



## AN EMERGING TRENDS AND ANALYSIS OF CORPORATE GOVERNANCE\*

Corporate Governance deals with determining the ways to take effective strategic decisions. It gives ultimate authority and complete responsibility to the Board of Directors. Corporate Governance has a broader scope, which includes both social and institutional aspects. Corporate Governance encourages a trustworthy, moral, as well as ethical environment. The corporate governance is defined by the Cadbury report (U.K), which is frequently quoted or paraphrased: "Corporate governance is the system by which businesses are directed and controlled<sup>1</sup>." It also refers to a set of processes, custom, policies and laws by which a corporation is directed, administered or controlled. It is a generic term which describes the ways in which rights and responsibilities are shared between the various corporate participants, specify the management and the shareholders. It is based upon the principles of responsibilities, transparencies and accountabilities<sup>2</sup>.

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<sup>1</sup>Shinu Vig, *Ensuring Better Corporate Governance Through-Governance*, INTERNATIONAL JOURNAL OF MARKETING, FINANCIAL SERVICES & MANAGEMENT RESEARCH, 188, 189(2012).

<sup>2</sup> *Corporate Governance Law and Legal Definition*, USLEGAL, (Sept.15, 2015, 11:04 A.M) <http://definitions.uslegal.com/c/corporate-governance/>.

### FRAMEWORK OF CORPORATE GOVERNANCE

There are the following frameworks related to corporate governance under the companies act 2013.

**1. Directors:** Under the Companies Act, 2013, "director" means a director appointed to the Board of a company<sup>3</sup>. Each company will need to have minimum one director who stayed in India for at least 182 days in the previous calendar year. The Companies Act, 1956 does not contain this requirement<sup>4</sup>. Maximum number of directors at 15 (12 at present). This number can be enhanced by special resolution without Central Government approval<sup>5</sup>. The categories of companies which need to comply with the requirement of having at least of one woman director are as follows:

- (a). Every listed company, within one year from the commencement of second proviso to sub-section (1) of section 149
- (b). Every other public company that has paid-up share capital of one hundred crore rupees or more, or a turnover of three hundred crore rupees or more within three years from the commencement of second proviso to sub-section (1) of section 149

While this new requirement will go a long way in encouraging gender diversity, it has already created quite a stir in the manner in which companies will ensure compliance<sup>6</sup>. Under the

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Companies Act, 2013, only listed companies will be given an option to have one director elected by the small shareholders. A person will be able to become director of 20 companies. However, out of this, not more than 10 companies can be public companies<sup>7</sup>. Keeping in view the fiduciary capacity of directors, the Companies Act, 2013 has prescribed duties of directors. A director of the company will (i) act in accordance with the articles of the company, (ii) act in good faith to promote the objects of the company, (iii) exercise his duties with due and reasonable care, skill and diligence, (iv) not get involved 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, (v) not achieve or attempt to achieve any undue gain or Advantage either to himself or to his relatives, partners, or associates, and (VI) not assigns his office<sup>8</sup>. U/s 141 Companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30/09/2014 needs to have the resident director from the date of incorporation itself. Stakeholders sought clarification on applicability of Section 149(3) of the Companies Act, 2013, which mandates every company to have at least one director to stay in India for at least 182 days in a calendar year. It has been clarified by the Ministry that as 'residency requirement' is applicable from 01.04.2014, the first 'previous calendar year' would be 1st April to 31st December. Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed 136 days. It is also clarified in this Circular that companies incorporated between 01.04.2014 to 30.09.2014 should have a resident director either at the incorporation stage or within six months of incorporation (General Circular No. 25/2014 dated 26.06.2014)<sup>9</sup>.

**2. Independent director:** The meaning of the term "independent director" given under the Companies Act, 2013 contains most of the attributes prescribed in the listing agreement<sup>10</sup>. The Companies Act, 2013, however, contains certain additional criteria, e.g.: (a) an independent director should be a person of integrity and possess relevant expertise and experience. (b) The language used in clause 49 suggests that a person to be appointed as "independent director" should not have any material pecuniary relationship/ transactions with the company, its promoters, its directors or its holding company, its subsidiaries and associates, which will affect independence of the director. The listing agreement does not specify any particular timeframe to be considered in this regard. However, the Companies Act, 2013 states that such relationship should not have existed either in the current financial year or immediately preceding two years<sup>11</sup>. Nominee directors are not considered independent directors. A small shareholder director providing declaration of independence is to be considered an independent director<sup>12</sup>. Tenure of independent directors limited to maximum of two consecutive tenures of five consecutive years with a cooling off period of three years thereafter; during cooling-off period, such a person cannot be inducted in any capacity in the company either directly or indirectly.

<sup>8</sup>18,G.O.I, MoL&J§§166 (2013).

<sup>9</sup>Newsletters July 2014, MINISTRY OF CORPORATE AFFAIRS, (Sept, 16, 2015, 12:28 P.M)  
[http://www.mca.gov.in/Ministry/pdf/Monthly\\_Newsletter\\_July\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/Monthly_Newsletter_July_2014.pdf)

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For this purpose, tenure shall be computed prospectively from the commencement of the Act. Limited tenure will ensure fresh talent on the boards as well as reduce the proximity of independent directors with management. Stricter eligibility criteria for independent Directors e.g., should not be related to promoters or directors of the company or its holding, subsidiary, or associate company and should not have any pecuniary relationship with the company/its holding/ subsidiary / associate etc. during the specified period. This would ensure greater independence. The independent director needs to declare to the board that he is independent at the time of his appointment and also whenever there is a change that may impact his independence<sup>13</sup>.

According to the schedule IV of companies act 2013 the independent directors shall play following duties<sup>14</sup>:-

- (a). undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (b). 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;
- (c). strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (d). participate constructively and actively in the committees of the Board in which they are chairpersons or members;
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- (f). 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;
- (g). keep themselves well informed about the company and the external environment in which it operates;
- (h). not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (i). 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;

<sup>3</sup>18, G.O.I, MoL&J§§2(34)(2013).

<sup>4</sup>Ernst & Young LLP, *India Inc- Companies Act 2013- An overview*, EY, (Sept, 15, 2015, 11:25 A.M)  
[http://www.ey.com/Publication/vwLUAssets/India\\_Inc\\_Companies\\_Act\\_2013/\\$File/India\\_Inc\\_Companies\\_Act\\_2013.pdf](http://www.ey.com/Publication/vwLUAssets/India_Inc_Companies_Act_2013/$File/India_Inc_Companies_Act_2013.pdf)

<sup>5</sup>*Companies Act 2013 New Rules of the Game*, KPMG INDIA, (Sept, 15, 2015, 6:16 P.M)  
[http://www.kpmg.com/IN/en/Documents/KPMG\\_Companies\\_Act\\_2013.pdf](http://www.kpmg.com/IN/en/Documents/KPMG_Companies_Act_2013.pdf)

<sup>6</sup>*Companies Act 2013 key highlights and analysis*, PWC INDIA, (Sept, 16, 2015, 9:07 P.M)  
<https://www.pwc.in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf>

<sup>7</sup>supra 4 at 33.

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Advantage either to himself or to his relatives, partners, or associates, and (VI) not assigns his office<sup>8</sup>. U/s 141 Companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30/09/2014 needs to have the resident director from the date of incorporation itself. Stakeholders sought clarification on applicability of Section 149(3) of the Companies Act, 2013, which mandates every company to have at least one director to stay in India for at least 182 days in a calendar year. It has been clarified by the Ministry that as 'residency requirement' is applicable from 01.04.2014, the first 'previous calendar year' would be 1st April to 31st December. Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed 136 days. It is also clarified in this Circular that companies incorporated between 01.04.2014 to 30.09.2014 should have a resident director either at the incorporation stage or within six months of incorporation (General Circular No. 25/2014 dated 26.06.2014)<sup>9</sup>.

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<sup>9</sup>Newsletters July 2014, MINISTRY OF CORPORATE AFFAIRS, (Sept, 16, 2015, 12:28 P.M)  
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Advantage either to himself or to his relatives, partners, or associates, and (VI) not assigns his office<sup>8</sup>.U/s 141 Companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30/09/2014 needs to have the resident director from the date of incorporation itself. Stakeholders sought clarification on applicability of Section 149(3) of the Companies Act, 2013, which mandates every company to have at least one director to stay in India for at least 182 days in a calendar year. It has been clarified by the Ministry that as 'residency requirement' is applicable from 01.04.2014, the first 'previous calendar year' would be 1st April to 31st December. Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar Year 2014, shall exceed 136 days. It is also clarified in this Circular that companies incorporated between 01.04.2014 to 30.09.2014 should

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<sup>9</sup>Newsletters July 2014, MINISTRY OF CORPORATE AFFAIRS, (Sept, 16, 2015, 12:28 P.M)

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According to the schedule IV of companies act 2013 the independent directors shall play following duties<sup>14</sup>:-

- (a). undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (b). 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;

- (c). strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (d). participate constructively and actively in the committees of the Board in which they are chairpersons or members;
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- (j). 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;
- (k). report concerns about unethical behaviour, actual or suspected fraud or violation of the company code of conduct or ethics policy;
- (l). acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (m). 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.

**3. Code of conduct for independent director:** As mentioned in schedule IV of companies act 2013, the Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors. An independent director shall<sup>15</sup>:

- (a). uphold ethical standards of integrity and probity;
- (b). act objectively and constructively while exercising his duties;
- (c). exercise his responsibilities in a *bona fide* manner in the interest of the company;
- (d). devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (e). 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;
- (f). 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;
- (g). refrain from any action that would lead to loss of his independence;
- (h). where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;

<sup>15</sup>18, G.O.I, MoL&J§§149(8) (2013).

- (i). assist the company in implementing the best corporate governance practices.
- (j). safeguard the interests of all stakeholders, particularly the minority shareholders;

(k). Keep themselves well informed about the company and the external environment in which it operates.

**4. Liabilities of independent director:** Under the Companies Act, 2013, an independent director and a non-executive director not being promoter or KMP, will 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<sup>16</sup>. Independent director liable only for acts or omissions which occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently. Liabilities specified with defined limits not entitled to any remuneration, other than sitting fee and reimbursement of expenses and any profit related commission as approved by members; stock options prohibited. Separate limits may be laid down by government for sitting fee to independent directors<sup>17</sup>.

**5. Corporate social responsibility:** 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 any 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 Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee. The Corporate Social Responsibility Committee shall formulate and recommend the following activities relating to<sup>18</sup> :-a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII like eradicating extreme hunger and poverty; promotion of education; promoting gender equality and empowering women; reducing child mortality and improving maternal health; combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; ensuring environmental sustainability; employment enhancing vocational skills; social business projects; contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic Development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and such other matters as may be

<sup>16</sup>supra 4 at 35.

<sup>17</sup>supra 5 at 15.

<sup>18</sup>18, G.O.I, MoL&J§§135 (2013).

Prescribed. In item (i), after the words "and sanitation", the words "including contribution to The Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation" has been inserted; (ii) in item (iv), after the words "and water", the words "including contribution to the Clean Ganga Fund setup by the Central Government for rejuvenation of river Ganga;" has been inserted<sup>19</sup>. Pursuant to the Budget 2014-15 announcement, 'Slum Area Development' has been included as the eleventh item in the list of activities on Corporate Social Responsibility (CSR) in the Schedule VII of the Companies Act, 2013<sup>20</sup>.

- (a). Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (b). Monitor the Corporate Social Responsibility Policy of the company from time to time. The Board of every company 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 ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company. The Board of every company shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy. It is 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. If the company fails to spend such amount, the Board shall, mentioned in its report made and specify the reasons for not spending the amount<sup>21</sup>.

Good CSR practices can only bring in greater benefits, In India, a fourth and increasingly important stakeholder is the community, and many companies have started realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a company's business operations. Thus, a CSR programme that meets the aspirations of these communities not only provides them with the licence to operate, but also to maintain the licence, thereby precluding the 'trust deficit'. Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR

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<sup>19</sup> G. S. R. 741(E) G.O.I, MoL&J§§135 (2014).

<sup>20</sup> G. S. R. 568(E) G.O.I, MoL&J§§135 (2014).

<sup>21</sup> 18, G.O.I, MoL&J§§135 (2013).

Commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company. There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain. The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes. This allows companies to position themselves as responsible corporate citizens<sup>22</sup>.

**6. Serious fraud investigation office:** The Central Government shall, by notification the Government of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company. It shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—

- (a). banking;
- (b). corporate affairs;
- (c). taxation;
- (d). forensic audit;
- (e). capital market;
- (f). information technology;
- (g). law; or
- (h). Such other fields as may be prescribed.

The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs. The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act<sup>23</sup>. Investigation report of SFIO filed with the Court for framing of charges shall be treated as a report filed by a Police Officer. SFIO shall have power to arrest in respect of certain offences which attract the punishment for fraud.

<sup>22</sup> *Handbook on Corporate Social Responsibility in India*, PWC INDIA, (Sept, 17, 2015, 2:12P.M)

<https://www.pwc.in/assets/pdfs/publications/2013/handbook-on-corporate-social-responsibility-in-india.pdf>

<sup>23</sup> 18, G.O.I, MoL&J§§211 (2013).

Recognition of SFIO would strengthen and expedite the investigation process. The legal and statutory powers vested with the SFIO and its broad-based composition with experts drawn from various relevant disciplines would make the process more effective. The Act specifies that, as part of an investigation, in case the persons concerned in formation of the company or management of

its affairs are found to be guilty of fraud, then the person in default shall be punishable for fraud. The offences of fraud are non cognizable and the person accused of such offense cannot be released on bail, unless for exceptions as provided. Person found to be guilty of fraud shall be punishable with imprisonment not be less than six months, which may extend to ten years. The person shall also be liable to fine up to a maximum of three times the amount involved in the fraud<sup>24</sup>.

**7. Audit committee:** The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. It is provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. Every Audit Committee of a company existing immediately before the commencement

Of this Act shall, within one year of such commencement, be reconstituted. Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, *inter alia*, include,—

- (a). The recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (b). Review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (c). Examination of the financial statement and the auditors' report thereon;
- (d). Approval or any subsequent modification of transactions of the company with related parties;
- (e). Scrutiny of inter-corporate loans and investments;
- (f). Valuation of undertakings or assets of the company, wherever it is necessary;
- (g). Evaluation of internal financial controls and risk management systems;
- (h). Monitoring the end use of funds raised through public offers and related matters.

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

<sup>24</sup>supra 5 at 22.

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The internal and statutory auditors and the management of the company. 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. Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. The vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. The details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report<sup>25</sup>. In case of any contravention of these requirements, the company will be punishable with a fine, which will not be less than ` 1 lakh but which may extend to ` 5 lakh. Every officer of the company who is in default will be punishable with imprisonment for a term, which may extend to one year or with fine, which will not be less than ` 25 thousand but which may extend ` 1lakh or with both<sup>26</sup>.

**8. Nomination and remuneration committee:** The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors. 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. 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 lay down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance. 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.

The Nomination and Remuneration Committee shall, while formulating the policy ensure that—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; relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

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<sup>25</sup>18, G.O.I, MoL&J§§177 (2013).

<sup>26</sup>supra 4 at 37.

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: 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. The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company. 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. In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both<sup>27</sup>.

**9. Internal audit:** Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board<sup>28</sup>.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<sup>29</sup>.

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<sup>27</sup>18,G.O.I, MoL&J§§178 (2013).

<sup>28</sup>18,G.O.I, MoL&J§§138 (2013)

<sup>29</sup> supra 5 at 7.

## FINDINGS AND SUGGESTIONS

1. The Companies Act, 2013 lays down various restrictions, on the person as well as its relatives, for being eligible to be appointed as independent director. If the government prescribes a list of relations, the company, the person who is or seeking to be an independent director and the relatives of such person will have to keep track of this, to

ensure compliance on a going forward basis. If a company cannot appoint any person as an independent director if that person or his relative is/was a partner/ executive in the preceding three financial years in the firm of auditors of the company.

2. Most of the attributes of independent directors prescribed in the Companies Act, 2013 are qualitative in nature. Therefore, it may not be possible to demonstrate compliance or otherwise with these criteria. Accordingly, it is possible that these aspects may become subject matter of significant debate.
3. Non-listed companies, which belong to class of companies as prescribed by the government and thereby required to constitute an audit committee, will need to revisit the composition in light of new requirements.
4. The Companies Act, 2013 does not require a company to appoint only an external agency to get internal audit done. A company may either engage external agency or have internal resources to conduct internal audit.
5. The Companies Act, 2013 does not prescribe any penal provision if a company fails to spend amount on CSR activities. The board will need to explain reasons for non-compliance in its report.
6. Section 149 of the Companies Act, 2013 mandates only public companies whether listed or in other prescribed class to have independent directors. In contrast, applicability of CSR requirements depends on net worth, turnover or net profit criterion, irrespective of whether the company is a public or private company. Every company covered by CSR needs to constitute a CSR committee with at least one independent director. This implies that even a private company will need to have an independent director if it is covered under CSR requirements.
7. It is not absolutely clear whether a company will need to create provision in the financial statements toward unspent amount if it fails to spend 2% amount of the CSR activities in a particular year. The resolution of this issue may depend upon the legal/ other consequences, which may follow, if a company fails to spend the requisite amount in a particular year.
8. To clear the ambiguity surrounding the deductibility of the CSR expense, industry expects the Central Board of Direct Taxes to clarify the position on deductibility CSR expenditure.
9. As the business environment gets increasingly complex and stakeholders become vocal about their expectations, good CSR practices can only bring in greater benefits likes ; Communities provide the licence to operate, Attracting and retaining employees, Communities as suppliers, Enhancing corporate reputation.
10. In alignment with the provisions of the Companies Act, 2013, Securities and Exchange Board of India (SEBI) revised Clause 49 of the Equity Listing Agreement related to Corporate Governance, vide Circular date 17.04.2014. These changes will come into force from 1st October, 2014. The new code aimed at improving transparency and disclosure standards of listed companies in India. Some of the important changes are as follows: (1). It is mandatory for companies to put in place a whistleblower policy, and establish a process through which employees can report to management their concerns about unethical behaviour, (2). Companies are required to set up a Nomination and Remuneration Committee that would decide remuneration for the top management, (3). A person shall not serve as an independent director in more than seven listed companies (4). An independent director is eligible to hold office for a term up to five consecutive years on the Board of a company, and can be reappointed for another five consecutive years, etc.

## **CONCLUSION**

India needs and deserves a well designed policy framework that take in to account all these concerns while being aligned to global developments. An effort has been made by the government to modernise the existing law. By introducing significant changes regarding the board composition and has a renewed focus on board processes. While certain of these changes may seem overly prescriptive, a closer analysis is on board processes, which over a period of time would

institutionalize good corporate governance and not make governance over dependent on the presence of certain individuals on the board. The need of establishing a governing authority i.e. a watchdog to look into the matters of a corporate. I think Ministry of Corporate Affairs, true to its mission of simplifying government procedures and the core policy of "*Minimum Government, Maximum Governance*", has moved towards a disclosure and self regulation based corporate law, away from the one based on checks, controls and approvals. The Ministry is committed to enlightened regulation by creating a conducive environment for corporate sector to grow.

