CORPORATE GOVERNANCE

by

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POWERS

1. The directors' powers are normally set out in the articles. The shareholders cannot control the way in which the Board of directors act provided its actions are within the powers given to the Board.

2. **Section 291 of Companies Act, General Powers** Board is entitled to exercise all such powers and do all such acts and things, subject to the provisions of the Companies Act, as the company is authorized to exercise and do. However, the Board shall not exercise any power which is required whether by the Act or by the memorandum or articles of the company or otherwise to be exercised or done by the company in general meeting.

3. **Power of the individual directors** – Unless the Act or the articles otherwise provide, the decisions of the Board are required to be the majority decisions only. Individual directors do not have any general powers. They shall have only such powers as are vested in them by the Memorandum and Articles.

BOARD OF DIRECTORS

POWERS

4. **Section 292(1)** provides that the Board of directors of a company shall exercise the following powers on behalf of the company and it shall do so only by means of resolution passed at meeting of the Board:

a. the power to make calls on shareholders in respect of money unpaid on their shares;
b. the power to authorize the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A;
c. the power to issue debentures;
d. the power to borrow moneys otherwise than on debentures;
e. the power to invest funds of the company; and
f. the power to make loan.

STATUTORY DUTIES

1. To file return of allotment: Section 75 .
2. Not to issue irredeemable preference share or shares or share redeemable after 20 years
3. To disclose interest (Section 299-300)
4. To disclose receipt of compensation from transferee of shares (Sec.320)
5. Duty to attend Board meetings
6. To convene statutory, Annual General meeting (AGM) and also extraordinary general meetings [Section 165,166 &169]

BOARD OF DIRECTORS

STATUTORY DUTIES

7. To prepare and place at the AGM along with the balance sheet and profit & loss account a report on the company's affairs including the report of the Board of Directors (Section 173, 210 & 217).

8. To authenticate and approve annual financial statement (Section 215).

9. To appoint first auditor of the company (Section 224).

10. To appoint cost auditor of the company (Section 233B).

11. To make a declaration of solvency in the case of Members' voluntary winding up (Section 488

BOARD OF DIRECTORS

GENERAL DUTIES

1. **Duty of good faith**
2. **Duty of Care**
3. **Duty Not to Delegate**

LIABILITIES

A. **Liabilities to the Company**

- **Breach of fiduciary duty**
- **Ultra Virus Act**
- **Negligence**
- **Mala fide Acts**

BOARD OF DIRECTORS

B. Liabilities to third parties

Liabilities under Companies Act

- Prospectus
- With regard to allotment
- Unlimited Liability
- Fraudulent Trading

C. Liability for breach of Statutory Duties

D. Liability for acts of co-directors

E. Criminal Liability

CORPORATE GOVERNANCE

REPORTS ON CORPORATE GOVERNANCE

1. **Report of the Cadbury committee,**
2. **Report of the Greenbury committee,**
3. **the Report of Blue Ribbon committee in the U.S.**
4. **the OECD code or Corporate Governance**
5. **K.M. Birla Committee for suggesting changes in Listing Agreement**
6. **SEBI committee on corporate governance to Indian Banks**

CORPORATE GOVERNANCE

“CORPORATE GOVERNANCE is the system by which companies are directed and controlled by the management in the best interest of the shareholders and others ensuring greater transparency and better and timely financial reporting. The Board of Directors are responsible for governance of their companies.”

“CORPORATE GOVERNANCE is needed to create a corporate culture of consciousness, transparency and openness. It refers to combination of laws, rules, regulations, procedures and voluntary practices to enable the companies to maximize the shareholders long-term value. It should lead to increasing customer satisfaction, shareholder value and wealth.”

CORPORATE GOVERNANCE

"On account of unscrupulous management of the companies in the past that has raised capital from the market at higher valuation and had performed worse than the reported figures and thus had left the investors suffer huge losses."

"Enough law exists, but corporate governance is considered as one of the important instrument for investors protection and was rated high in the priority on the SEBI's agenda for investors protection ."

The basic objective of Corporate Governance would be "enhancement of the long-term shareholders value while at the same time protecting the interests of other stakeholders."

3 key constituents of Corporate Governance are :

1. **the Shareholders,**
2. **the Board of Directors and**
3. **the Management.**

Steps taken by SEBI for strengthening corporate governance through the amendment of the listing agreement are:

Strengthening of disclosure norms for IPOs

Providing information in directors' report for utilization and variation of funds of the company including the cash flow and fund flow statements in the annual reports.

Declaration of unaudited quarterly results;

Mandatory appointment of compliance officer for monitoring the share transfer process and ensuring compliance with various rules, regulations;

Timely disclosure of material and price sensitive information including details of all material events having a bearing on the performance of the company;

Dispatch of one copy of complete balance sheet to every household and abridged balance sheet to all shareholders.

Issue of guidelines for preferential allotment of shares at market related prices and

Issue of rules and regulations to ensure an fair and transparent framework for takeovers and substantial acquisition of shares

CORPORATE GOVERNANCE ISSUES AS PER CLAUSE 49 OF THE LISITING AGREEMENT