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ROLE OF BOARD OF DIRECTORS IN CORPORATE GOVERNANCE*

INTRODUCTION

In the eyes of law, a company is an artificial person, who has no physical existence and has neither a body nor soul. According to *Cairn:* 'The Company itself cannot act in its own person, for it has no person, it can only act through directors.' The *Supreme Court* says: 'A company is in some respects an institution like a state functioning under its basic constitution consisting of the Companies Act and the Memorandum of Association. The members in general meeting and the directorate are described as the two primary organs of a company comparable with the legislative and the executive organs of a parliamentary democracy, where the legislative sovereignty rests with the parliament, while the administration is left to the executive government, subject to a measure of control by parliament through its power to force a change of government. Like the government, the directors will be answerable to parliament constituted by the general meeting.' [1] 'Section 2 (34) of the Companies Act, 2013 defines Director as 'a director appointed to the Board of a company.' Thus, the directors are the persons through whom the company acts and does its business. Without the directors the companies cannot maintain their existence.[2] Section 2(10) of the Companies Act, 2013 defines "Board of Directors" or "Board", in relation to a company , means the collective body of the directors of the company.[3]

In corporate governance there are many players such as Board of Directors, Non- Executive Directors, Institutional Directors, Audit Committee, Company Secretaries, Small Investors, Consumers, etc.[4] The BOD is perhaps one of the most important mechanisms in the governance of companies. It has been recognized as the heart of the structure of corporate governance and the board processes have been accepted as the most important processes of governance. Ideally, the Board should be the heart and soul of a company. The BOD is entrusted with overall direction, management of the affairs of the company, delegate its power and authority to executives and carry on all activities to promote the interests of the company and its shareholders, subject to certain restrictions imposed by public authorities. The BOD is authorized to exercise such powers and to perform all such acts and things as the company is entitled to, which means that the powers of the BOD is co-extensive with those of the company subject to two conditions: (1) The board shall not do any act which is to be done by the company in general meeting of shareholders (2) The board shall exercise its powers subject to

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[1] A.C FERNANDO, BUSINESS ETHICS AND CORPORATE GOVERNANCE (Pearson ,8th ed.)
[2] COMPANIES ACT, 2013 (Bharat Law House Pvt .Ltd, New Delhi)
[3] *Ibid.*
[4] SANJAY BHAYANA, CORPORATE GOVERNANCE PRACTICES IN INDIA (Regal Publications,2007)

the provisions contained in the articles or the memorandum or in the Federal Acts concerned with companies or any regulation made by the company in the general meeting.[5]
The performance of BOD is a deciding factor for the corporate governance. In a competitive environment, survival of a company depends upon the efficiency of BODs. The need of the hour is to select only capable BODs so that they manage and guide the operations of the company effectively and protect the interest of the stakeholders. BODs should also ensure adequate information, audit and control system exist in the company and the company is complying with legal and ethical standards.[6]

The important functions of the Board, as laid down in the Report on the Financial Aspects of Corporate Governance issued in 1992 by the Cadbury Committee that brought into light the role that corporate boards can play in governance, are to define a company's purpose, to strategise and draw up plans to achieve that purpose, to appoint the chief executive, to monitor and assess the performance of the executive team and last but not least, to assess their own performance. In executing these functions, the universally accepted principle is that the BOD acts as fiduciaries of shareholders and other stakeholder's interest. A typical board of modern corporations consists of inside or executive directors who are full time employees of the company and are involved in its day to day operations and non executive or outside directors who do not have any executive responsibilities and play mostly an advisory role.[7]

CORPORATE GOVERNANCE- AN OVERVIEW:

Corporate Governance has been an important subject of academic research and policy discourse in countries around the world. Though the benefits of good governance have been understood many years earlier, the issue of corporate governance came to the forefront in India only since the adoption of the structural adjustment and globalization program by the government in July 1991[8].There have been several major corporate governance initiatives launched in India since the mid-1990s. The first was by the Confederation of Indian Industry (CII), which came up with the first voluntary code of corporate governance in 1998 – 'Desirable Corporate Governance.' The second was by the SEBI, which set up the Kumar Mangalam Birla Committee on Corporate Governance in May 1991 to suggest measures to improve the standards of corporate governance of listed companies in India, pursuant to which Clause 49 of the listing agreement was introduced. The third was the Naresh Chandra Committee set up by the Ministry of Corporate Affairs, which submitted its report in 2002. The fourth was again by SEBI — the Narayan Murthy Committee, which also submitted its report in 2002. Based on some of the recommendation of this committee, SEBI revised Clause 49 of the listing agreement in August 2003. Subsequently, SEBI withdrew the revised Clause 49 in December 2003, and currently, the original Clause 49 is in force. The J.J Irani committee, an Expert Committee, under the chairmanship of Dr. J.J Irani was constituted by the Government of India in December 2004 to evaluate the comments and suggestions received on 'concept paper' and provide recommendations to the Government in making a simplified modern law.[9]

Before delivering further on the subject, it is important to define the concept of corporate governance. In a ***narrow*** sense, corporate governance involves a set of relationships amongst the company's management, its board of directors, its shareholders, its auditors and other stakeholders. These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining these

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[5]Fernando, *Supra* note 1
[6] Bhayana, *Supra* note 4
[7] JAYATI SARGAR AND SUBRATA SARKAR, CORPORATE GOVERNANCE IN INDIA (Sage Publications India Pvt Ltd, New Delhi)
[8] *Ibid.*
[9] SUBHASH CHANDRA DAS, CORPORATE GOVERNANCE IN INDIA (Eastern Economy 2nd Ed.)

objectives as well as monitoring performance are determined. In a ***broader*** sense, however, good corporate governance- the extents to which companies are run in an open and honest manner- is important for overall market confidence, the efficiency of capital allocation, the growth and development of countries' industrial bases, and ultimately the nations' overall wealth and welfare. [10]

"Corporate Governance is the system by which companies are directed and controlled." - ***Cadbury Report UK***[11]

"Corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance"- ***OECD*** *April* ***1999***.[12]

EVOLUTION OF CORPORATE GOVERNANCE RULES WITH RESPECT TO BOARD OF DIRECTORS IN INDIA- Clause 49 of the Listing Agreement:

In India, Board regulations for all registered companies was laid down by the Companies Act, 1956, and additional regulations applicable to the sub-set of listed companies was laid down by SEBI under Clause 49 of the Listing Agreement. Under Clause 49, both mandatory and non-mandatory requirements relating to Board are mentioned.[13] It is mandatory for the companies to file every quarter a separate section in the annual reports on corporate governance. In this report, non- compliance of any mandatory requirement and the extent to which non- mandatory requirements have been adopted has to be specifically highlighted.[14]

Mandatory Requirements: **[Clause 49]**

- ***Board Composition:-***

  Clause 49 aims to provide a board which is sufficiently independent of the management by specifying the requirements for both non-executive directors and independent directors. Under the clause, all listed companies are required to have at least 50 percent of its board comprised of non- executive directors. In the revised Clause 49 notified in October, 2004, the same requirement of the original regulations of February 2000 was been carried out, which said that, 'in case of a non-executive chairman at least one third of the board must comprise of independent directors, and in case of an executive chairman, at least half of the board should comprise of independent directors. However, subsequently, in light of suggestions and requests, SEBI issued a circular in April 2008, which specified that in case where a non-executive chairman is a promoter of the company or is related to any promoter or person occupying the management positions at the Board level or at one level below the Board, at least one- half of the Board of the company shall consist of independent directors.[15]

- ***Meetings And Compliance Report:-***

  The Board shall meet at least four times a year, with a maximum time gap of three months between any two meetings. The Board shall periodically review compliance reports of all

[10] Article on Corporate Governance in India.
[11] JAYATI SARGAR AND SUBRATA SARKAR, CORPORATE GOVERNANCE IN INDIA (Sage Publications India Pvt Ltd)
[12] *Ibid*
[13] *Ibid*
[14] Das, *Supra* note 9.
[15] Sarkar, *Supra* note 11

laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliance.[16]

- ***Code of conduct:-***

The Board shall lay down a code of conduct for all Board members and senior management of the company which shall be posted on the website of the company. Compliance with the code on an annual basis shall be affirmed by the Board members and senior management. The annual report of the company shall contain declaration to this effect which must be signed by the CEO.[17]

- ***Board Disclosures- Risk Management:-***

The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures which shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework.[18]

Non-Mandatory Requirements: [Clause 49][19]

- ***Remuneration Committee***-The Board may also set up a remuneration committee.
- ***Training of Board Members***- A company may train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors and the best ways to discharge them.

PURPOSE OF BOARD OF DIRECTORS:

The primary responsibility of the board of directors is to protect the shareholders' assets and ensure they receive a decent return on their investment. The board of directors is the highest governing authority within the management structure at any publicly traded company. It is the board's job to select, evaluate, and approve appropriate compensation for the company's chief executive officer (CEO), evaluate the attractiveness of and pay dividends, recommend stock splits, oversee share repurchase programs, approve the company's financial statements, and recommend or strongly discourage acquisitions and mergers. The Board of Directors is a group of individuals elected by the shareholders to watch over the management of the company on behalf of the shareholders. Board members are, in essence, like trustee and guardians of the shareholders and, in a large sense, for the integrity and reliability of our economic system. Because of their essential role, directors by law owe special duties of the company and particularly its shareholders, duties called “loyalty” and “care”. The board of directors, including the general manager or CEO (chief executive officer), has very defined roles and responsibilities within the business organization. Conversely, management is not responsible for the overall policy decisions of the business. The board of directors selects officers for the board. The major office is the president or chair of the board. Next there is a vice-president of vice-chair who serves in the absence of the president. These positions are filled by board members. Next it usually has a secretary and treasurer or combined secretary/treasurer. These positions focus on very specific activities and may be filled by electing someone who is serving on the board of directors or appointing someone who is not a member of the board of directors. Each board may have their own ways of handling those issues.[20]

PRINCIPLES FOR BOARD GOVERNANCE:

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[16] SUBHASH CHANDRA DAS, CORPORATE GOVERNANCE IN INDIA (Eastern Economy, 2nd Ed.)
[17] *Ibid.*
[18] *Ibid.*
[19] *Ibid*
[20] A.C FERNANDO, BUSINESS ETHICS AND CORPORATE GOVERNANCE (Pearson, 2nd Ed.)

- Board members must be qualified, understand their role and exercise sound judgment about the credit union's affairs.

- Board members must approve and oversee the strategic objectives and values that are communicated throughout the credit union.
- Board members must set and enforce clear lines of accountability throughout the credit union.
- Board members must ensure there is appropriate oversight by senior management consistent with board policy.
- Board members must govern the credit union in a transparent manner.[21]

PREREQUISITE SKILLS FOR BOARD OF DIRECTORS:

- Must make a commitment to serve by taking an active role and having an enthusiastic attitude;
- Must have the ability to work as a team member;
- Must be a credit union member in good standing;
- Must be bondable; and
- Must understand or have the ability to learn financial statements and the laws governing credit unions.[22]

GOVERNANCE MODELS:

There are several governance models of how BOD can function and they must decide which model is best for them[23]:-

(1) *Manager Focus* – With this model, the manager dominates the board. In this case the board functions are an advisory board and reacts to the views of the manager. This model often emerges when there is a charismatic CEO who is very dominant and proactive in running the organization. In most cases, this is not a good model for a value-added business.
(2) Proactive Board – This model is of a proactive board that speaks as one voice. It speaks as one voice for the board and often has a proactive manager that also speaks with one combined voice for the organization. This is a good model because the manager and the board are on the same page and speak with a single voice.
(3) Geographic Representation – This model focuses on the members/investors whom the board member represents. With this model, the board member feels that he/she has been elected to the board to represent individuals in a geographic location or special interest group. This is not a model that works well for most value-added businesses.
(4) Community Representation – In this situation the board member is representing the community rather than the organization.

APPOINTMENT OF BOD:

Section 149[24] seeks to provide that every company shall have a Board of Directors and prescribes the minimum and maximum number of directors. A Company shall have a

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[21]RAMESH K. ARORA AND TANJUL SAXENA, CORPORATE GOVERNANCE ISSUES AND PERSPECTIVES (Mangal Deep Publications, Jaipur)
[22] *Ibid.*
[23] Fernando, *Supra* note 20
[24] COMPANIES ACT, 2013 (Bharat Law House Pvt .Ltd, New Delhi)

minimum number of three directors in the case of a public company, two in the case of a private company and one director in the case of a One person Company and a maximum of fifteen directors. After passing a special resolution, a company may also appoint more than 15 directors but such prescribes class or classes of companies shall have atleast one women director. The section further provides that every listed public company shall have at least one-third of the total number of directors as independent directors and in case of any class or classes of public companies, the minimum number of independent directors shall be prescribed by the Central Government.[25]

MEETINGS OF THE BOARD:

Section 173 seeks to provide that the first meeting of the BOD of every company shall be held within thirty days of the date of its incorporation and a minimum number of four meetings of the BOD shall be held every year. In case of a One Person Company, small company and dormant company if at least one meeting of the BOD has been conducted in each half of a calendar year and the gap between the meetings is not less than ninety days, it shall be deemed to have complied with the provisions of this section. [26]

QUORUM FOR MEETINGS OF THE BOARD:

Section 174 seeks to provide that the quorum for a meeting of the BOD shall be one-third of its total strength or two directors, whichever is higher, and the directors participating by video conferencing or other audio visual means shall be counted for quorum. It further provides that where the number of interested directors exceeds, or is equal to two-thirds of the total strength of the Board, the number of directors who are not interested and present at the meeting, being not less than two, shall be the quorum. The section further provides that the meeting shall stand adjourned if it could not be held for want of quorum.[27]

PASSING OF RESOLUTION BY CIRCULATION:

Section 175 seeks to provide that no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation unless the resolution has been circulated in draft, to all the directors, or members of the committee at their addresses registered with the company in India and has been approved by a majority. [28]

BOARD COMMITTEES:

The important committees, which must be constituted in the company under the new Companies Act, 2013, are:

(A)Audit Committee-

Section 177 require every listing company and such other class or classes of companies to have an Audit Committee, formally set up by the board, which must be composed of minimum of three directors with independent directors forming a majority, with no personal, financial, or family ties to management and reporting to the board. [29]

Definition of Audit committee-

[25] *Ibid*
[26] *Ibid.*
[27] *Ibid.*
[28] COMPANIES ACT, 2013 (Bharat Law House Pvt .Ltd, New Delhi)
[29] *Ibid.*

- A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and if no such committee exists with respect to an issuer, the entire board of directors of the issuer- *(Section 205(a) of SOX)*[30]

The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. An audit committee acts as a link between the board and the outside auditors. The members of the committee discuss the scope of the audit, explore matter that the auditors raise about the Management Systems and controls, and are involved in resolving any disagreements that might occur on the form and content of the published financial accounts. The audit committee makes recommendations on audit fees and the reappointment or change of auditors.[31]

It is one of the most important committees to provide checks against the executives with the ability to review systems and internal control and particularly to review objectively, the progress made. In fact, the existence of a strong independent audit committee avoids any possibility of domination by the top executive management of the board's link with the auditors. It ensures that the board as a whole becomes aware of all the issues raised by the auditors and any significant problem.

(B)Nomination and Remuneration Committee and Stakeholders Relationship Committee-

Section 178 require every listed company and such other class or classes of companies to constitute a Nomination and Remuneration Committee by the BOD consisting of three or more non-executive directors out of which not less than one-half shall be independent directors. The Committee shall recommend to the Board the appointment and removal of persons who are qualified to become directors and who may be appointed in senior management. The most important role of the remuneration committee is to have an appropriate reward policy that can attract, retain and motivate directors to achieve the long-term goals of the company.

The section also provides to constitute a Stakeholders Relationship Committee by the BOD which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year. The committee shall consist of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The committee shall consider and resolve the grievances of security holders of the company.[32]

POWERS OF BOARD:

The powers available to the directors are exercised by the BOD as a director as an individual cannot exercise these powers except where the BOD has delegated its power to him**.** Section 179 provides various powers to the Board. They are as follows:-

- ***General Powers of management-*** The BOD of a company are entitled to exercise all such powers and to do all such acts and things as the company is authorised to do. However, the Board is not entitled to do what the Act, memorandum and articles require to be done by the company in general meeting. Besides, in exercise of its powers, the Board is subject to the provisions of this Act, or in the memorandum or

[30] In America, in response to the Enron, Worldcom, and other corporate crises and accounting standards, the Sarbanes- Oxley Act of 2002("SOX") was passed. The objective behind passing this Act was to "protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws."
[31] Das, *Supra* note 18
[32] *Supra* note 27.

articles, or in any other regulations not inconsistent therewith made by the company in its general meeting.

The following powers can be exercised by the Board of Directors on behalf of the company only by means of a resolution passes at meetings of the Board:-

- ✓ To make calls on shareholders in respect of money unpaid on their shares.
- ✓ To authorise buy-back of securities under section 68.
- ✓ To issues securities, including debentures, whether in or outside India.
- ✓ To borrow money and invest the funds of the company.
- ✓ Any other matter which may be prescribed.[33]

Some other powers provided to the Board under the Act are as follows:-

- ***Calling of extraordinary general meeting(Section 100) -*** The Board may call an extraordinary general meeting on its own and shall call such meeting in case of company having share capital on a request from such numbers of members holding not less than one-tenth of paid-up capital of the company. In case of company not having a share capital, such number of members having not less than one-tenth of the total voting power of all the members may call an extraordinary general meeting.[34]
- ***Declaration of interim dividend[Section 123(3)] –*** The BOD of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.[35]
- ***Books of account etc. [Section 128(1) and 128(3)] –*** Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financially statements annually. But the BOD has power to decide to keep books and other papers at any other place in India. The books of accounts and other books and papers maintained by the company shall be open for inspection by any director but the inspection of books of accounts of subsidiary companies can be done only by the person duly authorised by the Board.[36]
- ***Appointment of additional director, alternate director and nominee director(Section 161) –*** The Board if authorised by articles may appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director, alternate director, nominee director at any time.[37]
- ***Contribute to bona fide and charitable funds, etc (Section 181) –*** It says that the BOD has power to contribute to bona fide charitable and other funds.[38]
- ***Contribute to national defence fund, etc (Section 183) –*** It seeks to provide that the Board or any person or authority exercising the powers of the BOD of a company in general meeting may contribute such amount as it thinks fit to the National Defence Fund or any other fund for the purpose of national defence.[39]
- ***Related party transactions (Section 188) –*** It says that no company shall enter into any contract or arrangement with a related party with respect to the matters given therein without the consent of the BOD given by a resolution at a meeting of the Board.[40]
- ***Appointment of managing director, whole-time director or manager (Section 196(4)–*** For the appointment of managing director, whole- time director or manager and the

[33]COMPANIES ACT, 2013(Bharat Law House Pvt .Ltd, New Delhi)
[34] *Ibid*
[35] *Ibid*
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*

terms and conditions of such appointment and remuneration payable must be approved by the BOD.[41]

- ***Valuation by registered valuers [Section 247(1)] –*** In the absence of an audit committee the registered valuers shall be appointed by the BOD.[42]

RESTRICTIONS ON THE POWERS OF THE BOARD (SECTION 180):

The section seeks to provide for the powers of the BOD of a company to be exercised only with the consent of a company by a special resolution. They are as follows:-

- ✓ To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
- ✓ To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation.
- ✓ To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.
- ✓ To remit, or give time for the repayment of, any debt due from a director.[43]

FIDUCIARY DUTIES OF THE BOARD:

'Fiduciary duty' means that, as shareholders' guardians, directors must be trustworthy, acting in the best interest of shareholders, and investors in turn have confidence in the directors' actions. The following are the fiduciary duties of BOD:

- ***Duty of due care****:* Determines the manner in which directors should carry out their responsibilities. Failure to uphold the set stipulations may constitute a breach of the fiduciary duty of care of expected directors.
- ***Duty of loyalty:*** Requires directors to refrain from pursuing their own interests over the interests of the company. Breach of loyalty can occur even in the absence of conflicts of interest if directors consciously disregard their duties to the company and its shareowners. [44]
- ***Duty of Good Faith:*** It is an important fiduciary obligations, and any irresponsible, reckless, irrational or disingenuous behaviors or conduct can breach that fiduciary duty.
- ***Duty to Promote Success:*** Directors should act in a good faith and promote the success of the company to benefit its shareholders and other stakeholders.
- ***Duty to Exercise Diligence, Independent Judgment, and Skill:*** Directors should be knowledgeable about the companies' business and affairs, continuously update their understanding of the company activities and performance, and use reasonable diligence and independent judgment in making decisions.
- ***Duty to Avoid Conflict of Interests****:* Potential conflict of interest may occur when director receives a gift from a third party he is doing business with, either directly or indirectly enters into a transaction or arrangement with that company, obtains substantial loans from the company, or engages in backdated stock options.
- ***Fiduciary Duties and Business Judgment Rules:*** Directors operate under a legal doctrine called "business judgment rules". Under that law directors that make decisions

[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] RAMESH K. ARORA AND TANJUL SAXENA, CORPORATE GOVERNANCE ISSUES AND PERSPECTIVES (Mangal Deep Publications, Jaipur)

in good faith, based on rational reasoning, and an informed manner can be protected from liability to the company's shareholders in the ground that they appropriately fulfilled their fiduciary duty of care. [45]

ROLE OF THE BOARD IN ENSURING CORPORATE GOVERNANCE:

Company Laws enacted by various countries make it a point to stress that the duty of a statutory board is to protect and represent the interests of the shareholders. The board cannot and does not run the company. There are executives who run the day-to-day affairs of the company as dictated by the Board. The role of the board is to work out business strategy and address big issues. A board's role is evolved from law, custom, tradition and current practice, while it gets its authority from the shareholders as their representatives to run the company's mission. It is the broader responsibility of the board to ensure that the management works in the best interests of the corporation and the shareholders to enhance corporate economic value.[46]

The board has to shoulder a large responsibility than the CEO, whose role is limited to being actively engaged with routine management functions. However, there are many boards that 'overlook more than they oversee'. This is more so in family-owned enterprises which are common in Asia and Latin America. In India, for instance it is common to find family-owned concerns being run by the promoters. In such a set-up, the board acts more like a rubber-stamp, rather than shouldering large responsibilities. For better governance, the board should function as follows:

- ***Exhibit total commitment to the company-*** An efficient and independent board should be conscious of protecting the interests of all stakeholders and not concerned too much with the current price of the stock. The hallmark of a good director is that he or she attends and actively participates in the meetings. This requires a cent percent commitment.[47]
- ***Steer discussions properly****:* Another important function of the board is to set priorities and to ensure that these are acted upon. They should see that all the important issues concerning the company's business are discussed and decision taken.
- ***Make clear their stand on issues***: A Director should have the courage of conviction to disagree. A good, responsible and duty-bound director should be willing to register dissent, when and where needed.
- ***Responsibility to ensure efficient CEOs****:* Directors have a great responsibility in the employment and dismissal of the CEOs. The board as a whole, should recruit the best CEO they can probably hire.[48]
- ***Challenges posed by decisions on acquisitions****:* One of the toughest challenges confronted by the board arises while approving acquisitions. It so happens in most cases that the board takes up the issue of acquisitions only when the process has been set in motion and substantially gone through by the management
- ***Anticipate business events****:* An efficient board should be able to anticipate business events that would spell success or lead to disaster if proper measures are not adopted in

[45] A.C FERNANDO, BUSINESS ETHICS AND CORPORATE GOVERNANCE (Pearson, 2nd Ed. New Delhi)
[46] *Ibid.*
[47]Responsibilities of Board of Directors available at: https://ideas.repec.org/p/nbr/nberwo/14486.html(last visited12/8/2015)

[48]Corporate Governance Guidelines available at:http://www.lockheedmartin.com/content/dam/lockheed/data/corporate/documents/CorporateGovernance-Guidelines.pdf(last visited 15 /8/ 2015)

time. They should be alert to such situations and be ready with the strategy to meet them so that either way the company stands to gain.

- ***Long-term focus and stakeholders interests***: As per the current laws, this would imply that directors are required to act in the interests of the shareholders, but at the same time, to consider such interests with a long time focus.[49]
- ***Overall interests of the company and its stakeholders:*** To promote the overall interests of the company and its stakeholders are of paramount importance of the Board and they should try to achieve this end and not do anything contrary to it.[50]

RESPONSIBILITIES OF THE BOD UNDER CORPORATE GOVERNANCE:

The points below outline the major responsibilities of the board of directors:

- ***Establish vision, mission and values-***
- Determine the company's vision and mission to guide and set the pace for its current operations and future development.
- Determine the values to be promoted throughout the company.
- Determine and review company goals, company polices.[51]
- ***Set strategy and structure-***
- Review and evaluate present and future opportunities, threats and rise in the external environment and current and future strengths, weaknesses and risks relating to the company.
- Determine strategic options, select those to be pursued, and decide the means to implement and support them[52].
- ***Delegate to management-***
- Delegate authority to management, and monitor and evaluate the implementation of policies, strategies and business plans.
- Determine monitoring criteria to be used by the board[53].
- ***Exercise accountability to shareholders and be responsible to relevant stakeholders-***
- Ensure that communications both to and from shareholders and relevant stakeholders are effective
- Monitor relations with shareholders and relevant stakeholders by gathering and evaluation of appropriate information[54].
- ***Recruit, supervise, retain, evaluate and compensate the manager-***
- Recruiting, supervising, retaining, evaluating and compensating the CEO or general manager are probably the most important functions of the board of directors. Value-added business boards need to aggressively search for the best possible candidate for this position. Another major error of value-added businesses is under-compensating the

[49] Board of Directors Corporate Governance Guidelines available at:http://www.endeavourmining.com/i/pdf/Board-of-Directors-Corporate-Governance-Guidelines-Oct.pdf(accessed on 15/ 8/2015)
[50] A.C FERNANDO, BUSINESS ETHICS AND CORPORATE GOVERNANCE (Pearson, 2nd Ed.)
[51] RAMESH K. ARORA AND TANJUL SAXENA, CORPORATE GOVERNANCE ISSUES AND PERSPECTIVES (Mangal Deep Publications, Jaipur)
[52]Board of Directors Corporate Governance Guidelines available at:http://www.endeavourmining.com/i/pdf/Board-of-Directors-Corporate-Governance-Guidelines-Oct.pdf(last visited 5 /8/2015)
[53] *Ibid.*
[54] Role of Directors available at: http://www.ecgi.org/codes/documents/hampel25.pdf(last visited 6 /8/2015)

manager. Managerial compensation can provide a good financial payoff in terms of attracting top candidates who will bring financial success to the value-added business.[55]

- ***To establish a policy based governance system-***
- The board has the responsibility of developing a governance system for the business. The articles of governance provide a framework but the board develops a series of policies. This refers to the board as a group and focuses on defining the rules of the group and how it will function. In a sense, it's no different than a club. [56]
- ***The rules that the board establishes for the company should be policy based-***
- The board develops policies to guide it own actions and the actions of the manager. The policies should be broad and not rigidly defined as to allow the board and manager leeway in achieving the goals of the business.
- ***To govern the organization and the relationship with the CEO-***
- Another responsibility of the board is to develop a governance system. The governance system involves how the board interacts with the general manager or CEO. Periodically the board interacts with the CEO during meetings of the board of directors. Typically that is done with a monthly board meeting, although some boards have switched to meetings three to four times a year, or maybe eight times a year. In the interim between these meetings, the board is kept informed through phone conferences or postal mail.[57]
- ***Fiduciary duty to protect the organization's assets and member's investment.***
- The board has a fiduciary responsibility to represent and protect the member's/investor's interest in the company. So the board has to make sure the assets of the company are kept in good order. This includes the company's plant, equipment and facilities, including the human capital.[58]
- ***Monitor and control function-***
- The board has a monitoring and control function. The board is in charge of the auditing process and hires the auditor. It is charge of making sure the audit is done in a timely manner each year. [59]

CONCLUSIONS:

As BOD are regarded as one of the most important mechanisms of corporate governance, the primary responsibility for good governance rests with the Board. If they produce truthful financial reporting, carry out the core functions of conducting business honestly and obey the various applicable laws, surely good corporate governance will be maintained and achieved. The directors are responsible for ensuring that proper books of account are kept. In some circumstances, a director can be required to help pay the debts of his company, even though it is a separate legal person. For *example,* directors of a company who try to 'trade out of difficulty' and fail may be found guilty of 'wrongful trading' and can be made personally liable.

[55] The role of boards of directors in corporate governance: a conceptual framework and survey available at: http://www.nber.org/papers/w14486.pdf (accessed on 12 /8/15)
[56]The Board's roles and responsibilities available at:http://www.severntrent.com/about-us/corporate-governance/the-board/roles-and-responsibilities(last visited 21 /8/2015)

[57]Board of Directors Corporate Governance Guidelines available at:http://www.endeavourmining.com/i/pdf/Board-of-Directors-Corporate-Governance-Guidelines-Oct.pdf(last visited 5 /8/2015)
[58]Corporate Governance Guidelines available at:http://www.lockheedmartin.com/content/dam/lockheed/data/corporate/documents/CorporateGovernance-Guidelines.pdf(last visited 5 /8/ 2015)
[59]Corporate Governance Guidelines available at:http://www.lockheedmartin.com/content/dam/lockheed/data/corporate/documents/CorporateGovernance-Guidelines.pdf(last visited 5 /8/ 2015)

Directors are particularly vulnerable if they have acted in a way which benefits them. The directors must always exercise their powers for a 'proper purpose' – that is, in furtherance of the reason for which they were given those powers by the shareholders. Directors must act in good faith in what they honestly believe to be the best interests of the company, and not for any collateral purpose. This means that, particularly in the event of a conflict of interest between the company's interests and their own, the directors must always favour the company. Directors must act with due skill and care. Directors must consider the interests of employees of the company.

As BOD is a collection of individuals trying to operate as a group, functioning as a group is something many people are not comfortable with. So each board evolves with its own culture. Each culture is dictated by the backgrounds of the individuals on the board. However, there are several governance models of how a board of directors can function. Examining and choosing the right model is important because it will impact the success of the value-added business. In nutshell, we can say that BOD plays an imperative role in managing corporate affairs of a company.