment-grade long positions. By the end of January, the firm booked year-to-date, mark-to-market losses of about $100 million. Additionally, the bank began using a new formula for value at risk that cut Mr. Iksil's estimated losses by about half. The bank eventually conceded that the new VaR standard was seriously flawed (JP Morgan), but not before the change emboldened traders to increase the size of the London Whale bet, which resulted in doubling down after a loss with bigger and bigger bets; eventually leading to even greater losses. Mark-to-market losses grew to $169 million by the end of February 2012.

By March 23, 2012, the traders had added significant long positions to the Synthetic Credit Portfolio; after assessing the situation, the Chief Investment Office ordered the suspension of trading in the portfolio. Even after that, the estimated mark-to-market losses continued to grow throughout the end of March and the year-to-date losses reported by the traders totaled at about $400 million through March 29, 2012.

However, on March 30, 2012, the reported estimation of mark-to-market loss was at $138 million only. That was later confirmed as deception by Mr. Martin-Artajo, who directed Mr. Iksil to use the "best" possible prices. A separate spreadsheet was still kept by Mr. Iksil which showed the estimate losses at over $400 million.

The Chief Investment Office on April 5, 2012, sent an e-mail to the JP Morgan Operating Committee making them aware of an article that would be published in the Wall Street Journal and Bloomberg. The Office also assured them that the situation was under control and that the Synthetic Credit Portfolio was generally "balanced," that the market was currently dislocated, and that the mark-to-market losses were temporary and manageable. That prompted Mr. Dimon, the company's CEO to declare the Synthetic Credit Portfolio a "tempest in a teapot" and Mr. Braunstein (Chief Financial Officer) to further state that the Firm was "very comfortable" with its positions as mark-to-market prices in the Synthetic Credit Portfolio would "mean revert" (Kopecki ).

It was further revealed that on the evening of April 7, 2012, Mr. Grout formulated a loss estimate by constructing numerous loss scenarios. He evaluated how those scenarios would impact the Synthetic Credit Portfolio's positions. In that way, he generated a number of probability-weighted profit-and-loss estimates for the second quarter; the estimates ranged from losses of $750 million to gains of $1.925 billion. However, the Mr. Martin-Artajo felt these scenarios were very unrealistic and thus directed that trader to simply run a "Monte Carlo" simulation to determine the potential losses for the second quarter, against Mr. Grout's recommendation. Nevertheless, he performed the requested analysis and came to a loss estimate of -$150 million to +$250 million which was provided to senior management.

It was not until after the Earnings Meeting – on April 13, 2012 – that the company realized the predictions were all wrong and "mean revert" was not going to happen. Messrs. Dimon, Braunstein, Hogan and Ms. Drew commissioned a thorough review of the Synthetic Credit Portfolio, conducted by personnel outside of the Chief Investment Office, in order to better understand the losses it was experiencing and to know whether the Synthetic Credit Portfolio was properly managed.

On April 26, 2012, Mr. Hogan directed senior members of firm-wide Market Risk to commence a position-by-position review of the Synthetic Credit Portfolio and eventually to take over the responsibility of the Synthetic Credit Portfolio. (JP Morgan) The firm's own review showed that the Synthetic Credit Portfolio was not protected against various market scenarios. In addition, they found that the market's knowledge of the positions resulted in investors at other banks and hedge funds that were trading with JPMorgan to take advantage of the situation so that a liquidity risk reduction was not possible.

Following the firm's audit report, on May 10, 2012, the firm disclosed that there were significant problems with the trading strategy for the Synthetic Credit Portfolio and the strategy was "flawed, complex, poorly reviewed, poorly executed, and poorly monitored." (JP Morgan) The firm disclosed that the Synthetic Credit Portfolio had incurred slightly more than $2 billion in mark-to-market losses up to that point in the second quarter, with the possibility of additional future losses and volatility.

Accordingly, on July 13, 2012, the firm restated its first-quarter net income after lowering it by $459 million. At the same time, the firm that the cumulative year-to-date losses through June 30, 2012, had grown to approximately $5.8 billion.

In this case, the bank was not alone at fault. The regulators overseeing the bank at the Treasury Department's Office of the Comptroller of the Currency didn't detect the risk accumulating in the Chief Investment Office's synthetic-credit portfolio when it increased to a hundred and fifty-seven billion dollars, in the first quarter of 2012. The regulators should also have taken note when the risk profile of the Synthetic Credit Portfolio suddenly improved by fifty percent.

*London Whale- Summary of Events*

| | |
|---|---|
| Dec-11 | 51 billion in net notional positions of credit index and tranche position |
| Jan-12 | mark-to-market losses of about $100 million. Created the new VaR model |
| Feb-12 | mark-to-market losses of about $169 million |
| 29-Mar-12 | mark-to-market losses of about $400 million |
| 30-Mar-12 | mark-to-market losses of about $138 million. |
| 5-Apr-12 | Chief Financial Officer sends the e-mail |
| 6-Apr-12 | The London Whale Article |
| 6-Apr-12 | Grout forced to go back on his analysis |
| 13-Apr-12 | the Earnings Meeting |
| 26-Apr-12 | Firm-wide Market Risk commences |
| 10-May-12 | disclosed $2 billion in mark-to-market losses |
| 13-Jul-12 | disclosed $5.8 billion in mark-to-market losses |
| 16-Jan-13 | Report of JPMorgan Chase & Co. |
| Sep-13 | $920 million fine |
| 16-Oct-13 | $100 million fine |

**The penalties**

Following the incidents, the UK and U.S. Attorney's Office opened an official investigation into the matter. It was investigated whether the traders at JPMorgan's Chief Investment Office in London intentionally inflated the value of their portfolio to conceal losses. Federal officials charged the responsible persons on five counts, including securities fraud, conspiracy, filing false books and records, wire fraud and making false filings with the U.S. Securities and Exchange Commission. (Hurtado)

The bank agreed in September 2013 to pay $920 million to resolve related U.S. and U.K. probes into its internal controls and handling of the trades, which inflicted at least $6.2 billion in losses to the bank. The selling cited by the CFTC was a “manipulative device” that disregarded consequences to the broader market. And further, on October 16, 2013, the bank agreed to a $100 million settlement with the Commodity Futures Trading Commission, which found that it had deployed a reckless trading strategy. Thus the total amount of fines exceeded $1 billion (Brush).

**Results of the Crises**

In JP Morgan’s Chief Investment Office, new and more robust committee structures have been instituted. The new management has enhanced its key business processes and reporting and a revision of basic policies and procedures with respect to valuation and price verification was done. The firm has also mandated a self-assessment of the Risk function within each line of business which includes the firm conducting a spot check of significant drivers of the firm’s VaR (JP Morgan).

**LESSON ROUND-UP**

- Risk is inherent in the business. Different types of risk exist in the business according to the nature of the business and they are to be controlled and managed.
- In traditional concept the natural calamities like fire, earthquake, flood, etc. were only treated as risk and keeping the safeguard equipment’s etc. were assumed to have mitigated the risk. But due to rapid changes, the various types of risks have emerged viz. Compliance risk, legal risk, country risk, operational risk.
- Risk may be controllable or uncontrollable. In other words, the systematic risk which stands at macro level is not controllable, but the unsystematic risk which is at micro level is controllable with the risk mitigation techniques.
- The risk may broadly be segregate as Financial Risk and Non-financial Risk.
- Financial Risk includes market risk, credit risk Liquidity risk, Operational Risk, Legal Risk and Country Risk. Non-financial risk does not have immediate financial impact on the business, but its consequence is serious.
- Non-Financial Risk do not have immediate financial impact on the business, but its consequence are very serious and later may have the financial impact. This type of risk may include, Business/ Industry & Service Risk, Strategic Risk, Compliance Risk, Fraud Risk, Reputation Risk, Transaction risk, Disaster Risk.
- To mitigate the various types of risks, which a business entity faces, a proper risk management process should be in force. It is a continuous process and is applied across the organisation. It is basically the identification of risk areas, assessment thereof, evaluating the impact of such risk, develop the risk mitigation techniques, establishing the sound internal control process and continuous monitoring thereof, setting of standards for each process and abnormal variances to be vetted.
- Risk management plays vital role in strategic planning. It is an integral part of project management. An effective risk management focuses on identifying and assessing possible risks.
- The process of risk management consists of the following logical and sequential steps, Identification of risk, Assessment of risk, Analysing and evaluating the risk, Handling of risk (Risk may be handled through the Risk Avoidance, Risk Retention/ absorption, Risk Reduction, Risk Transfer) and Implementation of risk management decision.

- ISO 31000 published as a standard on the 13th of November 2009, provides a standard on the implementation of risk management. ISO 31000 contains 11 key principles that position risk management as a fundamental process in the success of the organization.
- Fraud has been defined as, 'A deliberate act of omission or commission by any person, carried out in the course of a banking transaction or in the books of accounts maintained manually or under computer system in banks, resulting into wrongful gain to any person for a temporary period or otherwise, with or without any monetary loss to the bank".
- Reputation Risk as the risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt-holders, market analysts, other relevant parties or regulators that can adversely affect a bank's ability to maintain existing, or establish new, business relationships and continued access to sources of funding (e.g. through the interbank or securitisation markets).
- SEBI (LODR) Regulations, 2015 requires that every listed company should have a Risk Management Committee.
- Secretarial Audit is a process to check compliance with the provisions of all applicable laws and rules/regulations/procedures; adherence to good governance practices with regard to the systems and processes of seeking and obtaining approvals of the Board and/or shareholders, as may be necessary, for the business and activities of the company, carrying out activities in a lawful manner and the maintenance of minutes and records relating to such approvals or decisions and implementation.
- Secretarial Audit helps the companies to build their corporate image. Secretarial Audit facilitates monitoring compliances with the requirements of law through a formal compliance management programme which can produce positive results to the stakeholders of a company.

## GLOSSARY

**Risk Management:** Risk management is the identification, evaluation, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability or impact of unfortunate events or to maximize the realization of opportunities.

**Fraud Risk:** A fraud risk assessment is a tool used by management to identify and understand risks to its business and weaknesses in controls that present a fraud risk to the organization.

**Secretarial Audit:** Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company. It provides necessary comfort to the management, regulators and the stakeholders, as to the statutory compliance, good governance and the existence of proper and adequate systems and processes.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What do you mean by Risk Management?
2. Discuss about the Controllable and Un-controllable Risks.
3. Elaborate on different types of Financial and Non-financial Risk.
4. Describe the Risk Management Process and its advantages?

5. What do you understand by Fraud risk? What strategy can adopt to mitigate such a risk?
6. What do you mean by Business Continuity Plan, Crisis management and Disaster recovery plan and give the Relationship between Business Continuity Plan, Crisis management and Disaster recovery plan in corporate world.

**LIST OF FURTHER READINGS**


- Risk Management: Concepts and Guidance, Fifth Edition by Carl L. Pritchard
- The Essentials of Risk Management by Michel Crouhy, Dan Galai, Robert Mark
- A Practical Guide to Risk Management by Thomas S. Coleman
- Financial Risk Management- A Practitioner's Guide to Managing Market and Credit Risk by Steve L. Allen
- The Failure of Risk Management: Why It's Broken and How to Fix It (Second Edition) by Douglas W. Hubbard


**OTHER REFERENCES**


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- https://grm.institute/blog/what-is-esg-and-why-its-important-for-risk-management/
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- https://www.techtarget.com/searchdisasterrecovery/definition/disaster-recovery-plan
- https://www.smartsheet.com/content/crisis-management-examples

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- https://scope.dge.carnegiescience.edu/SCOPE_15/SCOPE_15_1.1_chapter1_1-14.pdf
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- https://www.kyndryl.com/in/en/learn/plan#:~:text=A%20key%20component%20of%20a,business%20needs%20can%20be%20met.
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- https://www.livingsecurity.com/blog/cyber-risk-management
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- https://analystprep.com/study-notes/frm/part-2/operational-and-integrated-risk-management/case-study-financial-crime-and-fraud/
- https://financetrainingcourse.com/education/2014/04/china-aviation-oil-singapore-corporation-limiteds-jet-fuel-scandal-2005-casestudy/

# PART III

# ENVIRONMENT & SUSTAINABILITY REPORTING

# Sustainability Audit; ESG Rating; Emerging Mandates from Government and Regulators

Lesson 19

## KEY CONCEPTS

■ Sustainable Development ■ Sustainability Reporting ■ Sustainability Audit ■ Standards on Sustainability ■ ESG Ratings ■ ESG Rating organisations ■ Key Performance indicators ■ SEBI Regulations on ESG Reporting in India ■ Developments across the world on ESG and reporting requirements

## Learning Objectives

**To understand:**

- Sustainable Development, Sustainability Reporting and Sustainability Audit – Process, Importance and Standards
- ESG Ratings – Organizations, Methodology and Importance
- Emerging Mandates from Government and Regulators in India and Across the World

## Lesson Outline

**A. Sustainability Audit**
- Meaning of Sustainability Audit
- Rise / Evolution of Sustainability Audit
- Framework of Sustainability Audit
- Process of conducting Sustainability Audit
- Audit Standards on Sustainability
- Importance of Sustainability Audit

**B. ESG Rating**
- Meaning of ESG Rating
- ESG Rating organisations and ESG Rating Methodology
- Advantages of ESG Ratings

**C. Emerging Mandates from Government and Regulators**
- ESG Reporting in India
- ESG regulations around the world

- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

# SUSTAINABILITY AUDIT; ESG RATING; EMERGING MANDATES FROM GOVERNMENT AND REGULATORS

## PART A. SUSTAINABILITY AUDIT

## INTRODUCTION TO SUSTAINABLE DEVELOPMENT, BUSINESS SUSTAINABILITY, ACCOUNTABILITY REPORTING AND AUDIT

### Sustainable Development

Sustainable development is a relatively new concept and gained momentum in the late 1980s. The UN's Brundtland report defined it as ***"development that meets the needs of the present without compromising the ability of future generations to meet their own needs".*** Theoretically, the concept has its ties with ecological modernization which opines that economic growth and ecological concerns can be favorably combined. Sustainability recognizes the interdependence of economic, social and environmental factors for all round development.

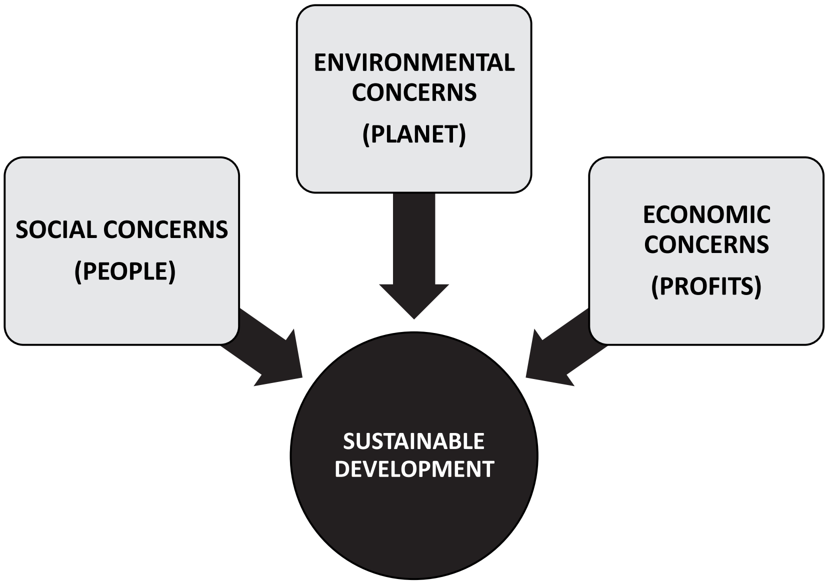



**FIG. 19.1 – Understanding the Concept of Sustainable Development**

For business, sustainability is defined in several ways. For example, the 2010 United Nations' (UN) publication "Corporate Governance in the Wake of the Financial Crisis" broadly describes business sustainability as

> ***"Conducting operations in a manner that meets existing needs, without compromising the ability of future generations to meet their needs and has regard to the impacts that the business operations have on the life of the community in which it operates and includes environmental, social and governance issues."***

The UN report further links business sustainability to corporate governance and suggests that sustainability information, i.e. the information pertaining to social, governance, ethical, and environmental concerns be incorporated with financial information in a single report that also includes professional assurance on sustainability information.

> *Corporate sustainability can be understood as conducting business to create value for present shareholders while protecting the rights of future shareholders and stakeholders.*

## Sustainability Reporting

The concept of sustainable development fostered reporting on sustainability as a response of organisations towards growing concerns about environmental degradation and social and ethical issues in business practices. In the late 1980s, the first voluntary environmental reports were published. Companies with environmentally sensitive operations, especially large polluters, started to publish sustainability reporting to showcase their efforts towards sustainable development and Companies with socially sensitive operations started to develop corporate social responsibility (CSR) reporting. The concept evolved over time through the efforts of various organizations, governments, and experts in the fields of sustainability and environmental management.

## Sustainability Audit

Reporting on sustainability paved the way for emergence of sustainability audit. The concept of sustainability audit has evolved over the years as society's understanding of sustainability has expanded and as organizations have become increasingly aware of their impact on the environment and society besides their bottom-line.

The wave of financial mishaps in the early 2000s, the 2007–2009 global financial crisis, and subsequent regulatory responses have stimulated considerable interest in business sustainability, corporate governance, ethical, and corporate accountability. Businesses and professional organizations worldwide have also responded by developing a business sustainability framework consisting of five overriding dimensions of economic, governance, social, ethical, and environmental (EGSEE) performance as an improvement over the "People, Planet and Profits" agenda.

A program or an activity is considered sustainable if it meets all of the following criteria:

- **Creates economic value**
- **Increases public wealth with mechanisms for its proper distribution**
- **Socially justified**
- **Environmentally sound**
- **Ethically conducted**
- **Conforms to all applicable laws, rules, and regulations**

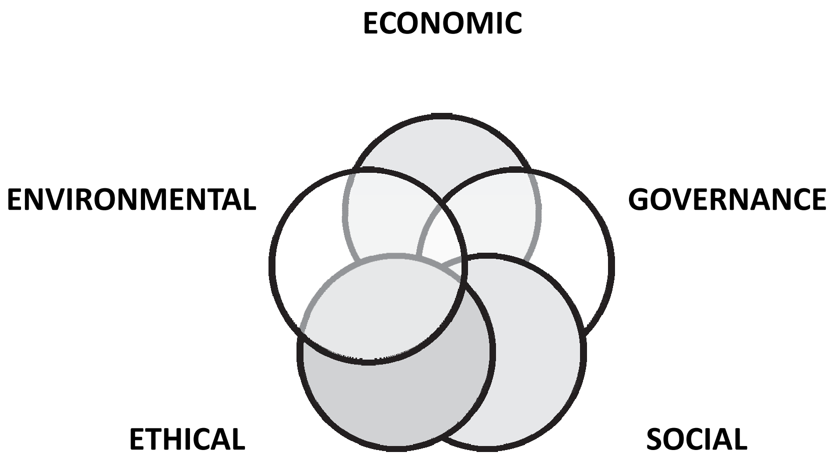



**FIG. 19.2 – Dimensions of Business Sustainability**

## MEANING OF SUSTAINABILITY AUDIT

Sustainability Audit is a comprehensive assessment of an organization's environmental, social and economic impacts. The purpose of the audit is to identify areas where the organization can improve its sustainability performance and minimize its negative impacts on the environment, society and economy. The audit typically covers areas such as energy use, greenhouse gas emissions, waste management, water usage, product sourcing, supply chain management, employee relations, and community engagement. The outcome of a sustainability audit is used to develop a sustainability strategy and set goals for ongoing sustainability performance improvement. (*Source: https://www.esgthereport.com/*)

A sustainability audit is a process that evaluates the performance of an organization in relation to its sustainable development goals. It assesses how well a company performs in the three areas of social, environmental and economic aspects and is thus also referred to as a "triple bottom line" assessment.

It includes an analysis of both internal and external factors affecting the organization's sustainability. In addition to tangible aspects like energy use or recycling rates, factors such as climate change legislation or customer preferences are also considered. The purpose of such an evaluation is not only for companies to become more sustainable, but also to ensure they are meeting their stakeholders' expectations through increased transparency and accountability.

A sustainability audit is a look inside the company to determine the most powerful way to practice sustainability.

A sustainability audit is a targeted evaluation of a company's current sustainable workplace practices such that by identifying the current environmental impact, the company can set out initiatives for executing and promoting improved sustainable measures.

**FIG. 19.3 – Sustainability Audit**

## RISE / EVOLUTION OF SUSTAINABILITY AUDIT

The concept of sustainability audit has evolved over the years as society's understanding of sustainability has expanded and as organizations have become increasingly aware of their impact on the environment and society.

Initially, sustainability audits focused primarily on environmental issues such as energy use, waste management and water usage. Over time, the scope of sustainability audits has expanded to include social and economic factors, such as human rights, labor practices, community engagement and economic performance.

The rise of corporate sustainability reporting and the increasing demand for transparency from stakeholders have also driven the evolution of sustainability audits. Many organizations now use sustainability audits as a way to measure and report on their sustainability performance, and to demonstrate their commitment to sustainability.

Finally, technological advancements and the availability of new sustainability data and tools have also contributed to the evolution of sustainability audits. For example, organizations can now use data analytics and machine learning to more accurately measure and monitor their sustainability performance, and to identify areas for improvement.

The exact founder of sustainability audits is not clear, however, some organizations and initiatives played a key role in the development and promotion of sustainability audits, including the United Nations Environment Programme (UNEP), the World Business Council for Sustainable Development (WBCSD), and the Global Reporting Initiative (GRI). These organizations helped to establish sustainability reporting standards, guidelines, and best practices, and provided support and guidance to organizations seeking to improve their sustainability performance.

For decades, increasing attention has been given to the concept of Environmental, Social and Corporate Governance (ESG) by both the public and private sectors. Companies are no longer only evaluated from an economic perspective, but also from a societal and environmental one. The rising importance of sustainability is illustrated by the amount of standard-setting initiatives that have been developed over the years. Some well-known examples include the ISO 26000 standard on Social Responsibility, the Global Reporting Initiative, the implementation guidelines developed by Sustainability Accounting Standards Board, and the universal sustainability development goals (SDG's) set by the UN Global Compact.

Sustainability reflects on the impact an organization has on society and the environment, whilst making business decisions and conducting its activities. It is a broad concept which covers the areas of Corporate Governance, Human Rights, Labor Practices, Environment, Operating Practices, Customer Issues, Community Involvement and Development. It is Important to note is that each organization can define its own areas of focus depending on its size, location, business activities, and stakeholder's expectations.

A sustainability process flows throughout all hierarchical levels of an organization, from its strategic goals down to its operational practices. Given the overarching character of the concept, it is essential that sustainability initiatives are consistently managed, meaning that organizations should evaluate their ESG impacts, risks and opportunities across the entire value chain. When assessing ESG-risks, organizations should think beyond the 'traditional' reputational risks. Issues and malpractices related to ESG can pose environmental, compliance, financial and reputation risks that can severely damage the company.

For banks and insurers, the financial risks of climate change are in sharp focus as regulators set out expectations for stress testing, ESG disclosures and climate risk management. Asset and fund managers are being required by regulators and investors to embed sustainable investment throughout their businesses and to consider the full spectrum of ESG.

## FRAMEWORK OF SUSTAINABILITY AUDIT

Measuring sustainability is not an easy task nor is the process of verifying sustainability related information. Although traditional financial auditing is prepared to deal with accounting systems, processes and controls, to meaningfully analyze sustainability data and provide assurance on sustainability reports might require setting up teams of experts with diverse backgrounds. Particularly important in this regard is the knowledge of the methods used in performance auditing and environmental auditing. Besides auditing guidelines and subject matter, it might be good if auditors are also knowledgeable about stakeholder engagement processes to fully understand and appreciate the scope of the audit.

A sustainability audit typically follows a structured framework that includes the following steps:

**Planning and Preparation:** This involves defining the scope and objectives of the audit, identifying stakeholders, and preparing a plan for conducting the audit.

**Data Collection and Analysis:** This involves gathering data on the organization's environmental, social, and economic impacts, as well as reviewing policies, procedures, and practices related to sustainability.

**Assessment and Evaluation:** This involves evaluating the data collected and analyzing the organization's sustainability performance. This step typically includes benchmarking the organization's performance against industry standards and best practices.

**Report Generation:** This involves summarizing the findings of the audit and presenting recommendations for improvement.

**Implementation and Monitoring:** This involves taking action on the recommendations made in the report and monitoring progress to ensure that sustainability goals are met over time.

Different organizations may use slightly different frameworks for sustainability audits, but the basic steps are generally consistent across different approaches. The choice of framework often depends on the organization's specific sustainability goals and the resources available for conducting the audit.

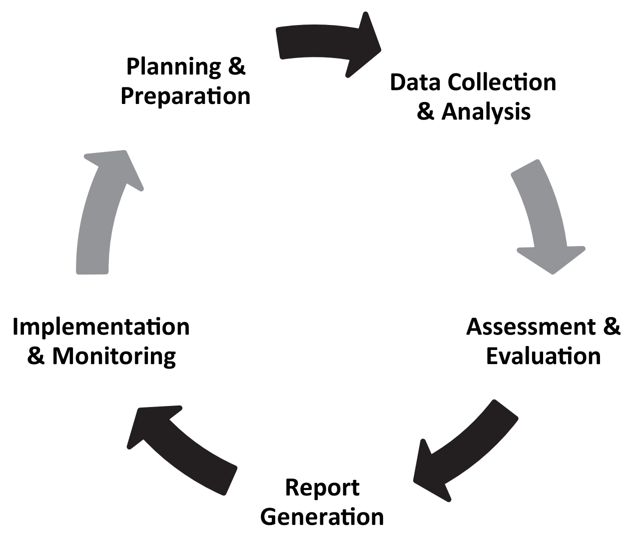



**FIG. 19.4 – Planning for Sustainability Audit**

## PROCESS OF CONDUCTING SUSTAINABILITY AUDIT

The process of a sustainability audit typically begins with assessing the culture of the company, which includes things such as understanding how open employees are with regard to discussing their social responsibility practices or what sort of training they have received on these issues.

Once the culture is assessed, the auditors will explore the related issues minutely including looking at the social responsibility results.

The auditor will typically look at the sustainability strategy, which is a formal document that sets out sustainability aims and objectives. The audit team may also consider other documentation, such as contracts with suppliers or regulatory filings to determine what emphasis the company places on sustainability activities.

After this review is conducted, the auditor will look at how well the company has executed these sustainability activities. The auditor will look at things such as what results have been achieved from efforts regarding sustainability, whether or not there have been any negative effects from CSR/ESG initiatives and if infractions have occurred in the area of social responsibility.

The audit team may also evaluate whether a company's policies align with their stated sustainability initiatives. For example, reviews of supplier relationships may look at the human rights records of suppliers.

Once this review is complete, the auditors will provide a report on their findings to management team and the board of directors. The sustainability audit also provides recommendations for how companies can improve sustainable business practices.

The final product of the sustainability audit is a scorecard that provides an evaluation of how well the company is performing in relation to its social responsibility goals.

A sustainability audit may be conducted in the following manner:

**Defining the scope and objectives of the audit:** This involves determining what aspects of the organization's operations will be included in the audit and what sustainability goals the audit is intended to achieve.

**Gathering data:** This involves collecting data on the organization's environmental, social, and economic impacts, as well as reviewing policies, procedures, and practices related to sustainability. This may include analyzing data from existing sustainability reports, conducting surveys of employees and stakeholders, and reviewing internal documents and data.

**Conducting assessments and evaluations:** This involves evaluating the data collected and analyzing the organization's sustainability performance. This step typically includes benchmarking the organization's performance against industry standards and best practices, and identifying areas for improvement.

**Preparing a report:** This involves summarizing the findings of the audit and presenting recommendations for improvement. The report should be clear, concise, and actionable, and should be designed to engage and inform stakeholders.

**Implementing and monitoring actions:** This involves taking action on the recommendations made in the report, and monitoring progress over time to ensure that sustainability goals are met. This may involve developing and implementing new sustainability policies and procedures, investing in new technologies or processes, and engaging with stakeholders to drive sustainability improvements.

**Reporting and communicating:** Report on the findings of the sustainability audit, including the results of the performance assessment, areas for improvement, and the action plan. Communicate the results to stakeholders, including employees, customers, shareholders, and the wider community.

The specific details of how to conduct a sustainability audit will depend on the size and complexity of the organization, as well as its specific sustainability goals. It may be necessary to engage external experts or consultants to assist with certain aspects of the audit, such as data collection and analysis, or to provide expert advice on sustainability best practices.

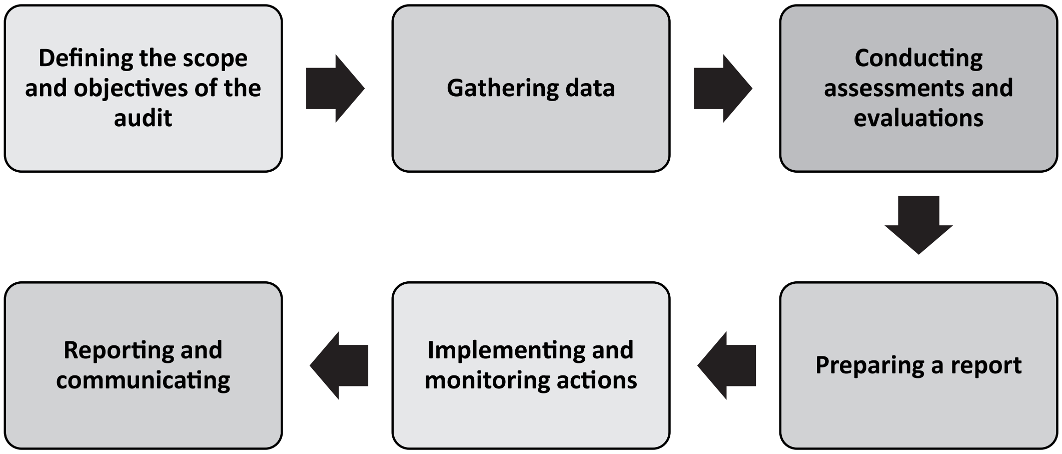



**FIG. 19.5 –Sustainability Audit Process Flow**

## CASE STUDY

**Case Study: Sustainability Audit of a Manufacturing Company**

A manufacturing company based in Europe wanted to assess its sustainability performance and identify areas for improvement. The company engaged a sustainability consulting firm to conduct a comprehensive sustainability audit.

Define the scope: The scope of the audit included the company's operations, supply chain, and product life cycle. The audit focused on the company's impacts on the environment, including energy and resource use, waste generation, and greenhouse gas emissions, as well as its social and ethical responsibilities.

Gather information: The audit team collected data on the company's energy and resource use, waste generation, and emissions, as well as information on the company's social and ethical practices, including labor rights, human rights, and community engagement.

Assess performance: The audit team evaluated the company's sustainability performance using a set of sustainability indicators and benchmarks, including the Global Reporting Initiative (GRI) Standards and the ISO 26000. The team found that the company was performing well in some areas, such as energy efficiency and waste management, but that there were opportunities for improvement in other areas, such as emissions reduction and community engagement.

Identify areas for improvement: Based on the findings of the performance assessment, the audit team identified several areas for improvement, including reducing greenhouse gas emissions, improving community engagement, and reducing the use of hazardous materials in the supply chain.

Develop action plan: The audit team developed an action plan that included a set of specific, measurable, and achievable goals and targets, as well as a time-line for implementation. The action plan also included a monitoring and reporting framework to track progress towards the sustainability goals.

Implement and monitor: The company implemented the action plan, and the sustainability consulting firm provided ongoing support and monitoring to help the company achieve its sustainability goals.

Report and communicate: The company reported on the findings of the sustainability audit and the results of the action plan, including a comprehensive sustainability report that was made available to stakeholders, including employees, customers, shareholders, and the wider community.

The sustainability audit was a valuable tool for the manufacturing company to understand its sustainability performance, identify areas for improvement, and take action to enhance its sustainability. The audit helped the company to demonstrate its commitment to sustainability, improve its reputation and brand image, and foster innovation and competitiveness.

**Example of Companies undertaking Sustainability Audit**

Many companies around the world conduct sustainability audits as part of their commitment to sustainability and responsible business practices. Here are a few examples:

**Unilever:** Unilever, a consumer goods company, has been conducting sustainability audits for many years, and uses the results to drive continuous improvement in its sustainability performance. The company publishes an annual sustainability report that includes a comprehensive analysis of its sustainability performance.

**Nike:** Nike, a multinational sportswear company, regularly conducts sustainability audits to assess its performance on a range of ESG issues, including labor standards, environmental impact, and product sustainability. The company also publishes a sustainability report that provides detailed information on its sustainability performance and initiatives.

**Google:** Google, a technology company, regularly conducts sustainability audits to assess its environmental impact, and to identify opportunities for improvement. The company has set a number of ambitious sustainability goals, including achieving 100% renewable energy and becoming carbon neutral.

**Coca-Cola:** Coca-Cola, a multinational beverage company, conducts regular sustainability audits to assess its performance on a range of ESG issues, including water use, waste management, and community engagement. The company also publishes an annual sustainability report that.

## UNDERSTANDING ABOUT SUSTAINABILITY AUDIT REPORT

A sustainability audit report is a comprehensive document which provides a detailed analysis of an organization's sustainability performance. The report assesses the organization's environmental, social, and governance impacts and identifies areas for improvement. It is used to help the organization understand its sustainability performance and make informed decisions about how to improve it further.

Sustainability audit report is an important tool for organizations to understand and improve their sustainability performance. It is usually prepared by an independent third-party auditor, to ensure its accuracy and credibility. The report may also be made available to the public, and published on the organization's website or included in its annual sustainability report, to demonstrate its commitment to transparency and accountability.

The report typically includes the following key elements:

**Executive Summary**: This section provides a high-level overview of the report, including the purpose of the audit, the key findings, and the main recommendations.

**Background:** This section provides context for the audit, including information about the organization, its sustainability goals and objectives, and the scope of the audit.

**Methodology:** This section outlines the methodology used to conduct the audit, including the data sources, the stakeholders consulted, and the tools and techniques used to gather and analyze the data.

**Key Findings:** This section presents the main findings of the audit, including a detailed analysis of the organization's sustainability performance on key ESG issues, such as energy use, greenhouse gas emissions, waste management, water use, employee relations, community engagement, and compliance with relevant laws and regulations.

**Recommendations:** This section provides specific recommendations for how the organization can improve its sustainability performance in the areas identified by the audit. The recommendations may include specific actions that the organization can take, such as reducing energy use, improving waste management practices, or enhancing employee engagement programs.

**Implementation Plan:** This section outlines a plan for implementing the recommendations from the audit, including specific goals, timelines, and responsibilities.

**Conclusion:** This section provides a summary of the main findings and recommendations from the audit, and reiterates the organization's commitment to sustainability.

## CASE STUDY

**Are the Olympic Games sustainable?**

(*Source: https://www.mountainwilderness.org*)

Researchers at the University of Lausanne, Switzerland, recently reviewed the social, environmental and economic sustainability of 16 editions of the Summer and Winter Olympic Games from Albertville 1992 to Tokyo 2020 and found that in all three areas, there has been a steady decline in performance, as economic benefits have gone down and environmental costs have risen. This has occurred, despite the fact that the International Olympic Committee (IOC) and its host cities have been making ever more grandiose environmental claims.

'That the Olympics be sustainable is a requirement laid down in the contract between Olympic host cities and the International Olympic Committee (IOC). Sustainability is one of the three pillars of the IOC's road map for the future, Olympic Agenda 2020, and features prominently in its continuation, Olympic Agenda 2020+5. The IOC's sustainability strategy aims to "ensure the Olympic Games are at the forefront in the field of sustainability"

In 2018, the United Nations passed a resolution that declared *"sport as an enabler of sustainable development"* and signed a letter of intent highlighting the contribution of the Olympic Games to the UN Sustainable Development Goals (SDGs).'

In 2018, the United Nations passed a resolution that declared *"sport as an enabler of sustainable development"* and signed a letter of intent highlighting the contribution of the Olympic Games to the UN Sustainable Development Goals (SDGs).'

Researchers used a conceptual model with the above-mentioned three dimensions of sustainability, dividing each into three indicators and measuring sustainability via a score card

**Fig. 1: Definition and conceptual model of sustainability in the Olympic Games**


The definition and model assign equal weight to the classic three dimensions of sustainability (inner ring--ecological, social and economics), evaluating them with three indicators each (outer ring).

(*Source: https://www.mountainwilderness.org*)

It turned out that Winter Olympics in Sochi in 2014 and the Summer Olympics in Rio de Janeiro in 2016 had the lowest sustainability scores. The latter displaced a large number of residents for Olympics-related development and provided the excuse for comprehensive legal exceptions. The resulting sports venues remained poorly used after the event, and cost overruns were the highest.

Data show that: 'There are no Olympics that score highly in all or even the majority of the indicators. Cities such as Vancouver and London, which have marketed themselves as models of sustainable Olympic Games and have advised other Olympic hosts on sustainability, score below average'.

The study concludes that the rhetoric of sustainability does not match actual sustainability outcomes and sustainability in the Olympics is clearly declining over time as Salt Lake City (2002) and Albertville (1992) scored higher than all the rest.

**CASE STUDY**

**Sustainability in the spotlight at Beijing Olympics 2022**

*Source: https://olympics.com*

*"As the world is racing to avoid the catastrophic effect of climate change, sustainability and climate action have a very central place in our Strategy for the future of the Olympic Movement,"* said Marie Sallois, IOC Director for Sustainability, in her opening remarks at the joint IOC Beijing 2022 Daily Briefing. "*Our aim is to ensure the Games are at the forefront of sustainability and act as a catalyst for sustainable development for their host. We also want to use the visibility of sport and the Olympic Games to showcase and promote innovative and sustainable solutions."*

*"The concepts of 'green Games' and sustainability have been embedded in the entire process and every aspect of our work to prepare and deliver the Beijing 2022 Games,"* said Li Sen, Director General of the General Planning Department of Beijing 2022, who highlighted carbon neutrality and environmental protection as the key focus areas of Beijing 2022 sustainability.

Organisers identified measures to avoid and reduce carbon emissions and reach carbon neutrality. This included minimizing construction by reusing five of the Beijing 2008 venues, using renewable energy to power all Games venues, introducing low-carbon technologies, employing low-carbon transport, and creating forestry-based carbon sequestration projects.

All newly constructed venues embraced new construction standards, from water and energy efficiency to building insulation and cooling technologies; and ecological conservation was prioritised during venue construction in the competition zones. Environmental Impact Assessments were carried out, and diverse nature conservation measures were taken to protect the local plant and animal species.

## AUDIT STANDARDS ON SUSTAINABILITY

There are several standards and guidelines that organizations can use to conduct sustainability audits. Some of the most widely used include:

**Global Reporting Initiative (GRI) Standards:** The GRI is a widely recognized sustainability reporting framework that provides guidelines and indicators for organizations to measure and report on their sustainability performance. The GRI Standards provide a comprehensive and consistent approach to sustainability reporting, and are used by organizations around the world to report on their sustainability performance.

**ISO 26000:** ISO 26000 is an international standard for corporate social responsibility that provides guidelines for organizations on how to implement, maintain, and continually improve their social responsibility practices. This standard can be used as a framework for conducting sustainability audits, and provides guidance on topics such as environmental responsibility, human rights, and community involvement.

**Sustainability Assessment Standards:** There are a number of sustainability assessment standards that organizations can use to conduct sustainability audits. These standards provide a systematic and comprehensive approach to sustainability assessment, and include the Environmental Management Accounting (EMA) standards, the AA1000 Account Ability Principles Standard, and the Sustainability Assessment Framework (SAF).

**National and Regional Standards:** There are also a number of national and regional standards that organizations can use to conduct sustainability audits. For example, the European Union has developed the EU Eco-Management and Audit Scheme (EMAS), which provides a framework for organizations to measure and report on their sustainability performance.

## IMPORTANCE OF SUSTAINABILITY AUDIT

A sustainability audit will serve two crucial functions:

1) identifying important environmental, social and governance (ESG) risks, and
2) benchmarking the organisation's sustainability initiatives against competitors.

Besides these, a sustainability audit is important for several reasons, including:

1) **Identifying areas for improvement:** A sustainability audit helps organizations to understand their environmental, social, and economic impacts, and identify areas where they can improve their sustainability performance. This can lead to cost savings, increased efficiency, and reduced environmental impacts.
2) **Measuring sustainability performance:** A sustainability audit provides a systematic and comprehensive way to measure an organization's sustainability performance, and to track progress over time. This information can be used to set sustainability goals, benchmark performance against industry standards, and engage stakeholders.
3) **Demonstrating commitment to sustainability:** By conducting a sustainability audit and taking action on its findings, organizations can demonstrate their commitment to sustainability and show that they take their environmental and social responsibilities seriously.
4) **Enhancing reputation and brand image:** A sustainability audit can help organizations to enhance their reputation and brand image by demonstrating their commitment to sustainability and by improving their sustainability performance. This can help to attract and retain customers, employees, and other stakeholders who value sustainability.
5) **Fostering innovation and competitiveness:** By identifying areas for improvement and taking action to improve sustainability performance, organizations can foster innovation and competitiveness. This can help to stay ahead of the curve, to respond to changing market demands, and to differentiate themselves from competitors.
6) Overall, a sustainability audit provides a valuable tool for organizations to understand their sustainability performance, to identify areas for improvement, and to take action to enhance their sustainability and to achieve their sustainability goals.

## PART B. ESG RATING

## MEANING OF ESG

ESG (environmental, social, and corporate governance) is a framework designed to be embedded into an organization's strategy that considers the needs and ways in which to generate value for all of organizational stakeholders (such as employees, customers and suppliers and financiers).

ESG is a term used to represent an organization's corporate financial interests that focus mainly on sustainable and ethical impacts.

Capital markets use ESG to evaluate organizations and determine future financial performance. While ethical, sustainable and corporate governance are considered non-financial performance indicators, their role is to ensure accountability and systems to manage a corporation's impact, such as its carbon footprint.

ESG corporate reporting can be used by stakeholders to assess the material sustainability-related risks and opportunities relevant to an organization. Investors may also use ESG data beyond assessing material risks to the organization in their evaluation of enterprise value, specifically by designing models based on assumptions that the identification, assessment and management of sustainability-related risks and opportunities in respect to all organizational stakeholders leads to higher long-term risk-adjusted return. Organizational stakeholders include but not limited to customers, suppliers, employees, leadership, and the environment.

## What are the criteria for ESG?

Each criterion of ESG plays an important role in the effort to increase focus on sustainable and ethical investments.

1. **Environmental**

   Environmental factors involve how much an organization considers the protection of natural resources. These factors include the environment, climate change, energy consumption and use and its overall impact.

   Examples of environmental factors include:

   - Air and water quality
   - Biodiversity
   - Deforestation
   - Energy performance
   - Carbon footprint, including greenhouse gas emissions
   - Natural resource depletion
   - Waste management and pollution

2. **Social**

   Social factors address how an organization treats people, Community relations, including the organization's connection and impact on the local communities in which it operates and serves, Examples of social factors include:

   - Customer satisfaction
   - Data protection and privacy policies and efforts
   - Efforts to fund projects or institutions that help poor and underserved communities globally
   - Employee diversity, equity and inclusion (DEI)
   - Employee engagement and relations
   - Health and safety
   - Human rights, including child labor and slavery
   - Labour standards

3. **Governance**

   Governance examines how a corporation polices itself, focusing on internal system controls and practices to maintain compliance. Governance focuses on transparency, industry best practices, organization management and associated growth initiatives.

   Examples of governance factors include:

   - Company leadership
   - Board composition, including diversity and structure

- Corruption and bribery
- Donations and political lobbying
- Executive compensation and policies
- Tax strategy, including audit committee structure, internal controls and regulatory policies
- Whistleblower programs.

## MEANING OF ESG RATING

An ESG score is an objective measurement or evaluation of a given company, fund, or security's performance with respect to Environmental, Social, and Governance (ESG) issues. Specific evaluation criteria vary between the different rating platforms that issue ESG scores; however, they all fall within one (or more) of the E, S, or G.

ESG scoring systems tend to be either industry-specific or industry-agnostic. Industry-specific scoring systems assess issues that have been deemed material to the industry at large. Industry-agnostic ESG scores tend to incorporate widely accepted factors that are meaningful across industries – issues like climate change, diversity, equity and inclusion (DEI), and human rights.

ESG rating platforms determine a weighting for each measurement criterion; then, they assess an organization's performance against each criterion. An organization's final ESG score is typically a sum-product of the criteria ratings and the (proprietary) criteria weightings.

An ESG rating measures a company's exposure to long-term environmental, social, and governance risks. These risks, involving issues such as energy efficiency, worker safety, and board independence, have financial implications. But they are often not highlighted during traditional financial reviews. Investors who use ESG ratings to supplement financial analysis can gain a broader view of a company's long-term potential.

A good ESG rating means a company is managing its environment, social, and governance risks well relative to its peers. A poor ESG rating is the opposite -- the company has relatively higher unmanaged exposure to ESG risks.

Along with ESG reporting, ESG ratings help investors understand a company's priorities and the long-term risks it could face in the future.

**Key Takeaways**

- An ESG score is an evaluation of an organization's performance against various sustainability metrics (related to either environmental, social, or governance issues).
- ESG scores are generated by rating platforms where analysts evaluate corporate disclosures, conduct management interviews, and review publicly available information about an organization to provide an objective rating of the organization's performance.
- Scores are used differently by different stakeholders (i.e., investors vs. employees), and rating platforms have evolved to reflect this variety of use cases.

## ESG KEY PERFORMANCE INDICATORS

ESG key performance indicators, or KPIs, are trackable figures meant to help firms understand the environmental, social and governance impact of their operations. For venture capital and private equity managers, ESG KPIs are integral in understanding the ESG impact of the companies they invest in or are thinking about investing in, and thus the impact of their funds. ESG KPIs also provide managers and investors with an idea of what risks their investments and funds face.

With reference to the Key Performance Indicators (KPIs) of ESG, it will be of paramount academic interest to explore Regulation 34(2)(f) of the SEBI (LODR) Regulations, 2015 as amended by SEBI (LODR) (Second Amendment) Regulations, 2023 dated 14th June 2023 reads as under:

"for *the top one thousand listed entities based on market capitalization, the annual report shall contain a Business Responsibility and Sustainability Report on the environmental, social and governance disclosures, in the format as may be specified by the Board from time to time.*

*Provided that the* ***assurance of the Business Responsibility and Sustainability Report Core*** *shall be obtained, with effect from and in the manner as may be specified by the Board from time to time."*

*Explanation:*

1. *Business Responsibility and Sustainability Report Core shall comprise of such key performance indicators as may be specified by the Board from time to time;*
2. *"Value chain" for the listed entities shall be specified by the Board from time to time.*

On referring the Consultation Paper on ESG Disclosures Ratings and Investing by SEBI it is mentioned that Assurance can be either limited or reasonable. Limited Assurance is being adopted globally by jurisdictions as it is relatively easy to implement. However, due to its inherent nature, limited assurance draws relatively low confidence, while reasonable assurance despite being relatively more expensive, draws more confidence.

In order to achieve the twin objectives of improving credibility and limiting the cost of compliance, BRSR Core has been proposed by SEBI for reasonable assurance which consists of select Key Performance Indicators (KPIs) under each E, S and G attributes / areas that needs to be reasonably assured.

SEBI in this regard issued a consultation paper on ESG Disclosures, Ratings and Investing in the month of February 2023 introducing the concept of BRSR Core for third party assurance on select Key Performance Indicators (KPIs) under E, S and G areas. ESG Advisory Committee (EAC) of SEBI adopted the following approach in developing BRSR Core:

1. The KPIs sought in BRSR are quantifiable to the extent possible so as to facilitate comparability of the disclosures.
2. It contains factors that are relevant to both Manufacturing and service sectors and are relevant in the Indian Context.
3. The KPIs contain a number of intensity ratios so as to enable comparability irrespective of size of the Company.

The consultation paper recommended a glide path approach in implementation of assurance mandates on BRSR Core as under:

For FY 22-23 – BRSR Mandatory Reporting for top 1000 companies and Assurance–No mandatory Requirement

For FY 23-24-Reasonable Assurance of BRSR Core –Mandatory for top 250 companies

For FY 24-25 - Reasonable Assurance on BRSR Core mandatory for top 500 companies

For FY 25-26- Reasonable Assurance on BRSR Core mandatory for top 1000 companies

Further, at present the metrics related to supply chain of a company are covered under leadership indicators in the BRSR, that may be reported on voluntary basis. It was proposed in the consultation paper to introduce a limited set of ESG disclosures i.e. BRSR Core in a gradual manner and on comply or explain basis as under.

For FY 24-25 – ESG disclosures as per BRSR Core, for supply chain for top 250 companies on comply or explain basis; Assurance not mandatory.

For FY 25-26 - ESG disclosures as per BRSR Core, for supply chain for top 250 companies on comply or explain basis; Assurance on comply or explain basis.

**List of Recommended Attributes in the consultation paper**

| ***Sr. No.*** | ***Attribute*** |
|---|---|
| 1 | Change in GHG footprint |
| 2 | Change in Water footprint |
| 3 | Investing in reducing its environmental footprint |
| 4 | Embracing circularity - details related to waste management by the entity |
| 5 | Enhancing Employee Wellbeing and Safety |
| 6 | Enabling Gender Diversity in Business |
| 7 | Enabling Inclusive Development |
| 8 | Fairness in Engaging with Customers and Suppliers |
| 9 | Openness of business |

It is heartening to note that globally corporate have realized the importance of assurance on ESG Parameters. The KPMG Survey of Sustainability Reporting 2022 found that 63 percent of the G250 companies obtained assurance. Similarly, the International Federation of Accountants' (IFAC) recent study of around 1,350 companies in 15 jurisdictions found that 64 percent were obtaining some form of assurance over at least some of their ESG information. In view of this, it is essential to have a look on the International Regulatory framework on Independent Assurance of ESG/Sustainability Reports.

| | |
|---|---|
| **Environmental, Social and Governance Reporting Guide, Hong Kong** | The issuer may seek independent assurance to strengthen the credibility of the ESG information disclosed. Where independent assurance is obtained, the issuer should describe the level, scope and processes adopted for the assurance given clearly in the ESG report.<br>*Reference: https://en-rules.hkex.com.hk/rulebook/environmental-social-and-governance-reporting-guide-0* |
| **Corporate Sustainability Reporting Directive, EU** | CSRD requires independent assurance service providers to carry out the assurance of sustainability reporting, Member States should also allow a statutory auditor, other than the one(s) carrying out the statutory audit of the financial statements, to express an assurance opinion on sustainability reporting.<br>Member States should set out requirements that ensure the quality of the assurance of sustainability reporting carried out by independent assurance services providers and consistent outcomes in the assurance of sustainability reporting. Therefore, all independent assurance services providers should be subject to requirements that are equivalent to the requirements set out in Directive 2006/43/EC of the European Parliament and of the Council as regards the assurance of sustainability reporting, while being adapted to the characteristics of independent assurance services providers which do not carry out statutory audits. |

| | |
|---|---|
| | If an undertaking seeks the opinion of an accredited independent assurance services provider other than the statutory auditor on its sustainability reporting, it should not in addition need to request an assurance opinion on its sustainability reporting from the statutory auditor.<br>*Reference: https://eur-lex.europa.eu/legal content/EN/TXT/?uri=CELEX:32022L2464* |
| **NASDAQ ESG Reporting Guide** | In May 2019, NASDAQ launched its new global environmental, social and governance (ESG) reporting guide for public and private companies. Initially introduced in 2017 as a voluntary support program for Nasdaq's Nordic and Baltic markets, the new Guide includes the latest third-party reporting methodologies widely adopted by the industry and aims to help both private and public companies navigate the evolving standards on ESG data disclosure.<br>The Guide provides sustainability disclosures by external assurance by a third party.<br>*Reference: https://www.nasdaq.com/docs/2019/11/26/2019-ESG-Reporting-Guide.pdf* |
| **JSE Climate Disclosure Guidance** | Reports are generally more credible when they are supported by robust internal assessment processes involving existing internal audit, risk, and data control verification systems. Properly managed, external assurance provides a hugely valuable independent oversight and advisory function on an organisation's internal data gathering, management and disclosure activities, and it can contribute to an added degree of trust, credibility, and recognition among external stakeholders. It is important to recognise, however, that while third-party assurance is usually valuable in strengthening internal sustainability reporting systems and enhancing the credibility of reports, organisations should not use any concerns regarding the (perceived or actual) cost of assurance as a reason not to report; it is better to start reporting with no or little assurance, than to not start reporting at all.<br>*Reference:https://www.jse.co.za/sites/default/files/media/documents//JSE%20Climate%20 Disclosure%20Guidance_June%202022*.pdf |
| **European Sustainability Reporting Standards (ESRS)** | These standards will require detailed corporate reporting on a broad range of ESG issues, as well as audited assurance on the information disclosed. |

At this juncture, it will be of substantial academic interest peruse the ESG Metrics prescribed by SGX (The Singapore Exchange), which is an exemplar in ESG initiative. The Singapore Exchange (SGX) recommends a list of 27 core ESG metrics ("Core ESG Metrics") for Issuers to use as a starting point for sustainability reporting. These Core ESG Metrics are intended as a common and standardised set of ESG metrics, which will help better align users and reporters of ESG information. The 27 core ESG metrics identified by SGX are as under:

## List of SGX's Core ESG Metrics

**1. Environmental**

| *Topic* | *Metric* | *Unit* | *Framework Alignment* | *Description* |
|---|---|---|---|---|
| Greenhouse Gas Emissions ("GHG") | Absolute emissions by: (a) Total; (b) Scope 1, Scope 2; and (c) Scope 3, if appropriate | tCO2e | GRI 305-1, GRI 305-2, GRI 305-3, TCFD, SASB 110, WEF core metrics | Metric tons of carbon dioxide equivalent (tCO2e) of relevant GHG emissions. Report the Total, Scope 1, and Scope 2 GHG emissions and, if appropriate, Scope 3 GHG emissions. GHG emissions should be calculated in line with internationally recognised methodologies (e.g., GHG Protocol). |
| | Emission intensities by: (a) Total; (b) Scope 1, Scope 2; and (c) Scope 3, if appropriate | tCO2e/ organisation - specific metrics | GRI 305-4, TCFD, SASB 110 | Emission intensity ratios in GHG emissions (tCO2e) per unit of organisation- specific metrics (e.g., revenue, units of production, floor space, number of employees, number of passengers). This is calculated from the absolute emissions reported. Denominators should be clearly defined and disclosed. |
| Energy Consumption | Total energy consumption | MWhs or GJ | GRI 302-1, TCFD, SASB 130 | The organization has total energy consumption in megawatt hours or gigajoules (MWhs or GJ). |
| | Energy intensity consumption | MWhs or GJ organisation- specific metric | GRI 302-3, TCFD | Energy intensity ratios in energy consumed (MWhs or GJ) per unit of organisation- specific metrics (e.g., revenue, units of production, floor space, number of employees, number of passengers). This is calculated from the total energy consumption reported. Denominators should be clearly defined and disclosed. |

| *Topic* | *Metric* | *Unit* | *Framework Alignment* | *Description* |
|---|---|---|---|---|
| Water Consumption | Total water consumption | ML or $m^3$ | GRI 303-5, SASB 140, TCFD, WEF core metrics | All operations have total water consumption in metres or cubic metres (ML or $m^3$). |
| | Water consumption intensity | ML or $m^3$/ organisation-specific metrics | TCFD, SASB IF-RE- 140a.1 | Water intensity ratios in water consumed (ML or $m^3$) per unit of organisation-specific metrics (e.g., revenue, production units, floor space, number of employees, number of passengers).<br>This is calculated from the total water consumption reported. Denominators should be clearly defined and disclosed. |
| Waste Generation | Total waste generated | Tonne (t) | GRI 306-3, SASB 150, TCFD, WEF expanded metrics | Total weight of waste generated, in metric tons (t), within the organisation, and where possible, to include relevant waste composition information (*e.g., hazardous vs. non-hazardous, recycled vs. non-recycled*). |

**2. Social**

| *Topic* | *Metric* | *Unit* | *Framework Alignment* | *Description* |
|---|---|---|---|---|
| Gender Diversity | Current employees by gender | Percentage (%) | GRI 405-1, SASB 330,<br>WEF core metrics | Percentage of existing employees by gender. |
| | New hires and turnover by gender | Percentage (%) | GRI 401-1, WEF core metrics | Percentage of new employee hires and employee turnover during the reporting period by gender. |

| *Topic* | *Metric* | *Unit* | *Framework Alignment* | *Description* |
|---|---|---|---|---|
| Age-Based Diversity | Current employees by age groups | Percentage (%) | GRI 405-1, WEF core metrics | Percentage of existing employees by age group.<br>GRI's employee age group categories include: (a) under 30 years old, (b) 30-50 years old, and (c) over 50 years old. |
| | New hires and turnover by age groups | Percentage (%) | GRI 401-1, WEF core metrics | Percentage of new employee hires and employee turnover during the reporting period by age group.<br>GRI's employee age group categories include: (a) under 30 years old, (b) 30-50 years old, and (c) over 50 years old. |
| Employment | Total turnover | Number and Percentage (%) | GRI 401-1, SASB 310,<br>WEF core metrics | Total number and rate of employee turnover during the reporting period. The scope of reporting (i.e., subsidiaries included or not)<br>should be clearly defined and disclosed. |
| | Total number of employees | Number | Commonly reported metric by SGX Issuers | The total number of employees at the end of the reporting per the scope of reporting (i.e., subsidiaries included or not) should be clearly defined and disclosed. |

| *Topic* | *Metric* | *Unit* | *Framework Alignment* | *Description* |
|---|---|---|---|---|
| Development & Training | Average training hours per employee | Hours/No. of employees | GRI 404-1, WEF core metrics | Average training hours per employee during the reporting period (total number of hours of training provided to employees over the total number of employees). |
| | Average training hours peremployee by gender | Hours/No. of employees | GRI 404-1, WEF core metrics | Average training hours per employee during the reporting period by gender (total number of hours of training provided to employees in each category over a number of employees per category). |
| Occupational Health & Safety | Fatalities | Number of cases | GRI 403-9, WEF core metrics, MOM (Singapore), SASB 320 | Number of fatalities due to work-related injury during reporting period across the organisation.<br><br>The report's scope should include employees and workers who are not employees but whose work and/or workplace is controlled by the organisation. |

**3. Governance**

| *Topic* | *Metric* | *Unit* | *Source* | *Description* |
|---|---|---|---|---|
| Board Composition | Board independence | Percentage (%) | GRI 102-22, WEF core metrics | The number of independent board directors as a percentage of all directors. |
| | Women on the board | Percentage (%) | GRI 102-22, GRI 405-1, WEF core metrics | The number of female board directors as a percentage of all directors. |

| *Topic* | *Metric* | *Unit* | *Source* | *Description* |
|---|---|---|---|---|
| Management Diversity | Women in the management team | Percentage (%) | GRI 102-22, GRI 405-1, WEF core metrics, SASB 330 | The number of female senior management as a percentage of senior management.<br>Each organisation defines which employees are part of its senior management team. |
| Ethical Behaviour | Anti-corruption disclosures | Discussion and number of standards | GRI 205-1, GRI 205-2 and GRI 205-3 | Disclosures based on GRI's anti-corruption standards of 205-1, 205-2 and 205-3. |
| | Anti-corruption training for employees | Number and Percentage (%) | GRI 205-2, WEF core metrics | Number and percentage of employees that received anti- corruption training during the reporting period. |
| Certifications | List of relevant certifications | List | Commonly reported metric by SGX Issuers | List all sustainability or ESG-related certification (e.g., ISO 45000 family, BCA Green Building, LEED, ENERGY STAR).<br>Each organisation defines which certifications are relevant to be reported. |
| Alignment with Frameworks | Alignment with Frameworks and disclosure practices | GRI/TCFD/SASB/ SDGs/others | SGX-ST Listing Rules (Mainboard) 711A and 711B, Practice Note 7.6; SGX-ST Listing Rules (Catalist) 711A and 711B, Practice Note 7F | The Issuer needs to give priority to using globally-recognised frameworks and disclosure practices to guide its sustainability reporting. Where the Issuer is applying a portion of a particular framework, the Issuer should provide a general description of the extent of the Issuer's application of the framework. |
| Assurance | Assurance of Sustainability Report | Internal/External/ Non e | SGX-ST Listing Rules (Mainboard) 711A and 711B, Practice Note 7.6; SGX-ST Listing Rules (Catalist) 711A and 711B, Practice Note 7F | Disclose whether the Sustainability Report has undertaken: (a) external independent assurance, (b) internal assurance or (c) no assurance. Provide scope of assurance if the organisation has undertaken external or internal assurance. |

The KPIs of ESG are provided in the following tables.

| ***ENVIRONMENTAL*** | ***SOCIAL*** | ***GOVERNANCE*** |
|---|---|---|
| Environmental Policy | Monetary and Non Monetary employee benefits | Board independence |
| Environmental impacts | Attrition rate | Board Diversity |
| Energy Consumption | Training and Development Hours | Separation of powers |
| Energy intensity | Health care Benefits | Voting pattern and results |
| Carbon Emission | Human Rights Policy and Violations | Gender Pay Ratio |
| Primary Energy Source | Child and Forced labour | Business Ethics and Code of Conduct |
| Renewable Energy usage | Gender Parity | Supplier Code of Conduct |
| Water Management | Local Procurement | Corporate Governance |
| Waste Management | Community and Social Work | AML / Anti Bribery Policy |

| ***CATEGORY: ENVIRONMENT*** | |
|---|---|
| Environmental Policy | Does the Company have an Environmental policy and if yes to what extent is it followed? |
| Environmental impacts | Does the Company have any legal or regulatory responsibility for environmental impact? |
| Energy Consumption | Total energy usage |
| Energy intensity | Amount of energy used |
| Carbon Emission | Quantum of Carbon and Green House Gas emissions |
| Primary Energy Source | What is the primary source of energy used by the Company? |
| Renewable Energy usage | Percentage of energy used from renewable sources |
| Water Management | Amount of water consumption and details about water recycling |
| Waste Management | Amount of waste generated, recycled and reclaimed |

| ***CATEGORY: SOCIAL*** | |
|---|---|
| Monetary and Non Monetary employee benefits | Employee wages, benefits and staff welfare |
| Attrition rate | Employee turnover rate |
| Training and Development Hours | Training and development hours per employee |

| | |
|---|---|
| Health care Benefits | Provision of health care benefits and policy on health care benefits, if any |
| Human Rights Policy and Violations | Number of grievances about human rights filed, addressed and resolved |
| Child and Forced labour | Does the Company prohibit use of child/forced labour through the organisation and supply chain? |
| Gender Parity | Opportunities for gender equality and percentage of women in workforce |
| Local Procurement | Percentage of total procurement from local suppliers |
| Community and Social Work | Number of hours spent on community work |

| ***CATEGORY: GOVERNANCE*** | |
|---|---|
| Board independence | Number of independent directors on Board |
| Board Diversity | Ratio of women directors on Board |
| Separation of powers | Whether CEO can chair board / be appointed on Board? |
| Voting pattern and results | Disclosure of result of voting of last 3 general meetings |
| Gender Pay Ratio | Ratio of median male salary to medial female salary |
| Business Ethics and Code of Conduct | Does the Company have and follow a Business Ethics and Code of Conduct? |
| Supplier Code of Conduct | Does the Company have and follow a Supplier Code of Conduct? |
| Corporate Governance | Adherence to corporate governance practices |
| AML / Anti Bribery Policy | Does the Company have and follow an AML / Anti Bribery Policy? |

## ESG RATING ORGANISATION/ ESG RATING PROVIDERS AND ESG METHODOLOGY

The ESG Rating Agencies are organizations that examine a company's environmental, social, and corporate governance policies to determine its sustainability. Stakeholders may use an ESG rating agency's report to see how sustainable a company is, allowing them to better determine which ones to invest in and where to do business.

With ESG investing becoming mainstream, the demand for ESG data and indices has also increased globally. Investors are increasingly relying on ESG ratings to gauge a company's performance on ESG issues and exposure to ESG related risks. ESG ratings help to bridge this gap by collecting the myriad ESG data, analyzing and diluting it to a single score/rating. ESG rating providers ("ERPs") collect ESG data for a given company mainly from a company's own disclosures, news items, third party reports and questionnaires. ERPs thereafter employ their distinct methodology to aggregate and process this data into a single score/rating.

Some of the widely known ESG Rating organisations include –

### Dun & Bradstreet

Dun & Bradstreet is an international business data and analytics provider, which provides insights into company performance, trends, and ESG factors. Through its ESG analysis, Dun & Bradstreet provides companies with a comprehensive view of their sustainability performance in relation to global peers.

They offer company-level ESG scores and ratings, sector-level analysis, and a range of other data points to help organizations identify key areas for improvement or risk management. Dun & Bradstreet also offers ESG-focused research reports, tailored to specific industries or countries, as well as proprietary tools to help companies track and analyze their own ESG performance.

Knowing the environmental, social, and governance risks of doing business with third parties is a key factor in maintaining a competitive advantage in any economic climate. That's why they provide you with an easy-to-understand snapshot of these rankings, including a comparison to industry averages, so you can make informed decisions about investing.

### Sustainalytics ESG Risk Ratings

Sustainalytics is an ESG rating and data supplier that provides ESG ratings on 20,000 companies and 172 countries. They rate 40,000 companies worldwide. Sustainalytics is a subsidiary of Morningstar, one of the largest stock market data providers in the world. The ESG ratings from Sustainalytics measure the environmental, social, and corporate governance performance of companies on a global scale. They cover about 13,000 international equities across all regions worldwide.

ESG describes the Environmental (E), Social (S), and Governance (G) metrics that are evaluated to inform security selection.

ESG ratings are based on both quantitative ESG data and qualitative analysis. ESG Scores cover several different areas including governance, environmental impact, social contribution, and financial performance to provide a holistic view of the ESG profile of companies.

### MSCI ESG Ratings

MSCI ESG Ratings are created by MSCI ESG Research, one of the largest rating agencies. These ESG ratings are released for 14,000 different equity and fixed-income issuers.

SCI ESG Ratings are generally known to be one of the industry leaders in publishing scores and ratings for ESG companies.

MSCI rates companies according to their exposure to industry specific ESG risks and opportunities and their ability to manage those risks and opportunities relative to peers.

The company level ratings are aggregated to the fund level, which are further aggregated to the portfolio level to provide the ESG rating available on the Sustainability tab of the 360 Evaluator.

The MSCI ESG Ratings model seeks to answer four key questions about companies:

- What are the most significant ESG risks and opportunities facing a company and its industry?
- How exposed is the company to those key risks and/or opportunities?
- How well is the company managing key risks and opportunities?
- What is the overall assessment of how the company is managing ESG risks and opportunities and how does it compare to its global industry peers?

The key issue scores and weights are combined and normalized per industry to offer an overall ESG score (0-10) and rating (AAA-CCC) for each issuer.

The criteria covered by MSCI under three pillars- Environmental, Social and Governance is as under:

| *Pillar* | *MSCI* |
|---|---|
| **Environmental** | Climate Change |
| | Natural resources |
| | Pollution & waste |
| | Environmental opportunities |
| **Social** | Human capital |
| | Product liability |
| | Stakeholder opposition |
| | Social opportunities |
| **Governance** | Corporate governance |
| | Corporate behaviour |

*Source: Refinitiv, MSCI, Bloomberg, FTSE; OECD assessment.*

## Bloomberg ESG Disclosures Scores

Bloomberg ESG Disclosure Scores is an ESG data system that provides ESG information for over 11,800 companies in more than 100 countries. Their ESG data includes topics such as climate change, human capital, and shareholders' rights. The ESG Disclosure Scores rank companies on their level of ESG disclosure and span key sustainability topics.

The following criteria covered under Environmental, Social and Governance

| *Pillar* | *Bloomberg* |
|---|---|
| **Environmental** | Carbon Emissions |
| | Climate change effects |
| | Pollution |
| | Waste disposal |
| | Renewable energy |
| | Resource depletion |
| **Social** | Supply chain |
| | Discrimination |
| | Political contributions |
| | Diversity |
| | Human rights |
| | Community relations |

| | |
|---|---|
| **Governance** | Cumulative voting |
| | Executive compensation |
| | Shareholders' rights |
| | Takeover defence |
| | Staggered boards |
| | Independent directors |

*Source: Refinitiv, MSCI, Bloomberg, FTSE; OECD assessment.*

## Thomson Reuters

Thomson Reuters uses more than 400 different ESG metrics, of which a subset of 186 fields are selected, with history going back to 2002. The ESG metrics are then grouped into ten categories (Resource use, Emissions, Innovation, workforce, human rights, community, product responsibility, management, shareholders and CSR strategy) which are combined to formulate the three pillar scores of Environmental, Social and Governance.

The ESG criteria covered by Thomson Reuters is presented below-

| ***Pillar*** | *Thomson Reuters* |
|---|---|
| **Environmental** | Resource Use |
| | Emissions |
| | Innovation |
| **Social** | Workforce |
| | Human Rights |
| | Community |
| | Product Responsibility |
| **Governance** | Management |
| | Shareholders |
| | CSR strategy |

*Source: Refinitiv, MSCI, Bloomberg, FTSE; OECD assessment.*

## FTSE Russell's ESG Ratings

The ESG Ratings by FTSE Russel are an ESG-based assessment system of a company's ESG performance. The ESG Ratings consist of more than 7,200 securities from 47 countries and are based on a methodical analysis of the performance at a company level.

The ratings are a way to compare and analyze the ESG performance of issuers. The ratings consist of six ESG categories which are listed below:

- Corporate Governance
- Environmental Policy

- Social Policy
- Labor Practices
- Supply Chain Policy
- Country of Origin (a proxy for economic development)

## Institutional Shareholder Services Ratings and Rankings

ISS (Institutional Shareholder Services), majority-owned by Deutsche Bourse Group, provides company, country, and fund ratings as well as data and analysis across the full range of sustainable investment issues, including climate change, human rights, labor standards, corruption, and controversial weapons.

## S&P Global ESG Scores

Standard & Poor's Global is one of the largest companies that provide data analytics and reporting related to companies around the world. S&P Global ESG Scores is different from other ESG scoring systems because it uses a bottom-up approach. The system's goal is to take the ESGY Scorecard directly to the industry level, which can control ESG behavior. S&P Global ESG Scores takes a more analytical look at how well companies perform in areas such as environmental practices and employee relations.

## CDP Climate, Water, and Forest Scores

A not-for-profit organization called CDP, which provides environmental data, research, and tools to investors, helps investors identify funds that invest in companies that are more successful at addressing material concerns linked to climate change, water security, and deforestation.

## Moody's ESG Solutions Group

Moody's ESG Solutions Group, a Moody's Corp. business unit. Moody's is well-known as being one of the largest credit rating agencies in the world. This segment of their business offers ESG ratings, analytics, sustainability ratings, and sustainable finance reviewer/certifier services using data from Moody's. The group now includes environmental social responsibility (ESG) assessor V.E (Vigeo Eiris), as well as climate data business Four Twenty Seven, which was acquired in 2019.

**UNDERSTANDING MSCI ESG RATINGS – AN EXAMPLE TO UNDERSTAND ESG RATINGS**
**(*Source: www.msci.com*)**

The foundation of the MSCI ESG score is a key issues framework that measures risk across 10 categories of environment, social, and governance areas.

**Considerations for the environmental score**

MSCI's key environmental issues fall under the categories of climate change, natural capital, pollution and waste, and environmental opportunities.

Climate change issues include:

- Carbon emissions
- Product carbon footprint
- Financing environmental impact
- Climate change vulnerability

Natural capital issues are:

- Water sourcing
- Biodiversity and land use
- Raw material sourcing

The pollution and waste category encompasses:

- Toxic emissions and waste
- Packaging material and waste
- Electronic waste

Environmental opportunities are:

- Clean technology
- Green building
- Renewable energy

**Considerations for the social score**

Social score issues fall into four categories: human capital, product liability, stakeholder opposition, and social opportunities.

Human capital issues are:

- How labor is managed
- Health and safety practices and protocols
- Worker training
- Supply chain labor standards

Product liability areas of focus include:

- Product safety and quality
- Chemical safety
- Consumer financial protection
- Privacy and data security
- Responsible investing
- Insuring health and demographic risk

Stakeholder opposition includes:

- Controversial sourcing
- Community relations

Social opportunities are:

- Access to communication
- Access to finance

- Access to healthcare
- Opportunities in nutrition and health

**Considerations for the governance score**

MSCI breaks governance into two categories: corporate governance and corporate behavior.

Corporate governance includes:

Composition of the board in terms of diversity and independence

- Executive compensation
- Ownership
- Accounting practices

Corporate behavior encompasses:

- Business ethics
- Tax transparency

**How are companies scored?**

Key issues are identified by industry. MSCI selects 35 most relevant issues to specific industries. For example, packaging material and waste is a key issue for the soft drink industry. This wouldn't be a factor for industries that don't physically package a product, such as technology infrastructure. Corporate governance key issues are included for all industries.

Companies are scored on each key issue. MSCI analyzes 80 different exposure metrics and 270 governance metrics to score companies from 0 to 10 on each key issue. A low score means the company is heavily exposed to the issue and is not managing that risk effectively. A high score indicates an aggressive effort to mitigate the risk. An example of risk mitigation for carbon emissions would be Microsoft's (NASDAQ:MSFT) goal to become carbon-negative by 2030.

Issues are weighted. MSCI weights key issues according to their timeline and potential impact. Issues that could have a major environmental or social impact within two years have the highest weights. Issues with lesser potential for impact and a timeline of more than five years have the lowest weights. Worker safety in a manufacturing environment, for example, presents an immediate risk with severe financial and legal consequences. That would justify a heavier weighting. Issue scores and weights are combined. Issue scores and weights are combined to produce an industry-adjusted numerical score from 0 to 10 for the rated company. MSCI translates the numerical score into an ESG rating. ESG ratings range from CCC to AAA. The leaders have AA and AAA scores.

**ESG score data sources**

MSCI uses public data sources to measure ESG exposure. These sources include company 10-Ks, sustainability reports, and proxy reports, plus thousands of monitored media outlets and data sets from governments, regulatory organizations, and NGOs. MSCI also works directly with corporations to validate the information collected.

**ESG rating reliability**

ESG ratings have been making the news recently for a lack of transparency in data sourcing. ESG ratings are a useful tool only if they are data-backed, reliable, and objective. While that remains largely the case, recent events have called that into question.

One major event is the war in Ukraine, where environmental and social values are colliding. Europe is loosening climate objectives and reverting to fossil fuel use to ban Russian oil, leading to increased fossil fuel use across business sectors.

Simultaneously, Russian-backed Sberbank (ETR:SBNC)(AKSJ.F) has sparked outrage as it was highly rated by both MSCI ESG research and Sustainalytics as of December 2021. The bank scored especially well on data security and governance compared to Western lenders.

MSCI and Sustainalytics have now downgraded or suspended Sberbank and other Russian government-backed companies. Investors are calling for an overhaul in how geopolitics and human rights factor into ESG ratings.

Meanwhile, a working paper from the European Corporate Governance Institute found that a significant number of ESG rating agencies were downgrading ESG scores retroactively. The findings call into question the reliability of ESG ratings and may reduce investor confidence.

In better news for ESG integration in mainstream finance, in June 2022 the UK's Financial Conduct Authority (FAC) stated that it has a clear rationale for regulating ESG ratings. ESG rating standardization means greater transparency and standardization for investment decisions.

**An ESG rating example**

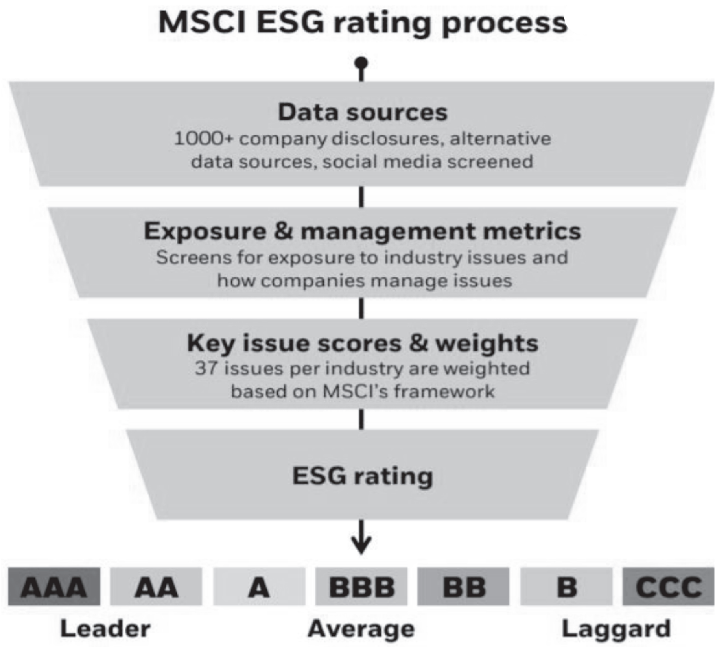
Amazon (NASDAQ:AMZN) has an average MSCI ESG rating of BBB. Amazon leads in corporate governance and privacy and data security. However, the e-commerce retailer has an average product carbon footprint and poor scores for labor management and corporate behavior.

The laggard score in labor management and corporate behavior isn't surprising if you follow Amazon. The company has had its share of negative headlines in these areas. Amazon workers' complaints have been surfacing for years. Reports cite issues such as hazardous working conditions, aggressive attempts to block unionization, and mistreatment of pregnant workers.

Amazon has also been accused of price-fixing more than once. In early 2021, a group of retail booksellers filed a class action lawsuit claiming Amazon and major book publishers were manipulating wholesale prices on print books. Two months later, the District of Columbia filed a separate antitrust suit alleging Amazon prohibited third-party sellers from offering their products at lower prices outside of Amazon's website.

Poor treatment of workers and unsavory trade practices are more than problematic on principle. They pose financially relevant risks such as workforce churn, higher recruitment costs, lawsuits, and loss of reputation.

If you are (or want to be) an Amazon shareholder, the more you know about factors that can affect the retailer's returns, the better decisions you will make.




*Source: MSCI*

## ADVANTAGES OF ESG RATING

Unsurprisingly, people prefer to invest in companies that manage their risks better than their competition. Companies with high ESG scores appear sustainable, boast fewer liabilities, build positive brand reputations, and maintain strong relationships with their clients and stakeholders. As a result, these companies have an advantage when attracting talent, impressing consumers, and raising capital.

There are five main benefits small to mid-sized companies can gain by starting an ESG program:

- Competitive Advantage
- Cost Reduction
- More Attractive to Lenders and Investors
- Supply Chain Prospects
- Attraction and Retention of Talent

**Competitive Advantage:**

Having an ESG program in place helps boost brand recognition and even promotes brand loyalty. Today's consumers and clients are increasingly aware of ethical spending and care more about what a company does to support sustainability. Small to mid-sized companies that have taken steps to meet sustainability concerns (having an ESG program) have been known to attract more customers and clients who seek to do business with companies addressing these issues.

Small to mid-size companies can create value by having an ESG program. In the past, it was harder to track and be consistent when it came to ESG data and took extra resources. Today ESG data management is simpler with software programs that allow for the ability to consolidate information such as tracking greenhouse gas emissions (GHG), energy data, utility data sync, waste management, etc.

**Cost Reduction:**

By implementing an ESG program, small to mid-sized companies can track key metrics like energy consumption, water consumption, waste shipping/treatment costs, and raw material usage. This tracking ability is a prerequisite for companies to plan programs to improve efficiency, which leads to reduced costs associated with energy and water usage and waste transport. In addition to improving cost management, ESG programs also allow for operational efficiency, less exposure to fines/penalties, better risk management, and improved innovations.

**More Attractive to Lenders and Investors:**

Attracting the attention of investors and lenders is one of the biggest advantages of having an ESG program. It seems no matter where you look for ESG benefits, the top thing that comes up is that investors and lenders are gaining interest in companies with an ESG program in place over those without. Study(opens in a new tab) after study(opens in a new tab) has shown companies that made ESG a priority stand out to both investors and lenders because they tend to outperform their competition.

**Supply Chain Prospect:**

Much like investors are paying more attention to ESG, many companies are looking for supply chain partners that embrace sustainability efforts. For example, many retail stores are making decisions not to stock products made by companies considered to have poor ESG performance. Companies' supply chains have an effect on the environment, people, and society, so companies that take their ESG goals seriously find it to be in their best interest to partner with suppliers who share the same vision. Multiple large companies have already made the move to implementing ESG, making it more beneficial for them to partner with suppliers that have an ESG program in place, as well as easier to attract partners who insist on better ESG performance as a condition for partnership.

Arguably, these considerations carry even more weight for small to mid-sized companies. A larger company can potentially replace lost supply chain partners more easily than smaller competitors can, so those smaller companies need to be especially mindful of the ESG criteria that many companies are looking for in their choice of partnerships.

**Attraction and Retention of Talent :**

Today, many job seekers are no longer looking for just a paycheck. They want to enjoy their jobs, feel appreciated, and make a positive impact. Working for a company with strong ESG goals appears to be the top factor for employees' job satisfaction, along with evidence that the company "walks the walk" by putting its stated goals into practice. Adding to that, the "Great Resignation" has shown many employers that at least some of their employees have other options, and will use them if their current job doesn't fulfill their needs and values.

Research(opens in a new tab) has shown that satisfied employees work harder, stay longer, and seek to produce better results. Millennials and Gen Z are quickly taking over the workforce and these generations have put a greater emphasis on environmental and social concerns, expecting more from their employers than prior generations.

Small to mid-sized companies need to compete for their share of the talent pool, which means they need to take the values of people in that talent pool seriously. Making and demonstrating progress on ESG will enable them to recruit and retain top-level talent who will only consider working for companies that are doing the right things.

**Promote Company's Growth and Improves Financial Performance:**

All the above-listed benefits for having an ESG program in place go hand in hand in contributing to the growth and improved financial performance of a company, especially small to mid-size companies. In the past, the correlation between companies with high ESG performance and strong financial performance might only have been achievable for companies having the resources to invest in an ESG program. However, as mentioned above, this is no longer the case because utilization of ESG software can significantly lower the resources required to pursue ESG.

Small to mid-sized companies can now reap the benefits and easily establish ESG goals. It's easy and not too late to join the sustainability movement. Make ESG your strength and transform your company into a sustainable powerhouse through the help of ESG software.

As per the BSE's "GUIDANCE DOCUMENT ON ESG DISCLOSURES", Importance of ESG reporting can be outlined as below:

**Raises Corporate Transparency**

It broadens organisational disclosure beyond traditional financial metrics and raises corporate transparency on environmental and social metrics. Sustainability reporting allows a balanced and understandable assessment of the company's performance by stakeholders to facilitate corporate accountability, as promulgated by one of the principles under the Code of Corporate Governance.

**Strengthens Risk Management**

Sustainability reporting allows listed companies to consider emerging risk areas and to identify opportunities presented by risks that are overlooked by other analytical and system driven approaches. A risk management approach that incorporates sustainability provides management with useful data for identifying emerging issues and developing appropriate responses that help protect corporate reputation and improve shareholder value.

**Promotes Stakeholder Engagement**

Identification of and engagement with stakeholders are fundamental to sustainability reporting and are cited as critical steps by various international sustainability frameworks. Listed companies need to identify their stakeholders to effectively engage those that are interested in and affected by the company's sustainability performance. Given the varied nature and interests of stakeholders such as shareholders, employees, customers, suppliers and communities, stakeholder engagement enables the company to take into account the Information needs of various stakeholders with regards to the disclosure of sustainability related information.

**Improves Communications with Stakeholders**

By broadening disclosure beyond financial disclosure to include non-financial disclosure of environmental and social interaction and impact, the company provides a framework for measuring non-financial performance. It also gives guidance on the opportunities and threats faced in managing non-financial risks.

Sustainability reports can be used for benchmarking and assessing sustainability performance with regard to existing frameworks, demonstrating how the organisation influences and is influenced by expectations about sustainable development, and facilitating peer comparison over time and enabling communication with stakeholders.

## PART C. EMERGING MANDATES FROM GOVERNMENT AND REGULATORS

## ESG REPORTING IN INDIA

ESG reporting in India commenced in **2009** with the Ministry of Corporate Affairs (MCA) issuing the Voluntary Guidelines on Corporate Social Responsibility. Ever since the reporting framework has come a long way with the introduction of Business Responsibility Reporting ("BRR"), Corporate Social Responsibility (CSR), National Guidelines on Responsible Business Conduct (NGRBC) and the newly introduced Business Responsibility and Sustainability Report (BRSR).

The Companies Act, 2013 introduced one of the first ESG disclosure requirements for companies. Section 134(m) mandates companies to include a report by their Board of Directors on conservation of energy, along with annual financial statement. This requirement is further detailed under Rule 8(3)(A) of the Companies (Accounts) Rules, 2014, which mandates the board to provide information regarding conservation of energy. Similar requirement existed in the Companies Act, 1956 also.

Further, it is the statutory duty of a director of an Indian company to act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment.

In addition to this, companies are mandated to include disclosures on opportunities, threats, risks and concerns as part of their annual reports under Regulation 34(3) of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 ("LODR Regulations"). However, such disclosure requirements do not seek details about the metrics and processes adopted by companies to identify such opportunities or risks nor mandate the companies to chart its progress over the course of time.

In recent times, adapting to and mitigating climate change impact, inclusive growth and transitioning to a sustainable economy have emerged as major issues globally. There is an increased focus of investors and other stakeholders seeking businesses to be responsible and sustainable towards the environment and society. Thus, reporting of company's performance on sustainability related factors has become as vital as reporting on financial and operational performance. The Securities and Exchange Board of India ("SEBI") introduced the requirement of ESG reporting back in 2012 and mandated that the top 100 listed companies by market capitalisation file a BRR. This was later extended to the top 500 listed companies by market capitalisation in 2015.

In 2017, SEBI issued a circular on 'Disclosure Requirements for Issuance and Listing of Green Debt Securities', to introduce the regulatory framework for issuance of green debt securities in India and enhance investor confidence. It supplements the SEBI (Issue and Listing of Debt Securities) Regulation, 2008 and envisages a list of disclosures that an issuer must make in its offer document before and after the commencement of a project financed by green debt. These additional disclosure requirements have been prescribed in order to attract the finance reserved for ESG-compliant projects, such as renewable and sustainable energy, clean transportation, sustainable water management, climate change adaption, energy efficiency, sustainable waste management, sustainable land use, and biodiversity conservation.

In addition to this SEBI circular, the Indian Banks' Association (IBA) has also released the National Voluntary Guidelines for Responsible Financing, laying down broad and general principles towards 'integrating ESG risk management into Financial Institution's (FIs) business strategy, decision-making process and operations. For instance, Principle 2 provides that FIs 'should integrate the analysis of environmental, social and governance factors in their investment, lending and risk-management processes across business lines to minimize adverse impact on their own operations and on society. However, these Guidelines do not envisage any framework for credible and transparent issuance of green debt instruments.

On 10 May 2021, SEBI introduced new reporting requirements on ESG parameters called the Business Responsibility and Sustainability Report ("BRSR") by amending regulation 34 (2) (f) of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015 ("LODR Regulations").

Further, SEBI, on July 11, 2023, issued a Master Circular No. SEBI/HO/CFD/PoD2/CIR/P/2023/120 in order to enable the users to have access to the provisions of the applicable circulars issued till June 30, 2023, at one place, pertaining to the compliance requirements specified in the LODR Regulations. With the issuance of this Master Circular, the aforementioned SEBI circular dated 10th May, 2021 has been rescinded.

Section IV-B of this Master Circular prescribed the requirements for Business Responsibility and Sustainability Reporting by listed entities. The format of the BRSR is specified in Annexure 16 to this Master Circular and the guidance note is given at Annexure 17 to enable the companies to interpret the scope of disclosures.

The BRSR seeks disclosures from listed entities on their performance against the nine principles of the 'National Guidelines on Responsible Business Conduct' (NGBRCs) and reporting under each principle is divided into essential and leadership indicators. The essential indicators are required to be reported on a mandatory basis while the reporting of leadership indicators is on a voluntary basis. Listed entities should endeavor to report the leadership indictors also. It is mandatory for the top 1,000 listed companies to annually disclose ESG-related information from financial year 2022-23.

## ESG REGULATIONS AROUND THE WORLD

As ESG becomes a topic of much discussion and debate, various stakeholders such as investors, employees, customers, governments, and regulatory agencies are all emphasizing the importance of sustainable management. The integration of sustainable practices into corporate strategy is now increasingly considered as a prominent way to meet shareholder expectations and requirements of a company's environmental, social, and governance (ESG) criteria globally.

International standards such as the United Nations Principles of Responsible Investment (UNPRI), Task Force on Climate-Related Financial Disclosures (TCFD), and the Global Reporting Initiative (GRI) have recently advocated different suggestions to improve ESG reporting procedures around the world.

The regulatory landscape is moving in tandem, especially concerning ESG disclosures and transparency obligations, which the ever-expanding pool of sustainable investors rely on to determine how well financial services and products meet their predefined ESG investment criteria. According to a study conducted in Australia, reporting regulations distinctly influence the intentions of ESG disclosures of companies in the metal and mining sector. However, these monumental changes to the regulatory landscape are more than just a compliance requirement. They are also an opportunity for businesses to make a fundamental choice by approaching the emerging ESG disclosure regulations to comply or recognize this as a long-term change in their business strategy.

Here are some examples of ESG regulations that are mandatory and currently being implemented. The list is not exhaustive, and more regulations and disclosure requirements are expected in the coming years. (*Source: www.regask.com*)

| ***COUNTRY / REGION*** | ***REGULATION*** | ***INSTITUTION*** | ***DESCRIPTION*** |
|---|---|---|---|
| United States | US SEC Climate Guidance | Securities and Exchange Commission (SEC) | The guidance requires public companies to disclose material business risks to investors, transparently through regular filings with the SEC, including climate change risks that may develop on their business. |
| United States | NYSE Section 303A Corporate Governance Rules | NYSE | The regulation requires listed companies to "adopt and disclose a code of business conduct and ethics." |
| United States | Interpretive Bulletin 2015-01 | Department of Labor | The regulation clarifies that ESG factors can be a part of the primary analysis of cautious investment decision making. |

| ***COUNTRY / REGION*** | ***REGULATION*** | ***INSTITUTION*** | ***DESCRIPTION*** |
|---|---|---|---|
| Canada | Consultation Report | Ontario Capital Markets Modernization Taskforce | The Consultation contains policy proposals to modernize Ontario's capital markets for enhancing ESG disclosure including forward-looking information, for Toronto Stock Exchange (TSX) issuers. |
| Canada | TSX Listing Rules | Toronto Stock Exchange | The regulation states that any "material" information on the environment or social aspects must be immediately disclosed by a news release as required by the Exchanges' Timely Disclosure Policies. The issuer must file a material change report on the System for Electronic Document Analysis and Retrieval (SEDAR). |
| Canada | National Instrument 43-101 | Canadian Securities Administration | Under this regulation mining companies are required to report on reasonably available information on environmental and social factors as it involves various mining and exploration activities. |
| European Union | EU Sustainable Finance Disclosure Regulation (SFDR) | European Commission | SFDR is designed to obligate financial market participants (FMPs) and financial advisers to be transparent with their sustainable investment products and to prevent greenwashing. |
| European Union | EU Taxonomy Regulation Article 8 Delegated Act | European Commission | The EU Taxonomy framework is designed to categorize economic activities to help fund managers, companies, issuers and project promoters navigate the transition to a low-carbon, climate-resilient, and resource-efficient economy. The taxonomy will increase transparency and facilitate green bonds in sustainable projects and assets across the EU. |

| ***COUNTRY / REGION*** | ***REGULATION*** | ***INSTITUTION*** | ***DESCRIPTION*** |
|---|---|---|---|
| European Union | Sustainable Corporate Governance Initiative | European Commission | The initiative was established to improve the EU regulatory framework on company law and governance by helping companies manage long-term sustainability goals such as social and human rights, climate change, environmental protection, etc. by introducing a duty of care and mandatory due diligence. |
| European Union | EU Non-Financial Reporting Directive | European Commission | It requires public companies with more than 500 employees to provide accurate data on social and environmental practices they have adopted to aid shareholders. |
| Germany | German Supply Chain Due Diligence Legislation | German Government | The act will go into effect on January 1, 2023, requiring the applicable companies to determine and assess risks to human rights and the environment within their supply chains, as well as to establish effective risk management systems. The act is applicable to German-based companies having more than 3,000 employees, and the threshold will be reduced to 1,000 starting January 1, 2024. |
| Netherlands | National Climate Agreement (Klimaatakkoord) | Dutch Government | The National Climate Agreement contains agreements with specific sectors to achieve climate goals. The listed sectors are: electricity, industry, built environment, traffic and transport, and agriculture. |
| United Kingdom | FCA's Climate-related Disclosure Regime | Financial Conduct Authority | The regulation requires commercial companies with a premium listing to disclose in line with the TCFD recommendations. |

| COUNTRY / REGION | REGULATION | INSTITUTION | DESCRIPTION |
|---|---|---|---|
| United Kingdom | Mandatory Climate-related Financial Disclosures by Publicly Quoted Companies, Large Private Companies and LLPs (Non-binding guidance) | Department for Business, Energy and Industrial Strategy | The guidance helps companies and limited liability partnerships (LLPs) understand how to meet new mandatory climate-related financial disclosure requirements. |
| Switzerland | Articles 964a-964c of the Code of Obligations | Federal Audit Oversight Authority | Swiss companies of public interest must prepare an annual report on non-financial matters covering environmental issues, social issues, employee-related issues, human rights, and combating corruption. |
| Switzerland | Article 964j-964l of the Code of Obligations | Federal Audit Oversight Authority | Registered companies in Switzerland must comply with obligations of due diligence in the supply chain and report if: 1. they place in free circulation or process in Switzerland minerals containing tin, tantalum, tungsten or gold or metals from conflict-affected and high-risk areas; or 2. they supply products or services that are produced by child labor. |
| Singapore | Environmental Risk Management for Asset Managers, Banks and Insurers | Monetary Authority of Singapore | The guidance lays out expectations for asset managers, banks, and insurers to improve the resilience of funds and segregated mandates they manage by laying out effective environmental risk management procedures that can be implemented. |
| Hong Kong | ESG Reporting Guide | Hong Kong Securities Exchange | Proposed in 2015, the regulation went through changes in 2020 for introducing ESG mandatory requirements for corporations. There is a requirement to report on the environmental and social factors. |

| COUNTRY / REGION | REGULATION | INSTITUTION | DESCRIPTION |
|---|---|---|---|
| Hong Kong | Circular to Management Companies of SFC-authorized Unit Trusts and Mutual Funds – ESG Funds | Securities and Futures Commission of Hong Kong | By enhancing the disclosure standard of ESG funds, the circular aims to improve their comparability, transparency and visibility. |
| Brazil | Instrução Normativa 480/2009 | Brazilian Securities Commission (CVM) | Items 7 and 10 of Annex 24 require listed corporations to include the following environmental sustainability information in their yearly reports: environmental policies, costs for compliance with environmental regulations and international standards, and third-party assurance check. |
| Brazil | DECISÃO DE DIRETORIA Nº 125/2015/V/I, 26 de maio de 2015 | Companhia de Tecnologia de Saneamento Ambiental de Brasil (CETESB) | CETESB in São Paulo requires companies in highly polluting industries such as manufacturing and energy to report scope 1 and 2 GHG emissions. |
| Brazil | Resolution CMN nr 4.661/2018 | National Monetary Council | This resolution sets out guidelines for listed entities to "carry out their activities with good faith, loyalty and diligence" and "ensure high ethical standards" in the application of resources. Article 10(4) states these entities "should consider in the analysis of risks, whenever possible, the aspects related to economic, environmental, social and investment governance sustainability". |
| Japan | Corporate Governance Code Amendments 2018 | Japan Exchange Group | The code outlines core principles for successful corporate governance with the goal of achieving mid to long-term growth and increasing corporate value. |

| ***COUNTRY / REGION*** | ***REGULATION*** | ***INSTITUTION*** | ***DESCRIPTION*** |
|---|---|---|---|
| China | ESG-related Amendments to the Disclosure Rules Applicable to Listed Companies | China Securities Regulatory Commission | The act mandates that companies, corporations and investors report on disclosure principles, content, and scopes, as well as liabilities, emphasizing the necessity of transparency for both companies and investors. |
| China | Measures for the Assessment of Information Disclosure of Listed Companies on the Shenzhen Stock Exchange (2020 revision) | Shenzhen Stock Exchange | These metrics analyze whether listed firms have taken the initiative to disclose their ESG performance, as well as if the substance of their disclosure reports is comprehensive and complete enough to assess their social responsibility. |
| Australia | Workplace Gender Equality Act | Australian Government, Workplace Gender Equality Agency | This act requires non-public sector companies with more than 100 employees to submit a report to the Workplace Gender Equality agency annually, detailing the gender composition of their workforce, the gender composition of their governing bodies, gender remuneration, and anything else related to gender-based harassment and discrimination. |
| Australia | ASX Corporate Governance Principles and Recommendations: 4th edition | ASX Corporate Governance Council | By focusing on material environmental and social risks, the fourth edition of the law pushes listed firms to strengthen climate and non-financial risk disclosure. |
| Australia | National Greenhouse and Energy Reporting Regulation (NGER) | Australian Government, Department of the Environment and Energy | NGER was developed as a framework for energy and emissions reporting. The Determination 2008 provides methods for calculating GHG emissions and energy data provided by the NGER act. Amendments to this act are made annually. |

| COUNTRY / REGION | REGULATION | INSTITUTION | DESCRIPTION |
|---|---|---|---|
| Australia | The Corporations Act 2001 | Australia Securities and Investments Commission | Companies filing director's reports must disclose social and environmental information, as well as ethical information, under this Act. It also applies to superannuation funds, which must explain how environmental, social, and governance factors are factored into investment decisions. |

*Source: United Nations Principles for Responsible Investment (UNPRI)*

## ESG – THE WAY AHEAD

As investment in sustainable asset funds continues to rise, organizations face an array of new regulations in the United States, Europe, the Middle East, and Africa. The new regulations will ensure the companies comprising these funds meet true environmental, social, and corporate governance (ESG) criteria versus some version of greenwashing.

By early 2022, ESG investment assets reached $8.4 trillion and accounted for 13% of the total amount of U.S. assets being managed professionally. This massive influx of capital flowing into companies that tout their ESG qualifications has gotten the attention of regulators across the globe. The attention is well-warranted as a company's position on sustainability, and efforts to curb its carbon emissions (or lack thereof), can influence stakeholder decisions.

For example, the U.S. Securities and Exchange Commission has proposed new reporting requirements that will require transparency. Under the new requirements, companies must measure and publish their Scope 1 and Scope 2 carbon emissions beginning in 2024. And for larger companies, required reporting on Scope 3 emissions (or carbon emissions from customers and the supply chain) may not be far behind.

Europe is also stepping up its regulation of sustainability and ESG-related assets. The Corporate Sustainability Reporting Directive, which is part of the European Green Deal, includes the requirement to report sustainability information under the framework of the European Sustainability Reporting Standards. It's estimated the new mandate will impact more than 50,000 large and listed companies based in Europe, as well as companies based outside of the region, but have subsidiaries or branch offices there.

As companies prepare for an influx of new ESG reporting mandates and regulations in 2023, there are three key changes companies should quickly establish to prepare for the challenges ahead.

1. **Appoint a Chief Sustainability Executive**

   The initial impact of these regulatory changes will result in companies making more of a cross-functional effort to understand what needs to happen internally to meet the moment. This will require businesses to build out teams with sustainability roles, from coordinators to C-level executives.

   Chief sustainability officers will be critical in influencing, communicating, and cutting through organizational complexity to allow their company to deliver on ESG commitments. People generally support the idea of working or living more sustainably until it involves them having to change their behaviors. And this is true in the corporate world as well.

   Many employees will be slow to adapt to new policies or focus on the difficulties involved with changing operational processes to be a more sustainable business, including how it deals with the IT asset end-of-life phase, which requires it to move from a destruction mindset to a reuse/recycle process.

It's up to the chief sustainability officer to cut through those obstacles while also continually making an effort to push for change. Once employees are informed and supportive of the goal, they are much more likely to be cooperative with the steps required to get there. This may take some creativity on the part of the chief sustainability executive, for example, including the company's achievement of its ESG goals as an element of employee bonuses could be a true motivator that links teams together to meet a common goal.

2. **Create an ESG Policy Budget**

New ESG regulations will require organizations to hire people for key roles to implement new policies and to partner with companies that will help them achieve sustainability objectives. The first push-back on change is the lack of budget for making these changes; however, for sustainability policies to be successful, a budget must be set aside, and this will require the CFO's buy-in to make it happen.

Justifying the spending may take some convincing, yet many of the changes could potentially save money. For example, extending the life of IT assets will result in purchasing fewer new computers, hard drives, and laptops each year.

3. **Assess Partners' Sustainability Practices**

There is a clear mandate for carbon footprint reduction in the new regulations. As companies calculate and seek to reduce their carbon footprint, they will also need to assess their supply chain in detail to ensure that their partners operate sustainably. This will range from the suppliers of tangible items such as computer equipment to suppliers of utilities into their office space and even the providers of professional services such as accountancy and insurance. The carbon footprint of all company partners will be impacted by the footprint of those partners and it will be important that these partners are taking steps to reduce their own carbon emissions and sustainability. Those companies who are not looking seriously at this now will be left behind.

Alongside the growing number of companies establishing "net zero" targets for carbon by 2050 (or sooner), governments worldwide are ramping up regulatory rules that will separate the companies engaging in greenwashing from those that are serious about reducing their carbon footprint and doing their part to stem the harmful effects of climate change.

While meeting the new mandates set forth through regulations may take time, effort, and money, the organizations that rise to meet these challenges will do much more than just future-proof their businesses via compliance. These proactive companies, alongside their executives, will exhibit the values that both stakeholders and potential investors and customers appreciate now and into the future.

## ESG / SUSTAINABLE PRACTICES - EXAMPLES FROM INDIAN LANDSCAPE

Given below are examples of ESG / Sustainability practices being followed by some of the top corporates in India as reported by them in their sustainability reports:

**ASIAN PAINT:**

Asian paints has reported its sustainability practices over four major areas being:

- **Product Stewardship** – Eco friendly paints and low-VOC paints that ensure health and environmental benefits while providing higher performance levels, International and self 'Green Certification' for products, efforts to reduce carbon footprints of its products and cycle time reduction across intermediate and finished product streams which translates to lower energy consumption are some of the ways through which company reported to have followed sustainability in its product offerings.

- **Environment – "**The environmental practices at Asian Paints are focused on natural resource conservation, optimisation of energy and emissions and relentless waste reduction."
- **Health and Safety** – *"Asian Paints is committed to ensuring safety and protecting the health of its employees, service providers, visitors, neighbouring communities, customers and assets. We follow industry-accredited best practices on occupational health and safety across all our operations and are continuously investing in technologies and processes."*

Their goal is Improving the safety culture to achieve zero accidents, zero occupational illness, and zero incidents of property damage by focusing on several key elements.

- **Community -** Colour Academy, a vocational training initiative of the Company, imparts skill education and works towards enhancing the productivity of the people in the paint application trade. It offers the best training facilities to both new and experienced paint applicators.

Asian Paints contributed towards the COVID-19 Disaster Relief by providing medical supplies like oxygen cylinders, ventilators, oxygen concentrators etc. We also worked with the local communities to understand the need and supplied COVID-19 relief materials like sanitation kits, ration kits, PPE kits, masks and more. We covered all plants with requirements at the COVID care centres, hospitals and within the communities.

**NESTLE:**

**A snapshot of Nestle's sustainability efforts and their outcome is given below:**

**About Nestlé**

**275 000**
Employees across all our operations

**188**
Countries we sell in

**94.4**
Billion
Group sales in CHF

| COMMITMENT | KEY PERFORMANCE INDICATOR | 2020 | 2021 | 2022 |
|---|---|---|---|---|
| We aim to reduce our greenhouse gas (GHG) emissions by 20% by 2025 and 50% by 2030 from 2018 levels, on the road to net zero by 2050 at the latest | Million tonnes of $CO_2e$ reductions compared with business-as-usual scenario[1] | N/A | -4.0 | **-6.4**[2] |
| We aim to achieve and maintain 100% assessed deforestation-free primary supply chains (for meat, palm oil, pulp and paper, soy and sugar) by 2022 and 2025 for cocoa and coffee | Percentage of our primary supply chains for meat, palm oil, pulp and paper, soy and sugar assessed as deforestation-free (%) | N/A | 97.2% | **99.1%** |
| We aim to source 20% of key ingredients through regenerative agriculture methods by 2025 and 50% by 2030 | Percentage of key ingredients sourced through regenerative agriculture methods[3] (%) | N/A | N/A | **6.8%** |
| We aim to reduce water use in our factories by 6 million $m^3$ between 2021 and 2023 | Water use reduction in factories (million $m^3$) | -1.69 | -2.30 | **-2.38** |
| We aim for 100% of key ingredients volumes to be produced sustainably by 2030[4] | Percentage of key ingredients produced sustainably (%) | N/A | 16.3% | **22%**[5] |
| | Number of servings of affordable nutrition with micronutrient fortification (MNF) (billions) | 120.0 | 128.6[6] | **129.2** |
| By 2025, we aim to design above 95% of our plastic packaging for recycling and continue to work toward 100% being recyclable or reusable | Percentage of plastic packaging designed for recycling[7] (%) | 74.8% | 74.9% | **81.9%** |
| By 2025, we aim to reduce virgin plastics by one third, versus our 2018 baseline | Percentage virgin plastic reduction (versus 2018 baseline) (%) | -4.0% | -8.1% | **-10.5%** |
| By 2030, our ambition is to help 10 million young people around the world have access to economic opportunities | Millions of young people around the world with access to economic opportunities since 2017 | 2.45 | 3.89 | **5.62** |
| We aim to increase the proportion of women in our top 200+ senior executive positions to 30% by 2022 | Percentage of women in the top 200+ senior executive positions (%) | 25.6% | 27.2% | **30.2%** |

Nestle's sustainability governance structure is framed as below:

**Board of Directors** - The board is responsible for the company's strategy and organization, including financial and non-financial reporting. This comprises identifying and enforcing both statutory and internal disclosure rules on ESG matters, particularly where ESG risks may affect the Company's performance.

**Executive Board** - The Company's Executive Board is responsible for the execution of the Company's sustainability strategy, which includes the handling of the mandatory reporting obligations, with delegation to the ESG and Sustainability Council.

**ESG & Sustainability Council -** The ESG and Sustainability Council provides strategic leadership and execution support, and drives the implementation of Nestlé's sustainability strategy, including our 2050 Net Zero Roadmap, ensuring focus and alignment.

**ESG Strategy & Deployment Unit -** Ensures execution, monitors external developments, and defines KPIs in support of Nestlé's sustainability strategy. Coordinates sustainability activities and has the oversight of internal ESG data and external disclosures. It also advises Nestlé's ESG and Sustainability Council.

**Sustainability Committee (SC) -** The SC reviews the Company's sustainability agenda including the measures which ensure the Company's long term sustainability strategy and its ability to create shared value.

**Creating Shared Value (CSV) Council -** The CSV Council is an external advisory body that advises senior management on a range of sustainability issues.

**HDFC BANK**

In its Environmental Social & Governance (ESG) Policy Framework, HDFC Bank has *inter alia* disclosed as below:

"As India's largest private sector Bank, we have always stayed strong in our commitment to positively impact the environment, our customers, employees, and the community at large. Our core values have guided our ESG practices, which seek to drive growth and empower communities through our corporate decision-making processes. In FY 2014-15, sustainability was officially included as our fifth value, alongside customer focus, operational excellence, product leadership, and people. This is testament to the fact that sustainability is now a part of our DNA.

As a testament to our commitment to the environment, we constituted a board governed environmental policy in 2019, which serves as a framework to understand and manage our environmental risks, impacts and opportunities. To further strengthen our vision and focus on ESG, we have established an Environmental Social & Governance (ESG) committee, which is a management level committee comprising of senior members across major functions at the Bank, chaired by a member of the senior management team. The ESG Committee reports to the Corporate Social Responsibility (CSR) committee of the Board of Directors on the Bank's ESG strategy and road map to achieve set targets. Functionally, the main ESG committee is further segregated into 3 sub committees for focused discussions.

- Environment Sub-Committee: Sets targets and identifies opportunities for improvement in areas of emissions, energy, water and waste
- Social & Governance Sub-Committee: Focuses on work place policies including Code of Conduct & Human Rights, diversity, stakeholder engagement and corporate governance policies
- Product Responsibility Sub-Committee: Focuses on assessing Environmental & Social (E&S) risks, including climate risks in our existing portfolio and identify new business opportunities in the E&S space.

**TATA MOTORS**

Tata motors limited reported a S&P Global ESG Score 2022 of 64/100, a jump of 18% from their FY 21 score. Some of it sustainability efforts in FY 2022 are reported as below:

**Preserving Nature and Biodiversity (Going beyond Planting Trees)**

- In FY22 Tata Motors has now planted ~ 1 million saplings across the country as a part of customer touch point initiative. Our Biodiversity and Nature strategy aspires to go beyond, guided by science and leveraging Nature based Solutions to deliver Biodiversity and Community co-benefits. Tata Motors Ltd. is committed to source 100% of its electricity needs through Renewable Sources by 2030
- Tata Motors launched 'AIKYAM', a platform for collaboration, innovation, knowledge sharing and co-creating the Supply Chain Sustainability roadmap.
- Fatality free 1 year completed. Injury rates decreasing as a result of implementation of "Zero Incident Plan."

**LESSON ROUND-UP**

- Sustainability in business refers to a company's strategy to reduce negative environmental impact resulting from their operations in a particular market.
- The concept of sustainable development fostered reporting on sustainability and reporting on sustainability paved the way for emergence of sustainability audit. The concept of sustainability audit has evolved over the years as society's understanding of sustainability has expanded and as organizations have become increasingly aware of their impact on the environment and society besides their bottom-line.
- Sustainability Audit is a comprehensive assessment of an organization's environmental, social and economic impacts. It is a targeted evaluation of a company's current sustainable workplace practices such that by identifying the current environmental impact, the company can set out initiatives for executing and promoting improved sustainable measures.
- An organization's sustainability practices are typically analyzed against environmental, social, and governance (ESG) metrics.
- An ESG rating measures a company's exposure to long-term environmental, social, and governance risks. Along with ESG reporting, ESG ratings help investors understand a company's priorities and the long-term risks it could face in the future
- ESG reporting in India commenced in 2009 with the Ministry of Corporate Affairs (MCA) issuing the Voluntary Guidelines on Corporate Social Responsibility.
- The Companies Act, 2013 introduced one of the first ESG disclosure requirements for companies.
- The Securities and Exchange Board of India ("SEBI") introduced the requirement of ESG reporting back in 2012 and mandated that the top 100 listed companies by market capitalisation file a BRR. This was later extended to the top 500 listed companies by market capitalisation in 2015. In 2021 SEBI introduced new reporting requirements on ESG parameters called the Business Responsibility and Sustainability Report ("BRSR")

## GLOSSARY

**Business resilience:** The ability of an organisation to adapt in a changing environment to enable it to achieve its objectives and prosper.

**Carbon footprint:** Total emissions of greenhouse gases (in carbon equivalent) for an activity or organisation over a given period of time.

**E-waste:** Discarded electronic appliances such as mobile phones, computers, and televisions.

**Integrated reporting:** An approach to corporate reporting that integrates financial information and non-financial (e.g. sustainability) information into a single document to show how a company is performing.

**Product stewardship:** A concept where businesses take responsibility for the environmental impact of the products they make, sell or buy. This involves all stages of the product's life cycle, including end-of-life management.

**Renewable energy:** Energy that comes from natural sources that are constantly replenished like wind, water and sunlight.

**Shared value:** A management principle that seeks market opportunities for business to solve social problems. 'Creating Shared Value' was first introduced in the Harvard Business Review in 2011, based on the principle that the competitiveness of a company and the health of the communities around it are mutually dependent.

**Sustainability:** A balance of society, economy and environment for long-term resilience.

**Sustainable Development Goals (SDGs):** A collection of 17 interlinked global goals designed to end poverty, protect the planet and ensure that all people enjoy peace and prosperity by 2030. They were adopted by the UN in 2015.

**Triple bottom line:** A phrase first coined by John Elkington in 1994, describing the separate but interdependent financial, social and environmental 'bottom lines' of companies.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. What is the need for a sustainability audit? How does it benefit the company and the stakeholders?
2. Are company secretaries capacitated to conduct sustainability audit of organisations?
3. What do you understand about ESG Ratings? How are they different from other ratings like Credit Ratings?
4. Write a note on few ESG Rating Orgainsations.
5. Chart the growth of ESG Reporting Framework in India
6. What are the legal provisions concerning ESG Reporting in India?
7. Compare the ESG reporting framework in India with other developed nations.
8. What is the way forward for ESG reporting?

## LIST OF FURTHER READINGS

- Values at Work: Sustainable Investing and ESG Reporting - by Daniel C. Esty (Editor), Todd Cort (Editor)
- Integrated Sustainability Reporting: Linking Environmental and Social Information to Value Creation Processes - by Laura Bini (Author), Marco Bellucci (Author)
- White paper on "Navigating the Changing Landscape of ESG Regulations"
- Guidance Document On ESG Disclosures by BSE

## OTHER REFERENCES

- Making ESG data accessible, comparable and transparent - https://www.esgbook.com/
- https://www.mckinsey.com/~/media/s/Our%20Insights/From%20why%20to%20why%20not%20Sustainable%20investing%20as%20the%20new%20normal/From-why-to-why-not-Sustainable-investing-as-the-new-normal.ashx
- https://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/from-why-to-why-not-sustainable-investing-as-the-new-normal
- https://online.hbs.edu/blog/post/sustainable-investing
- https://www.morganstanley.com/im/en-us/individual-investor/insights/articles/push-and-pull-factors-drive-the-evolution-of-sustainable-investing-in-private-markets.html

# Integrated Reporting Framework; Global Reporting Initiative Framework; Business Responsibility & Sustainability Reporting

Lesson 20

## KEY CONCEPTS

■ Integrated Report ■ IR Framework, Integrated Thinking ■ IFRS ■ GRI ■ GRI Standards ■ Sustainability Reporting, Sustainable Disclosure, ESG Reporting, BRSR

## Learning Objectives

**To understand:**

- Integrated Reporting
- Global Reporting Initiative
- Business Responsibility & Sustainability Reporting

## Lesson Outline

## INTEGRATED REPORTING FRAMEWORK

### Introduction

Integrated reporting is part of an evolving corporate reporting system. This system is enabled by comprehensive frameworks and standards, addressing measurement and disclosure in relation to all capitals, appropriate regulation and effective assurance.

The Integrated Reporting Framework defines integrated reporting as ***'a process founded on integrated thinking that results in a periodic integrated report by an organization about value creation over time and related communications regarding aspects of value creation.'***

Integrated reporting brings together material information about an organization's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how the organization demonstrates stewardship and how it creates value, now and in the future.

But integrated reporting isn't just a reporting process. It's founded on integrated thinking, or systems thinking. Integrated thinking drives an improved understanding of how value is created and enhances decision-making by boards and management. The more integrated thinking is embedded in daily operations, the more naturally this information will be expressed in internal and external communications. On this basis, integrated thinking and integrated reporting are mutually reinforcing.

An integrated report is a concise communication about an organisation's strategy, governance, performance and prospects. Presenting each topic in the context of the organisation's external environment, the report summarises how the organisation creates value in the short, medium and long term. The integrated report is the most visible and tangible product of integrated reporting. It is a concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to value creation over time.

Integrated reporting is consistent with developments in financial and other reporting, but an integrated report also differs from other reports and communications in a number of ways. In particular, it focuses on the ability of an organization to create value in the short, medium and long term, and in so doing it:

- Has a combined emphasis on conciseness, strategic focus and future orientation, the connectivity of information and the capitals and their interdependencies;
- Emphasizes the importance of integrated thinking within the organization.

Integrated reporting promotes a more cohesive and efficient approach to corporate reporting and aims to improve the quality of information available to providers of financial capital to enable a more efficient and productive allocation of capital.

The primary purpose of an integrated report is to explain to providers of financial capital how an organization creates, preserves or erodes value over time. An integrated report benefits all stakeholders interested in an organization's ability to create value over time, including employees, customers, suppliers, business partners, local communities, legislators, regulators and policy-makers. An integrated report benefits all stakeholders interested in a company's ability to create value, including employees, customers, suppliers, business partners, local communities, legislators, regulators and policymakers, although it is not directly aimed at all stakeholders.

Historical financial statements are essential in corporate reporting, particularly for compliance purposes, but do not provide meaningful information regarding business value. Users need a more forward-looking focus without the necessity of companies providing their own forecasts and projections. Companies have recognised the benefits of showing a fuller picture of company value and a more holistic view of the organisation.

The Integrated Reporting framework (IR) was developed by the International Integrated Reporting Council (IIRC). It explains the concepts of integrated reporting, establishes Fundamental Concepts, Guiding Principles and Content Elements governing the preparation and presentation of an integrated report. It's written primarily in the context of private sector, for-profit companies of any size, but is also applied by public sector and not-for-profit organizations.

## EVOLUTION OF INTEGRATED REPORTING FRAMEWORK

The idea of Integrated Report is viewed to have stemmed from the concept of capitalism. Until 2007, the accepted definition of capitalism was the efficient allocation of capital to deliver returns to investors over the short, medium, and long term. In 2007, the Global Financial Crisis (GFC) disrupted the world economy and raised questions about organizations' dependence on short-term financial factors and complete misrecognition of their interactions with nature. The need for change was evident – a reporting methodology that focuses on financial data and at a same time also provides for sustainability-related information.

In 2009, the Prince of Wales held a high-level meeting of investors; companies; accounting bodies; and representatives of Unites Nations (UN), Accounting for Sustainability Project, International Federation of Accountants (IFAC) and the Global Reporting Initiative (GRI). This resulted in the establishment of the International Integrated Reporting Committee (IIRC). IIRC's aim was to oversee the creation of an Integrated Reporting framework. In 2011, the Committee was renamed the International Integrated Reporting Council (IIRC).

The International Integrated Reporting Council (IIRC) was a global coalition of regulators, investors, companies, standard setters, the accounting profession, academia and NGOs. Together, this coalition shared the view that communication about value creation, preservation or erosion is the next step in the evolution of corporate reporting.

A Pilot Programme began in 2011. It included over 90 businesses that were ready to challenge and change orthodox ways of reporting and promote responsible stakeholder communication. Two years later, in 2013, IIRC published the framework defining the guiding principles.

The Integrated Reporting Framework was developed in 2013.

The framework is based on integrated thinking. Integrated thinking is the process that an organization follows while creating an Integrated Report.

In November 2020, the IIRC and Sustainability Accounting Standards Board (SASB) announced a potential merger which was finalized in June 2021, resulting in the Value Reporting Foundation (VRF).

The Integrated Reporting Framework was revised in 2021, following extensive consultation and testing by report preparers and users in all regions of the world.

In August 2022, the Value Reporting Foundation merged with the IFRS Foundation. The IFRS Foundation is a not-for-profit, public interest organisation established to develop high-quality, understandable, enforceable and globally accepted accounting and sustainability disclosure standards. As of August 2022, the IFRS Foundation assumed responsibility for the Integrated Reporting Framework.

IFRS Standards are developed by our two standard-setting boards, the International Accounting Standards Board (IASB) and International Sustainability Standards Board (ISSB).

The International <IR> Framework (January 2021) supersedes the International <IR> Framework (December 2013). This latest version applies to reporting periods commencing 1 January 2022.

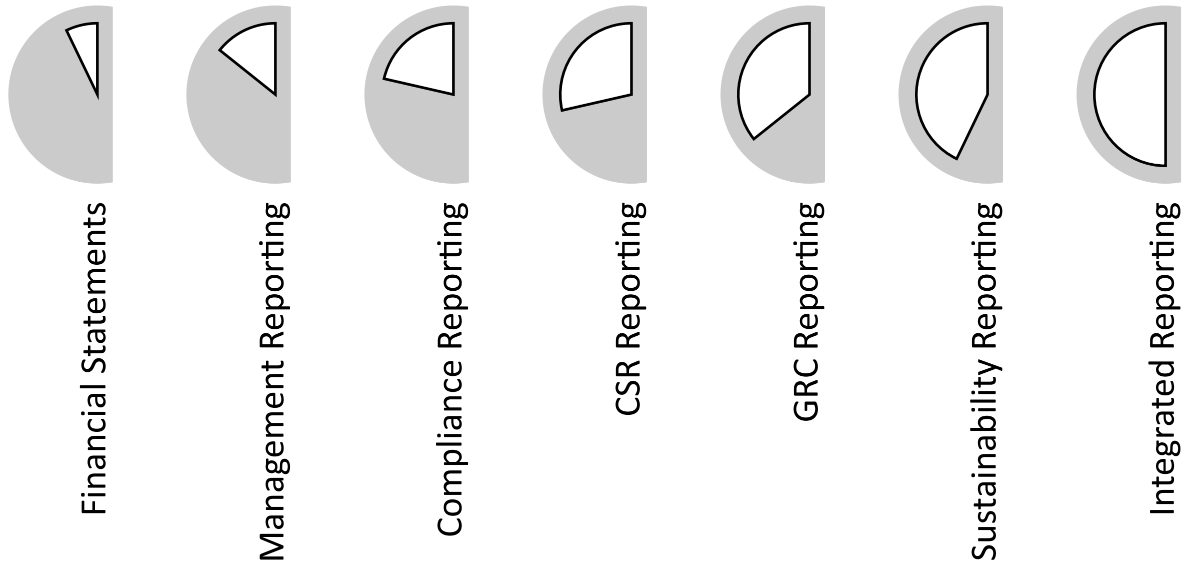



**FIG. 1 – Evolution of Integrated Reporting**

(*Source :www.Integratedreporting.org*)

## STRUCTURE OF THE INTEGRATED REPORTING FRAMEWORK

*"We've overspent our financial, environmental, social and governance "capital" and now the debt's come due. Integrated Reporting is the starting point to help us repay that debt."*

**Brad J. Monterio**

The IR Framework is principles-based. The intent of the principles-based approach is to strike an appropriate balance between flexibility and prescription that recognizes the wide variation in individual circumstances of different organizations while enabling a sufficient degree of comparability across organizations to meet relevant information needs.

The IR Framework does not prescribe specific key performance indicators, measurement methods or the disclosure of individual matters. Those responsible for the preparation and presentation of the integrated report therefore need to exercise judgement, given the specific circumstances of the organization, to determine:

- Which matters are material
- How they are disclosed, including the application of generally accepted measurement and disclosure methods as appropriate. When information in an integrated report is similar to, or based on other information published by the organization, it is prepared on the same basis as, or is easily reconcilable with, that other information.

### A. Guiding Principles

Seven Guiding Principles underpin the preparation and presentation of an integrated report, informing the content of the report and how information is presented:

**Strategic focus and future orientation**

An integrated report should provide insight into the organization's strategy, and how it relates to the organization's ability to create value in the short, medium and long term, and to its use of and effects on the capitals.

**Connectivity of information**

An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time.

**Stakeholder relationships**

An integrated report should provide insight into the nature and quality of the organization's relationships with its key stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests.

**Materiality**

An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term.

**Conciseness**

An integrated report should be concise

**Reliability and completeness**

An integrated report should include all material matters, both positive and negative, in a balanced way and without material error.

**Consistency and comparability**

The information in an integrated report should be presented:

(a) on a basis that is consistent over time; and

(b) in a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.

These Guiding Principles are applied individually and collectively for the purpose of preparing and presenting an integrated report; accordingly, judgement is needed in applying them, particularly when there is an apparent tension between them (e.g. between conciseness and completeness).

## B. Content Elements

An integrated report includes eight Content Elements that are fundamentally linked to each other and are not mutually exclusive, posed in the form of questions to be answered. The Content Elements are not intended to serve as a standard structure for an integrated report with information about them appearing in a set sequence or as isolated, standalone sections. Rather, information in an integrated report is presented in a way that makes the connections between the Content Elements apparent.

The content of an organization's integrated report will depend on the individual circumstances of the organization. The Content Elements are therefore stated in the form of questions rather than as checklists of specific disclosures. Accordingly, judgement needs to be exercised in applying the Guiding Principles to determine what information is reported, as well as how it is reported.

**Organizational overview and external environment**

What does the organization do and what are the circumstances under which it operates?

**Governance**

How does the organization's governance structure support its ability to create value in the short, medium and long term?

**Business model**

What is the organization's business model?

**Risks and opportunities**

What are the specific risks and opportunities that affect the organization's ability to create value over the short, medium and long term, and how is the organization dealing with them?

**Strategy and resource allocation**

Where does the organization want to go and how does it intend to get there?

**Performance**

To what extent has the organization achieved its strategic objectives for the period and what are its outcomes in terms of effects on the capitals?

**Outlook**

What challenges and uncertainties is the organization likely to encounter in pursuing its strategy, and what are the potential implications for its business model and future performance?

**Basis of presentation**

How does the organization determine what matters to include in the integrated report and how are such matters quantified or evaluated?

## BENEFITS OF INTEGRATED REPORTING

The corporate landscape is changing and Integrated Reporting is an ideal tool with which to explore value creation. This direction of travel – which is voluntary – is focused on driving more authentic, comprehensive and meaningful information about all aspects of an organisation's performance and value creation story delivering benefits for both internal and external stakeholders. Quite simply, Integrated Reporting (<IR>) is considered by many to be the future of corporate reporting.

Integrated Reporting brings together material information about an organisation's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It leads to a clear and concise articulation of the organisation's value creation story which is useful and relevant to all stakeholders.

There are a multitude of benefits associated with Integrated Reporting - both within an organisation and from an external perspective, such as:

Integrated Report shows the **holistic picture** of a company about future targets, it also shows the **links between financial and non-financial performances**, thus the links between financial and sustainability performances in the single document. Bringing governance issues, financial capital, intellectual capital, social capital and environmental capital onto common platform could **enhance the transparency and accountability** on corporate governance.

For companies providing different separate reports, IR enables them to avoid the prioritization dilemma that they experience as to which stakeholder group should the particular report be produced first with respect to their relative importance. The confusion arise due to huge publication costs, press conference costs for each report, therefore for small and medium sized local companies which could ideally be aiming to reduce costs, **adoption of integrated reporting could bring about substantial savings.**

Integrated reporting **promotes greater clarity, lowers reputational risk.** For instance, normally in the State-Owned Companies, there are issues of transparency of how resources are allocated, IR would enable better understanding of the capitals and their related outcomes, therefore lowers reputational risk. There are perceived internal benefits involving improved internal resource benefits and challenges with adoption of the integrated reporting framework allocation decisions, greater engagement with shareholders and other stakeholders.

Integrated reporting **enhances the reputation and the brand of an organization** to the external market, as it is able to meet the needs of the stakeholders who want environmental, social and governance information, consequently evaluation of performance and there could be perceived challenges of the need to change the management information systems, which could be costly for micro and small and medium-sized companies in order to implement the requirements of the report content. The practical realization of benefits depends on the ethical qualities, such as honesty, fairness and integrity embedded in the companies' values being upheld.

**BENEFITS OF INTEGRATED REPORTING**

- Encouraging your organisation to think in an integrated way
- Clearer articulation of strategy and business model
- A single report that is easy to access, clear and concise
- Creating value for stakeholders through identification and measurement of non-financial factors
- Linking of non-financial performance more directly to the business
- Better identification of risk and opportunities
- Improved internal processes leading to a better understanding of the business and improved decision making process.

## CHALLENGES IN IMPLEMENTING INTEGRATED REPORTING FRAMEWORK

The critical challenge of integrated reporting is converting the traditional report that is only concerned with financial terms and related disclosures about an organization's value creation. The conventional report is very lengthy, so it is challenging to make it concise. Also, integrated reporting is compliance-based reporting which is difficult for many organizations to prepare.

Another limitation of integrated reporting is, it doesn't provide detailed information. Also, it includes non-financial information, due to which it is more time-consuming to prepare.

It requires high expertise for understanding this report because it is a concise report explaining the matter in summary.

Describing company's business model in relation to the Framework is one the hardest aspects to implement, because of the Framework's capitals-based approach.

Conciseness is also a challenge when reporters want to include new information, either to meet regulatory requirements or because additional content could be helpful to readers. Many reporters find conciseness difficult as they try to provide sufficient context to help readers understand the organisation's value-creation process and performance.

Few other challenges include:

- Lack of standardization,
- Reluctance in disclosing sensitive information,
- Lack of importance of non-financial information, associated cost of reporting, difficulties with measuring and linking sustainability performance.

## GLOBAL REPORTING INITIATIVE FRAMEWORK

### Introduction

Global Reporting Initiative (GRI) is an organization that provides a framework for sustainability reporting that can be used by all types of organizations. Its Guidelines on sustainability reporting are widely used.

GRI is an independent, international organization that helps businesses and other organizations take responsibility for their impacts, by providing them with the global common language to communicate those impacts.

The GRI was formed by the United States based non-profits Coalition for Environmentally Responsible Economies (CERES) and Tellus Institute, with the support of the United Nations Environment Programme (UNEP) in 1997. It has its Secretariat in Amsterdam. Although the GRI is independent, it remains a collaborating centre of UNEP and works in co-operation with the United Nations Global Compact.

GRI's Mission is to make sustainability reporting standard practice by providing guidance and support that enable organizations to report transparently and accountably, as drivers of the transition to a sustainable global economy.

As GRI grew, the reporting system was broadened to include social, economic, and governance issues.

### GRI Standards for Reporting

The GRI Standards are a modular system of interconnected standards. They allow organizations to publicly report the impacts of their activities in a structured way that is transparent to stakeholders and other interested parties.

Three series of Standards support the reporting process: the **GRI Topic Standards,** each dedicated to a particular topic and listing disclosures relevant to that topic; the **GRI Sector Standards,** applicable to specific sectors; and the **GRI Universal Standards,** which apply to all organizations.

Using these Standards to determine what topics are material (relevant) to report on helps organizations indicate their contributions – positive or negative – towards sustainable development.

**a) GRI Universal Standards**

The GRI Universal Standards apply to all organizations, and consist of the following:

- **GRI 1: Foundation 2021 (GRI 1)** outlines the purpose of the GRI Standards, clarifies critical concepts, and explains how to use the Standards. It lists the requirements that an organization must comply with to report in accordance with the GRI Standards. It also specifies the principles – such as accuracy, balance, and verifiability – fundamental to good-quality reporting.
- **GRI 2: General Disclosures 2021 (GRI 2)** contains disclosures relating to details about an organization's structure and reporting practices; activities and workers; governance; strategy; policies; practices; and stakeholder engagement. These give insight into the organization's profile and scale, and help in providing a context for understanding an organization's impacts.
- **GRI 3: Material Topics 2021 (GRI 3)** explains the steps by which an organization can determine the topics most relevant to its impacts, its material topics, and describes how the Sector Standards are used in this process. It also contains disclosures for reporting its list of material topics; the process by which the organization has determined its material topics; and how it manages each topic.

**b) GRI Sector Standards**

The GRI Sector Standards intend to increase the quality, completeness, and consistency of reporting by organizations. Standards were initially developed for 40 sectors, starting with those with the highest impact, such as oil and gas, agriculture, aquaculture, and fishing. The Standards list topics that are likely to be material for most organizations in a given sector, and indicate relevant disclosures to report on these topics. If an applicable Sector Standard is available, an organization is obliged ('required') to use it when reporting with the GRI Standards.

Each Sector Standard consists of an initial section that gives an overview of the sector's characteristics, including the activities and business relationships that can underpin its impacts. The main section of the Standard then lists the likely material topics for the sector. Topic by topic, the most significant impacts associated with the sector are described in this section. Each topic description points to the relevant disclosures in the Topic Standards for the organization to report. A Sector Standard may also list additional disclosures that are not in a Topic Standard, for example, where the disclosures from the Topic Standard do not provide sufficient information about the organization's impacts concerning the topic. The topics and associated disclosures are determined using sector-specific evidence, international instruments, and advice from sector experts. Consequently, they reflect the expectations of a wide range of stakeholders regarding the management of impacts in the sector.

**c) GRI Topic Standards**

The GRI Topic Standards contain disclosures for providing information on topics. Examples include Standards on waste, occupational health and safety, and tax. Each Standard incorporates an overview of the topic and disclosures specific to the topic and how an organization manages its associated impacts. An organization selects those Topic Standards that correspond to the material topics it has determined and uses them for reporting.

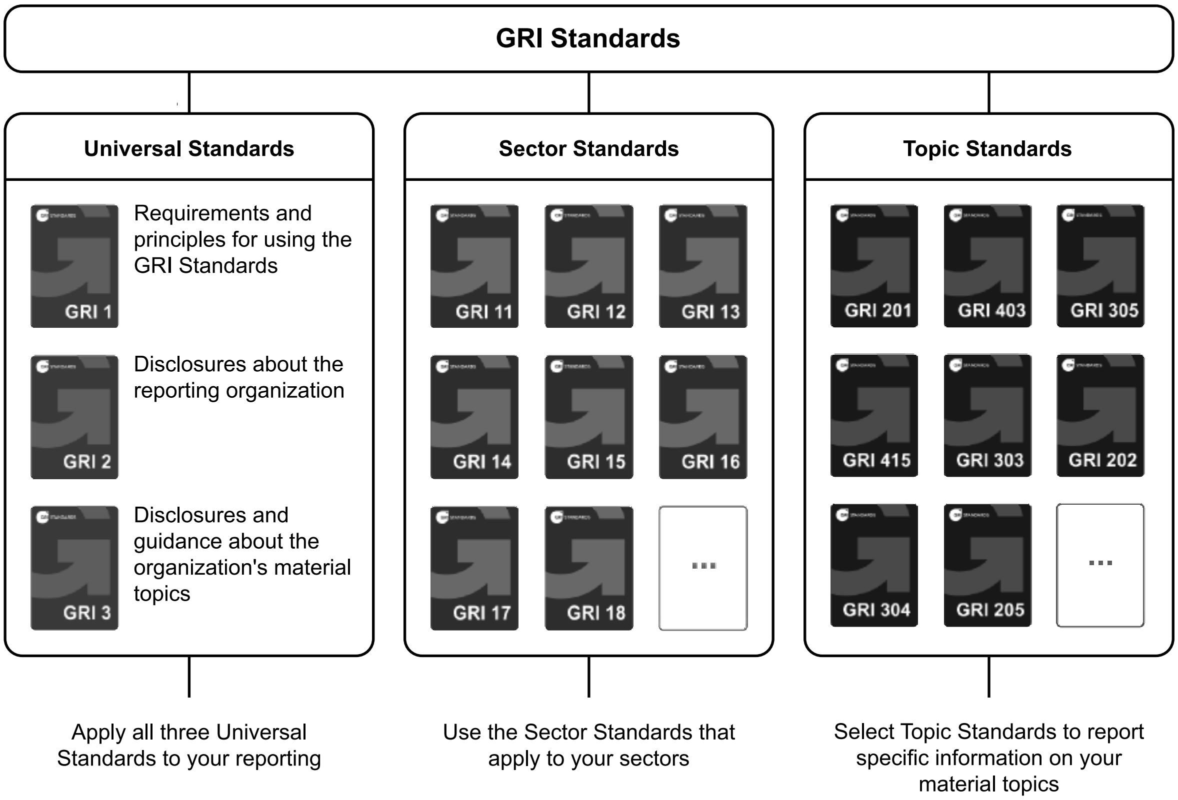



**FIG. 2 – GRI Standards**

*(Source: www.globalreporting.org)*

## Understanding the GRI Framework

GRI reporting protocols aim to cover a wide range of ESG issues, from employee safety and human rights to environmental management. In order to determine the weight of greenhouse gas emissions (GHG) generated on-site, companies must carefully track their product usage, chemical inventory, and control technologies. This is also true for water consumption and waste tracking as well as hazardous waste generation. These are all part of the GRI reporting framework that will require a deeper knowledge of company processes and supply chains, as well as comprehensive data inputs.

The GRI offers 30 environmental performance indicators that should be used as part of the environmental sustainability report. These performance indicators are divided into nine primary categories:

1. **Materials:** Includes raw materials (natural resources, manufactured chemicals, and materials needed for manufacturing) as well as packaging materials and recycled product content.
2. **Energy:** Includes direct and indirect energy consumption, renewable energy amounts used, such as wind, solar, and geothermal, and efforts made to reduce energy requirements through more energy efficient processes.
3. **Water:** Covers the total amount of water withdrawn from water sources and company impact on those water sources, as well as the percentage and total volume of water that is recycled or reused.
4. **Biodiversity:** Provides information regarding company impact on the biodiversity of adjacent/nearby protected areas and/or areas considered to have high biodiversity, as well as company strategies for managing impacts on biodiversity.
5. **Emissions, Effluents, Waste:** Includes total weight of direct and indirect emission of GHGs, ozone-depleting emissions, and NOx, SOx, and other air emissions by type; total water discharge by quality and destination; total weight of waste generated by type and disposal method; total weight of treated, transported, or imported hazardous waste either as well as the percentage of waste shipped internationally; total volume and number of spills on and off-site.
6. **Products and Services:** Provides the percentage of products sold and packaging materials that are reclaimed/recycled.
7. **Compliance:** Provides the total monetary value of noncompliance fines and number of noncompliance sanctions.
8. **Transport:** Describes the impact of transporting your materials and finished products.
9. **Overall:** Provides the total values of environmental protection expenses and investments.

## REPORTING PROCESS UNDER GRI FRAMEWORK

The foundation of sustainability reporting is for an organization to identify and prioritize its impacts on the economy, environment, and people – to be transparent about their impacts.

GRI 1 is the starting point for all organizations reporting using the GRI Standards in that it lays out key concepts and principles, and lists the requirements for reporting in accordance with the GRI Standards.

## Identifying and assessing impacts

Identifying its impacts and assessing their significance is part of an organization's day-to-day activity, which varies according to its specific circumstances.

The Sector Standards are of help at this point in that they describe the characteristics of a sector that underlie its impacts. The topics and impacts listed in the Sector Standards provide a valuable means of identifying an organization's impacts. An organization needs to consider the impacts described, and decide whether these impacts apply to it.

Understanding an organization's context is a crucial factor in identifying and assessing the significance of its impacts.

GRI 2 aids in this process by specifying disclosures in detail for different aspects of an organization's activities (reporting practices, governance).

GRI 3 explains step-by step how to identify and assess impacts together with their significance.

Once an organization has assessed the significance of its impacts, it needs to decide on which to report. To do this, it needs to prioritize the impacts. Grouping the impacts into topics (such as 'water and effluents' or 'child labor') facilitates this, as it indicates what topics are most relevant to the organization's activities - its material topics. GRI 3 also contains a step-by-step explanation of how to organize this grouping. To report in accordance with the GRI Standards, an organization needs to document the process by which it determined its material topics, and the disclosures contained in GRI 3 facilitate this.

Again, the Sector Standards are part of the process of determining material topics. An organization should test its selection of material topics against the topics in the applicable Sector Standard. This helps the organization ensure that it has not overlooked any topics that are likely to be material for the sector. If an applicable Sector Standard is available, then an organization is obliged to use it when reporting in accordance with the GRI Standards. Using the Sector Standards is not a substitute for determining material topics, but an aid. However, the organization still needs to consider its specific circumstances when selecting its material topics.

## Reporting disclosures

An organization that has determined its material topics needs to gather relevant data to report specific information on each topic. The topics in a Sector Standard list specific disclosures from the Topic Standards identified for reporting on the topic by an organization in the sector. Where relevant, additional disclosures specific to the sector are included.

The disclosures in the Topic Standards specify the information that needs to be collected to report according to the GRI Standards. Together with the disclosures from GRI 2 and GRI 3, they provide a structured way of reporting this information. If an organization cannot comply with the particular reporting requirements, it is in certain instances permitted to omit the information, provided that a valid reason is given for the omission. In addition to the requirements listed under these disclosures, there are also recommendations and guidance that would add to the quality and transparency of a report.

## Reporting in accordance with the GRI Standards

The GRI Standards allow an organization to report information in a way that covers all its most significant impacts on the economy, environment, and people, or to focus only on specific topics, such as climate change or child labor. GRI recommends reporting in accordance with the GRI Standards. Under this approach, the organization reports on all its material topics and related impacts and how it manages these topics. This reporting approach provides a comprehensive picture of an organization's most significant impacts on the economy, environment, and people. However, if an organization cannot fulfill some of the requirements to report in accordance with the GRI Standards or only wants to report specific information for specific purposes, such as when complying with regulatory requirements; in that case, it can use selected GRI Standards or parts of their content, and report with reference to the GRI Standards.

### Navigating a report

Reports using the GRI Standards may be published in various formats (e.g., electronic, paper-based) and made accessible across one or more locations (e.g., standalone sustainability report, webpages, annual report). Reports must contain a GRI content index. The content index makes reported information traceable and increases the report's credibility and transparency. The content index provides an overview of the organization's reported information and helps stakeholders navigate the report at a glance. It specifies the GRI Standards that the organization has used. The index also lists the location, such as a page number or URL, for all disclosures that the organization has used to report on its material topics. The content index can also help a stakeholder understand what the organization has not reported. The organization must specify in the content index if a 'reason for omission' is being used. In addition, the disclosure or the requirement that the organization cannot comply with, together with an explanation, must be listed in the content index. If Sector Standards apply to the organization, Sector Standard reference numbers provide a unique identifier for each disclosure listed in a Sector Standard. This helps information users assess which of the disclosures listed in the applicable Sector Standards are included in the organization's reporting.

GRI reporting is broken down into a five-step process:

- **Step 1: Prepare** - Organizations define a vision for the report, create a report team, develop a plan of action, and set a kickoff meeting.
- **Step 2: Connect** - Companies identify, hold meetings, and set priorities with key stakeholders in order to determine reporting priorities and define scope.
- **Step 3: Define** - The reporting team selects issues for action and reporting as well as decides on the report content.
- **Step 4: Monitor** - The reporting team monitors activities and records data, checks processes and systems, ensures quality of information, and follows up as needed.
- **Step 5: Report** - Companies choose the best way to communicate, write, finalize, and launch the report publicly.

## BUSINESS RESPONSIBILITY AND SUSTAINABILITY REPORTING

### Introduction

As per Global Reporting Initiative (GRI), *"A sustainability report is a report published by a company or organization about the economic, environmental and social impacts caused by its everyday activities. A sustainability report also presents the organization's values and governance model, and demonstrates the link between its strategy and its commitment to a sustainable global economy."*

Sustainability Reporting or Non-Financial Reporting is the process of communicating the social, environmental and governance effects of a company's operations to the stakeholders at large. Many companies have realized the importance of factoring in environmental, social and governance parameters in the business strategy of the company. It is also felt that companies that disclose their sustainability efforts are rewarded by the market.

With sustainable development and the climate change movement gaining momentum, the sustainability reporting landscape is changing rapidly around the globe. The push from investors has further accelerated this movement, and it is now incumbent on companies to report their sustainability performance in order to maintain transparency with stakeholders. Sustainability reporting frameworks have evolved over time and companies worldwide have adopted these frameworks for measuring, monitoring and disclosing performance in areas related to environmental, social and governance (ESG).

Global ESG/sustainability disclosures and frameworks such as the Global Reporting Initiative (GRI), Integrated Reporting (IR), Sustainability Accounting Standards Board (SASB), United Nations Global Compact (UNGC) and CDP require businesses to disclose their sustainability performance as per the respective key performance indicators (KPIs) and principles. ISO 26000 offers voluntary guidance on social responsibility. Many countries around the world have introduced and mandated some form of ESG related disclosures.

The BRSR is intended towards having quantitative and standardized disclosures on ESG parameters to enable comparability across companies, sectors and time. Such disclosures will be helpful for investors to make better investment decisions. The BRSR shall also enable companies to engage more meaningfully with their stakeholders, by encouraging them to look beyond financials and towards social and environmental impacts.

## EVOLUTION OF ESG REPORTING IN INDIA

ESG reporting in India started in 2009 with the Ministry of Corporate Affairs (MCA) issuing the Voluntary Guidelines on Corporate Social Responsibility as the first step towards mainstreaming the concept of business responsibility. Since then, the reporting landscape has come a long way with the introduction of Business Responsibility Reporting (BRR), Corporate Social Responsibility (CSR), IR, National Guidelines on Responsible Business Conduct (NGRBC) and now Business Responsibility and Sustainability Report (BRSR).

When the Ministry of Corporate Affairs (MCA) released the National Voluntary Guidelines (NVG), there was no India-specific corporate framework, either voluntary or compulsory, relating to sustainable development till 2011.

The National Voluntary Guidelines (NVGs) released by MCA in the year 2011 is a set of guidelines for Indian business enterprises to operate considering their responsibilities related to the economy, environment and society. It is based on the triple bottom line (TBL) principle of sustainability, and is appropriate for organizations of every size, sector and management, and is specific to the Indian context.

It had 9 elements, viz., human right, ethics, product life cycle sustainability, accountability and transparency, well-being of the employees, engagement of Stakeholder, Human rights, Environment, Policy advocacy, Inclusive growth and equitable development and value to customers.

There are guidelines in NVG to implement the use of its four concepts of leadership, integration, engagement and reporting.

It also had supplementary annexures that laid out the business case for taking up the guidelines and the related regulatory frameworks and legislation. It had a separate section for the Micro, Small, and Medium Enterprises (MSMEs) and about the methods of application.

The organizations were directed by The Securities and Exchange Board of India (SEBI) to release an annual report on their Business Responsibility (BR) in line with the NVGs.

After the National Voluntary Guidelines (NVGs) were released by the Ministry of Corporate Affairs in the year 2011, indicating the Social, Environmental and Economic Responsibilities of Business, SEBI made it compulsory for the top 100 listed companies to disclose non-financial data pertaining to environmental and social responsibilities through Business Responsibility Report (BRR).

After the MCA released the National Guidelines on Responsible Business Conduct (NGRBCs), it constituted a Committee on Business Responsibility Reporting to finalise business responsibility reporting formats for listed and unlisted companies, based on the framework of the NGRBC. Through its 'Report of the Committee on Business Responsibility Reporting', the Committee recommended that BRR be rechristened BRSR, where disclosures are based on ESG parameters, compelling organisation's to holistically engage with stakeholders and go beyond regulatory compliances in terms of business measures and their reporting.

The BRSR framework has been developed after years of evolution, as can be seen from the table below:

| ***Year*** | ***Event*** |
|---|---|
| **2009** | Ministry of Corporate Affairs ("MCA") issued the Voluntary Guidelines on CSR as a step towards mainstreaming the concept of business responsibility. |
| **2011** | United Nations Human Rights Council (UNHRC) adopted UN Guiding Principles on Business and Human Rights (UNGPs) which India endorsed. |
| **2011** | MCA issued National Voluntary Guidelines on Social Environmental and Economic Responsibilities of Business, 2oo (NVGs) |
| **2012** | SEBI introduced non-financial reporting in the form of Business Responsibility Report (BRR) and mandated the top 100 listed companies by market capitalization to file BRR based on the MCA's NVGs along with their annual reports. |
| **2014** | CSR was mandated and CSR Rules came into force. |
| **2016** | BRR was extended by SEBI to the top 500 listed companies by market capitalisation. |
| **2017** | SEBI advised that IR may be adopted by companies on a voluntary basis from financial year 2017-18 by the top 500 listed companies. |
| **2019** | NVGs were revised and MCA released the National Guidelines on Responsible Business Conduct (NGBRCs). |
| **2019** | BRR was extended by SEBI to the top 1000 listed companies by market capitalization. |

| | |
|---|---|
| **2019-20** | MCA formed a Committee to align BRR format in line with NGBRCs.<br><br>Committee prescribed a revised format to reflect the intent and scope of reporting requirement and recommended that BRR be renamed as Business Responsibility and Sustainability Report (BRSR).<br><br>It was also envisaged that the information collected through BRSR be used to develop a Business Responsibility – Sustainability Index for companies.<br><br>SEBI issued consultation paper inviting public comments on format of BRSR |
| **2021** | SEBI introduced BRSR in May 2021. |

## BRR TO BRSR – A COMPARATIVE STUDY

The BRR was introduced in August 2012. It was SEBI's reporting requirement, which was in tune with the National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business.

BRR guidelines on sustainability information can be classified into five (5) categories as below:

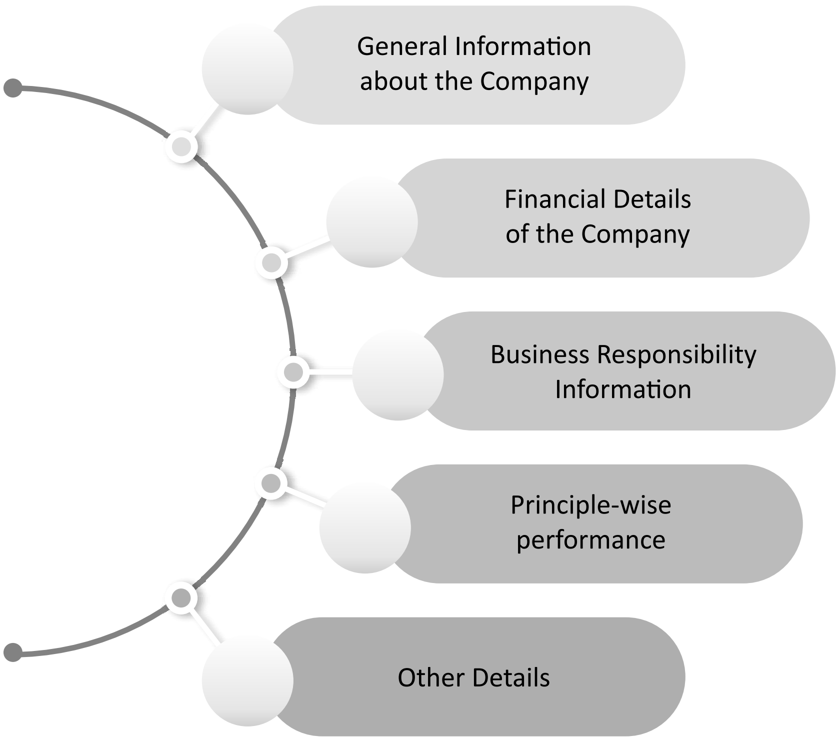



**FIG. 3 - Business Responsibility Report Classification**

Both the BRSR and the BRR were designed around the nine business sustainability principles identified by the Ministry of Corporate Affairs in their voluntary ESG guidelines published in 2011 ("MCA ESG Guidelines"), but that is where the similarity ended.

The BRR was not well received, since it based its ESG disclosure requirements almost entirely on the nine sustainability principles from the MCA ESG Guidelines (often, as a Y/N questionnaire) and provided very little meaningful ESG data. The BRSR, on the other hand, built upon the framework of the MCA ESG Guidelines, derives inspiration from international reporting frameworks like the GRI standards, and provides for detailed ESG data, both qualitative and quantitative.

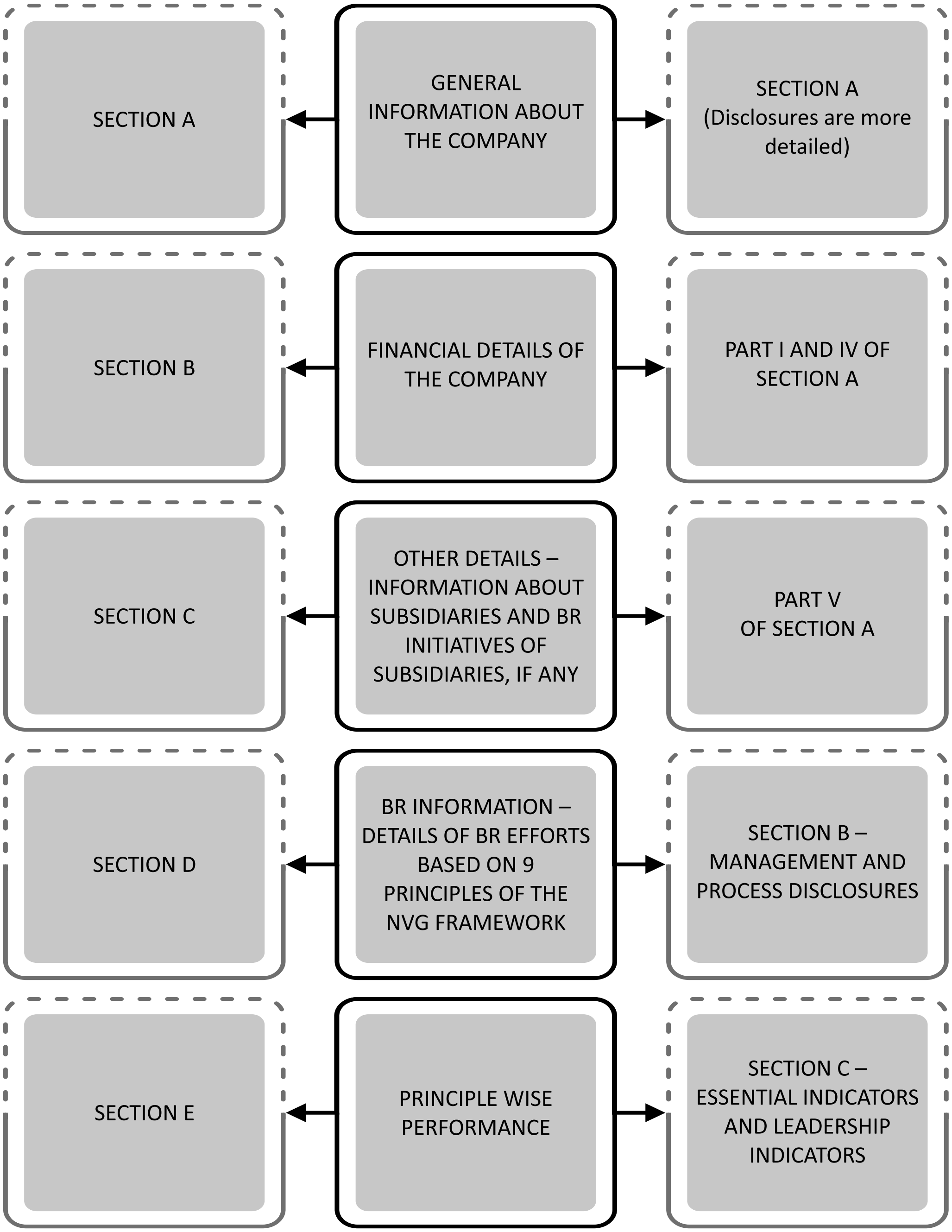



**FIG. 4 - BRR Vs. BRSR – A comparison**

## OVERVIEW AND APPLICABILITY OF BRSR

SEBI has played a key role in promoting sustainability reporting in India by issuing the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. On 05th May, 2021 SEBI *vide* Notification No.SEBI/LAD-NRO/GN/2021/22 amended Regulation 34(2)(f) of the SEBI (LODR), Regulations, 2015 and mandated top 1000 listed companies based on their market capitalization to prepare a Business Responsibility Report (BRR) describing the initiatives taken by the listed entity from an Environmental, Social and Governance (ESG) perspective, in the format as specified by SEBI from time to time and provided that

- BRR shall be discontinued after the financial year 2021–22;
- From the financial year 2022–23 the top 1000 listed entities based on market capitalization shall submit a Business Responsibility and Sustainability Report (BRSR) in the format as specified by SEBI from time to time;

On 10th May, 2021 SEBI issued another Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 providing the Applicability of BRSR and Disclosure format.

With effect from the financial year 2022-2023, filing of BRSR has been made mandatory for the top 1000 listed companies (by market capitalization) and has replaced the existing BRR.

With ESG investing becoming more mainstream, SEBI's disclosure requirements through BRSR have been introduced to keep pace with such investment strategies, and growing concerns about responsible corporate governance and climate change.

BRSR is an essential component of sustainability finance that aims to integrate sustainability considerations into a company's reporting and disclosure practices. The increasing global concerns about climate change, social inequality, and environmental degradation have led to a growing demand for businesses to disclose their ESG performance to stakeholders. BRSR helps businesses communicate their sustainability performance, challenges, and opportunities to their stakeholders transparently.

BRSR involves reporting on various ESG parameters, such as environmental impact, social and community development, governance practices, and economic performance. The disclosure of such information enables stakeholders to assess the company's sustainability performance and take informed decisions.

Apart from introducing a relatively comprehensive disclosure framework, BRSR also includes the following aspects, with an aim to enhance ESG complaint business practices in India:

- Implementation of the NGRBC principles to address ESG-related concerns;
- Disclosure of adequate policies and mechanism that a company implements to remain ESG-compliant. BRSR lays considerable emphasis on quantifiable metrics for ensuring comparison across sectors, companies, and time periods;
- Enhanced disclosures on climate and social related issues;
- Segregation of disclosures into essential and leadership indicators, the former being the mandatory requirement. The leadership indicators, inter alia, also emphasizes disclosures related to the value chain of eligible entities;
- BRSR allows interplay for organisations that are already publishing sustainability reports under other internationally recognized frameworks.

## STRUCTURE / FRAMEWORK OF BRSR

Before exploring the structure / framework of BRSR, it is essential to have a look on the approach adopted for developing the BRSR Core-

**i) Quantifiable and outcome oriented metrics**

The KPIs sought in the BRSR Core are quantifiable to the extent possible, so as to facilate comparability of the disclosures. The KPIs also incorporate metrics that are reflective of sustainable outcomes in companies. For instance, one of the metrics recommended by the Committee was 'gross wages by gender' which was reflective of whether a company has gender diversity practices which attract and retain women in its workforce.

**ii) Relevance of the attributes / areas in the BRSR Core**

The BRSR Core contains factors that are relevant to both the manufacturing and service factors and are relevant in the Indian context. Therefore, under the 'S' parameters, attributes such as job creation, and inclusive development have been considered. The 'G' parameter included openness / concentration of business including related party transactions.

**iii) Comparability across jurisdictions**

The KPIs in the BRSR Core, contain a number of intensity ratios, such as intensity of Green-House Gas (GHG) emissions, water consumption, waste generation etc., so as to enable comparability, irrespective of the size of the company.

These intensity rations are based on both revenue and volume. Considering the fact that these ratios are also used by global investors and global ERPs, it is felt appropriate that intensity ratios based on economic value adjusted for Purchasing Power Parity (PPP) should be computed in addition to the norm intensity ratios, for global comparability to be fairer to low cost / developing economies. It is proposed that in the first phase, country level PPP may be used and over time, sector specific PPP may be developed.

The reporting framework is divided into three sections

## Section A: General disclosures

The section contains details of the listed entity; products/services; operations; employees; holding, subsidiary and associate companies (including joint ventures); CSR; transparency and disclosure compliances.

Under this basic details of company shall be disclosed such as, name, CIN, registered office, contact details, paid-up capital, name and contact details of the responsible person for BRSR, details about operation, production, turnover, details of employee, gender ratio of employee, representation of women at the top management and turnover ratio of the employees etc.

## Section B: Management and process disclosures

It contains questions related to policy and management processes, governance, leadership and oversight. It includes preparation/identification of policy(ies), processes put in place towards adopting the NGRBC principle and core elements, Sustainability Governance Structure to benchmark, implement and monitor sustainability aligned decisions and actions.

## Section C: Principle-wise performance disclosures

Companies are required to report upon KPIs in alignment with the nine principles of the NGRBC given below. The section classifies KPIs into two sub-categories that companies are required to report upon:

- Essential indicators (mandatory): KPIs include data on training programmes conducted, environmental data on energy, emissions, water and waste, social impact generated by the company, etc.

- Leadership indicators (voluntary): Companies are expected to comply with these indicators for better accountability and responsible purpose. Some of the KPIs include data on life cycle assessments (LCAs), details on conflict management policy, additional data on biodiversity, breakup of energy consumption, Scope 3 emissions and supply chain disclosures.

## Nine principles of the NGRBC

The NGRBC are designed to be used by all businesses irrespective of their ownership, size, sector, structure or location. It is expected that all businesses investing or operating in India, including foreign multinational corporations (MNCs) will follow these guidelines. Correspondingly, the NGRBC also provide a useful framework for guiding Indian MNCs in their overseas operations, in addition to aligning with applicable local national standards and norms governing responsible business conduct.

Furthermore, the NGRBC reiterate that need to encourage businesses to ensure that not only do they follow these guidelines in business contexts directly within their control or influence, but that they also encourage and support their suppliers, vendors, distributors, partners and other collaborators to follow them.

The nine principles of NGRBC are as under:

**Principle 1**

**Businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent and accountable.**

- Detailed description of number of trainings and awareness programmes on any of the principles held for the Board, KMP, employees and workers
- Details of fine/penalties /punishments/awards/compounding fees/settlement paid
- Disclosure on number of complaints received
- Details relating to anti- corruption

**Principle 2**

**Businesses should provide goods and services in a manner that is sustainable and safe.**

- Disclose percentage of Research and development and capital expenditure investments
- Disclose procedure on Sustainable sourcing
- Details of Life Cycle Assessment
- Disclosure on Extended producer Responsibility

**Principle 3**

**Businesses should respect and promote the well-being of all employees, including those in their value chains.**

- Detailed measure taken by entity for their employee’s
- Details of retirement benefits

**Principle 4**

**Businesses should respect the interests of and be responsive to all its stakeholders**.

- Disclosure about the processes for identifying key stakeholder group

**Principle 5**

**Businesses should respect and promote human rights**

- Details of training
- Details of minimum wages paid

**Principle 6**

**Businesses should respect and make efforts to protect and restore the environment.**

- Specific disclosures relating to water withdrawal
- Disclosure regarding whether the entity has implemented a mechanism for zero liquid discharge
- Details of air emission or greenhouse gases
- Disclose the details of environmental impact assessment project

**Principle 7**

**Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.**

- Disclose details on trade and industry chambers of the entity
- Disclose details of corrective actions taken or underway on any issues related to anti -competitive conduct by the entity

**Principle 8**

**Businesses should promote inclusive growth and equitable development.**

- Disclose details of Social Impact Assessment (SIA) of projects undertaken by the entity
- Disclose details of preferential procurement policy

**Principle 9**

**Businesses should engage with and provide value to their consumers in a responsible manner.**

- Number of consumer complaints received during the current year and previous year
- Advertising, cyber security and unfair trade practises along with the details regarding mechanism
- Disclosure regarding framework /policy on cyber security and risks related to data privacy along with providing weblink of the policy.

A summary of the ESG metrics and other key disclosures required by the BRSR is as follows:

| ***SUBJECT MATTER*** | ***KEY DISCLOSURES**** |
|---|---|
| **General** | ***Key quantitative and/ or qualitative KPIs*:**<br>● Principal business activities and products/ services.<br>● Markets served, plants and offices (national and international), and types of customers. |

| SUBJECT MATTER | KEY DISCLOSURES* |
|---|---|
| | • Contribution of exports.<br>• R&D and capex investments in technologies that improve ESG impacts.<br>• Trade and industry affiliations.<br>***Other key disclosures*:**<br>• Overview of material responsible business conduct issues.<br>• Specific ESG commitments and performance.<br>• External assessment/ evaluation of ESG policies. |
| **Environmental** | ***Key quantitative and/ or qualitative KPIs*:**<br>• Material environmental impacts, risks and concerns.<br>• Energy consumption and intensity.<br>• Water consumption, intensity, withdrawal and discharge.<br>• GHG emissions (scope 1 to 3) and projects for emissions reduction.<br>• Plastics and waste management (including through 3Rs practices) and wastewater management.<br>• Sustainable input sourcing.<br>• Environmental impact assessments.<br>• Extended producer responsibility.<br>• Life cycle assessments.<br>• Operations in ecologically sensitive areas and biodiversity impacts.<br>• Compliance with environmental laws.<br>***Other key disclosures*:**<br>• Business continuity and disaster management plan(s). |
| **Social** | ***Key quantitative and/ or qualitative KPIs:***<br>• Median remuneration and minimum wages.<br>• Return to work and retention rates.<br>• Union/ association memberships.<br>• Occupational safety and health (OSH) matters, including risk assessments, reporting and corrective actions.<br>• Safety incidents and corrective actions.<br>• Human rights related risk assessments, diligence, corrective actions, grievance redressal and business process changes.<br>• Trainings – on ESG, OSH, human rights, and skill upgradation.<br>• Safety-linked product recalls. |

| SUBJECT MATTER | KEY DISCLOSURES* |
|---|---|
| | ● Insurance, retirement, and other employee benefits.<br>● Employee/ worker complaints and grievances, and protective mechanisms for complainants.<br>● Rehabilitation and resettlement, and community grievances.<br>● Social impact assessments and mitigating actions.<br>● Customer/ consumer issues, including complaints, corrective actions, awareness, and feedback.<br>● Product labelling.<br>● Sourcing from local/ small producers and marginalised/ vulnerable groups.<br>● Beneficiaries of CSR projects.<br>● Data privacy issues.<br>***Other key disclosures*:**<br>● Framework/ policy on cyber security and data privacy risks. |
| **Governance** | ***Key quantitative and/ or qualitative KPIs:***<br>● Anti-bribery/ corruption disciplinary sanctions involving directors and employees, and related corrective actions.<br>● Conflicts of interest involving directors or KMPs, and related corrective actions.<br>● Process for identifying and engagement with key stakeholders.<br>***Other key disclosures*:**<br>● Anti-corruption/ bribery policies. |

**Certain KPIs/ disclosures (particularly, those relating to value chain partners) are voluntary only.*

## BENEFITS OF BRSR REPORTING

1. **Improved ESG Performance:** BRSR reporting helps companies to identify and monitor their ESG (Environmental, Social, and Governance) performance. This allows them to better understand their environmental impact, social responsibility, and governance practices. By having a better understanding of their performance, companies can make informed decisions about how to improve their sustainability practices. Ultimately, this can lead to a reduction in environmental impact, improved social outcomes, and better governance practices.

2. **Competitive Advantage:** By reporting on their sustainability practices, companies can differentiate themselves from their competitors. This can help attract environmentally and socially conscious investors who may prefer to invest in companies that have a positive impact on the environment and society. This can also help companies attract customers who are increasingly concerned about the sustainability practices of the companies they do business with.

3. **Compliance with Regulations:** BRSR reporting helps companies to comply with regulations such as SEBI guidelines and the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business. By disclosing their sustainability practices and performance, companies

can demonstrate that they are following relevant regulations and guidelines. This can help them avoid potential fines or penalties and maintain a positive reputation.

4. **Improved Stakeholder Engagement:** By disclosing their ESG performance, companies can engage with stakeholders such as investors, customers, and employees on sustainability issues. This can help build trust and credibility with stakeholders and demonstrate a commitment to sustainability. Stakeholders may have a significant impact on a company's success, and engaging with them can lead to opportunities for collaboration and co-creation. This can ultimately result in a more sustainable business model.

5. **Risk Management:** BRSR reporting helps companies to identify and manage ESG-related risks. By understanding their environmental and social impact, companies can identify potential risks and take steps to mitigate them. This can help reduce the likelihood of negative impacts on the environment, society, or the company's reputation. Effective risk management can also help protect a company's financial performance and increase its resilience to unexpected events.

6. **Cost Savings:** BRSR reporting can help companies to identify areas where they can reduce costs by improving their sustainability practices. For example, by identifying ways to reduce energy consumption or waste, companies can reduce their operating costs, which can have a positive impact on their bottom line. Additionally, companies that adopt sustainable practices may be able to save on costs associated with fines and penalties for non-compliance with environmental and social regulations.

7. **Innovation:** BRSR reporting can be a powerful tool to encourage companies to innovate and develop new products and services that are more sustainable. For example, by tracking their carbon emissions and setting reduction targets, companies may identify opportunities to develop new low-carbon products or services. Similarly, by monitoring their water usage and identifying ways to reduce it, companies may be able to develop new water-efficient products or technologies.

8. **Investor Confidence:** BRSR reporting can enhance investor confidence by providing relevant information about a company's ESG performance. This information can help investors make informed decisions about which companies to invest in and which to avoid. By disclosing their sustainability practices and performance, companies can build trust with investors and attract those who prioritize ESG factors in their investment decisions.

9. **Improved Reputation:** BRSR reporting can also enhance a company's reputation by demonstrating a commitment to sustainability. A positive reputation can help attract and retain customers, employees, and other stakeholders, while a negative reputation can lead to lost business and legal or regulatory consequences. By disclosing their sustainability practices and performance, companies can demonstrate a commitment to transparency and accountability, which can help build trust and enhance their reputation.

10. **Long-Term Value Creation:** BRSR reporting can help companies create long-term value by promoting sustainable business practices. By considering the environmental and social impact of their operations, companies can identify opportunities to reduce costs, improve efficiency, and develop innovative products and services. By integrating sustainability into their business strategy, companies can create value for shareholders while also contributing to a more sustainable future. Moreover, companies that prioritize sustainability may be better equipped to navigate risks related to climate change, social inequality, and other ESG factors, which can help them create long-term value for all stakeholders.

## CHALLENGES OF BRSR REPORTING

Challenges of Sustainability Reporting include –

- **Diverse views on Sustainability** – There is no one definition of sustainability. This results in the ambit of sustainability becoming very large, and it could be overwhelming for companies to collate such a lot of information and present it in the form of a report.

- **Multiple reporting standards and frameworks** – Globally there are various reporting standards and frameworks for Sustainability Reporting, such as Carbon Disclosure Project (CDP), the Climate Disclosure Standards Board (CDSB), the Global Reporting Initiative (GRI), the International Integrated Reporting Council (IIRC) and the Sustainability Accounting Standards Board (SASB). Each of these provide their own guidelines for Sustainability Reporting. This can result in challenges in reporting, basis each of these frameworks.
- **Time-consuming exercise** – Given the extensive data that is required, Sustainable Reporting could be time consuming, especially for smaller companies.
- **Lack of understanding within management** – The personnel responsible for collecting such data need to be educated and trained efficiently. Problems can arise if there is lack of proper coordination between different departments within a company. The credibility and reputation of the company depends on the accuracy of the data published.
- **No clear proof of financial return on investment** – Although studies have shown that stakeholders reward companies with sustainable practices, there is mixed empirical evidence, partly because data continues to be a challenge.

## CONCLUSION

Unlike financial reporting where companies have robust system in place to capture and report necessary data, reporting around ESG parameters is still at a growing stage. Therefore, there is an urgent need to invest in necessary mechanism which could help in three aspects:

1. Enable capturing the required data for reporting ESG matters
2. Selection of sustainable framework and related metrics that can be adopted by companies to facilitate reporting
3. Level of assurance to be provided on such reporting.

BRSR reporting is a first step towards achieving these milestones.

India is gradually moving towards developing regulations around ESG. With the introduction of the BRSR framework, SEBI has joined the group of countries and international organization to have released comprehensive sustainability reporting frameworks. Though the reporting mandate is presently restricted to the top 1,000 listed companies by market capitalization, the experience with BRR only indicates that a wider range of companies would soon be covered under the BRSR framework.

Thus, with the BRSR becoming mandatory from the financial year FY2022-23 and a number of stakeholders such as investors and ESG rating providers placing reliance on disclosures made in the BRSR, assurance becomes key for enhancing credibility of disclosure and investor confidence.

### LESSON ROUND-UP

- Sustainability Reporting or Non-Financial Reporting is the process of communicating the social, environmental and governance effects of a company's operations to the stakeholders at large.
- ESG reporting in India started in 2009 with the Ministry of Corporate Affairs (MCA) issuing the Voluntary Guidelines on Corporate Social Responsibility as the first step towards mainstreaming the concept of business responsibility.
- The Integrated Reporting Framework was developed in 2013. The framework is based on integrated thinking. Integrated thinking is the process that an organization follows while creating an Integrated Report.

- The IR Framework is principles-based. The intent of the principles-based approach is to strike an appropriate balance between flexibility and prescription that recognizes the wide variation in individual circumstances of different organizations while enabling a sufficient degree of comparability across organizations to meet relevant information needs.
- The GRI Standards are a modular system of interconnected standards. They allow organizations to publicly report the impacts of their activities in a structured way that is transparent to stakeholders and other interested parties.
- The GRI Sector Standards intend to increase the quality, completeness, and consistency of reporting by organizations.
- SEBI has played a key role in promoting sustainability reporting in India by issuing the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- India is gradually moving towards developing regulations around ESG. With the introduction of the BRSR framework, SEBI has joined the group of countries and international organization to have released comprehensive sustainability reporting frameworks.

## GLOSSARY

**Business model:** An organization's system of transforming inputs through its business activities into outputs and outcomes that aims to fulfill the organization's strategic purposes and create value over the short, medium and long term.

**Capitals:** Stocks of value on which all organizations depend for their success as inputs to their business model, and which are increased, decreased or transformed through the organization's business activities and outputs. The capitals are categorized in the <IR> Framework as financial, manufactured, intellectual, human, social and relationship, and natural.

**Content Elements:** The categories of information required to be included in an integrated report; the Content Elements, which are fundamentally linked to each other and are not mutually exclusive, are stated in the form of questions to be answered in a way that makes the relationships between them apparent.

**Guiding Principles:** The principles that underpin the preparation and presentation of an integrated report, informing the content of the report and how information is presented.

**Inputs:** The capitals (resources and relationships) that the organization draws upon for its business activities.

**Integrated report:** A concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation, preservation or erosion of value in the short, medium and long term.

**Integrated reporting:** A process founded on integrated thinking that results in a periodic integrated report by an organization about value creation, preservation or erosion over time and related communications regarding aspects of value creation, preservation or erosion.

**Integrated thinking:** The active consideration by an organization of the relationships between its various operating and functional units and the capitals that the organization uses or affects. Integrated thinking leads to integrated decision-making and actions that consider the creation, preservation or erosion of value over the short, medium and long term.

**Material/materiality:** A matter is material if it could substantively affect the organization's ability to create value in the short, medium or long term.

**Outcomes:** The internal and external consequences (positive and negative) for the capitals as a result of an organization's business activities and outputs.

**Outputs:** An organization's products and services, and any by-products and waste.

**Performance:** An organization's achievements relative to its strategic objectives, and its outcomes in terms of its effects on the capitals.

**Providers of financial capital:** Equity and debt holders and others who provide financial capital, both existing and potential, including lenders and other creditors. This includes the ultimate beneficiaries of investments, collective asset owners, and asset or fund managers.

**Reporting boundary:** The boundary within which matters are considered relevant for inclusion in an organization's integrated report.

**Stakeholders:** Those groups or individuals that can reasonably be expected to be significantly affected by an organization's business activities, outputs or outcomes, or whose actions can reasonably be expected to significantly affect the ability of the organization to create value over time. Stakeholders may include providers of financial capital, employees, customers, suppliers, business partners, local communities, NGOs, environmental groups, legislators, regulators and policy-makers.

**Strategy:** Strategic objectives together with the strategies to achieve them.

**Charged with governance:** The person(s) or organization(s) (e.g. the board of directors or a corporate trustee) with responsibility for overseeing the strategic direction of an organization and its obligations with respect to accountability and stewardship. For some organizations and jurisdictions, those charged with governance may include executive management.

**Value creation, preservation or erosion:** The process that results in increases, decreases or transformations of the capitals caused by the organization's business activities and outputs.

## TEST YOURSELF

*(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)*

1. Explain the origin and development of sustainability reporting in India.
2. With the growing ESG concerns, mere financial reporting is not sufficient. Do you agree? Write a note on sustainability reporting frameworks in support of your answer.
3. Explain the structure of IR Framework
4. Is BRSR better than the BRR? Explain the development of BRSR, its applicability and perceived benefits in the coming times.
5. Write a note of GRI framework of reporting.

## LIST OF FURTHER READINGS

- Abhishek, N., and Divyashree, M.S., Sustainability Reporting Practices in India: An Analysis of Compliance Level of BRR Requirements among Indian Companies, International Journal of Education, Modern Management, Applied Science & Social Science, 2019

**OTHER REFERENCES**

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- https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-bylistedentities_50096.html
- https://www.sebi.gov.in/legal/circulars/nov-2015/format-for-business-responsibility-report-brr-_30954.html
- https://pib.gov.in/Pressreleaseshare.aspx?PRID=1568750
- https://www.mca.gov.in/Ministry/pdf/NationalGuildeline_15032019.pdf
- https://www.globalreporting.org/media/wmxlklns/about-gri-brochure-2022.pdf

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# PROFESSIONAL PROGRAMME

# ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) – PRINCIPLES & PRACTICE

# GROUP 1 • PAPER 1

**(*This test paper is for practice and self-study only and not to be sent to the Institute*)**

*Time allowed: 3 hours* *Maximum Mark: 100*

***Answer all Questions***

## PART I: GOVERNANCE AND SUSTAINABILITY (65 MARKS)

**Question No. 1**

Board independence is crucial for unbiased and smooth functioning of the company, especially when it comes to deciding on strategic matters like mergers and acquisitions, setting up of a new business entity within the country or in foreign lands, corporate finance, keeping a vigil on financial transactions of mammoth size to ensure that there are no irregularities or scams, ensure safeguarding of the interests of all the stakeholders especially minority shareholders etc.

Thus, board independence is the essence of corporate governance. In ensuring board's independence and its free and fair approach, role of independent directors is noteworthy. Excel Limited, a publicly listed company engaged in the business of oil exploration, appointed Mr. Ramesh as its independent director, who is a person of integrity and have relevant expertise and experience in oil sector. Previously he has worked with renowned oil companies. In due course it came to light that Mr. Ramesh is step brother of the promoter of the subsidiary company of Excel Limited, i.e., Zenith Limited and Mr. Ramesh is the Chairman of the Audit Committee and ESG Committee of Excel Limited.

With reference to the board composition of Excel Limited, the Chairman of the company is not an Independent Director and the board has total 8 Directors out of which 4 are Independent Directors including Mr. Ramesh. The meeting of Audit Committee of Excel Limited was held on May 4, 2022, which considered the audited financial statements. Mr. Ramesh was the only Independent Director attended the meeting.

It was also found that Mr. Ramesh is also on the Board of Swan Limited which is an unlisted material subsidiary having registered office at Mumbai.

Examining the case in the light of relevant provisions covered under the Companies Act, 2013 and SEBI (LODR) Regulations, 2015, answer the following questions:

a) In light of the above, as a Company Secretary what steps are required to be taken with respect of Board Composition and Board Committees?

**(5 Marks)**

b) Comment on the validity of Audit Committee Meeting.

**(5 Marks)**

c) In light of the above case, elucidate the liabilities of the Independent Directors.

**(5 Marks)**

d) In the above context, explain the provisions of LODR relating to directors *inter se* relationship.

**(5 Marks)**

**(Total= 5+5+5+5= 20 Marks)**

**Question No. 2**

Super Communications Limited is a telecom company and a family business wherein promoters holding is 55%. Some of the vital aspects pertaining to corporate governance of the company are as under:

i) There is a separation of role of Chairman and Managing Director / CEO.

ii) The company has a robust succession planning framework in place for the Board and top critical positions including its senior management. The Board of Directors, HR & Nomination Committee and Apex Talent Council are entrusted with overseeing and monitoring talent management and succession planning initiatives at the company.

iii) The company has a Business Continuity Plan and Disaster Management Plan in place. It has proactively implemented business continuity plan and effectively enabled work from home facility for all the employees by providing necessary IT infrastructure and network security.

iv) In order to drive its long-term sustainability vision, the company has ESG Committee which provides strategic guidance and decision making on ESG and is responsible for review and approval of ESG strategy, goals and targets.

v) With reference to composition of board of directors, 50% of directors are independent directors.

vi) Company's stakeholder engagement framework outlines an approach to engage and work with its stakeholders and is applicable to all its operating entities and functions across the corporate and regional levels.

vii) The company has in place stringent procedures and safeguards to avoid any conflicts of interest involving members of the Board and other employees. The company's guidelines related to Conflict of Interest focus on avoiding any conflict of interest, both actual and apparent, and the mechanism to report any such situations that may give rise to a potential conflict.

ix) Super Communication's policy on Related Party Transactions intends to ensure that proper reporting, approval and disclosure processes are in place for all transactions between the company and related parties. Further the policy, disallows the concerned or interested director participate in any discussion or approve contracts or arrangements with related parties, to avoid potential conflicts of interest.

In light of the above mentioned facts, answer the following questions

a) In your view, how does the separation in the role of the Chairman and Managing Director / CEO and substantial strength of Independent Directors may contribute towards achieving efficiency in business operations of Super Communications Limited?

**(3 Marks)**

b) How succession planning is facilitated in Super Communications Limited and what initiatives the management of the company may take to further strengthen the succession planning?

**(4 Marks)**

c) The company has in place 'Business Continuity Plan', 'ESG Committee', 'Management of Conflict of Interest' and 'Policy on Related Party Transactions', thereby ensuring a holistic approach towards corporate governance. In view of this, briefly state the advantages the company may derive from the aforesaid measures.

**(8 Marks)**

**(Total 3+4+8= 15 Marks)**

**Question No. 3**

Wealth Bank a publicly listed bank recognising socio-environmental dimension as one of the strategic element of business have embraced the Environmental and Social Management System (ESMS). An Environmental and Social Management System (ESMS) helps an organisation to integrate plans and standards into its core operations in order to anticipate environmental and social risks posed by its business activities and to avoid, minimize, and compensate for such impact. Lenders being channels of credit flow play a crucial role in promoting environmentally and socially sustainable projects.

However, on perusing the ESMS report of the bank the following facts came to light.

i) The position of "E&S Officer" *(a senior officer of Bank to be responsible for administration and oversight of the E&S Management System),* have been lying vacant for past 3 years.

ii) As cost saving initiative the bank has not engaged any external agency as "E&S Consultant"*(external agencies engaged by bank to undertake E&S categorisation and for undertaking due diligence of high risk business activities financed by the bank).*

iii) The bank has advanced loans to casino, arms and ammunition enterprises.

iv) The bank has given loan to Elite Limited, Advanced loans to tobacco producers.

v) The bank does not have any External Communications Mechanism (ECM) is in place for public to submit their queries or concerns pertaining to Bank's Environmental & Social Policy and/ or projects financed by Bank.

vi) A loan of Rs.20 crore was advanced to Pinnacle Limited, a real estate company which provided in its loan application to the bank that the proceeds of the loan will be utilised for construction of green building thereby facilitating energy efficiency, but on investigation it was observed that the company has partially utilised the amount for construction of green building.

In light of the above mentioned case, answer the following questions:

a) How the concept of Environmental and Social Management System (ESMS) facilitate the focus on ESG matters by the Boards of the Companies?

**(8 Marks)**

b) Wealth Bank despite having ESMS in place, failed to comply with the requirements specified under it. As a Company Secretary, explain the infringements made by the management of the bank under various elements of ESMS and as an advisor to the Board of Directors, what measures you would suggest to strengthen ESMS compliance and uphold the tenets of best corporate governance practices.

**(7 Marks)**

**(Total 8+7 = 15 Marks)**

***Attempt either Q.No.4 or Q.No.4A***

**Question No. 4**

As William Clay Ford Jr. said that "*Creating a strong business and building a better world are not conflicting* *goals – they are both essential ingredients for long-term success*", in light of this, explain how CSR Impact Assessment is going to change the CSR landscape in India.

**(15 Marks)**

***OR (Alternate Question to Q.No.4)***

**Question No. 4A**

Data governance has become an indispensable element for data protection and its appropriate usage by its concerned stakeholders, in view of this, elucidate the principles of data governance.

**(15 Marks)**

## PART II: RISK MANAGEMENT

***Attempt either Q.No.5 or Q.No.5A***

**Question No.5**

Best Bank was once the country's fifth-largest private lender by market capitalization. Best Bank had been founded by Anand Kapoor and Amandeep Kapoor in 2015. The bank was ranked number 1 bank in the Business Today-KPMG Best Banks Annual Survey 2019. Best Bank was the first institution globally to receive funding through IFC's Managed Co-Lending Portfolio Programme and the first Indian bank to raise loan under IFC's A/B loan facility.

The bank's loan book on March 31, 2020, was Rs 55,633 crore, and its deposits were Rs 74,192 crore. Since then, the loan book has grown to nearly four times as much, at Rs 2.25 trillion as on September 30, 2023. While deposit growth failed to keep pace and increased at less than three times to Rs 2.10 trillion. The bank's asset quality also worsened and it came under regulator RBI's scanner. Best bank was lending aggressively disregarding the risk limits and also under-reporting the bad loans. They were lending to corporates that were already in very risk businesses and facing some challenges in their business like the Amar Ambani led Pinnacle group, DHFL and IL&FS.

All this happened in Anand Kapoor's (Founder of Best Bank) tenure. The exposure of loans to such bad performing companies was huge in Best Bank's case, and to add up they were hiding the NPAs (Non-performing assets) or misreporting the same. After the above fiasco, Ravinder Gill took charge of Best Bank but struggled to revive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidence in the market. The tipping point came when one of the bank's independent directors Mohan Agarwal, resigned from the board in January 2024 citing governance issues.

In light of the above case, answer the following questions:

a) Elucidate the possible reasons for debacle of Best Bank.

**(12 Marks)**

b) What steps the management of Best Bank may take to avert such fiascos in future?

**(8 Marks)**

**(Total 12+8 = 20 Marks)**

***OR (Alternate Question to Q.No.5)***

**Question No. 5A**

Matrix Limited had a requirement to build a strong platform with the best-of-breed agile services which can support their digital transformation journey. They were facing increased complexity due to heterogeneous IT security stack and high AMC due to multiple vendors. The company went for digital transformation to become Cloud Native with NextGen Security Solutions that comprised of-

i) Built a security framework

ii) Implemented network, data and endpoint security along with IAM (Identify and Access Management)

iii) Installed NexGen firewalls with hyperscale capabilities to reduce complexity, management efforts and operational cost.

The outcome of the aforesaid cyber security initiatives were-

1. Reduced 99% of P1 outages**.** A priority 1 or P1 outage is caused by many factors. Some examples include a thunderstorm cuts out the power, a server experiences a hardware failure, or a third party's infrastructure experiences an issue.
2. Enhanced the security posture and reduced overall network risk.
3. Reduced the risk from cyber threats.
4. Improved scalability and reduced redundancy.
5. Optimized operation efforts by implementing public cloud solution.

1. Based on the above contents, carry out a SWOT Analysis of digital transformation embraced by Matrix Limited.

**(10 Marks)**

2. Explain the cybersecurity security risk management process.

**(10 Marks)**

**(Total= 10 + 10 = 20 Marks)**

## PART III : ENVIRONMENT & SUSTAINABILITY REPORTING

**Question No. 6**

Giant Power Limited formed in 2005 is a publicly listed company and is engaged in the business of power generation from both coal and water, i.e., thermal and hydel respectively. In order to decipher whether the company is adhering to the Principles of Business Responsibility and Sustainable Reporting (BRSR) or not, the Business Responsibility and Sustainability Report of Giant Power Limited for the FY2021-22 was explored and following observations were made:

1. The company is guided by the principles of GCoC (Giant Code of Conduct) and GBEM(Giant Business Excellence Model) and so it mandates training of its workforce to make them conversant with Giant Power's Code of Conduct so that their conduct is in accordance with the same. In view of this, regular training sessions was required but on perusing the training programmes conducted by the company during the mentioned financial year, the following facts were observed:

| Segment | Total number of training and awareness programmes held | Topics / principles covered under the training and its impact | % age of persons in respective category covered by the awareness programmes |
|---|---|---|---|
| Board of Directors | 2 | Business Ethics and Values | 100 |

| | | | |
|---|---|---|---|
| Key Managerial Personnel (KMP) | 5 | ESG related matters | 50 |
| Employees other than Board of Directors and KMPs | 25 | Safety related measures in the operational areas of the organisation | 45 |
| Workers | Nil | Nil | Nil |

2. It was observed that during the aforesaid financial year workers working in plants met with some accidents, as new workers were not aware of various fire and safety measures, first aid and other related precautions that needs to be taken into consideration while working in the plants.

3. Two cases were pending against the company for unfair trade practices, irresponsible advertising and/or anti-competitive behaviour. Additionally cases of corruption were pending against 2 Key Managerial Personnel.

4. On going through the details of percentage of R&D and capital expenditure (capex) investments in specific technologies to improve the environmental and social impacts of product and processes to total R&D and capex investments made by the entity, respectively is as under:

| Expenditure Heads | FY 2021-22 (%) | FY 2020-21 (%) | Details of improvements in environmental and social impacts |
|---|---|---|---|
| R&D | 40 | 70 | Expenditure incurred on promoting green initiatives in generation of power by reducing pollution of thermal power plants was reduced. |
| Capex | 25 | 45 | Capex represents expenditure on clean and green business |

5. During the year company made negligible spending on well-being of employees.

   i) In light of the mentioned facts of the case, identify which principles covered under Business Responsibility and Sustainability Reporting (principle wise performance disclosure) have been infringed by Giant Power Limited?

**(10 Marks)**

ii) What measures management of a company may take to make its business more sustainable and BRSR compliant?

**(5 Marks)**

**(Total = 10+5 =15 Marks)**

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