

# CORPORATE GOVERNANCE IN STARTUPs & SMEs - A Report

December 2022



*Submitted to:*  
National Foundation for  
Corporate Governance

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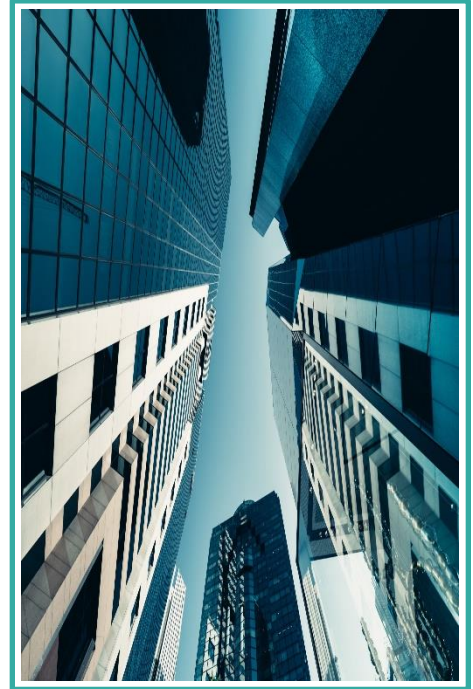
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**Title: CORPORATE GOVERNANCE IN START-UPS AND SME'S**

A combination of Research Methodologies including, empirical, mixed, descriptive, analytical, surveys and case studies on various Parameters of Corporate Governance and current standards of compliance by Start-ups and SMEs and Recommendations on Best Practices

**Year:** 2022

**Abstract**

Corporate governance is a basic norm for any corporate wishing to not only become profitable, but to sustain. Much has been done and said about corporate governance in India, especially for large, listed companies. There is sufficient proof that corporates that have integrated good corporate governance practices into their company culture stand benefitted in terms of capital opportunities and investor trust. As major contributors to the economy, Start-ups and SMEs are receiving a lot of investment attention and it is felt that there is a need for a focused approach to educate these corporates on the need and benefits of being a compliant organisation. This research attempts to study the current standards of corporate governance practices in India through survey, and in comparison, with the best practice models across the globe, make recommendations on best practices for Start-ups and SMEs. Our research findings show that while most corporates appear to be knowledgeable of the concept of corporate governance but have to officially adapt the practices into the company culture by way of implementing policies and setting the tone at the top. While organisations falling under the categories of Start-ups or SMEs are not necessarily 'companies' and 'listed', there is a necessity to sensitise all organisations about voluntarily adopting good governance practices, in the absence of a statutory mandate.

**Keywords:** Corporate Governance, Start-ups, SMEs, Board Composition, Structure, Functioning, Independent Director, ESG, Sustainability, Control Environment, Disclosure, Transparency, Stakeholder, Investor, Employee, Regulator, Auditor, Finance.

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## EXECUTIVE SUMMARY

Start-ups and SMEs have undoubtedly emerged as important contributors to the Indian economy in terms of employment generation, share in GDP, capital raised, foreign direct investment, etc. However, to reach the next level i.e. become stable, sustainable and globally competitive in the long run and grow to become global corporations, these businesses may adopt sound governance practices which will lay a strong foundation for the continued success of these entities. This is more so in the wake of certain instances of governance failures amongst these entities, coming to light.

In view of the aforesaid line of thought, this research was carried out with an objective to assess the current regulatory framework for corporate governance, awareness and compliance level in Start-ups and SMEs over past years across select parameters of corporate governance, assess the global corporate governance practices for Start-ups and SMEs and using the same to assess their standards in India and ascertain certain best practices in terms of good governance for Start-ups and SMEs that they may like to follow.

The scope of this research covered Indian Start-ups and SMEs who were contacted with a questionnaire-based survey to gauge the level of awareness as well as compliance of various corporate governance parameters by these entities. The results of the survey were supplemented with the secondary research and study of various practices, codes, regulations, statutes and voluntary guidelines pertaining to corporate governance – of India and of some of the other prominent jurisdictions which have well-developed legal framework on corporate governance.

Apart from above, instances of recent governance failures amongst Indian corporates were also researched with a view to assess the most common areas where these entities faltered in terms of corporate governance and the lessons and learnings from these failures have also been detailed in the report.

The research has culminated in the form of best corporate governance practices followed along with a background of their legal framework in Indian and other jurisdictions.

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The essence of good governance lies in the basic principles of trust, integrity, transparency, fairness, accountability, disclosures, social responsibility and equitable treatment of all shareholders, which may be imbibed in the culture of every kind of organization. The Start-ups and SMEs may gain immensely by the insights provided in the research and they may like to adopt good governance practices (even if not required to adhere statutorily) according to the structure, size, form and scale of business of their respective entities.

## **Key Best Practices**

The key best practices which are outcome of this research are as follows:

- 1. Organizations adopt a proactive approach by focusing on self-governance and voluntary compliances and display their commitment in action by complying with requirements of formation, incorporation, and registration of business entity, obtaining licenses to conduct business, duly adopting articles, memorandum and bylaws and executing agreements to define responsibilities. It appears helpful to identify a dedicated corporate governance champion and identify key policies and processes to assist businesses remain compliant.*
- 2. It is a good practice to ensure compliance with laws and regulations by forming and integrating policies for ethical conduct and compliance by organization, forming Board Committees to oversee and review internal risk management systems and aspects such as audit, nomination and succession, risk and crisis management, remuneration structure, investor grievance and cyber security and data protection. It is crucial to devise mechanisms to report, investigate and address grievances, fraud, and harassment within organization.*
- 3. An Advisory Board is beneficial to all businesses and a well-constituted Board which has sufficient directors based on the scale and size of business, appropriate balance of executive, non-executive and independent directors with necessary skills, competency and knowledge and diversity (in terms of gender, skills, knowledge, experience, thought and background) enhances the quality of decision making and strategizing business operations.*
- 4. It is important to have a robust process of appointment, succession planning and filling of Board vacancies. It is equally important to clearly define the role of the chair, fiduciary responsibility of directors, role and responsibilities of individual members*

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*of the board, integrity of directors and difference between roles of director and manager.*

- 5. Giving access to Board to accurate, relevant and timely information, devoting sufficient time to discharge their functions, conducting Board meeting as per necessity and trust amongst Board members enables smooth and effective execution of Board responsibilities. At the same time, it is also important to focus on adequate board compensation and board evaluation.*
- 6. It is important to ensure maintenance of proper books of accounts, conduct internal audits and establish transparent policies and procedures to ensure independence and effectiveness of audit functions, and integrity of reporting. Audit of annual financial statements by an external independent auditor and prevention of conflict of interests from external auditors is crucial.*
- 7. It is vital to address issues related to conflict of interests, related party transactions, insider trading and ensure timely disclosures, which have a material effect on price or value of securities, by Board Members, Key managerial personnel and entities.*
- 8. Compliance with ESG, DE&I, CSR and Sustainability attracts positive investor attention therefore as responsible players in the society, integrating ESG, DE&I, CSR and sustainability practices into company culture and reporting such practices as may be required is a step towards good governance.*
- 9. It is crucial that Board carries out effective engagement with stakeholders who are treated fairly, informed fully and equally about company activities and involved in decision making. It is essential that channels of communication are kept open with all stakeholders. It is also essential that businesses/ Corporates co-operate with the regulators and work towards closing and settling any issues. It is a good practice that minority shareholders are able to voice their opinions and there are no differential treatment in voting right amongst the same class of shareholders.*
- 10. It is vital to ensure relevant compliances involved in various methods of raising finances and restructuring. Besides, preparing and following a checklist of compliances and disclosures is beneficial.*



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# 1. INTRODUCTION

## 1.1. Background

### *Rise in Start-ups and SMEs*

Start-ups and Small and Medium Enterprises (SMEs) are vital and have been contributing to the economic growth, foreign direct investment, innovation, creation of employment opportunities and social integration in India. India saw a record of 44 start-ups turning unicorns in 2021. In April-November 2021, INR 89,066 crore was raised via 75 initial public offerings (IPOs), much higher than in any year in last decade.<sup>1</sup> As of 14 January 2022, India had 83 unicorns with a total valuation of USD 277.77 billion.<sup>2</sup> Most of these unicorns being in services sector, contributed to over 50% to India's GDP.<sup>3</sup> The Economic Survey released in January 2022 showed that India had become the third largest ecosystem in the world, after US and China.<sup>4</sup> To top it all, recognition of January 16 as 'National Start-up Day' only validates the role of start-ups in the growth of country's GDP. Total funding in Indian start-up's grew three times in 2021.<sup>5</sup>

SMEs are the growth engines of the global economy, making up around 90 per cent of all businesses globally, comprising roughly 70 % of employment and, by some estimates, contributing up to 90 % of global GDP.<sup>6</sup> The MSME segment in India accounts for 27% of the economy. It contributes to employment generation, exports and lending

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<sup>1</sup> Economic Survey: No. of startups grows to 14,000 in India; 44 unicorns in 2021, available at: <https://www.livemint.com/budget/news/economic-survey-no-of-startups-grows-to-14-000-in-india-44-unicorns-in-2021-11643620116976.html> (Last modified 31 January 2022)

<sup>2</sup> Delhi has replaced Bengaluru as startup capital: Economic Survey, available at: [http://archive.ptinews.com/news/13089408\\_Delhi-has-replaced-Bengaluru-as-startup-capital--Economic-Survey](http://archive.ptinews.com/news/13089408_Delhi-has-replaced-Bengaluru-as-startup-capital--Economic-Survey) (Last modified 31 January 2022)

<sup>3</sup> India gets its 100th Unicorn & creates a new milestone, available at : <https://indbiz.gov.in/india-gets-its-100th-unicorn-creates-a-new-milestone/#:~:text=With%20a%20total%20valuation%20of,according%20to%20the%20Economic%20Survey> (Last modified May 4 2022)

<sup>4</sup> Economic Survey 2022: At least 14,000 new startups recognised in India, up 20 times in five years, available at: [https://economictimes.indiatimes.com/tech/startups/economic-survey-2022-at-least-14000-new-startups-recognised-in-india/articleshow/89243366.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/tech/startups/economic-survey-2022-at-least-14000-new-startups-recognised-in-india/articleshow/89243366.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last modified 31 January 2022)

<sup>5</sup> Funding for startups grows 3 times in 2021, available at: [http://timesofindia.indiatimes.com/articleshow/88534767.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/88534767.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last modified 28 December 2021)

<sup>6</sup> MSMEs: Powering India, available at: <https://www.businesstoday.in/magazine/columns/story/msmes-powering-india-322844-2022-02-16> (Last modified 20 February 2022)

opportunities, making it crucial for the Indian economy. ASSOCHAM-CRISIL joint study on MSME sector, namely, ‘MSMEs back to the grind’, indicates that the sector has 50% share in India’s exports since past five years.<sup>7</sup> As a key contributor to India’s GDP growth, the budget allocation for MSMEs in FY 2022 more than doubled to Rs.15,700 crores (USD 2.14 billion) as against Rs. 7,572 crores (USD 1.03 billion) in FY 2021.<sup>8</sup>

The government has envisioned doubling of Indian economy to USD 5 trillion in the next five years.<sup>9</sup> The aforesaid data indicates the immense contribution of these segments to the Indian economy and undoubtedly, have a vital role to play in achieving this target. It is but imperative for these ecosystems to survive and sustain through all uncertainties.

**BUSINESS OWNERS OFTEN DELAY  
IMPROVING GOVERNANCE UNTIL SOME  
POINT IN THE FUTURE—WHEN THEY ARE  
“BIG ENOUGH.”**

International Finance Corporation, World Bank  
Group, SME Governance Guidebook (2020)

## Importance of Corporate Governance for MSMEs and Start-ups

Business organisations do not exist in isolation. Successful and sustainable businesses underpin our economy and society by providing employment and creating prosperity. To succeed in the long-term, entities need to build and maintain successful relationships with a wide range of stakeholders. These relationships will be successful and enduring if they are based on respect, trust, and mutual benefit. Accordingly, a company’s culture may promote integrity and openness, value diversity and be responsive to the views of shareholders and wider stakeholders.<sup>10</sup>

These businesses miss out on key tools and solutions that could improve their competitive survival and growth. Also, delaying implementation of governance until the

<sup>7</sup> MSME sector to achieve mid-teen growth in fiscal 2022 says study, available at: [https://economictimes.indiatimes.com/small-biz/sme-sector/msme-sector-to-achieve-mid-teen-growth-in-fiscal-2022-says-study/articleshow/90955822.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/small-biz/sme-sector/msme-sector-to-achieve-mid-teen-growth-in-fiscal-2022-says-study/articleshow/90955822.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last modified 20 April 2022)

<sup>8</sup> MSME Industry Report, available at: <https://www.ibef.org/industry/msme> (Last modified August 2022)

<sup>9</sup> India would become \$5 trillion economy by 2026-27, says CEA, available at: <https://www.thehindu.com/business/Economy/india-would-become-dollar-5-trillion-economy-by-2026-2027-says-cea/article65526415.ece> (Last modified 14 June 2022)

<sup>10</sup> Financial Reporting Council, The UK Corporate Governance Code (July 2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf>

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business is large and fully formed can mean that, when that implementation does come, the business may find the process to be a radical and disruptive shock. A better approach is for entrepreneurs to start—early on—governing their business based on the fundamental principles of good governance, using the solutions and tools appropriate for their company’s stage of development.<sup>11</sup>

In an IFC survey of institutional investors in emerging markets, 41 percent stated that their companies had a certain minimum governance threshold for investment decisions. Moreover, good governance allows entrepreneurs to receive substantially more money for shares in their companies. In the same survey, 100 percent of respondents indicated that they would pay a higher investment premium for well-governed firms in emerging markets; 55 percent said they would pay at least 10 percent more, and 38 percent were willing to pay 20 percent more for well-governed companies. These findings support a 2015 report indicating that MENA6 institutional investors identified good investee governance as one of the top three challenges for the industry. They also noted the effects of good governance on their investee clients.<sup>12</sup>

**TODAY, AN INCREASING NUMBER OF  
INVESTORS INCLUDE GOOD GOVERNANCE  
CRITERIA AS PART OF THEIR INVESTMENT  
DETERMINATION PROCESS.**

International Finance Corporation, World Bank  
Group, SME Governance Guidebook (2020)

Good governance is not a destination but a journey. The sooner entities adopt these practices, the more benefits they reap. While good corporate governance is not a panacea for all problems that the entities will face, but it is certainly an important ingredient for their sustenance and success. Conversely,

research findings consistently show poor governance practices to be directly linked to poor business performance, fraud, and catastrophic failures. Implementing good governance practices helps in addressing a distinctive number of challenges, namely –

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<sup>11</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

<sup>12</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

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- ✚ Effective policies, structures, and processes help reduce overreliance on a few “key persons.
  - ✚ Companies with sound governance have better access to finance, as they appear more attractive and less risky for investors and banks.
  - ✚ Family-run businesses increase the chances of long-term survival through proactive succession planning and managing the family-versus-business relationship.
  - ✚ Prudent governance reduces risks and improves the managing of conflicts among various shareholders and stakeholders
  - ✚ Well-structured management bodies (and later, boards of directors) provide critical stewardship, strategic direction, and business connections for sustainable growth.
  - ✚ Good governance is a common regulatory prerequisite for an IPO (initial public offering). Prudent internal controls help companies enhance risk management and build greater resistance to fraud, theft, and mismanagement.
  - ✚ Good governance practices help the founders recover some freedom in their lives. They can control and direct the business without having to be directly involved in all operational decisions. Well-governed companies attract and retain higher-quality staff that the founders can rely on.<sup>13</sup>

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<sup>13</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

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## 1.2. Description of Issue

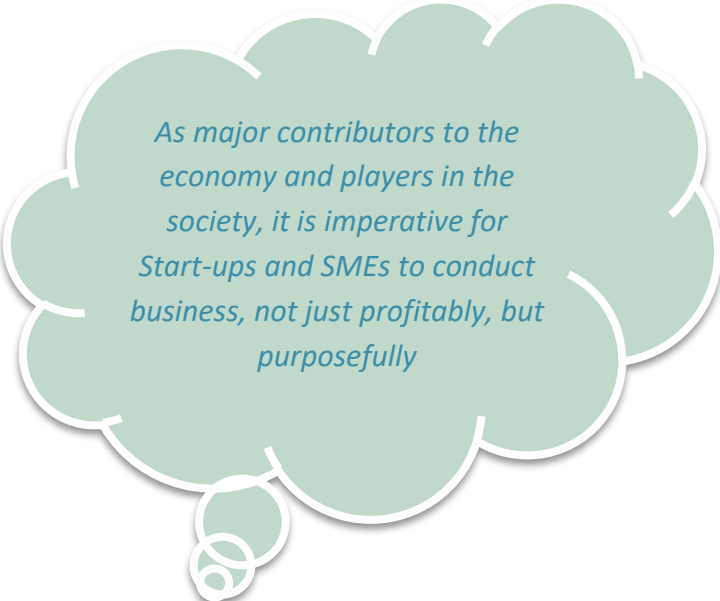
Classically, we see that corporate governance practices are dedicated to publicly traded companies. Most of the legal frameworks across jurisdictions have laws, codes, and regulation specifically to ensure compliance by such companies. Other forms of entities are often not mandated to comply with such regulations. Even in India, there is much said and done about corporate governance practices in large and listed companies, whether by virtue of voluntary guidelines or codes, shareholder activism, investor requirements or the regulatory framework, namely, the Companies Act, 2013 and SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations.

Given the rise in numbers and contribution of SMEs and Start-ups to the Indian economy, it is but cardinal for these entities, irrespective of its type (Company, Limited Liability Partnership, Sole Proprietorship, etc.), size, stage of growth, amount of turnover, to understand and undertake the role and responsibility of a “good corporate citizen”. Governance practices are no longer just “good to have” but “must have” for entities. Apart from focussing on growth, profitability and other business metrics, Boards and managements of Start-ups and SMEs may also focus on good governance – it is an important ingredient for the success, and early adoption leads to benefits (both tangible and intangible) for the organisation.<sup>14</sup> It is noticed that governance practices in Start-ups and SMEs need to be more streamlined. It will therefore be useful to study and research the current levels of governance. This will enable undertaking a structured program to hand hold these companies to enhance their governance standards – in sync with the global standards.

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<sup>14</sup> Confederation of Indian Industry, Guidelines on Integrity and Transparent in Governance and Responsible Code of Conduct, The CII Code 2020 (February 2020)





*As major contributors to the economy and players in the society, it is imperative for Start-ups and SMEs to conduct business, not just profitably, but purposefully*

Principles of good governance may not be separated from the ethos of an organization, just because the organization is young, from an unorganized sector, has smaller scale or operations, or does not have a definitive regulatory framework to govern its conduct. The necessity of the day is for entities to integrate principles of good corporate governance right at the conceptual level and become part of its culture. Further, investors today score companies not only on the basis

of profitability, but also on the basis of their governance and sustainability practices. With increase in shareholder activism and investor awareness, organisations are forced to fall in line.

### **1.3. Main Objectives**

The current regulatory framework for corporate governance in Start-ups and SMEs, particularly for companies, in India includes the Companies Act, 2013, MSME Act, SEBI (LODR) and other relevant regulations. This is supplemented by various codes and guidelines that organisations, regulators, and government have issued from time to time. This Research captures an overview on corporate governance in Start-ups and SMEs across select parameters by way of studying the principles underlying the regulatory framework, understanding select global practices on corporate governance, and suggesting best corporate governance practices for Start-ups and SMEs to adopt.

As we complete the commemoration of India@75 and step into the 'Amrit Kaal', i.e., the journey towards India@100, the government has placed high aspirations to promote India as a preferred global hub for investments. In order to keep up with international standards of practice and emerge successful amongst global competitors, Indian Start-

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ups and SMEs, have to establish robust organisational framework; a strong foundation of good governance practices that percolates through the entire organisation.

## **1.4. Scope and Limitations**

The primary source of information for this Research is based on responses to the Survey conducted pursuant to this Research. CII is not responsible for the veracity of the responses, which are assumed to be true and correct for the purposes of this study. The Research is based on secondary sources of information, including news reports, facts, information, data, and reports that are made publicly available on various websites. While references to secondary information is quoted in footnotes, the veracity of the same cannot be determined and CII is not responsible for the same.

For the purposes of this Research, the scope of research on regulatory framework has been limited to the Companies Act, MSME Act and SEBI Regulations. While Start-ups and SMEs can be of any form and type, and not necessarily companies, to limit the scope of research, the Research does not cover other applicable laws with specificity. The general underlying principles of the Research may prove beneficial to all types and forms of businesses.

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## 2. METHODOLOGY

### 2.1. Approach

This Chapter discusses the overarching approach or methodology adopted for the purposes of this Research Project. It describes in detail the different aspects that connected to the Project including conducting the research, identifying the parameters, collecting data, analysing and drawing necessary inference for completion and submission of this Project. A mixed approach of utilizing both qualitative and quantitative data has been adopted.

While such entities could be encouraged to voluntarily adopt practices that are regulated and promoted as good practices amongst large conglomerates and listed companies, there might be some practical issues in adopting such practices in entirety due to practicality. To illustrate, SMEs that are of sole proprietary concerns, do not have to deal with issues pertaining to dividend payment or managing shareholder expectations. Governance practices, undoubtedly differs from one type to another type of entity and might have to be scaled up or down depending on the size, nature of business and scale of operations of the organization. This Research would be concentrating on the general governance practices that are mostly applicable to all types of Start-ups and SMEs, with particular focus on companies. As such, one might find some portions inapplicable to type of entity, but it is encouraged to use it as a guide to adopt the underlying principle therein.

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## 2.2. Data Collection Methods

**Following data collection methods were used in this research report:**

- *Survey*
- *Instances of Governance Failures*
- *Jurisdictions and Codes/Guidelines*
- *Deliberations and direct interactions*

### 2.2.1 Survey

#### *Design and Format*

As a part of this Research, a Survey was conducted to understand the current levels of corporate governance practices amongst Start-ups and SMEs in India. The Survey was divided into Nine Sections, covering Parameters of Corporate Governance that have been identified for this Project. The Sections that were identified in the Survey covered the following topics – Corporate Governance, Formation, Governing Body, Commitment to ESG, CSR, DE&I and Sustainability, Control Environment, Disclosure and Transparency, Stakeholder Engagement, Auditor Independence, and Finance, Restructuring and Regulator Issues.

Each Section contained questions in ‘Yes’ or ‘No’ format. Additional space was provided to share Comments, if any. The Survey contained about 70 questions. They were mindfully posed in a simple and easy to understand manner. The average estimated time for completing the Survey form was about 5-10 minutes. The questions themselves were based on the research conducted, parameters identified and trends in corporate governance. The questions were general and not tailored to any specific type or form of entity, industry, or sector.

To reach out a larger sample size, the Survey was circulated by e-mails to select CII members, distributed to select respondents in-person and promoted on NFCG website [www.nfcg.in](http://www.nfcg.in). The Survey was also uploaded on <https://www.formsite.com/>, and the link was circulated amongst Start-ups and SMEs.

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### *Population, Sample and Respondents*

The population was identified as Start-ups and SMEs incorporated, registered, or conducting business in India. Given the population, and the probability of receiving responses, the target sample size was identified as 1000 entities, across the country, in order to receive at least 100 responses. The Survey, in its physical form, was circulated amongst participants of various advocacy events conducted by CII and NFCG, and in its virtual form was placed on NFCG's website and circulated amongst CII members, from across sectors and regions.

A total of 150 responses were received from different types of entities namely, listed company, unlisted company, LLP, sole-proprietorship, and others. The entities forming the respondents are from diverse industries, namely, manufacturing, IT, financial services, and other service industries. However, as not all responses were complete, only 102 responses that were found valid, were included for the analysis.

#### **2.2.2 Instances of Governance Failures**

There is much to learn from instances of governance mishaps. As such, we have identified 10 entities that were reported to have had such issues in the past. Issues have been identified and studied based on material available on public platforms and newspaper reports. Studying real life incidents will give the beneficiaries of this Research Project, a better understanding of the importance of having good governance practices and instances of how companies can falter.

#### **2.2.3 Jurisdictions and Codes/Guidelines**

One of the objectives of the Research is to suggest Best Practices of corporate governance practices for Start-ups and SMEs. To do so, extensive research was carried out on select jurisdictions, namely, the United States, the United Kingdom, UAE, Singapore and Australia, and select International Codes/ Guidelines, namely, G20/OECD Principles on Corporate Governance and International Finance Corporation's SME Governance Guidebook, to map some of the best and preferred practices. The research was conducted based on publicly available material on official websites.

#### **2.2.4 Deliberations and direct interactions**



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The research also draws inputs from numerous discussions and deliberations held at meetings of CII Corporate Governance Council and its various sub-groups, CII National Committee on Financial Reporting and CII National Committee for CFOs, conference on Corporate Frauds Governance and Risk Management, Conference on “Financial Reporting & Governance Framework: Building Trust”, NFCG’s conference on “Journey of Corporate Governance in India @75” the CII, NFCGProtiviti Conclave - Risk Management & Internal Controls - Imperatives for Independent Directors, CII Corporate Governance Summit, CII Governance Series, CII Directors Guild sessions, Legal Service Month webinars, which comprised of valuable inputs from independent directors, Board Members and Governance Professionals, on topics related to corporate governance.

### **2.3. Analysis Method**

The data from primary research has been aggregated, grouped and depicted in tabular and graphical manner for easy comprehension. Before analyzing the data gathered through Survey, it was checked for incomplete or irrelevant information. Thereafter it was compiled on MS Excel and converted into visual aids for representing the results obtained. Trends were identified based on the responses received.

Upon selection of instances of governance failures based on extensive reading of existing publicly available information and news reports, issues that emerged in each case were identified and studied. Based on the findings, learnings from these instances were charted out for the benefit of Start-ups and SMEs. Research on prevalent practices in select 5 jurisdictions and recommendations of select International Codes was carried out. Upon a comparative analysis, certain best practices for Start-ups and SMEs were identified, particularly for companies, to adopt.

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## 3. CORPORATE GOVERNANCE FRAMEWORK

### 3.1. Introduction

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.

OECD (2015), G20/OECD Principles of Corporate Governance

“Classic” corporate governance—developed initially for large publicly traded companies—is defined as the structures and processes by which companies are directed and controlled. It focuses on the interaction among three key decision-making bodies: shareholders, board of directors, and management. Shareholders own assets, provide capital to the business, and appoint the board to oversee it. The board sets strategic direction, supervises the performance of management, and

reports to shareholders on its stewardship. Management uses the assets and capital provided by the shareholders to realize a positive return for them, and reports on its performance to the board. Increasingly, good governance also includes active engagement of other stakeholders.<sup>15</sup>

Over time, corporate governance codes and guidelines have expanded beyond listed companies and now cover a broader range of organisations, including family businesses, state-owned enterprises, and even charitable organizations. According to the European Confederation of Directors Associations (ecoDa), good corporate governance for unlisted companies “is about establishing a framework of company processes and

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<sup>15</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBz>

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attitudes that add value to the business, help build its reputation and ensure its long-term continuity and success” (ecoDa 2010).<sup>16</sup>

BASED ON PRINCIPLES OF FAIRNESS, ACCOUNTABILITY, RESPONSIBILITY AND TRANSPARENCY, CORPORATE GOVERNANCE DEALS WITH LAWS, PROCEDURES, PRACTICES, AND IMPLICIT RULES THAT DETERMINE A COMPANY’S ABILITY TO TAKE MANAGERIAL DECISIONS *VIS-À-VIS* ITS CLAIMANTS—IN PARTICULAR, ITS SHAREHOLDERS, CREDITORS, CUSTOMERS, THE STATE, AND EMPLOYEES.

Kumar Mangalam Birla Committee’s Report on Corporate Governance (1999)

priorities, and relevance. To elucidate, investors would prefer entities that performed profitably as an invest option about a decade back, but now investors prefer entities that rate high on ESG (Environmental, Social and Governance) ratings, along with being profitable as an investment choice. With growing importance of corporates as responsible actors in the society and nation building, the focus on adoption of good governance continues to grow.

Being a principle-based concept, the sources of corporate governances are multiple namely, laws, procedures, practices, and implicit rules. We also have regulations, other jurisdictions or international and institutional Guidelines and Frameworks, and books, to state a few.

Corporate governance is dynamic and evolves with the changing times,



*Organisations would benefit from having a flexible approach in learning, developing, and adopting new practices to emerge resilient and sustainable*

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<sup>16</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

## 3.2. Stages of Evolution

There is no single model of good corporate governance or set number of parameters of corporate governance. It is dependent on the form and structure of entity, nature of business, size and scale of operations, stage of evolution or maturity, listed or unlisted, registered or unregistered, governing law and others. At the initial stages, businesses are often characterised by informal structure of management, with little or less distinction between –

- Owner and entity (Separate Legal Entity) - The owner is the entity and vice versa
- Owner, founder and investor (Capital and Investment) – Typically owner/ founder is also the investor or shareholder
- Owner and Management (Concentration of Power) – Owner is all powerful and the sole decision-making authority on all issues
- Limited Portfolios (Finance, Product and Marketing) – Often, owner with the help of few personnel is able to get the work done
- Fewer Personnel (Personnel handling multi-portfolios/ Multi-tasking) – Owner and staff is often found to hold multiple portfolios

As the business evolves and grows, we see a more formal structure shaping up, with clearer distinction between -

- Owner and Entity (Separate Legal Entity) – The Owner and the business are identified as distinct and separate entities
- Owner, founder and multiple Investors (Capital and Investment) – From being a single or limited investor, the entity would now have multiple investors and the business would be accountable to a larger set of people
- Owner and Management (Concentration of Power) - Professionals with relevant skills, competency, and expertise, would often manage the business and there will be decentralization of power and dual system of governance. The Management that looks after the day-to-day functioning of the business would have to report to a Board, which then reports to the shareholders and investors
- Multiple Portfolios (Finance, Product, Marketing, Compliance, Investor Relations, etc.) – Bigger businesses need a more streamlined and clearly defined and distinct

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portfolios, roles and responsibilities to address various concerns and issues that often plague them

- Higher number of Personnel (Personnel handling multi-portfolios/ Multi-tasking)
  - It will become impossible for fewer persons to run the show, and has to be supplemented by personnel with specialized knowledge and competency for various portfolios<sup>17</sup>

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<sup>17</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>



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## 3.3. Global Corporate Governance Regulatory Framework

### 3.3.1 Background<sup>18</sup>

Globally, corporate governance originated in 1985 after major business failures took place in the US, most notably the collapse of Savings and Loan<sup>19</sup>, which led to the formation of Tread way Commission with an aim to identify the main causes of misinterpretation in financial reports and to suggest ways of reducing such incidences. The Commission in its report published in 1987<sup>20</sup>, stressed the need for an objective internal audit function, independent audit committees and suitable control environment.

The genesis of Corporate Governance framework in UK and Europe was triggered by the failure of Maxwell Corporation in the UK which was built through highly leveraged acquisitions in the 1980s and it was discovered later that the debts were financed by diverting resources from the pension funds of group companies. The fiasco prompted the formation of the Cadbury Committee in 1991 by the London Stock Exchange, Financial Reporting Council and the accountancy profession in the UK to investigate the British Corporate Governance system and suggest corrective measures to restore investors' confidence. The committee was tasked with preparation of draft Code of practices to assist corporations in UK by defining and applying effective internal controls to minimize their financial losses. At the same time, companies such as BCCI<sup>21</sup>, Polly Peck<sup>22</sup> failed due to poorly managed business practices. The Cadbury Committee gave its report titled "The Financial Aspects of the Corporate Governance" in 1992.

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<sup>18</sup> Pratip Kar, "Looking for Patterns in Corporate Failures" *available at*: [https://www1.nseindia.com/research/content/CG\\_11.pdf](https://www1.nseindia.com/research/content/CG_11.pdf) (Visited on October 14, 2022)

<sup>19</sup> Will Kenton, Reviewed by Michael J Boyle, "Savings and Loan (S&L) Crisis" *available at*: <https://www.investopedia.com/terms/s/sl-crisis.asp> (Updated July 30, 2021)

<sup>20</sup> Report of the National Commission on Fraudulent Financial Reporting (October 1987) *available at*: [https://www.sechistorical.org/collection/papers/1980/1987\\_1001\\_TreadwayFraudulent.pdf](https://www.sechistorical.org/collection/papers/1980/1987_1001_TreadwayFraudulent.pdf) (Visited on October 17, 2022)

<sup>21</sup> Steve Lohr, "World-Class Fraud: How B.C.C.I. Pulled It Off -- A special report.; At the End of a Twisted Trail, Piggy Bank for a Favored Few" (August 12, 1991) *available at*: <https://www.nytimes.com/1991/08/12/business/world-class-fraud-bcci-pulled-it-off-special-report-end-twisted-trail-piggy-bank.html> (Visited on October 14, 2022)

<sup>22</sup> Nadia Boro, "Nadir's Conviction Highlights Importance of Governance" (August 31, 2012) *available at*: <https://www.glasslewis.com/nadirs-conviction-highlights-importance-of-governance/> (Visited on October 14, 2022)

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Almost a decade after the fall of Maxwell, came to light the Parmalat episode wherein the leading global company filed for biggest corporate bankruptcy following financial failure in Europe and charged by the US Securities and Exchange Commission with one of the largest corporate financial fraud of those times. Concurrently, failure of Barings Bank<sup>23</sup> in UK and Australia-based HIH Insurance<sup>24</sup> took place.

However, the epitome of Corporate Governance disaster globally was yet to come in form of bankruptcy of Enron Corporation<sup>25</sup> of US and dissolution of Arthur Andersen<sup>26</sup>, which was the oldest audit and accountancy firm in the US. The same was followed by various corporate governance failures<sup>27</sup> such as ZZZZ Best, Tyco, Global Crossing, World Com, Adelphia Communications, etc. Reportedly, most of these failures were attributed to one or more of elements such as fraud, lack of transparency and disclosure, misleading financial statements, insider trading, inefficient, conflicted and lax board, external audit failure, ineffective audit committee, unethical business practices, poor decision making, etc. Thus, it prompted the formation of various committees such as Greenbury committee, Blue Ribbon committee, Joint Committee on Corporate Governance, 2001 (Canada), etc., various codes and standards on Corporate Governance such as Combined Code of Best Practices, London Stock Exchange (UK), Euro shareholders Corporate Governance Guidelines (Europe), King Report on Corporate Governance (South Africa) and led to the passing of the Public Company Accounting Reform and Investor Protection Act (known as Sarbanes Oxley Act 2002). The reports of the various committees laid down the basic principles of corporate governance and prescribed the mode of governance of public companies. The OECD published its Principles of Corporate Governance in 1999. OECD revised the principles of Corporate

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<sup>23</sup> Elliot Smith, "The Barings collapse 25 years on: What the industry learned after one man broke a bank" (February 26, 2020) *available at*: <https://www.cnn.com/2020/02/26/barings-collapse-25-years-on-what-the-industry-learned-after-one-man-broke-a-bank.html> (Updated February 26, 2020)

<sup>24</sup> David Kehl, "HIH Insurance Group Collapse" (November 29, 2001) *available at*: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/archive/hihinsurance](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/hihinsurance) (Visited on October 14, 2022)

<sup>25</sup> Richard A. Oppel Jr. and Andrew Ross Sorkin, "ENRON'S COLLAPSE: THE OVERVIEW; ENRON CORP. FILES LARGEST U.S. CLAIM FOR BANKRUPTCY" (Dec. 3, 2001) *available at*: <https://www.nytimes.com/2001/12/03/business/enron-s-collapse-the-overview-enron-corp-files-largest-us-claim-for-bankruptcy.html> (Visited on October 14, 2022)

<sup>26</sup> Lesley Curwen, "The collapse of Enron and the dark side of business", (August 3, 2021) *available at*: <https://www.bbc.com/news/business-58026162> (Visited on October 14, 2022)

<sup>27</sup> Pratip Kar: "Patterns in governance failures" (Last Updated at January 20, 2013) *available at*: [https://www.business-standard.com/article/opinion/pratip-kar-patterns-in-governance-failures-109041300030\\_1.html](https://www.business-standard.com/article/opinion/pratip-kar-patterns-in-governance-failures-109041300030_1.html)

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Governance in 2004. UNCTAD Guidelines on Good Practices in Corporate Governance Disclosure (UK) were also issued.

### **3.3.2 Regulatory Framework in different jurisdictions**

#### **United States (US):**

In the United States, matters regarding Corporate governance are mentioned in state and federal laws, regulations as well as listing rules. Initially, Sarbanes Oxley Act 2002 was brought about to restore shareholder confidence in the government of the USA. Apart from the Sarbanes-Oxley Act 2002, The Securities Exchange Act of 1934 state the disclosure requirements by public companies. Besides, rules and regulations framed by the Securities and Exchange Commission also form part of the regulatory framework in US. Apart from this, Corporate governance guidelines, recommendations and codes of best practice issued by various investor and business communities also exist in the US framework.<sup>28</sup>

#### **United Kingdom (UK):**

The UK Corporate Governance Code issued by the Financial Reporting Council governs the corporate governance framework in United Kingdom. The first version of the UK Corporate Governance Code (the Code) was published in 1992 by the Cadbury Committee. Over the years the Code has been revised and expanded to take account of the increasing demands on the UK's corporate governance framework.<sup>29</sup>

#### **United Arab Emirates (UAE):**

In UAE, the Securities and Commodities Authority (SCA), which regulates the Abu Dhabi Securities Exchange (ADX) and Dubai Financial Market (DFM), has framed The Governance Guide for Public Joint-Stock Companies, applying to all public joint stock

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<sup>28</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (1 September 2021)

<sup>29</sup> The UK Corporate Governance Code (July 2018) available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf> (Visited on October 19, 2022)

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companies. The SCA being the regulatory authority supervising listed companies, oversees the application of this Guide.<sup>30</sup>

**Singapore:**

In Singapore, the Code of Corporate Governance was first issued in 2001. Listed companies are required under the Singapore Exchange Listing Rules to disclose their corporate governance practices and give explanations for deviations from the Code in their annual reports. The Code was subsequently revised in 2005 and 2012. Based on recommendations of the Corporate Governance Council, Monetary Authority of Singapore (MAS) issued the revised Code and accompanying Practice Guidance In 2018.<sup>31</sup>

**Australia:**

In Australia, the Corporate Governance Principles and Recommendations were initially introduced in 2003 and the second and third editions were published in 2007 and 2014 respectively. The ASX Corporate Governance Council which comprise of members such as ASX, various associations of investor relations, shareholders, professionals, etc. in Australia came out with fourth edition of the Principles and Recommendations which became effective in 2020. The Principles and Recommendations apply to all entities admitted to the Australian Securities Exchange (ASX) official list as an ASX listing regardless of the legal form they take.

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<sup>30</sup> Securities and Commodities Authority, UAE, “The Governance Guide for Public Joint-Stock Companies” (2020), *available at*: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

<sup>31</sup> “Code of Corporate Governance” (Published Date: 06 August 2018) *available at*: <https://www.mas.gov.sg/regulation/codes/code-of-corporate-governance> (Visited on October 19, 2022)

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## 3.4. Indian Corporate Governance Regulatory Framework

Based on the principles of fairness, integrity, accountability, transparency, disclosures, social responsibility and equitable treatment of all shareholders, corporate governance deals with laws, practices, and rules that determine a company's ability to take sound managerial decisions and balance the interest of all its stakeholders.

### 3.4.1 Background

Corporate governance has always been an imperative and played a significant role not just for companies but the entire society and the business environment in India. Way back in 1998, Confederation of Indian Industry (CII) published the Desirable Corporate Governance: A Voluntary Code for corporates to adopt. Through various committees, the Government initiated reforms in the corporate governance framework in the country, namely

- Kumar Mangalam Birla Committee
- Ambassador Naresh Chandra committees
- Narayana Murthy Committee
- Dr J. J. Irani committee
- Adi Godrej Committee
- Kotak Committee

In 2009, MCA released the Corporate Governance Voluntary Guidelines to further strengthen the governance standards. MCA revamped the Companies Act 1956, through various amendments over the years and simplified the 2013 Act. Various initiatives of MCA have transformed the Corporate Governance landscape of the country and placed India on the global map for best practices in Corporate Governance. MCA is also the nodal authority which issues various rules, circulars and guidelines and oversee the implementation of Companies Act 2013 and prosecution thereunder. It has facilitated further ease of business by streamlining the provisions, including Decriminalization of the Companies Act, and smooth entry and exit rules for businesses. It has carried out landmark digital reforms for driving the E-Governance framework in the country. In 2019, MCA had also released the National Guidelines for Responsible Business Conduct (NGBRC) for nudging businesses to contribute towards wider

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development goals. India is the only country that has a legally mandated corporate social responsibility framework. In August 2020, Companies CSR Policy Rules were amended. There has been considerable increase in the CSR spend signifying the essence of the India Inc in giving back to the society and following the principles of governance in true letter and spirit. All these reforms have considerably improved the standards of corporate governance in the country. To raise the corporate governance standards, CII published the revised Guidelines on Integrity & Transparency in Governance & Responsible Code of Conduct in the year 2020.

Better corporate governance, simplification of Laws, transparency in reporting, all have resulted in leapfrogging India's ranking on the **World Bank's Doing Business Report** of 190 countries, which improved from 142<sup>nd</sup> position in 2014 to 63<sup>rd</sup> in 2020.

### **3.4.2 Regulatory Framework**

The Indian regulatory framework for corporate governance consists of mandatory legislations as well as voluntary code/ guidelines. It broadly covers compliance with various laws applicable to the entity in addition to adherence to the accounting standards as well as secretarial standards. The Companies Act, 2013, is the principal legislation that regulates aspects such as formation, powers and responsibilities of board of directors and various committees thereunder, shareholders' rights, board and shareholders' meetings, corporate social responsibility, financial statements, audit, annual and event-based disclosures, etc.

In addition to above, listed companies are also regulated by the market regulator Securities and Exchange Board of India (SEBI), which issues various regulations, rules, guidelines, etc. Corporate Governance of listed entities is essentially regulated by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) which prescribe norms pertaining to related party transactions, independent directors, disclosure requirements for listed entities, shareholders' rights including minority shareholders' rights, etc. Besides, SEBI (Substantial Acquisitions and Takeovers) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015 also govern the various transactions in securities market which ultimately regulate the corporate governance landscape of entities involved. The Indian corporate governance



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framework is further supplemented by laws including the Competition Act & Limited Liability Partnership Act, The Insolvency & Bankruptcy Code, and by the constitution of key institutions.

Apart from this, various sectoral regulators such as Reserve Bank of India (RBI), Insurance Regulatory and Development Authority of India (IRDAI), Petroleum and Natural Gas Regulatory Board (PNGRB), etc. also prescribe sector specific governance norms to regulate entities in those sectors.

### **3.4.3 Charting the Evolution of Corporate Governance in India<sup>32</sup>**

- CII Desirable Corporate Governance: A Code: 1998
- Kumar Mangalam Birla Committee Report on Corporate Governance: 2000
- Department of Company Affairs (DCA) modified the Companies Act, 1956: 2000
- Department of Company Affairs (DCA) modified certain accounting standards to further improve financial disclosures relating to disclosure of related party transactions, disclosure of segment income: revenues, profits and capital employed, deferred tax liabilities or assets, consolidation of accounts: 2001-02
- Department of Company Affairs (DCA) set up two Committees headed by Ambassador Naresh Chandra: 2002 and 2003
- SEBI Committee on Corporate Governance under the Chairmanship of Mr. N. R. Narayana Murthy, to look into the corporate governance issues / review Clause 49: 2003
- Dr. J J Irani Committee Report on Company Law: 2005
- General Guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs): 2007
- CII Report of a Special Task Force on Corporate Governance set up under the Chairmanship of Ambassador Naresh Chandra: 2009
- Corporate Governance Voluntary Guidelines issued by the Ministry of Corporate Affairs (MCA): 2009

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<sup>32</sup> Confederation of Indian Industry, Guidelines on Integrity and Transparent in Governance and Responsible Code of Conduct, The CII Code 2020 (February 2020)

- Guidelines on Corporate Governance for Central Public Sector Enterprises (CPSEs): 2010
- Mr. Adi Godrej Committee on Corporate Governance constituted by MCA to formulate policy document on Corporate Governance: 2012
- Companies Act, 2013, and the amendments thereof
- SEBI Listing Obligations and Disclosure Requirements (LODR) Regulations: 2015
- SEBI Committee on Corporate Governance constituted under the Chairmanship of Mr. Uday Kotak: Kotak Committee Report: 2017
- SEBI Notification dated 9 May 2018 to SEBI (LODR) Regulations, 2015; Circular dated 10 May 2018 and Notification dated 10 January 2020 pursuant to recommendations of the SEBI Kotak Committee Report on Corporate Governance

### 3.5. Focus Areas and Parameters of Corporate Governance in this Research

Based on requirements under the Indian regulatory and other jurisdictional governance frameworks, international codes or guidelines, and the common principles and elements underlying good corporate governance practices, for the purposes of this Research Project, we have broadly identified 10 Parameters. The issues that are most relevant, are discussed, and suggestions of best practices have been made for the benefit of Start-ups and SMEs, particularly companies.

#### PARAMETERS

1	Organisational Corporate Governance Framework
2	Formation, Incorporation & Registration
3	Structure & Functioning of Board/Governing Body
4	Internal Control Environment
5	Commitment to ESG, DE&I, CSR and Sustainability
6	Disclosure & Transparency
7	Governance of Stakeholder Engagement
8	Treatment of Minority Shareholders
9	Auditor Independence and Transparency
10	Raising Finances, Restructuring and Regulator Investigations

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## **1. Organisational Corporate Governance Framework**

The corporate governance framework is unique to each and every organisation, especially depending on the stage of its evolution. Organisational structures of entities that are in their initial years of commencement will mostly be informal and evolves into becoming more formal and clearly defined as it matures. At initial stages, commitment to governance can be showcased by complying with rules and regulations, identifying major areas to manage, such as finance, administration, and marketing, and having in place basic bye laws, agreements, or articles to define and guide the organisational framework. As business grows, there will be a necessity to identify a clear vision and mission, establish core values and culture, defining policies, roles and responsibilities for staff and members, establish internal controls and mechanisms for taking corrective actions.<sup>33</sup> Boards are held responsible for the organizational corporate governance framework of a company.

## **2. Formation, Incorporation & Registration**

It is important for businesses to choose a legal form of existence and take the necessary steps to complete the formalities of formation and incorporation of the organization to commence, perform and grow as a business entity with its own legal identity. In India, businesses can opt to function as sole proprietorship or one-person company, partnership or LLP, private or public company, and others. Depending on the choice of the type of legal entity, businesses will have to make efforts to have in place the necessary and mandatory documentation, bye laws, licenses, and other registrations to operate.

The legal formalities depend on the type of legal entity. A sole proprietorship will have lesser legal compliances when compared to a company. Businesses can also hire

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<sup>33</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ>

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professionals, namely, company secretaries, corporate lawyers, chartered accountants, and others to assist them.

### ***3. Structure & Functioning of Board/ Governing Body***

Contrary to popular practice, external advisors can prove beneficial even to entities in their nascent stage. They can provide independent opinion and advise, that often managers who are involved in day-to-day functioning of the business tend to overlook. Companies are mandated to have Boards and public and listed companies also need to have the presence of independent director.

As a Board drives the corporate governance framework for a business and is responsible for setting the tone of the organisation, its structure and functioning is cardinal. Further, burdened with the fiduciary responsibility to act in the best interests of the business, shareholders and stakeholders, there are a battalion of moral, ethical and legal obligations placed on the members of the Board.

The trends in the area of corporate governance touches upon matters relating to clearly defining the role and responsibilities of directors and Board, appointment process, constitution, diversity and inclusivity, skill ratio, appropriate balance of executive, non-executive directors and independent directors, presence of woman director, separation of roles of MD/CEO and Chair of Board, compensation, and others. Especially, w.r.t. companies, these parameters encompass appointment of board by shareholders, appointment and removal of independent directors only by passing of special resolution by shareholders, competency and skills of directors as the basis of appointment, filling of vacancies, disclosure of interest, compliances related to board meetings which may have trust and frank conversations, frequency of Board meetings, powers of board, provisions related to KMP (Key Managerial Personnel) and officer in default/ compliance officer, etc., obligations and duties (including fiduciary duty) and liabilities of Directors, independence of directors and timely, objective and fair performance evaluation. Compliances on aforesaid factors will ensure objective and critical analysis of decision making, the company management and operations.

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#### **4. Internal Control Environment**

Focused on internal processes, policies and controls, implementation of a suitable internal framework is the cornerstone of corporate governance in an organisation. The responsibility of overseeing and management in this regard is vested with the board. The framework controls and monitors the day-to-day functioning and operation of business.

The control environment includes internal audit, sound risk and crisis management framework, compliance functions – legal, financial, accounting and listing, adoption of policies, digital governance and data protection, etc. Besides, an important component of good Corporate Governance practices is stakeholders' grievance redressal mechanism which helps resolve conflicts with various stakeholders and help regain their trust. Entities can benefit from having established grievance redressal mechanisms and processes to address issues related to employee grievances, consumer grievances, sexual harassment, and others. This parameter also covers effective whistleblower mechanism in terms of a working environment that facilitates reporting by employees, of any potential breach of company policies, applicable laws, ethical practices, etc., without any fear of harassment or retribution by the company/ management.

At an organisational level, internal controls are primarily determined by articles, bye laws and legal requirements applicable. At the Board and management level, it covers aspects related to composition and meetings of various Board Committees, compensation structure, succession planning, conflict of interests, amongst others. Listed companies have several mandates under the Companies Act and SEBI Regulations to have certain Committees, make disclosures, etc. Every listed company as well as public companies with a prescribed paid-up share capital and turnover and/ or public companies having outstanding debts beyond prescribed threshold and/or prescribed number of security holders are required to form various committees under the Companies Act and/ or under SEBI Regulations such as Audit Committee, Nomination and Remuneration Committee (NRC), Stakeholders' Relationship Committee and CSR Committee. Besides, formation of Risk Management Committee and Investors' Grievance Committee also come under purview of sound Corporate Governance

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practices. These committees are sub-sets of the Board of directors and are delegated powers by the Board to address specific matters with focused attention and to optimize the Board's time. Besides, compliance with provisions on related party transactions (RPTs) such as approval of material RPTs by shareholders who are not related parties to the company, are also included in control aspects of Corporate Governance practices.

## ***5. Commitment to ESG, DE&I, CSR and Sustainability***

As active actors and contributors to society, corporates today are expected to give back to the society. The entity's/ company's culture and commitment towards these issues are dependent on the stewardship of the Board. While compliance with Corporate Social Responsibility (CSR) provisions are compulsory for companies above certain threshold of net worth, it remains voluntary for others in India. As per Companies Act 2013, companies with specified net worth, annual turnover or net profit are mandatorily required to form CSR Committee and spend a minimum of 2% of their average net profit earned in the previous three years on CSR activities. ESG framework defines how an organization addresses environmental concerns, has social impact and deals with governance issues. It is about conducting business in ethical and responsible manner with attention to social aspects such as diversity and equity and environmental aspects such as net carbon emissions, sustainable sourcing, allocation and utilization of resources, etc. The new Sustainability reporting framework, namely Business Responsibility and Sustainability Report (BRSR), has been made mandatory by market regulator SEBI, for top 1000 listed companies (by market capitalization) starting FY 2022-23 and remains voluntary for others. These compliances in true and fair spirit are vital for all businesses, in view of climate change issues as well.

## ***6. Disclosure & Transparency***

Timely, accurate and adequate disclosures on material matters of businesses is mandated. Such disclosures have to be made in letter and spirit. The entity may ensure that adequate controls are in place to preserve the integrity of such disclosures to stakeholders.



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In India, businesses, especially companies are mandated to make annual, quarterly, periodical, and event-based information with various stakeholders on a timely basis. Disclosures include both financial and non-financial reporting. Large corporates are additionally required to disclose information about their affiliates. The obligation to disclose and remain transparent is not limited to only businesses, but also to their founders, promoters, directors and other KMPs.

## ***7. Governance of Stakeholder Engagement***

Shareholding entitles the investor to participate in voting and decision making of the company. In recent times, shareholder activism has manifested in voting out of existing directors and election of minority shareholders on Board. Further corporate citizens of today are accountable to the larger concept of stakeholders, than just the shareholders. Stakeholders today would include the shareholders, investors, regulators, the society, employees, consumers, third party associates and partners, and others.

As responsible societal organisms, corporates are required to engage and respond to stakeholder views. Companies may timely and duly conduct meetings, conduct voting, both in person and through postal ballot, meet equitable treatment to all shareholders, make full and complete disclosures, engage in transparent and open communication with stakeholders about company activities, and have redressal mechanisms to address their grievances.

Entities are expected to understand and hear opinions and comments of stakeholders and make efforts to address them. Globally, shareholders have started demanding greater accountability through justifications and additional information on management actions and decisions. Investors' confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is an important factor in the development and proper functioning of capital markets. With the increase in shareholder activism, where people are ready to vote for change, it is indeed critical for businesses to focus on what the stakeholders are saying.

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## ***8. Treatment of Minority Shareholders***

All shareholders may be treated fairly and in equitable manner. There are often concerns of oppression and inability of minority stakeholders to voice concerns adequately. To prevent any form of oppression and mismanagement, often statutes have in place certain safeguards in the interests of minority shareholders. From a corporate governance perspective, aspects such as equitable treatment, balancing between rule of majority vs. rights of minority, presence of differential voting rights and sufficient opportunity to voice opinions of minority interests, and others may be proactively taken care of. Minority Shareholders may get right to be heard, representation of minority interests, their right to be informed through accurate, timely and adequate disclosures, rights during the meetings, rights during mergers/ amalgamations/ takeovers, rights in case of oppression and mismanagement and class/ representative action / derivative suits.

## ***9. Auditor Independence & Transparency***

In most jurisdictions across the globe requires companies, especially public companies to get their financial statements audited by registered independent auditor. This results in accountability of company to the public shareholders for their monies invested and value created. In the United States, the annual financial statements are mandated to be audited by a registered independent accounting firm, while the interim financial statements need to be reviewed.

Apart from the report itself, there is much focus placed on the appointment, terms, fees, termination, and rotation of independent auditor, involvement of the Audit Committee, ratification by shareholders, to ensure independence and transparency is maintained. In India, the Companies Act, SEBI Regulations and the guidelines and codes issued by the Institute of Chartered Accountants of India provide the regulatory framework on independence of auditors.

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## ***10. Raising finances, Restructuring, and Regulator Investigations***

This parameter covers aspects related to access to finance from investors; banks; private placement; deposits; GDR, reliance on promoters / promoters share in capital, business continuity plan for long-term survival of the business, IPO, Listing, Mergers & Acquisitions, etc. Apart from public companies, other forms of businesses are often minimally regulated. It is observed that they focus more on survival and profitability, and issues of compliances and legal risks are not given due regard. Whether to raise capital or to enter into agreements for restructuring and M&A transactions, it is business sense to avoid any legal risks owing to non-compliance. It is in the best interests of businesses to have necessary processes in place to smoothly address such issues.

Prominent issues recently coming to fore in the sphere of corporate governance in India are with respect to Board Composition, Performance evaluation of directors, True independence of directors, Removal and remuneration of independent directors, Accountability to stakeholders, Executive compensation, Promoters' Control, Crisis management, Succession Planning, Risk Management, Data Privacy, data protection, E-governance, Cyber Security concerns, Board's approach to CSR, focus on ESG and Business Responsibility Reporting (BRR), increased shareholders' activism, emphasis on non-financial disclosure and issue of conflict of interest of proxy advisors.

*A comprehensive analysis of aforesaid parameters, which forms an integral part of this research, is detailed later in this report.*

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## 4. INSTANCES OF GOVERNANCE FAILURES

### 4.1. Introduction

*Examination of our past is never time-wasting. Reverberations from the past provide learning rubrics for living today.*

*Kilroy J. Oldster*

Although the principles of governance are hard-wired into most corporate rulebooks, even the titans of India's industries seem to be having a hard time adhering to them, with steps being initiated after the unsavoury events have come to the fore. India has been credited with having some of the most stringent corporate governance practices worldwide. Starting with the 2013 Companies Act, all the way to the comprehensive governance guidelines and mechanisms set in place by SEBI as recently as 2022 - there has been no shortage of rules and regulations to avoid conflicts of interests and uphold the pillars of governance.<sup>34</sup> An understanding of some of the reported instances (based on media reports, news/ web articles) of corporate governance might provide an insight into the reasons for such mishaps.

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<sup>34</sup> Jaya Vaidhyanathan, "Corporate governance breakdown in India's corporates: Time for an overhaul?", BusinessToday.In, *available at:* <https://www.businesstoday.in/opinion/columns/story/corporate-governance-breakdown-in-indias-corporates-time-for-an-overhaul-325556-2022-03-10> (Last modified 10 March 2022)

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## 4.2. Bharat Pe

### About Company

Bharat Pe is a fintech start-up that was founded in 2018. The company empowers shop owners to accept digital payments for free. They aspire to be a one-stop business utility app for offline merchants in India.<sup>35</sup>

In December 2021, one of the founders appeared on Shark Tank, a reality television show, which was hugely popular. By March 2022, BharatPe had over 75 lakh merchants as its customers across 150 cities in India. The company had raised about USD 650 million in equity and debt.<sup>36</sup>

### Incidents Reported

- In October 2021, the Directorate General of GST Intelligence (DGGI) was reported to have conducted a search operation at company's head office over dealings with fake vendors.<sup>37</sup>
- The Co-founder and MD was reported to have had early talks with investors to sell his 9.5% stakes in the company for an over-valued amount based on an overvaluation of company at USD 6 billion.
- In January 2022, an audio clip capturing a conversation between the Co-founder and MD and a Kotak Mahindra Bank employee came to be leaked, where he was heard abusing bank employee for denying financing for Nykaa's IPO.
- Co-founder and MD's voluntary leave till March 2022 was announced thereafter.
- Soon after the incident, the company appointed a management consultancy and risk advisory firm, for investigating internal processes and systems. The preliminary report brought to light several financial discrepancies and misappropriations. It showed that the company had routed crores through some dubious HR consultancy firms and fake vendors, and raised fake invoices. The Co-founder and MD's wife, who was Head of

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<sup>35</sup> About Us, BharatPe, available at: <https://bharatpe.com/about>

<sup>36</sup> Aparna Banerjea, "BharatPe's Ashneer Grover announces voluntary leave of absence till March-end", BusinessToday.In, available at: <https://www.businesstoday.in/latest/corporate/story/bharatpes-ashneer-grover-announces-voluntary-leave-of-absence-till-march-end-319588-2022-01-19> (Last modified 19 January 2022)

<sup>37</sup> The Economic Times, "Independent probe finds financial irregularities at BharatPe as pressure mounts on Ashneer Grover and wife", available at: [https://economictimes.indiatimes.com/tech/startups/bharatpes-independent-probe-hints-at-fraudulent-transactions-and-irregular-invoices/articleshow/89337193.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/tech/startups/bharatpes-independent-probe-hints-at-fraudulent-transactions-and-irregular-invoices/articleshow/89337193.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last modified 4 February 2022)

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Controls was named in these fake transactions. There were allegations of using company funds to pay personal staff and funding family trips abroad.<sup>38</sup>

- In February 2022, company let go off their Head of Controls based on these allegations.<sup>39</sup>
- Company settled matters with the DGGI by paying dues and penalties.
- Company appointed accounting giant to conduct an independent audit. Subsequently, a notice of board meeting was issued to discuss the audit report.<sup>40</sup>
- On March 1, the co-founder resigned as MD and from the Board. This was allegedly immediately after receiving board minutes that included “submission of PwC report regarding his conduct and considering actions based on it”, scheduled to be held later that day.
- The said co-founder later once again held talks with investors to sell his stakes at an alleged discounted and cut all ties. The offer was however denied.
- There have been several accusations between the founders, board, and investors.

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<sup>38</sup> InsideIIM.com, “Ye Sab Doglapan Hai! | The Ashneer Grover - BharatPe Controversy Case Study”, available at: <https://insideiim.com/ashneer-grover-bharatpe-controversy-case-study> (Last modified 7 May 2022)

<sup>39</sup> Times of India, “BharatPe sacks co-founder Ashneer Grover's wife over financial irregularities”, available at: <https://timesofindia.indiatimes.com/business/india-business/bharatpe-sacks-ashneer-grover-wife-madhuri-jain-cancels-esops/articleshow/89769387.cms> (Last modified 23 February 2022)

<sup>40</sup> Times of India, “Ashneer Grover and the BharatPe tussle explained”, available at: [http://timesofindia.indiatimes.com/articleshow/89425048.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=ppst](http://timesofindia.indiatimes.com/articleshow/89425048.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=ppst) (Last modified 8 February 2022)



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## 4.3. Housing.com

### About Company

Housing.com was one of India's fastest-growing start-up. Facing difficulties in finding a house for rent, the founders came up with the idea for this start-up. The platform provides an innovative real estate advertising platform for homeowners, landlords, developers, and real estate brokers. The founders consisted of a team of 13 members from IIT Bombay and launched the company in June 2012.

In June 2013, Housing.com started listing homes for rent in Mumbai and raised about Rs 16 crores from Nexus Venture Partners. An year later, the company raised a further capital of INR 115 crores and was valued at over INR 350 crores. In December 2014, the start-up further raised 570 crores and was valued at INR 1500 crore.

### Incidents Reported<sup>41 42 43</sup>

- It was reported that in 2014, there were signs of rift amongst founders over valuation, expansion plans and commitment. In March 2015, one of the founders took on one of their investors for allegedly poaching its employees. A threatening e-mail sent in this regard was leaked on the internet, leading to unwanted issues. This was followed by loss to the company in an acquisition due to increased valuation owing to the delay in decision making by the company.
- In April 2015, the founder who was involved with the above incident, resigned by way of a distasteful letter, and few days later apologised for the same and withdrew it.
- A few days later in May 2015, the founder announced his decision to give away his entire 4.57% stake to company employees and challenged the founders of some of the other start-ups to do the same. The next month, he reportedly posted the photograph

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<sup>41</sup> ET Bureau, "Had Rahul Yadav lost interest in Housing.com? *available at:* <https://economictimes.indiatimes.com/small-biz/startups/had-rahul-yadav-lost-interest-in-housing-com/articleshow/47904159.cms?from=mdr> (Last Updated: July 02, 2015)

<sup>42</sup> Aditi Shrivastava & Pankaj Mishra, ET Bureau, "Quikr in talks to buy Housing.com in cash and stock deal estimated at Rs 1,100 crore" *available at:* <https://economictimes.indiatimes.com/small-biz/startups/quikr-in-talks-to-buy-housing-com-in-cash-and-stock-deal-estimated-at-rs-1100-crore/articleshow/47871534.cms?from=mdr> (Last Updated: June 30, 2015)

<sup>43</sup> Aditi Shrivastava, ET Bureau, "Housing.com and PropTiger merge in an all-stock deal, raise \$55 million in fresh capital" *available at:* <https://economictimes.indiatimes.com/small-biz/startups/housing-com-and-proptiger-merge-in-an-all-stock-deal-raise-55-million-in-fresh-capital/articleshow/56435375.cms?from=mdr> (Last Updated: January 11, 2017)

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of another company's CEO with some remarks. In June 2015 the company was in talks with Quikr to get acquired for USD 175 million.

- In July 2015, the founder was fired by the board for his behaviour towards investors, ecosystem, and the media. The valuation of the company dropped from INR 1500 crore to 450 crores and eventually was merged with PropTiger.

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## 4.4. Zomato<sup>44 45</sup>

### About Company

Initially named as Foodiebay during its established in 2008, the start-up was renamed as Zomato during its launch in 2010. Its technology platform connects customers, restaurant partners and delivery partners, serving their multiple needs. In 2016, Zomato was valued at USD 1 billion. By 2018, the company was among top start-ups in India and operated in about 23 countries including India, Australia, and the USA. In 2021, Zomato made an imposing debut with about 66% premium.

### Incidents Reported<sup>46 47 48</sup>

#### About Blinkit – Zomato deal and Incidents leading to concerns

- Blinkit (formerly Grofers) an online grocery delivery platform started its quick commerce service with a 10-minute delivery promise in 2021. The company started processing over a million orders a week, across 12 cities in India under the service. Blinkit shortly thereafter received funding from its investors, including Zomato.
- In June 2021, Zomato had informed stock exchanges that its board had approved acquisition of Blinkit for USD 568 million. The transaction value was apparently 40% lower than Blinkit's last valuation of over USD 1 billion.
- Zomato's chief people officer, was elevated to the position of cofounder from her erstwhile CFO position prior to Zomato's USD1.1 billion IPO in July 2021. While Zomato's red herring prospectus, she was named as a KMP, no disclosure was made to SEBI.

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<sup>44</sup> Chiranjivi Chakraborty, ETMarkets.com, "Zomato's lax disclosure practice is more worrisome than co-founder's exit" available at : <https://economictimes.indiatimes.com/markets/stocks/news/zomatos-lax-disclosure-practice-is-more-worrisome-than-co-founders-exit/articleshow/86254007.cms?from=mdr> (Last Updated: Sep 16, 2021)

<sup>45</sup> BusinessToday.In, (Sep 18, 2021), "Zomato explains why it didn't inform about co-founder Gaurav Gupta's resignation to exchanges", available at: <https://www.businesstoday.in/latest/corporate/story/zomato-explains-why-it-didnt-inform-about-co-founder-gaurav-guptas-resignation-to-exchanges-307019-2021-09-18> (Updated Sep 18, 2021)

<sup>46</sup> Tapanjana Rudra, (04 Aug'22) "Zomato Issues Clarification On Reports Of It Moving To Multiple CEO Structure", available at: <https://inc42.com/buzz/zomato-issues-clarification-on-reports-of-it-moving-to-multiple-ceo-structure/> (Visited on October 3, 2022)

<sup>47</sup> Informist (Aug 1, 2022) "Zomato has nothing to hide when it comes to Blinkit deal, says MD", available at: <https://www.informistmedia.com/zomato-has-nothing-to-hide-when-it-comes-to-blinkit-deal-says-md/> (Visited on October 3, 2022)

<sup>48</sup> Varun Sood, "The trouble with Zomato's investments", available at: <https://www.livemint.com/companies/start-ups/the-trouble-with-zomato-s-investments-11640023945944.html> (Updated: 21 Dec 2021)

- On July 23, 2021, when Zomato came to be listed on the stock exchanges and SEBI LODR regulations became applicable, Zomato did not notify the SEBI/stock exchanges about changes in its KMP.
- Subsequently, when Blinkit (formerly Grofers) announced its instant commerce business model, Zomato came in as an investor and deal was announced in August 2021.
- It thereafter came to light that Zomato had not disclosed to regulators, the relationship between its co-founder and chief people officer and the acquired company, Blinkit. The conflict of interest was that the Zomato's co-founder and chief people officer was married to Blinkit's co-founder. Questions were also raised if the deal itself could have ever been entered into without even having made such a material disclosure.
- As there were no official comments from Zomato, within a week of deal announcement, there was an adverse impact on its stock price.
- In 2021, Grofers rebranded itself as 'Blinkit' to reflect its pivot to quick commerce.
- In August 2022, Zomato received its shareholders approvals for the deal and in its recent filing with BSE, Zomato addressed the issue of non-disclosure of conflict-of-interest allegations and clarified that the Zomato's chief people officer role did not have any possible effect on the transaction. Zomato explained that the difference in definitions of KMP under SEBI's Issue of Capital and Disclosure Requirements (ICDR), SEBI LODR and the Companies Act, 2013 led to the apparent confusion.
- Zomato claimed that its co-founder had waived her compensation for three years starting January 2022, and that Blinkit's co-founder also did not draw a salary for his role as founder and CEO.

#### **About Zomato – Departure of Co-Founder and Incidents leading to concerns**

- In September 2021, one of the co-founders exited the company. No disclosure was forthcoming from Zomato but was revealed in a blog post.
- SEBI and BSE had sought a clarification regarding the exit of the C-suite member and lack of disclosure in this regard.
- Zomato had clarified that that the co-founder was not a KMP, a promoter or a shareholder at the time of resignation, and hence did not warrant a disclosure under SEBI LODR. The said co-founder was however listed as a KMP in the red herring prospectus of the company at the time of its IPO.

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### **About Zomato – Shiprocket and Incidents leading to concerns<sup>49</sup>**

- Earlier in December 2021, Zomato completed an acquisition of 7.89% in Shiprocket, a logistics start-up. The start-up closed its third round of funding for the year at USD 185 million from investors that included Zomato.
- Soon after, a question regarding a possible ‘conflict of interest’ was raised. Zomato’s founder had earlier in January 2021 invested in Shiprocket in its initial round of funding, but there was no disclosure forthcoming in this regard at the time of announcement of Zomato’s deal with Shiprocket.
- Zomato’s founder later clarified that he had exited his personal stake in Shiprocket at a loss, even before Zomato got involved. As such the situation did not warrant for any disclosures.

### **About Zomato’s restructuring as Eternal and Incidents leading to concerns<sup>50 51</sup>**

- Zomato’s internal communication that suggested that the company was looking to adopt a multiple-CEO structure for its business verticals under the name ‘Eternal’ to focus on profitability and unit economics in the long run, came to be leaked.
- Earlier in August 2022, SEBI once again sought out a clarification from Zomato regarding this internal restructuring announcement and lack of disclosure in that regard. Zomato clarified that the announcement was not ‘material’ and as such did not mandate any disclosure.
- Later in August 2022, went on to publicly announce that it was aiming to rename itself as ‘Eternal Ltd’ and remodel its business structure and appoint 4 CEOs for its existing businesses.

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<sup>49</sup> SHILPA PHADNIS/TNN, “Zomato's funding of Shiprocket generates controversy” available at: <https://timesofindia.indiatimes.com/business/india-business/zomatos-funding-of-logistics-co-shiprocket-sparks-row/articleshow/88216849.cms> (Updated: Dec 11, 2021)

<sup>50</sup> Deepsekhar Choudhury, (August 4, 2022), “SEBI asks Zomato to clarify ‘Eternal’ restructuring” available at: <https://www.moneycontrol.com/news/business/sebi-asks-zomato-to-clarify-eternal-restructuring-8950981.html> (Visited on October 3, 2022)

<sup>51</sup> Vivek Dubey, (August 29, 2022), “Zomato's rebranding as 'Eternal' is an internal identity, clarifies CEO Deepinder Goyal” available at: <https://www.businesstoday.in/latest/corporate/story/zomatos-rebranding-as-eternal-is-an-internal-identity-clarifies-ceo-deepinder-goyal-345886-2022-08-29> (Updated Aug 29, 2022)

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## 4.5. Zilingo

### About Company

Zilingo is a B2B technology platform that powers the global apparel supply chain with innovative solutions for production, sourcing, and trade. Zilingo was founded in 2015, with its headquarters in Singapore, with a vision to establish a connected and transparent supply chain within everyone's reach. The e-commerce platform for a few years also had made a jump into the B2C category, but later repositioned itself to B2B platform. The start-up was once touted as one of the biggest success stories to emerge from Southeast Asia and Singapore.

### Incidents Reported<sup>52 53 54 55 56</sup>

- In the early years, between 2017 and 2019, in pursuit of sales, the company allegedly burnt cash quickly, while jumping from one strategy to another, even if financial benefits were questionable. Instances of expenditure of USD 1 million towards a 3-day extravaganza for 9 social-media influencers to Morocco, subsidising 2% to 4% discount for transactions resulting in effectively paying merchants to trade with each other with no fees paid to Zilingo and others, were brought to light.
- In early 2019, Zilingo raised USD 226 million, lifting its valuation to USD 970 million.
- In July 2019, a former MD and Asia-Pacific head of technology investment banking for Citigroup Inc., joined Zilingo as its first chief financial officer.

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<sup>52</sup> Binu Paul, May 29, 2022, "How Zilingo's Troubles Bring to the fore Governance Issues at Start-ups" available at: <https://www.businesstoday.in/magazine/corporate/story/how-zilingos-troubles-bring-to-the-fore-governance-issues-at-start-ups-333472-2022-05-13> (Visited on October 3, 2022)

<sup>53</sup> Press Trust of India, "Corporate Governance In Focus Now; Startups Can Create 100 Million Jobs: Sequoia MD Rajan Anandan" available at: <https://www.outlookindia.com/business/startups-sequoia-capital-zilingo-corporate-governance-in-focus-now-startups-can-create-100-million-jobs-sequoia-md-rajan-anandan-news-203756> (Updated: 21 June 2022)

<sup>54</sup> HT Bloomberg (Aug 04, 2022) "Why is former CEO blamed for the economic turmoil in startup she co-founded?" available at: <https://www.hindustantimes.com/business/why-is-former-ceo-ankiti-bose-blamed-for-the-economic-turmoil-in-startup-she-cofounded-101659599567496.html>

<sup>55</sup> Bloomberg, "Zilingo board is said to discuss replacing CEO Ankiti Bose after suspension" available at: <https://www.livemint.com/companies/news/zilingo-board-is-said-to-discuss-replacing-ceo-ankiti-bose-after-suspension-11650357982401.html> (Updated: 19 Apr 2022)

<sup>56</sup> Parul, "Zilingo fraud saga threatens India's great startup run", (April 30, 2022) available at: <https://smefutures.com/zilingo-fraud-saga-threatens-indias-great-startup-run/> (Visited on October 3, 2022)



- In October 2019, Zilingo announced that its expansion of business to the US at a cost of USD100 million, taking advantage of the former President's trade war, only to less than a year later, shut its US operations.
- By November 2019, board learnt that the company was guzzling money of about USD 7 - 8 million a month, more than they had expected. The USD 226 million Zilingo had raised from investors in early 2019 was expended in less than two years.
- In 2020, during the pandemic Zilingo's deal in April to supply 10 million KN-95 masks, valued at USD 22.5 million, to India, fell and the company was entangled in a legal battle with the Indian government. It was claimed that the company failed to deliver 3.2 million of the masks on time.
- Covid-19 pandemic took a toll on business and revenue fell by about a third in fiscal 2021 to roughly \$40 million. The CEO and co-founder took a pay cut of about 30%, while the company laid off staff.
- In September 2020, the CFO left Zilingo to rejoin Citigroup.
- By November 2020, Zilingo had barely enough cash to last a month. A group of existing investors stepped in to rescue the company by purchasing USD 25 million of convertible notes.
- In January 2021, there was an informal suggestion for CEO to step down.
- The mounting pressure to stay afloat was testing relationship between the co-founders over the future of the company.
- In July 2021, the company took a debt of USD40 million, and subsequent efforts to raise money from private equity and venture capital firms failed.
- The company had been trying to raise as much as USD 200 million through another round of funding. After 8 weeks of due diligence in December 2021, the investor raised questions about the company's financial practices. Zilingo had made accounting decisions to make its revenue look larger.
- In March 2022, investors received complaints about alleged mismanagement and financial irregularities which appeared to require investigation. With the support of the majority investor shareholders, an independent forensic investigations consultancy was appointed to look into the allegations and the CEO and co-founder was placed under suspension till May 2022.
- Several allegations were made regarding merchant fraud in Indonesia, company's unaudited financial reports, use of non-SaaS platform for operations in India, Indonesia

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and Thailand, lack of clear directions to sales and procurement teams, quality checks, tech platform and coherent planning, revenue leakage, and rampant corruption amongst sales personnel to the detriment of the company.

- Within weeks, creditors recalled loans, more than 100 staff left the company and the CEO was fired.
- The CEO and co-founder called out the process of termination as an “unfair witch hunt” and denied allegations. Subsequently, she levelled harassment complaints against some top company officials and is believed to be in the process of initiating lawsuit and initiating buyback of investor stake.
- Certain other directors resigned from board thereafter.
- As of August 2022, for two years now the company has failed to file its annual financial statements. The auditor is yet to sign off the company’s FY20 results.

## 4.6. Oyo<sup>57</sup>

### About Company

In 2012, the founder launched Oravel Stays to enable the listing and booking of budget accommodations. After months of research and experiencing various bed and breakfast homes, guest houses, and small hotels across India, he pivoted Oravel to OYO in May 2013. From starting as a budget hotel chain to being a real estate company with businesses ranging from hospitality to coworking to cloud kitchen to coffee chain, OYO has had an eventful journey.

Oyo is trying to expand globally and now offers more than a million rooms in 80 countries. The start-up reached up to 3.5 times growth in revenue when it was valued at USD 10 Billion in October 2019. The funding marks OYO's presence as India's most successful unicorn.

Further, being backed by global investor giants Oyo has grown into one of India's most valuable private companies and aims to be the world's largest hotel chain by 2023. With its latest round of funding in January 2022, Oyo raised a funding of USD 3.1 billion in total. The company has seen 22 funding rounds to date.

### Incidents Reported<sup>58 59 60 61</sup>

- The company filed its DRHP for a USD 1.2 billion IPO in September 2021. As per the company's DRHP, OYO total income fell by nearly 70% in FY21 and stands at INR 4,157.38 crore. The losses decreased to INR 3,943.8 crore in FY21 due to fall in

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<sup>57</sup> Anubhuti Matta, "We already have a public company mindset: Steve Albrecht of Oyo", (September 21, 2022) *available at:* <https://www.forbesindia.com/article/news/we-already-have-a-public-company-mindset-steve-albrecht-of-oyo/79995/1> (Updated: September 21, 2022)

<sup>58</sup> Anumeha Chaturvedi, ET Bureau, "Oyo's aggrieved hotel owners planning to approach Sebi after co files DRHP papers", *available at:* <https://economictimes.indiatimes.com/industry/services/hotels/-restaurants/oyos-aggrieved-hotel-owners-planning-to-approach-sebi-after-co-files-drhp-papers/articleshow/86684370.cms?from=mdr> (Last Updated: October 01, 2021)

<sup>59</sup> Vindu Goel and Karan Deep Singh, The New York Times, "At SoftBank's Jewel in India: 'Toxic' Culture and Troubling Incidents" (Jan. 2, 2020), *available at:* <https://www.nytimes.com/2020/01/02/technology/oyo-softbank-india.html> (Visited on October 3, 2022)

<sup>60</sup> IANS, "Hotel and restaurant body asks Sebi to axe Oyo's IPO citing massive losses", *available at:* [https://www.business-standard.com/article/companies/hotel-and-restaurant-body-asks-sebi-to-axe-oyo-s-ipo-citing-massive-losses-122051101449\\_1.html](https://www.business-standard.com/article/companies/hotel-and-restaurant-body-asks-sebi-to-axe-oyo-s-ipo-citing-massive-losses-122051101449_1.html) (Last Updated at May 11, 2022)

<sup>61</sup> Manu Kaushik, "Mystery of the Oyo Rooms" (March 08, 2020), *available at:* <https://www.businesstoday.in/magazine/cover-story/story/mystery-of-the-oyo-rooms-ritesh-agarwal-investors-business-model-250370-2020-02-18> (Visited on October 3, 2022)

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company expenses. Due to numerous layoffs, company's expenses on employee benefits also declined.

- The impending IPO was said to be on the back foot as Federation of Hotel & Restaurant Associations of India (FHRAI) the regulatory body of the hotels, had written to SEBI, charging the company over alleged fraudulent and unfair business practices. Oyo rooms has been facing challenges owing to protests from hotel owners over unpaid dues, unspecified deductions and imposing hefty fines. OYO has also been called out for its unethical growth strategies including listing unavailable or unlicensed rooms, employ corrupt practices, employee frauds, criminal complaints against OYO, etc. There were also complaints against Oyo before CCI.
- In September 2022, OYO filed an update to its draft red herring prospectus (DRHP) claiming to be Ebitda-positive as of the quarter ended June 2022.
- This was however followed by a cut in its valuation by its largest investor to USD 2.7 billion from the USD 9.6 billion in 2021.
- Oyo, formally known as Oravel Stays Ltd., filed a fresh round of financial documents with India's market regulator as it plans for a stock-market debut after cost cuts and recovery in travel helped it reduce losses. The company expects approval from SEBI for its public debut soon.

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## 4.7. Satyam Computers Ltd.

### About Company

Satyam Computer Services Ltd was founded in 1987 in Hyderabad. Following the initial success, the company got listed and came out with its IPO in 1991 which further allowed the company to become one of the top players in the market. It is reported that the firm was worth \$1billion in 2003 and crossed the \$2billion mark in 2008. Satyam soon became the fourth largest IT software exporter in the industry after TCS, Wipro, and Infosys.

### Incidents Reported<sup>62 63 64 65 66 67 68</sup>

- As per information available in public domain, late in 2008, the board of Satyam decided to takeover Maytas Infrastructure Ltd and Maytas Properties Ltd., companies which were owned by one of the promoters and his family. The decision did not go well with the shareholders and thus was reversed shortly thus negatively impacting its share price.
- In the same year, World Bank had imposed severe penalties/ restrictions on the company.
- In early 2009, the said promoter of the company resigned confessing having manipulated accounts of Rs.7000 crores. Later, it came to light that, the said promoter along with the company's global head for internal audit had started

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<sup>62</sup> Aron Almeida, "Satyam Scam – The Story of India's Biggest Corporate Fraud!" (January 3, 2022) *available at*: <https://tradebrains.in/satyam-scam/> (Visited on October 14, 2022)

<sup>63</sup> Hindustan Times | By HT Correspondent, New Delhi "Satyam scam: All you need to know about India's biggest accounting fraud" *available at*: <https://www.hindustantimes.com/business/satyam-scam-all-you-need-to-know-about-india-s-biggest-accounting-fraud/story-YTfHTZy9K6NvsW8PxIEEYL.html> (Updated on Apr 09, 2015)

<sup>64</sup> Abhinav Mahlawat, "Critical Analysis Of Regulatory Failures In Satyam Computer Scam", *available at*: <https://www.legalserviceindia.com/legal/article-8620-critical-analysis-of-regulatory-failures-in-satyam-computer-scam.html> (Visited on October 14, 2022)

<sup>65</sup> Oishika Banerji of Amity Law School, Kolkata "Case study of the Satyam fraud case", (March 16, 2022) *available at*: <https://blog.ipleaders.in/case-study-satyam-fraud-case/> (Visited on October 14, 2022)

<sup>66</sup> "Satyam Scam: Everything that you need to know" *available at*: <https://indianexpress.com/article/india/india-others/satyam-scam-all-you-need-to-know/> (Updated: April 9, 2015)

<sup>67</sup> R.Keerthana, "The Satyam Scandal: True Lies" *available at*: <https://www.thehindu.com/in-school/news-bytes/1/article7109243.ece> (Updated: April 16, 2015)

<sup>68</sup> LexForti Legal News Network, "Satyam Scandal: The biggest issue revolving around Corporate Governance" (April 23, 2020) *available at*: <https://lexforti.com/legal-news/satyam-scandal-the-biggest-issue-revolving-around-corporate-governance/> (Visited on October 20, 2022)

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inflating revenues and profits of the company since 1999 by creating fake bank statements with cash balance, fake invoices, fake customer identities, etc.

- This enabled the company easy access to loans and led to rise in its share prices and the promoter took advantage by selling his shares at such higher prices. The said promoter further went on to create records of fake employees and him withdrawing huge sums by way of their salaries.
- The sums so diverted from the company were invested by the promoter in real estate business and a real estate company named Maytas was setup.
- Over a decade, these practices led to hugely overstated assets and understated liabilities.
- Reportedly, the matter came to light through a whistle-blower who wrote to one of the directors of the company who shared it with another director and one of the partners of the company's auditors. However, it was assured to them that there was no truth in the allegations.
- As a last resort to bridge the gap in financial figures which had accumulated over the years, the takeover of Maytas by Satyam was attempted but failed due to shareholders' dissent and thus led to the ultimate revelation of the debacle.
- This led to sudden fall in share prices of the company, promoter of the company being arrested by police and investigated by CBI, suspension of license of the auditors of the company, replacement of Board by the Government and ultimately sale of company at one-third of its value which was before the fraud came to light.

## 4.8. Winsome Diamonds and Jewelers<sup>69 70</sup>

### About Company

Winsome Diamonds and Jewellery Limited was a listed company. It was sanctioned high credit limits by various banks in the form of standby letters of credit. These LCs were similar to guarantees in favour of international bullion banks such as Standard bank – South Africa, Standard Chartered – London, and Scotia bank, which supplied gold to Winsome Group. The letter of credit was essentially an understanding between Indian banks and the international bullion banks that, if the Winsome Group failed to pay the loans, the Indian lenders would pay for the gold purchase.

### Incidents Reported<sup>71 72 73 74</sup>

- As per media reports, various banks had issued standby letters of credit to secure the repayment obligations of Winsome Diamonds under precious metal facilities. Winsome had used the facility to import gold which was used to manufacture and export jewelry to companies overseas.
- It is reported that the promoter of the company used seven companies including Winsome Diamonds and Jewelry Limited, to raise Rs 4687 crore as buyer's credit.

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<sup>69</sup> CA Naresh Kataria, "Corporate Frauds In India - Part VI" (May 04, 2021) available at: <http://www.lawstreetindia.com/experts/column?sid=557> (Visited on October 14, 2022)

<sup>70</sup> Danish Khan, "Winsome Diamonds' Mehta family face allegations of \$1 billion fraud, have declared assets worth only \$146 million" (October 08, 2022) available at: <https://www.moneycontrol.com/news/world/winsome-diamonds-mehta-family-face-allegations-of-1-billion-fraud-have-declared-assets-worth-only-146-million-9294721.html> (Visited on October 14, 2022)

<sup>71</sup> Rashmi Rajput & Sugata Ghosh, ET Bureau, "Winsome group money trail leads to Macau" available at: <https://economictimes.indiatimes.com/news/politics-and-nation/winsome-group-money-trail-leads-to-macau/articleshow/69764693.cms> (Last Updated: Jun 13, 2019)

<sup>72</sup> Sugata Ghosh, ET Bureau, "SFIO gets forensic auditors to unearth Winsome Group's complex dealings" available at: <https://economictimes.indiatimes.com/markets/stocks/news/sfio-gets-forensic-auditors-to-unearth-winsome-groups-complex-dealings/articleshow/82813368.cms> (Last Updated: May 21, 2021)

<sup>73</sup> CA Naresh Kataria, "Corporate Frauds In India - Part VI" (May 04, 2021) available at: <http://www.lawstreetindia.com/experts/column?sid=557> (Visited on October 14, 2022)

<sup>74</sup> Danish Khan, "Winsome Diamonds' Mehta family face allegations of \$1 billion fraud, have declared assets worth only \$146 million" (October 08, 2022) available at: <https://www.moneycontrol.com/news/world/winsome-diamonds-mehta-family-face-allegations-of-1-billion-fraud-have-declared-assets-worth-only-146-million-9294721.html> (Visited on October 14, 2022)



- As per news articles, in November 2012, the said promoter expressed inability to pay back the loan stating that the group's customers in the Gulf region were unable to pay him as they were hit by derivatives and commodities trading losses of \$1 billion. It is reported that in March and April 2013, Winsome defaulted to the tune of \$774 million. Subsequently, the promoter resigned from the company and left country.
- The Central Bureau of Investigation (CBI) in 2014, investigated the case for three years based on a complaint from various banks. Later, some news<sup>75</sup> and web articles stated that banks had alleged that several entities of the group were carrying round tripping of transactions.
- It is alleged that the company was raising fictitious export invoices, without any underlying actual export transactions.
- Reportedly, based on these fictitious exports, the company was withdrawing funds against sanctioned credit limits. Therefore, export proceeds against these invoices were not remitted to India or received in accounts of group entities, which were mostly entities incorporated in foreign jurisdictions.
- These revelations allegedly pointed towards the conclusion that the overseas companies were set up with an intent to divert money taken from the banks.
- As per a web article<sup>76</sup>, it is stated that an ED investigation into Winsome Diamonds found that the company allegedly diverted at least \$ 750 million (Rs 5,175 crore) to multiple entities, directly or indirectly controlled by its promoter, in other countries through dummy companies.
- Total default amount of loan is reportedly around Rs. 8000 crores while collateral security provided by company to banks is only about Rs.250 crores. NCLT has ordered liquidation of the company.<sup>77</sup>

<sup>75</sup> Khushboo Narayan, "ED registers two new cases against Winsome Diamonds, former promoter" (June 29, 2020) *available at*: <https://indianexpress.com/article/business/companies/ed-registers-two-new-cases-against-winsome-diamonds-former-promoter/> (Visited on October 20, 2022)

<sup>76</sup> CA Naresh Kataria, "Corporate Frauds In India - Part VI" (May 04, 2021) *available at*: <http://www.lawstreetindia.com/experts/column?sid=557> (Visited on October 14, 2022)

<sup>77</sup> NCLT Liquidation Order in the matter of M/s Winsome Diamonds and Jewellery Limited (September 01, 2020) *available at*: <https://ibbi.gov.in/uploads/order/7572b5650e318dd6406d86f720a95d7f.pdf> (Visited on October 20, 2022)

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- CBI<sup>78</sup>, SFIO and ED are reportedly investigating the promoters, company and its subsidiaries.
  - It is reported that the High Court in London has issued a worldwide freezing order<sup>79</sup> against the promoter of the company who face allegations of committing a \$1 billion fraud through complex transactions. The said promoter is seeking to reverse the freezing order and is contesting the claim.

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<sup>78</sup> Press Trust of India, “CBI books absconding diamantaire ...Winsome Diamonds in a fresh case” (May 09, 2019) *available at*: <https://www.firstpost.com/business/cbi-books-absconding-diamantaire-jatin-mehta-jordanian-national-winsome-diamonds-in-a-fresh-case-6603471.html> (Visited on October 20, 2022)

<sup>79</sup> Ananya Bhardwaj, “Winsome Diamonds case — why a UK court passed ‘worldwide freezing order’ against Indian merchant” (1 August, 2022) *available at*: <https://theprint.in/india/winsome-diamonds-case-why-a-uk-court-passed-worldwide-freezing-order-against-indian-merchant/1063686/> (Visited on October 20, 2022)

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## 4.9. Unitech India<sup>80 81</sup>

### About Company

Unitech India was India's largest and one of the first listed real-estate company in the year 2007 with a nation-wide presence and primarily engaged in constructing and selling premium houses. Prior to this, the real estate business was dominated by unorganised builders. In 2007-08, the company was valued at Rs.1.43 lakh crores.

### Incidents Reported<sup>82 83</sup>

- The company took a downturn in the year 2008 due to global economic slowdown.
- While trying to recover from downturn in the real-estate sector, Unitech tried to foray into an unconnected sector of Telecom in 2009 by setting up a telecom service company, Uninor, a joint venture with Norway's Telenor.
- Unitech Wireless, one of the subsidiaries of Unitech bid and secured a Pan-India telecom licence for 2G spectrum. However, in 2011, the promoter and managing director of the company was arrested, along with others, for the alleged involvement in the 2G spectrum scam and Uninor's licence was cancelled.
- Later, in the same year, Unitech sold its 67% stake in the company to Telenor and the joint venture was terminated.
- The decision of Unitech to enter unrelated business of telecom proved fatal as Uninor, the joint venture of Unitech and Telenor had financed the cost of licenses by taking bank loans against security of licenses. However, due to cancellation of licenses, the

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<sup>80</sup> CA Naresh Kataria, "Corporate Frauds In India - Part V" (May 04,2021) *available at:* <http://www.lawstreetindia.com/experts/column?sid=540> (Visited on October 14, 2022)

<sup>81</sup> Kailash Babar, ET Bureau, "The rise and stunning fall of Unitech" *available at:* <https://economictimes.indiatimes.com/news/company/corporate-trends/the-rise-and-stunning-fall-of-unitech/articleshow/61990781.cms?from=mdr> (Last Updated: December 09, 2017)

<sup>82</sup> Sunita Mishra, The Story Of Unitech Empire: Rise And Fall – PropTiger (October 05 2021) *available at:* <https://www.proptiger.com/guide/post/how-the-unitech-empire-crumbled-like-a-highrise-of-cards> (Visited on October 20, 2022)

<sup>83</sup> Press Trust of India, "Unitech loses property in Noida over non-payment of dues" *available at:* <https://www.indiatoday.in/business/story/noida-authority-cancels-allotment-of-unitech-property-over-non-payment-of-dues-1614250-2019-10-30> (Updated: March 24, 2022)

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security had no value and Uninor defaulted on loan repayments. Later on, the joint venture was terminated. Thus, the company lost all amounts invested in startup costs including that on infrastructure.

- Due to ongoing liquidity crisis, the company's construction work at most of the sites remained stalled. Reportedly, more than 20, 000 homebuyers were not handed over their flats. This led to filing of multiple cases by homebuyers and small investors against the company.
- The real estate sector was badly affected in 2016 with newly enacted RERA, demonetization, and liquidity issues due to held-up stocks of built and under construction properties.
- In 2017, NCLT ordered the suspension of all the 8 directors of the company on allegations of fraud and mismanagement and authorized the centre to appoint 10 nominees on its board. However, the Supreme Court stayed this order since SC was hearing this matter.
- The Supreme Court in January 2020<sup>84</sup> allowed the Centre to take total management control of Unitech and appointed a new board of nominee directors and a new CMD was appointed after the Central government superseded the Unitech board.
- Adding to the woes of the company, the Noida Authority reportedly stated that it had cancelled the allotment of a group housing property to Unitech due to alleged non-payment of dues worth Rs. 1203 crore after repeated notices were sent to company to clear the dues but the company failed to give any satisfactory explanation to the authority within stipulated time.
- It was also alleged that the company carried certain property development without getting the map cleared by the authority and in violation of the Noida Building Regulation, 2010. The group was also accused of trying to execute agreement to sell certain property with third parties without seeking the authority's permission.
- It is reported that after a SEBI probe in the scrip of Unitech during the period October 2008 to March 2009, SEBI had ordered levy of fines on five entities (including

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<sup>84</sup> Vandana Ramnani, "Supreme Court approves takeover of Unitech's management by Centre" (January 20, 2020) *available at*: <https://www.moneycontrol.com/news/business/real-estate/supreme-court-approves-takeover-of-unitechs-management-by-centre-4835521.html> (Visited on October 20, 2022)

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promoter entities) for violating regulatory norms and violation of the PIT (Prohibition of Insider Trading) rules in the matter of Unitech Ltd.<sup>85</sup>

- As per recent news, two years after the Supreme Court order, half of the directors on the Board had resigned and at least two of them stated that they resigned as “*things were not moving on the ground*”.<sup>86</sup>
- Reportedly<sup>87</sup>, the ED had recently filed a fresh charge sheet before a court regarding its money laundering probe against Unitech and its ex-promoters, who are jailed since 2017 and who have been accused of allegedly siphoning off home buyers’ money.

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<sup>85</sup> Livemint (With PTI inputs) “Unitech Case: Sebi imposes penalty worth ₹27 lakh on 5 entities. Here's why” available at: <https://www.livemint.com/news/india/unitech-case-sebi-imposes-penalty-worth-rs-27-lakh-on-5-entities-here-s-why-11664557451916.html> (Updated: 30 Sep 2022)

<sup>86</sup> ET Online, “As progress in delivery of flats lags, 50% directors of Unitech board resign” (Last Updated: Sep 02, 2022) available at: <https://economictimes.indiatimes.com/industry/services/property/-cstruction/as-progress-in-delivery-of-flats-lags-50-directors-of-unitech-board-resign/articleshow/93941644.cms?from=mdr> (Visited on October 20, 2022)

<sup>87</sup> PTI, “Supreme Court asks Unitech board to upload on its website timeline for completion of stalled projects” available at: <https://economictimes.indiatimes.com/industry/services/property/-cstruction/supreme-court-asks-unitech-board-to-upload-on-its-website-timeline-for-completion-of-stalled-projects/articleshow/93621842.cms?from=mdr> (Last Updated: Aug 17, 2022)

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## 4.10. Kingfisher Airlines<sup>88 89 90</sup>

### About Company

Kingfisher Airlines Limited was a wholly owned subsidiary of United Breweries Limited. The airlines started its operations in 2005 and international operations in 2008. It was a full-service low-cost airline providing some of the high-end services.

### Incidents Reported<sup>91</sup>

- It is reported that since beginning of its operations, the company was in losses.
- The massive expansion of airlines was stated to be financed through loans from banks and not through revenues.
- The company did not achieve expected growth. Besides, it also faced tough competition from other low-cost airlines.
- After acquiring Air Deccan in 2007, it is stated that company suffered a loss of more than Rs 1000 crores for 3 years continuously.
- It is reported that in 2011-12, the promoter of company withdrew a large sum of money i.e. Rs 33.46 crore per annum from the company as salary. The extravagant ways of promoter were amply reported in various media reports.
- In January 2012, State Bank of India, the largest creditor of the company, declared the loan to company as non-performing asset (NPA).
- The company also failed to pay fuel costs and aircraft lease rental dues. Hence, the airlines was grounded. Directorate General of Civil Aviation suspended the flying

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<sup>88</sup> "Cases of Corporate Governance Failure" available at: [https://www.sbsc.in/pdf/resources/1586873135\\_Audit\\_10.pdf](https://www.sbsc.in/pdf/resources/1586873135_Audit_10.pdf) (Visited on October 14, 2022)

<sup>89</sup> "Where are Vijay Mallya and Nirav Modi? Status of extradition cases before UK PM's India visit" available at: <https://timesofindia.indiatimes.com/business/india-business/where-are-vijay-mallya-and-nirav-modi-status-of-extradition-cases-before-uk-pms-india-visit/articleshow/90950706.cms> (Updated: April 20, 2022)

<sup>90</sup> Veritas Investment Research, "A Pie in the Sky", (September 12, 2011) available at: <https://groups.google.com/group/dpstock/attach/b90eb914c8e4d53a/UB%20Holdings%20Ltd%20doc%20-%20September%2012.pdf?part=0.1>

<sup>91</sup> "A timeline showcasing Vijay Mallya's bank-loan debacles and downfall of Kingfisher Airlines", (February, 2017) available at: <https://indianexpress.com/article/business/business-others/a-timeline-of-vijay-mallyas-bank-loan-debacles-and-downfall-of-kingfisher-airlines-4512983/> (Updated: February 27, 2017)

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license of the company in October 2012. Subsequently, the company stopped paying salaries to its employees.

- As per news, the airlines owed Rs3000 crore as salary to its employees and also owed US\$1Billion to banks like SBI, etc. as loan.
- Reportedly, due to non-payment of salaries, the employees of the company went on strike. Allegedly, various stakeholders such as employees, tax authorities and creditors filed Court cases against the company.
- The airlines was also undergoing investigation for possible money laundering and financial violations.
- As per news reports<sup>92</sup>, an SFIO probe alleged that the company understated its losses upto 7151.18 crore for FY 2008-09 TO 2011-12 by changing some accounting practices in violation of accounting standards. Some other news cited bad governance and absence of professional management as the reasons behind the troubles of the airlines company.<sup>93</sup>
- As per news, CEO of the company resigned in 2014.
- In 2015, Service Tax Department approached Bombay High Court seeking seizure of promoter's passport as the airlines had not paid 115 Crore of dues.
- In February 2016, SBI led consortium of 17 lender banks moved DRT to attach the promoter of the company. Thereafter, the syndicate of banks approached the Supreme Court of India to prevent the promoter from leaving the country. However, the promoter had already left the country.
- In 2017, India requested UK to extradite the promoter of the company and was ordered to be extradited.

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<sup>92</sup> [Khushboo Narayan](https://indianexpress.com/article/business/companies/vijay-mallya-kingfisher-airlines-kingfisher-tweaked-its-accounts-to-understate-losses-by-rs-7151-cr-sfio-4881227/), "Kingfisher tweaked its accounts to understate losses by Rs 7,151 cr: SFIO" (October 2017) available at: <https://indianexpress.com/article/business/companies/vijay-mallya-kingfisher-airlines-kingfisher-tweaked-its-accounts-to-understate-losses-by-rs-7151-cr-sfio-4881227/> (Updated: October 9, 2017)

<sup>93</sup> Press Trust of India, "Kingfisher failed due to bad governance: Moily", available at: [https://www.business-standard.com/article/companies/kingfisher-failed-due-to-bad-governance-moily-112022200216\\_1.html](https://www.business-standard.com/article/companies/kingfisher-failed-due-to-bad-governance-moily-112022200216_1.html) (Last Updated at January 20, 2013)



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## 4.11. Five Core Electronics Ltd.<sup>94 95 96</sup>

### About Company

Five Core Electronics Ltd. was an SME in the business of public address systems (microphones, amplifiers, horns) in India and claimed presence in 56 countries across 6 continents. It also claimed that its EBITDA and PAT grew 295% and 426% YoY in 2018 and that it had a credit rating of “BBB-” from CRISIL. It is reported that in May 2018, CRISIL revised its outlook from “stable” to “positive” for company’s bank loans amounting to INR 91 Crore. It is stated that its credit rating was valid till March 2019. The company’s IPO in May 2018 to raise INR46 crore, saw a subscription of 177%.

### Incidents Reported

- As per news reports, the company secretary of the company resigned in March 2019 claiming that the promoter was absconding and that there was no activity in the company.
- Reportedly, its independent directors were still not able to trace the promoters who had allegedly fled and all key managerial personnel including the MD had resigned.
- As per economic times news dated 23 July 2020, market regulator SEBI, in an interim order<sup>97</sup>, restrained Five Core Electronics Ltd and its promoters from the securities market till further orders for alleged violation of market norms and misutilization of the IPO proceeds.
- It had asked the National Stock Exchange (NSE) to appoint an independent auditor or audit firm within 30 days for conducting a detailed forensic audit of the company's books of accounts to confirm misutilization of the IPO proceeds, the news stated.

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<sup>94</sup> “CBI files case against firm for cheating bank” (2021) available at: <https://www.thehindu.com/news/national/cbi-files-case-against-firm-for-cheating-bank/article34782619.ece> (Updated on June 10, 2021)

<sup>95</sup> PTI “Sebi bars Five Core Electronics, promoters from securities market till further orders” (2020) available at: [https://economictimes.indiatimes.com/markets/stocks/news/sebi-bars-five-core-electronics-promoters-from-securities-market-till-further-orders/articleshow/77134683.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/markets/stocks/news/sebi-bars-five-core-electronics-promoters-from-securities-market-till-further-orders/articleshow/77134683.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last Updated: July 23, 2020)

<sup>96</sup> Aditya Jaiswal, “How Shady Corporate Governance Has Given India Inc. a Bad Name” (May 23, 2019) available at: <https://www.capitalmind.in/2019/05/guest-post-how-shady-corporate-governance-has-given-india-inc-a-bad-name/> (Visited on October 14, 2022)

<sup>97</sup> Securities and Exchange Board of India Interim Order Under Sections 11, 11(4) AND 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Five Core Electronics Limited (WTM/GM/CFD/19/2020–21) (July 23, 2020) available at: <https://nsdl.co.in/downloadables/pdf/2020-0102-Policy-SEBI%20Order%20Dated-July%2023,%202020.pdf> (Visited on October 14, 2022)

- Reportedly, SEBI had barred it from the securities market and from being associated with any SEBI-registered intermediary or any listed entity and asked not to dispose of, sell or alienate their assets or divert funds, till further orders and asked them to extend necessary cooperation to the auditor, who was required to submit its report within 3 months. Further, confirmatory order was issued by SEBI on 8 July, 2021, wherein the directions issued in the interim order were confirmed<sup>98</sup>.
- According to another news article dated 10 June, 2021 published in The Hindu, The Central Bureau of Investigation (CBI) had registered a case against Five Core Electronics Limited and others for allegedly cheating the Union Bank of India of ₹51.92 crore.
- As per news reports, SEBI noted that it appears that the company and its promoters have mis utilised the funds amounting to Rs 46.66 crore raised through the initial public offering (IPO) and "prima facie", there was an intent to defraud the investors and the firm had failed to comply with provisions of the LODR regulations.
- Reportedly, the accused had approached the Bank of Baroda in 2015 for taking credit facilities. Later, the company failed to repay the dues and the account was classified as non-performing asset in June 2019. Allegedly, promoters of company were named as the accused in FIR filed by CBI.
- News articles state that the bank found that the Directorate of Revenue Intelligence had conducted a raid in February 2019 and that the company promoters and directors were abroad.
- Reportedly, a forensic audit of the company's finances revealed that the funds borrowed from the bank were used by the directors for alleged creation of personal assets. They were involved in rotating funds among the company's sister concerns, besides discrepancies observed in export bills and invoices. During an inspection in April 2019, the bank found that the company's unit was locked.
- The independent directors had quit and filed a complaint regarding unethical behavior of the company's management with the National Stock Exchange (NSE) which consequently suspended trading in securities of the company.

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<sup>98</sup> SEBI Confirmatory Order in the matter of Five Core Electronics Limited (WTM/GM/CFID/20/2021-22) (Jul 08, 2021) *available at*: [https://www.sebi.gov.in/enforcement/orders/jul-2021/confirmatory-order-in-the-matter-of-five-core-electronics-limited\\_50970.html](https://www.sebi.gov.in/enforcement/orders/jul-2021/confirmatory-order-in-the-matter-of-five-core-electronics-limited_50970.html) (Visited on October 14, 2022)

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- Presently, the company is undergoing Corporate Insolvency Resolution Process.

The next Chapter analyses the common areas where aforesaid companies faltered in terms of corporate governance and how such lapses lead to their failure.

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## 5. Lessons & Learnings from Corporate Governance Failure instances

*#Failure is a great teacher, and I think when you make mistakes and you recover from them and you treat them as valuable learning experiences, then you've got something to share.*

*Steve Harvey*

# [https://www.brainyquote.com/quotes/steve\\_harvey\\_429810](https://www.brainyquote.com/quotes/steve_harvey_429810)

Corporate failures invariably result in humongous costs and irreversible damage to the economy and country as a whole. However, the lessons learnt from such failures are invaluable and can be used by organizations to avert occurrence of similar events as well as to preempt and plug the loopholes present in the organizational framework with respect to corporate governance. An analysis of instances of corporate governance failures which were discussed in the last chapter, is presented as follows:

### 5.1. Organisational Corporate Governance framework

Founding and conducting business on a well-devised framework based on principles of corporate governance is essential for all forms and sizes of businesses. Lack of a strong foundation often leads to unwanted fiascos. Though typically seen as an expensive proposition, it is in the interests of Start-ups and SMEs that they incorporate the principles into practice. Post the debacle, BharatPe is believed to have modified its internal governance policies. A cornerstone to any business, corporate governance practices are essential for any organisation. It is not just about conducting the business profitability, but it is important to do so ethically and with integrity. As a well laid framework guides the entire organisation's culture, it is important for businesses to retain focuses on its practices and train its employees in that direction. In Oyo case, it has been alleged to have adopted unethical business practices for the purposes of business. It is important for companies to adopt good governance practices and train its

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employees to adopt them. In Winsome case, there is apparent lack of integrity on the part of promoter. In Unitech case also, promoters' greed leading to diversion of company's funds for personal benefits of promoters was an aggravating factor that led to failure. In case of Five Core Electronics, it appears that company had no appropriate framework for good governance in place due to which there was no adherence to basic tenets of corporate governance such as accountability, transparency, fairness, disclosure and responsibility by the promoters of the company.

## **5.2. Power Centralized**

The said co-founder of BharatPe was the managing director and member of board. As the company grew, the company continued having a power centralized around the co-founders. This led to incompetent decisions and paved way for misappropriations. Smooth ownership and management transition is difficult in highly power centralized systems, but nevertheless is important. It is critical for smaller businesses to progress into a more de-centralized and collaborative business model for sustenance and growth. Continued centralization and failure to delineate between person and business results in sub-optimal, incompetent, and inexperienced decision making.

## **5.3. Structure and Functioning of Board**

Directors are responsible for leading company activities by monitoring, guiding, and providing strategic decisions. A company's board is responsible for setting the tone at the top. They lead by example. In BharatPe, the board let misappropriations slip by for years. Investors on board were more focused on profitability and increased valuation than on protecting stakeholders' interests. Board may act as the steward for the company to move forward and is responsible for its smooth sail. The effectiveness of a board is dependent on its structure and functioning. A board is as effective as its members are. In Winsome case, The Board did not raise concerns and reportedly failed to perform their duties. The Unitech case also suffered due to a silent, conforming and non-questioning board. The company made a wrong strategic decision to invest in unrelated highstake business of telecom which signifies that Board could not provide right strategic

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guidance in decision making. Suspension and replacement of all directors by NCLT itself makes conduct of Board questionable. In case of Kingfisher Airlines, The Board was mere formality as it was reportedly dominated by the promoter CMD who had no experience/ expertise in running an airline company and hence made strategic error such as acquisition of Air Deccan. Not appointing professionals on board and promoter's non-delegation and unwillingness to let go of decision making and control of the company led to such strategic failure. Moreover, lavish misuse of company's funds for personal uses amounted to unethical conduct by the promoter. High executive compensation can also be considered an aggravating factor in the failure of company as the company was already under high debt and suffering cash flow problems. Frequent change in strategy of company was another contributing factor. Extremely high cost per passenger as compared to competitors also signify lack of clear and focused long-term strategy. In case of Five Core Electronics, as per news articles, independent directors resigned and later filed complaint with the NSE against management's unethical behaviour. However, board members especially independent directors could have been more proactive and could have questioned management actions while being on board or could have expressed their dissent in board decisions.

#### **5.4. Composition of Board**

A board may have an appropriate presence of executive, non-executive, and independent directors. Each of these directors bring in different value to a company's growth and strategic approach and an appropriate proportion of each of the category is required, depending on the scale and size of business. Where the board does not have an appropriate mix, it often leads to skewed and biased decision making, with focus only on profitability and expansion, rather on resilience and value creation for stakeholders.

#### **5.5. Appropriate skill mix, knowledge and competency of Directors**

Each director who is appointed may have some role to play and bring in some value to the organisation's decision making. A director may have the necessary skill, competency and experience based on which the appointment may be carried

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out. Failing which, Board tends to be ineffective, with directors failing their purpose. For instance, though the company was burning cash as quickly as in the case of Zilingo, the investors only brought in additional money on various actions, without taking the tough decisions. Similarly, when there were financial irregularities that went unnoticed for years, there was equally something lacking in board competency. BharatPe MD's wife, a design graduate, held the position as head of controls, leaving the company in incompetent hands. The Board primarily consisting of Investors, also lacked the necessary oversight.

## **5.6. Independent Directors**

Touted as watchdogs of corporate governance, independent directors not only bring vigil to the system, but also immense value. Post the disaster, BharatPe went on to appoint IDs on board. The company also formed an audit committee headed by an independent director. IDs who are entrusted with the responsibility of being the eyes and ears of investors as they are expected to balance the interests of the management and its shareholders in letter and in spirit. An independent pair of eyes helps in reviewing the company and its functioning in a fair, honest, and unbiased manner.

## **5.7. Board Trust**

This topic has gained immense focus in the last few years. It is often difficult for businesses to operate and prosper in an environment of mistrust, disagreement, and strained confidence. Therefore, members of the board may have an environment of mutual respect and trust to operate in. Each member may feel confident and valued to express their opinions freely, even when it is a dissent. The way in which a board operates sets the tone for company's decision making. Boards may operate in a comfortable environment based on trust that can result in direct and honest conversations, with the ability to voice disagreement. There may be no room for ego clashes. Directors may be focused on what is best for the company and its stakeholders. In Housing.com case, reports have brought to light many instances which showed strains within the board. This indicates a board functioning without trust. In case of Zilingo also, reports suggest strain in relationships between the board members, management and founders.



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## 5.8. Internal Control Environment

Internal controls play an important part in governance, risk and crisis management of a company. As the bedrock of corporate governance, internal controls, policies, processes and systems govern operations of the entire organisation. Having in place proper controls, supports and brings clarity to compliance mechanisms. Instances that result in confusion regarding compliance and disclosure, can always be kept at bay with clear company policies on such issues. While management oversees everyday operations and processes, it is the board that provides the necessary direction and supervision. In BharatPe, neither the management nor the board scrutinised if proper policies, controls, and processes were in place and being followed. The internal auditing failed to make note of misappropriations and diversion of funds in case of BharatPe. As part of internal controls, it is important for companies to have in place proper agreements and understanding, even with board members, founder, and management. This prevents unnecessary disputes and brings clarity to the relationship. There was an alleged incident of poaching reported in the case of Housing.com. Situations like these can always be addressed by instating necessary clauses in the agreement and choosing a mode for settlement of disputes. Without proper controls in place, the business will be run on whims and fancies of those in power. Internal audit is a vital function in any organisation. SMEs and Start-ups often suffer due to lack of proper controls, processes, and mechanisms. In the case of Zilingo, there were alleged financial irregularities which went unnoticed for years. Similarly, employees allegedly suffered from clarity on definition of roles and responsibilities of personnel. There were instances of employee frauds, corruption, and misreporting, that have come to light. All of these point towards a weak internal control environment. Despite years of alleged mismanagement of millions of dollars, misgovernance, and accounting discrepancies, majority shareholders in the company only formally acted against the management after whistle blower complaints were filed earlier in March 2022. The importance of having appropriate mechanisms for grievance resolution and whistle blower is to the advantage of the company's and stakeholders' interests.

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The reportedly rampant use of fake documents in the Satyam fiasco indicate lack of adequate internal controls and lax processes which allowed generation and use of such documents in acts of misgovernance.

In Winsome case, apparently the control environment was lax otherwise raising of fictitious export invoices could have been detected and questioned.

In case of Kingfisher Airlines, it appears that no attention was paid to objections by auditors who had raised questions on accounting method used by the airline to calculate costs incurred on maintenance and repairs of aircraft, which according to auditors was not in accordance with generally accepted accounting standards.

Control Environment seems to be lax in case of Five Core Electronics which allowed the alleged discrepancies in export bills and invoices and various other means of misutilization/ diversion of company's funds.

## **5.9. Defining Roles and Responsibilities**

Role and responsibility of every member may be clearly defined at the time of their appointment. This brings clarity to the table on how every member is adding value to the company. Based on the events reported in case of Housing.com, it appears that the board could have performed better with this clarity.

## **5.10. Disclosure and Transparency including disclosure by directors**

As one of the basic principles of corporate governance, it is cardinal for businesses to make timely disclosures and remain transparent in their dealings. The intention is not only compliance in letter, but in spirit as well. A business is responsible for the entire ecosystem in which it operates. It may always choose to conduct operations in a transparent manner and make timely and material disclosures. Disclosures, both financial and non-financial may be carried out. This helps stakeholders assess and reach fair assessment of an entity's performance. Information regarding (mis)utilisation of funds was not conducted in a transparent manner in BharatPe. It was allocated and used for incorrect purposes. The BharatPe co-founder and his family on their part were not forthcoming in

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making relevant financial and financial disclosures to shareholders and investors. It is important for businesses to have a standard disclosure mechanism for everyone to comply. In BharatPe case, the said co-founder of BharatPe, as a Board Member failed to make relevant disclosures and acted in his personal interests to the detriment of company's interests.

Instances in the Zomato case, have revealed that the company had received unnecessary attention for alleged lack of disclosure and transparency to relevant stakeholders, including regulators. In case of Zilingo, as of August 2022, for two years, the company had failed to file annual financial statements, a basic requirement for all businesses of its size in Singapore, goes to speak volume of its transparency in conduct of operations.

In Satyam case, Misstatement in financial statements, and other instances of complete violation of ethical conduct of business and concealment of these facts from stakeholders clearly indicate lack of disclosure and transparency. Had these facts been disclosed to stakeholders earlier, it may not have assumed such gigantic proportions and action might have been taken against unethical action in the initial stages itself. In Unitech case, there was alleged cheating of homebuyers by using their money for different purposes and alleged corruption charges in acquisition of licence which was done on borrowed funds which could not be repaid due to cancellation of licence.

Instances in Winsome case, such as generation of fake invoices without underlying exports and diversion of funds to other entities indicate a complete lack of disclosure and transparency in company's transactions and operations.

Disclosure and Transparency was clearly lacking in Five Core Electronics case since company's borrowed funds were reportedly diverted for personal uses of promoters, there was rotation of funds in company's sister concerns, misutilization of IPO proceeds, non-compliance with SEBI LODR provisions.

Rather than err by not disclosing, it is advisable for companies to disclose material developments in business and remain transparent even when not sure whether they are required to disclose or not.

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## 5.11. Succession Planning

As much as it is important to have competent candidates for senior management and board, it is equally important for the company to invest time in cultivating or nominating a successor. The company and its members have separate legal identities and the company may be able to carry on even after its founders cease to exist. The identity and ability of a company may not remain focused on one person alone. When the founder of Housing.com left, the valuation went steep down. While the company has moved on since then, the issue brings to light the importance of always having a suitable candidate in line for succession.

## 5.12. Governance of Stakeholder Engagement

A corporate entity of today is responsible not only to its shareholders but to the entire ecosystem of stakeholders. Aspects of clear, honest and transparent communication with stakeholders has gained much momentum in the light of the rising shareholder activism. With recent events, where stakeholders have voted out board members despite holding minimal shareholding, goes to show how important in today's world it is to keep all the stakeholders; shareholders, employees, regulators and others, in the direct know-how and abreast of all material happenings. How a company engages with its stakeholders determines how trustworthy and accessible the company and board are perceived to be. Shareholders are entitled to receiving proper financial and non-financial disclosures by company and board members. Further, it is very important to have proper policies in place to govern relationships with external partners or third-party vendors. In case of BharatPe, shareholders were kept in the dark about the family dealings of the director. Similarly, non-governed third-party relationship with HR recruiters and others, led to diversion of company funds. In instances at Zomato, company dealings have often been 'leaked' and come to fore by way of an external source as against a statement or clarification from the company itself as the primary source. In one of the instances, the company's share prices also witnessed a drop. The company's CEO/management have also on certain occasions issued immediate clarifications of issues, that have prevented escalation of matters. It is thus, of vital importance that an entity maintains a clear

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and constant communication with its stakeholders by way of a preferred mode; website, social media platforms and others, and take initiative to address their sentiments in a price sensitive market. Businesses have the responsibility of creating value not only to its shareholders and investors but to the entire gambit of stakeholders. Employees, third party affiliates and partners, customers, regulators, and others fall within the meaning of stakeholders. In the case the Oyo has had several issues that have risen from time to time with various stakeholders. These issues, pending for a few years now, were even highlighted before the SEBI as Oyo is getting ready to debut in public listing. Lest such issues affect a company's IPO, reputation, and valuation, it is in company's best interests to attend to such issues and let them fester. In case of Kingfisher Airlines, the flying license of company was suspended by the aviation regulator as the company was unable to address the regulator's concerns regarding its operations which signify poor governance of Stakeholder Engagement by the company.

### **5.13. External Auditor**

External audit and review of operations is not just a good to have requirement, but is critical. External audit often brings out irregularities and discrepancies that could have escaped notice of internal audit, independent directors, and board. In case of BharatPe, failure to hire an external auditor led to fraudulent transactions going unnoticed. An external auditor brings an independent oversight and surveillance over the workings of internal controls and audit. Lastly, rotation of auditors will prevent passivity and undue influence from promoters.

### **5.14. Auditor Independence and Transparency**

Independence of auditors and transparency in their actions is an important cornerstone in good governance and ensures protection of legitimate interests of various stakeholders. Namesake external is once again futile but has to be independent and transparent. In Zilingo's case, the external auditor is yet to sign off the company's FY 20 results, indicating issues in the company. Auditor Independence and Transparency was compromised in Satyam case which led to perpetuation of misstatement in financial statements for so many years. In

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Winsome case, it appears that the required audit procedures and duties were not carried out diligently, else the fraud could have been detected.

## **5.15. Raising finances, Restructuring and Regulators**

Misappropriations within company had attracted action of Regulator in BharatPe case. There is only so much that any business can conceal. It is often in the interests of the business and its reputation to conduct business by following the applicable law. In Satyam case, the attempted takeover of Maytas indicate how the restructuring was intended to be used as a tool to hide the past misgovernance. However, the shareholders' rejection of this decision also reflects how active participation of shareholders in decision making can save a company from further misgovernance and uncovering of fraud. In case of Kingfisher Airlines, the company had pinned its hopes on raising FDI which did not arrive in time. It can be observed from the instance of Unitech that not taking requisite approvals and permissions from the sectoral regulator, not responding to regulator notice with suitable explanations, non-payment of statutory dues and non-compliance with sectoral laws, rules and regulations may result in adverse actions by the regulators against the entity such as cancellation of licence, etc.

The said instances underline the importance of not only complying with all applicable laws, rules and regulations at all times but also promptly addressing and responding to any communication/ notices received from regulatory authorities giving suitable justification for default in payment of dues, if any or seeking extension in time limit for same. It is equally important to seek the requisite approvals/ consent from the relevant sectoral regulator before entering into contract/ agreement with third parties, etc.

Above discussion indicates the failure of these corporates on some common grounds such as lack of corporate governance framework, ineffective structure and functioning of boards, inadequate internal controls, lack of disclosure and transparency, centralization of power with promoters/ founders, ineffective/ missing/ non-transparent audit mechanism and lacking stakeholder engagement.

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In the next chapter the best practices which may be followed by Start-ups and SMEs to avert governance failure on aforesaid grounds/ parameters have been elaborated.



## 6.BEST PRACTICES – ANALYSIS & FINDINGS

### 6.1. Introduction

To prepare this research report, various issues pertaining to the parameters were studied under the Indian regulatory framework, International Codes and select jurisdictional regulatory framework. In furtherance to the same, we have identified certain best practices for businesses, while keeping in mind the recent emerging trends in corporate governance. An analysis of the research and the findings that emerged during this research, have also been laid out for the benefit of the corporates.

### 6.2. Organisational Corporate Governance Framework

In the survey conducted, out of 102 SMEs and Start-ups that participated, most of them indicated with high levels of awareness and commitment towards corporate governance. The same is represented below in the chart –



While the numbers are encouraging, compiled below are some of the best practices that have been identified for organisations to bear in mind.

## BEST PRACTICES

- *Organizations focus on Self-Governance and Voluntary Compliances*
- *Commitment towards Corporate Governance is displayed in action by corporates*
- *Identifying a Dedicated Corporate Governance Champion proves beneficial*
- *Identifying Key Policies and Processes assist businesses to remain compliant*

### *Organisations focus on Self-Governance and Voluntary Compliances*

A further analysis into Principle I of G20/OECD Principles of Corporate Governance on ensuring the basis for an effective corporate governance framework, i.e., the corporate governance framework may promote transparent and fair markets, and the efficient allocation of resources, indicates that the corporate governance framework includes elements of self-regulation, and voluntary compliances. The focus of this recommendation is what an organization can do at its end that it imbibes the good practices for sustainable future.

What works well in one company, for one investor or a particular stakeholder may not

**WHILE THE REGULATORY SYSTEM PROVIDES A BASIS, SELF-REGULATORY ARRANGEMENTS, VOLUNTARY COMMITMENTS, AND BUSINESS PRACTICES OF AN ORGANIZATION EQUALLY CONTRIBUTES TO AN EFFECTIVE CORPORATE GOVERNANCE FRAMEWORK**

G20/OECD Principles of Corporate Governance (2015)

necessarily be generally applicable to corporations, investors and stakeholders that operate in another context and under different circumstances. As new experiences accrue and business circumstances change, the different provisions of the corporate governance framework may be reviewed and, when necessary, adjusted. On the purpose and scope of organizational corporate

governance framework, Principle VI states that the corporate governance framework may 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.<sup>99</sup>



Many a times, many entities would already be complying with good governance practices. Chalking out the same in clear terms will help gain clarity and define what the entity stands for and the kind of entity that it intends to build. Adopting articles of association and any other relevant policy deemed necessary to provide a minimum

structure to regulate the distribution of tasks.<sup>100</sup>

### *Commitment towards Corporate Governance displayed in action by corporates*

*Culture and Commitment to Good Governance "Good corporate governance is about 'intellectual honesty' and not just sticking to rules and regulations, capital flows towards companies that practice this type of good governance."*

*Mervyn King*

A more purposeful approach may be adopted instead of a mere tick in the box exercise. A business can demonstrate that corporate governance is important and integral to its sustainable development by ensuring that appropriate governance provisions are

<sup>99</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>100</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ

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incorporated in the articles of association and byelaws, and by defining authorities and responsibilities through policies and processes.

It is further demonstrated by how the corporate adapts to the evolving business structure. In the initial stages, owners comply with basic formalization in business, but as the entity evolves, there is increased emphasis on formalisation of processes, setting the right vision and culture for the company. The following are two overarching organizational circumstances that support successful SME evolution:

- Companies evolve from fluid and highly centralized organizational structures to well-defined and decentralized firms, with clearly defined roles, responsibilities, reporting lines, and authorities.
- Processes change from supporting multitasking teams to supporting defined, specialized functions and collaboration among them.<sup>101</sup>

### *Identifying a Dedicated Corporate Governance Champion proves beneficial*

The need for a dedicated governance champion to establish and manage the policies and systems for good governance is an important factor for ensuring that the organization remains compliant. In the early days of business, the owner/CEO may have the role of champion, especially when it comes to communicating the importance of good governance to staff and articulating key principles of business conduct. As companies evolve, this role will increasingly require specialised expertise and good administrative skills. It would be prudent to appoint a dedicated executive or a fulltime position for a governance. In mature companies this position is typically held by the company secretary in India.<sup>102</sup>

### *Identifying Key Policies and Processes assist businesses to remain compliant*

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<sup>101</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

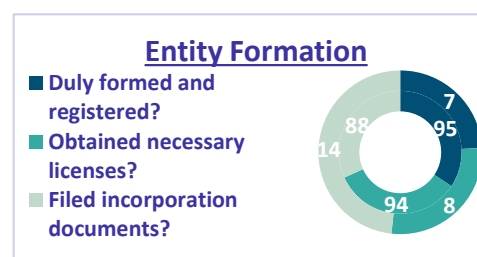
<sup>102</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

Having policies and processes in place will help entities and its members have clarity and purpose to work towards a goal. Organisations in initial stages might benefit from adopting the articles of association, byelaws, and any other relevant policies, that can be its key policies and processes to provide the minimum structure. Detailed policy documents may be formulated to govern all aspects of business such as finance, marketing, human resource management, etc. As businesses grow and evolve, identifying managers with an ongoing responsibility to monitor and supervise staff is advisable. Besides, job descriptions, hierarchy and communication channels within the entity may be clearly laid out well in advance. Clear articulation at policy level and creating a roadmap for governance is essential for bringing clarity in how these entities will proceed to meet the basic good governance norms. Periodic discussions to assess, review and improve policies, processes, or practices, would be beneficial to create awareness, commitment and implement leading practices.

Communication of company's vision, mission and goals, culture, management decisions, strategic planning, benefits of good governance, etc., will serve as a motivational factor for employees and others. take the time to talk about good governance and its benefits—to increase awareness and commitment to implement leading practices. Formalising governance provisions, with participation of key stakeholders, will also make them feel involved and responsible.<sup>103</sup>

### 6.3. Formation, Incorporation & Registration

Once again, the findings in the survey conducted, indicated that respondents are in due compliance of the



<sup>103</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ](https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ)

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## BEST PRACTICES

*It is critical for Businesses to -*

- *Duly comply with requirements of formation, incorporation, and registration*
- *Obtain licenses to conduct business*
- *Duly adopt articles, memorandum and byelaws*
- *Execute agreements to define responsibilities*

formalities surrounding issues of formation, incorporation, and registration. Certain best practices can prove beneficial to entities are shared in the below paragraphs.

### *Duly comply with requirements of formation, incorporation, and registration*

The responsibility of properly forming, incorporating, and registering and organization is often the mandate when one decides to launch the business. The process results in creation of a separate legal entity with its own name, identification, and seal, different from that of the owners, founders and investors. As an entity with separate legal entity, it becomes liable for its conduct and is responsible and accountable to the ecosystem in which it operates.

Businesses may ensure that all the documentation are in order, true and correct. Incorporating entities based on forged documents or incorrect information can attract criminal liability.

### *Obtain licenses to conduct business*

Depending on the area of operation, businesses will be required to obtain permissions and licenses from authorities. Often businesses would also require certain general

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permissions to conduct business, such as, environmental clearances, permission under Shop and Establishments Act, etc.

### *Duly adopt articles, memorandum, and byelaws*

The primary document that discusses policies, process and controls of any organization is its articles or byelaws. Companies are also mandated to submit a memorandum at the time of incorporation. The Companies Act itself provides readymade articles for companies to adopt.

### *Execute agreements to define responsibilities*

Businesses often have stories of friends who become first owners or founders and avoid getting into the nitty-gritties of defining role and responsibilities of each member. Repeatedly, it is seen that only when situations or relationships strain, that co-founders or partners get into an endless blame game. To keep the risks arising out of such situations to the minimum, it is in the best interest to have clarity of responsibilities.

Similarly, proper agreements need to be entered into at every stage of new relationships, whether at the time of receiving seed money and further funding, entering third party contracts, employee agreements, appointment of directors or KMPs, shareholders agreement and others. The agreements need to be drafted and executed in accordance with law, including mandates of stamping and registration requirements.

## **6.4. Structure & Functioning of Board/ Governing Body**

Depending on the organisation's size and needs, businesses may reflect and decide if the owner or founder is able to comfortably switch between portfolios and operate multiple roles in a set-up where the power is centralised, or to de-centralise the role and responsibilities, especially of decision-making and business strategising, to more skilled, competent, and experienced professionals. The body responsible for decision-making and strategising, is also the body responsible for 'setting the tone in the organisation'.



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As businesses grow, it is advisable to let go of power and de-centralise, in the interests of focused growth and sustenance of business.

A formal board of directors is the definitive means for engaging external expertise, setting strategy, and strengthening the management control function. It is also an important vehicle for owners who plan to relinquish their role in active management—for further professionalising the business or passing it to the next generation. Amongst other, two of the major functions (Monks and Minow 2014) of a Board includes oversight and control and providing strategic guidance and advice.<sup>104</sup> Principle 1 of the MAS Code

### **BEST PRACTICES**

- *An Advisory Board is beneficial to all businesses*
- *Boards are responsible for Setting the Tone at the top, with the Chair at the helm*
- *Boards are well-constituted*
  - *Board have sufficient directors based on the scale and size of business*
  - *Composition reflect an appropriate balance of executive, non-executive and independent directors*
    - *Presence of an Independent Director*
  - *Directors have necessary skills, competency and knowledge*

of Corporate Governance requires that the public company be headed by an effective

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<sup>104</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: [chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ](https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ)

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Board which is collectively responsible and works with Management for the long-term success of the company.<sup>105</sup>

**START-UPS AND MSMES SHOULD APPOINT NON-EXECUTIVE DIRECTORS WITH SKILL-SETS THAT MAY NOT BE AVAILABLE WITH THE FOUNDERS OR OTHER DIRECTORS ON THE BOARD.**

Guidelines on Integrity and Transparent in Governance and Responsible Code of Conduct, The CII Code 2020 (February 2020)

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<sup>105</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), *available at*: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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](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)

## BEST PRACTICES (contd..)

- *Boards with Diversity bring more to table*
  - *Women on Board*
  - *Diversity in Thought & Background*
  - *Skills, Knowledge & Experience, Gender & Age*
- *Process of appointment, succession planning and filling of vacancies is robust*
- *Boards conduct as many meetings and as frequently, as maybe necessary*
- *Directors assign sufficient time to discharge their functions*
- *Access to Accurate, Relevant and Timely Information*
- *Board effectively execute their Responsibilities*
- *Clear definition of:*
  - *Role of the chair*
  - *Fiduciary responsibility of directors*
  - *Role and Responsibilities of individual members of the board*
  - *Integrity of directors*
  - *Formation of Committees*
- *Board members are adequately compensated*
- *Understanding the difference between Roles of Director and Manager*
- *Board Trust is vital for smooth functioning and voicing*
- *Board Evaluation is essential for effective functioning*

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## *An Advisory Board is beneficial to all businesses*

Irrespective of the stage of evolution, Advisers/ Advisory Board/ External advisers (trusted fellow entrepreneurs, mentors) can be highly beneficial in the early stages of development. They can provide expertise that the company may lack in certain areas, unbiased advice, and external perspectives free of conflicts of interest—as well as new business connections. When the law or investors require companies to create formal boards of directors, entrepreneurs in the early stages tend to create closely controlled boards. Such boards fail to provide the desired independent advice and oversight.<sup>106</sup>

To start with, Startups and SMEs may appoint an Advisory Board<sup>107</sup> comprising of independent and unbiased professionals. This will help not only lay the foundation of accountability, integrity, transparency and conflict resolution in the entity, but also will help entities and their founders overcome the inhibition from letting go of control over the decision-making process.

## *Boards are responsible for Setting the Tone at the top, with the Chair at the helm*

The MAS Code of Corporate Governance takes as its starting point a recognition that the Board has the dual role of setting strategic direction, and of setting the company's approach to governance. This includes establishing an appropriate culture, values and ethical standards of conduct at all levels of the company. The role of the Board is therefore broader than that of providing oversight. They lead by example, leaving footprints for the rest of the organization to follow.

Given the centrality of the Board to good corporate governance, it is fundamental that the Chairman sets the right tone. The Chairman may encourage a full and frank exchange of views, drawing out contributions from all directors so that the debate benefits from

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<sup>106</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ>

<sup>107</sup> Debra Murphy, "CREATING A SMALL BUSINESS ADVISORY BOARD", available at: <https://tritonbusinessadvisors.com/small-business-advisory-board/> (Visited on October 17, 2022)

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the full diversity of views around the boardroom table. The Chairman may seek to stimulate and engender a robust yet collegiate setting, set the right ethical and behavioural tone, and provide leadership to the Board.<sup>108</sup>

### *Boards are well-constituted*

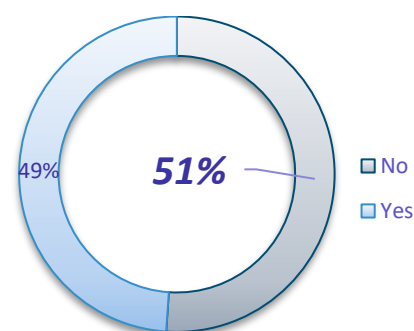
Vested with the responsibility of the stewardship of company, Boards may be well-constituted to effectively perform their roles and responsibilities. A well-constituted Board fosters more complete discussions, leading to better decisions and enhanced business performance.<sup>109</sup>

#### ➤ *Board have sufficient directors based on the scale and size of business*

Companies smaller in size and scale make do with the statutory minimum. However, as business grows, it is advisable to increase the number of directors as maybe necessary to effectively carry on the roles and responsibilities. If there is insufficient number of directors, the leadership is bound to suffer, which will stand reflected in company's performance.

#### ➤ *Composition reflect an appropriate balance of executive, non-executive and independent directors*

*51% respondents denied the inclusion of non-executive directors/ members on Board*



Each type of director has an important role to play in the company's governance, functioning and decision-making. Unproportionate representation of any type of director will only have a lop-sided effect. As such,

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<sup>108</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

<sup>109</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

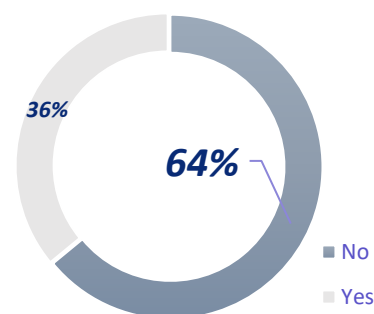
companies may strive to achieve a balance in the ratio of the different types of directors. The board may include an appropriate combination of executive and non-executive (and independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision-making.<sup>110</sup>

The Principle VI of the OECD Principles recommends that the board should be able to exercise objective independent judgement on corporate affairs. Boards should consider assigning a sufficient number of non-executive 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.<sup>111</sup>

The MAS Code requires that independent directors make up a majority of the Board, where the Chairman is not independent and in other cases, non-executive directors could make up for the majority. The Code also suggests that non-executive directors and/or independent directors, could meet regularly without the presence of Management. The chairman of such meetings provides feedback to the Board and/or Chairman as maybe appropriate.<sup>112</sup>

#### ■ *Presence of an Independent Director*

*The analysis of survey results revealed that: 64% of the respondents surveyed, affirmed inclusion of independent directors/ external members on the governing Board of the entity.*



<sup>110</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf](https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf)

<sup>111</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>112</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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](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)

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Having Independent Directors on Board is now a mandate for public companies. Other businesses can derive the benefits from opting to have one. The MAS Code expands on the need for a strong and independent element on the Board, along with a diverse skill set. It defines an independent director as one who is independent in conduct, character and judgement, and has no relationship with the company, its related corporations, its substantial shareholders, 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.<sup>113</sup>

Under NYSE and NASDAQ listing rules, for a director to qualify as "independent," the board may affirmatively determine that the director has no material relationship with the company including relationships that are commercial, industrial, banking, consulting, legal, accounting, charitable or familial. The listing rules also prohibits certain indirect material relationships. The NYSE and Nasdaq listing rules require that independent directors comprise a majority of the board and serve on the audit, compensation and nominating/corporate governance committees (with some exemptions, including transition periods for newly public companies and cure periods during which companies can regain compliance). Individual board members of listed companies who serve on key committees may be independent.<sup>114</sup>

In India, the Schedule IV to the Companies Act, 2013 provides the Code for Independent Directors which details the guidelines for their professional conduct, role, functions and duties, manner of appointment, re-appointment, separate meetings and their evaluation mechanism.

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<sup>113</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

<sup>114</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (1 September 2021)

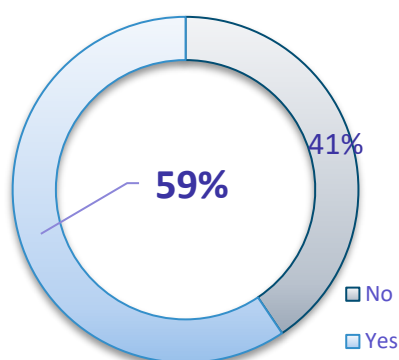


## ➤ *Directors have necessary skills, competency and knowledge*

Appointment of directors may add value to governance and decision making of the company. Compliance for the sake of compliance is no compliance. An understanding of the necessary skills and competencies missing on the Board may be carried out before hiring a suitable candidate. Further, the quality of the discussions and guidance to company will suffer due to presence of inappropriate and irrelevant persons on board.

## ➤ *Boards with Diversity have more to bring to table*

### ▪ *Women on Board*



*In survey results, 59% of respondents affirmed the inclusion of women directors/ members on board*

It is a mandate for public companies in India to have a woman director on Board, and without a doubt, they bring diversity to the table. In 2018, a California law was enacted that required California-based publicly held corporations to have at least one female director by the end of 2019, and (depending on board size) up to three female directors by the end of 2021. State Street Global Advisors published guidance in 2017 indicating that it may vote against the chair of a nominating or governance committee of a company that has no female directors and fails to take action to increase the number of women on its board. Consistent with this guidance, in recent years State Street has voted against or withheld votes from nominating and governance committee chairs at hundreds of its portfolio companies with no female directors.<sup>115</sup>

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<sup>115</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, [Sidley Austin LLP](https://www.sidleyaustinllp.com), "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (1 September 2021)

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## ▪ *Diversity in Thought & Background*

However, when one speaks of diversity in today's world, it not only limited to gender diversity. Principle 2 of the MAS Code states that the Board may have 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.<sup>116</sup> A California law was enacted in September 2020 that will require such corporations to have at least one director from an underrepresented community by the end of 2021, and (depending on board size) up to three directors from underrepresented communities by the end of 2022. Beginning in 2021, State Street will vote against nominating and governance committee chairs at S&P 500 companies that do not disclose the racial and ethnic composition of their boards. Beginning in 2022, State Street will vote against nominating and governance committee chairs at S&P 500 companies that do not have at least one director from an underrepresented community on their boards.<sup>117</sup>

The Securities and Exchange Commission (SEC) rules require companies to also disclose whether and (if so) how the nominating committee considers diversity in identifying director nominees, and if a diversity policy exists. Under SEC guidance issued in 2019, if the board or nominating committee considered certain self-identified diversity characteristics (such as race, gender, ethnicity, religion, nationality, disability, sexual orientation or cultural background) when determining an individual's specific experience, qualifications, attributes or skills for board membership, then the SEC expects the company to disclose those characteristics and how they were considered in the nomination process. The guidance also requires a company to disclose how its diversity policy (if any) takes into account nominees' self-identified diversity attributes and any other qualifications (such as diverse work experiences, military service or socio-economic or demographic characteristics).<sup>118</sup>

## ▪ *Skills, Knowledge & Experience, Gender & Age*

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<sup>116</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

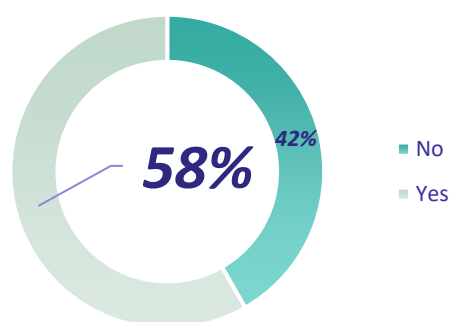
<sup>117</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (1 September 2021)

<sup>118</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (1 September 2021)

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The code suggests that 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.

### *Process of appointment, succession planning and filling of vacancies is robust*



*58% of respondents surveyed, replied in positive regarding Policy on succession planning for senior management and Board*

The UK Code requires that the 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. Both appointments and succession plans should be based on merit and objective criteria and promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths. 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.<sup>119</sup>

Principle 4 on Board Membership of the MAS Code requires that the Board have a formal and transparent process for the appointment and reappointment of directors, taking

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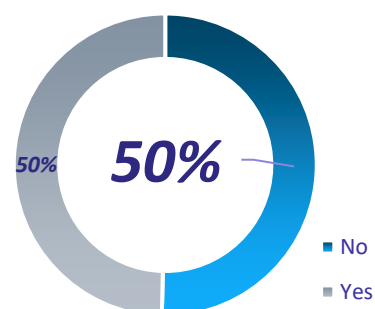
<sup>119</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf](https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf)

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into account the need for progressive renewal of the Board. A Nominating Committee maybe established to make such recommendations to Board.<sup>120</sup>

In India, Chapter XI of the Companies Act, 2013 along with the Companies (Appointment and Qualification of Directors) Rules, 2014 and subsequent amendments thereto, provide detailed provisions regarding appointment, duties, resignation, removal of directors, definition of independent director, rules regarding data bank of independent directors, etc. Regulation 17 of the SEBI (LODR) Regulations, 2015 contain provisions with respect to listed entities regarding appointment and composition of board of directors, frequency of board meetings and performance evaluation of directors.

*50% of respondents stated that criteria for retirement (rotation or other) was present*



### ***Boards conduct as many meetings and as frequently, as maybe necessary***

It is for the Board to ascertain the number of times they need to meet, and as frequently, as maybe necessary to discharge their duties and responsibilities. While ensuring that they have the minimum mandated meetings, the Chair may ascertain the necessity and call for additional meetings.

The Governance Guide for Public Joint-Stock Companies (UAE) prescribe for at least one-third independent directors, one female board member, chairman and managing

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<sup>120</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: [chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/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](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)

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director to be two different persons, meetings of board to be held at least four times a year, formation of nomination and remuneration committee, etc.<sup>121</sup>

### *Directors assign sufficient time to discharge their functions*

Directors on one Board, often hold responsibilities in other Boards or pursue other businesses and interests. When a director accepts the position on Board, it may be done so consciously of the efforts and time towards discharge of the responsibilities. The roles and responsibilities of directors and management may be clearly laid out ahead. Their desirable role, expectations and consequences of non-performance may be communicated to them in advance. Besides, the extent of delegation of authority may also be clearly defined keeping in view the size, structure and complexity of the organization. One of the important tasks that Board may endeavor to achieve is to identify and lay down a suitable implementation plan for corporate governance framework within the entity. While there is a maximum number of directorships prescribed under the Companies Act, it is for each director to decide individually of the responsibilities that can be efficiently executed.

Principle H of the UK Code on Division of Responsibilities requires that 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. In fact, this principle maybe used as a guidance by all directors.<sup>122</sup> Board members should be able to commit themselves effectively to their responsibilities.<sup>123</sup>

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<sup>121</sup> Securities and Commodities Authority, UAE, “The Governance Guide for Public Joint-Stock Companies” (2020), *available at*: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

<sup>122</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf>

<sup>123</sup> OECD (2015), G20/OECD Principles of Corporate Governance, *available on*: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

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The MAS Code requires companies to disclose in its annual report the listed company directorships and principal commitments of each director, and where a director holds a significant number of such directorships and commitments, it provides the NC's and Board's reasoned assessment of the ability of the director to diligently discharge his or her duties.<sup>124</sup>

### *Access to Accurate, Relevant and Timely Information*

In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.<sup>125</sup> The board, should be supported by the company and should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.<sup>126</sup>

### *Board effectively execute their Responsibilities*

The UK Code on Board Leadership and Company Purpose requires that 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. The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned.<sup>127</sup>

#### *➤ Role of the chair*

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<sup>124</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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](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)

<sup>125</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>126</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf](https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf)

<sup>127</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf](https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf)

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During board interactions, the chair has a key leadership role in ensuring that all the directors participate in discussions and decisions—that no director dominates, and no one is left out. The chair prepares for and conducts board meetings and coordinates their timing and frequency. The chair also ensures that the board’s agenda is appropriate and that meetings stay focused on the key tasks. In particular, the chair makes sure the board monitors the company’s progress—but does not slide into managing the business. The chair may monitor the board’s composition and structure—and initiate remedial activity if necessary. The chair is also responsible for inducting new members onto Board. Some business owners have difficulty adjusting to the role of board chair. As CEOs, they get used to being the direct superiors of other managers in their team. The chair, however, is not “the boss” of other directors on the board but rather is “the first among equals.” The chair conducts the meetings so that all members freely share their views. Moreover, a good chair will always aim for a decision based on consensus, not just on majority vote. Establishing effective board processes: To be of real use to the company, the board of directors may commit to effective working practices. Too often, this very basic issue receives only passing consideration, even though it has a direct, immediate impact on the board’s work and effectiveness.<sup>128</sup>

The UK Code on Division of Responsibilities requires that 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.<sup>129</sup>

The board charter should set out the role and responsibilities of the chair of the board. Usually, the chair will be responsible for leading the board, facilitating the effective contribution of all directors and promoting constructive and respectful relations

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<sup>128</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

<sup>129</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf>



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between directors and between the board and management. The chair will also usually be responsible for approving board agendas and ensuring that adequate time is available for discussion of all agenda items, including strategic issues. If the listed entity has a deputy chair or senior independent director, the board charter should also set out their roles and responsibilities. The board charter should state the entity's policy on when and how directors may seek independent professional advice at the expense of the entity. This generally should be whenever directors, especially non-executive directors, deem such advice necessary for them to discharge their responsibilities as directors. The nature of matters reserved to the board and those delegated to management will depend on the size, complexity and ownership structure of the entity, and will be influenced by its history and culture, and by the respective skills of its directors and management. These may vary over time as the entity evolves. The board should regularly review the division of functions between the board and management to ensure that it continues to be appropriate to the needs of the entity.<sup>130</sup>

### ➤ *Fiduciary responsibility of directors*

The MAS Code states that Directors are fiduciaries who act objectively in the best interests of the company and hold Management accountable for performance. The Board puts in place a code of conduct and ethics, sets appropriate tone-from-the-top and desired organisational culture, and ensures proper accountability within the company. Directors facing conflicts of interest recuse themselves from discussions and decisions involving the issues of conflict.<sup>131</sup>

In the United States, directors owe fiduciary duties of care and loyalty to the company and its shareholders. They have the duty to act in good faith; honesty and sincerity, which is nothing but a subsidiary element of the duty of loyalty. Directors also are expected to provide oversight, another offshoot of the concept of good faith. In recent

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<sup>130</sup> ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (2019), *available on:* <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>

<sup>131</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), *available at:* <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>



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cases, the Courts in the US have focused on whether the board had taken adequate steps to determine that the corporation's business and affairs are being properly administered by the company's officers and management. The Delaware court in recent times, have found directors guilty in their duty to exercise oversight.<sup>132</sup>

### ➤ *Role and Responsibilities of the board*

The OECD Principle VI while addressing the Responsibilities of the Board recommends that Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interests of the company, shareholders and stakeholders. The Board should fulfil certain key functions, including Reviewing and guiding corporate strategy, Monitoring the effectiveness of the company's governance practices, Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning, Monitoring and managing potential conflicts of interest of management, board members and shareholders, Ensuring the integrity of the corporation's accounting and financial reporting systems, systems for risk management, operational control, and compliance with the law and relevant standards and overseeing the process of disclosure and communications.<sup>133</sup>

It is best to have clarity of role and responsibilities of every director at the table. The MAS Code requires Directors to understand the company's business as well as their directorship duties.<sup>134</sup>

### ➤ *Integrity of directors*

All directors may act with integrity, lead by example and promote the desired culture. The board should ensure that the necessary resources are in place for the company to

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<sup>132</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

<sup>133</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>134</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/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>

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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.<sup>135</sup>

- *Formation of Committees*

Boards may 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 may be well defined and disclosed by the board. Once these specific oversight functions are delegated to various committees, Board can focus its time on strategic matters.

### *Board members are adequately compensated*

The Board is vested with the ultimate responsibility for growth and governance of an organization. They are also the officers of the company that bear the brunt of liabilities of the business. Depending on the role and responsibilities of each director, it is only fair that they are compensated accordingly, and in a reasonable manner.<sup>136</sup>

Board members' compensation structure may be competitive and may be marked to market trends as well as according to the individual competencies.

In India, Section 197 and 198 of the Companies Act, 2013 contain provisions regarding calculation of remuneration and sitting fees to be paid to directors. Further, the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 contain provisions regarding disclosure by listed companies of ratio of remuneration of

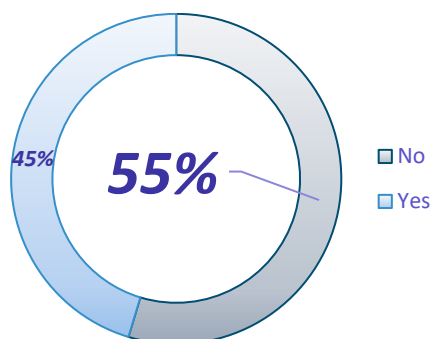
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<sup>135</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf>

<sup>136</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

each director to the median remuneration of the employees of the company in Board's report. It also provides for disclosure of percentage increase in remuneration of directors and other KMPs in the Board's Report.

### *Separation of Role of Chair and MD/CEO*



*55% of respondents surveyed, affirmed Separation of CEO/ Management from Chair of Board/ Governing Body*

The board determines its own leadership structure in accordance with the charter and byelaws. Board leadership structure can take various forms, for example, Combined chair/CEO, Separate chair, and CEO, and Lead independent director. SEC rules require disclosure regarding separation of roles, combination chosen, etc.<sup>137</sup>

In India, while it is voluntary for companies to determine the leadership structure, SEBI (LODR) recommends top 500 listed companies to voluntarily comply with the responsibility of separation of roles.<sup>138</sup> Section 203(1) of the Companies Act states that an individual shall not be appointed or reappointed as the chairperson, of the company as well as the managing director (MD) or the chief executive officer (CEO) at the same time, unless the articles of the company provides otherwise or the company does not carry on multiple businesses. Depending on the size and scale of business, the Start-up or SME can consider clear demarcation and segregation of roles of Chairman and CEO to promote balance of power, to enable effective oversight over management and to prevent concentration of unfettered powers of management with one person.

<sup>137</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

<sup>138</sup> SEBI Press Release on SEBI Board Meeting PR No. 5/2022 available at: [https://www.sebi.gov.in/media/press-releases/feb-2022/sebi-board-meeting\\_56076.html](https://www.sebi.gov.in/media/press-releases/feb-2022/sebi-board-meeting_56076.html) (15 February, 2022)

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Principle 3 of the MAS Code on Chairman and Chief Executive Officer states that 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. The Principle explicates that separate persons would ensure an appropriate balance of power, increased accountability, and greater capacity of the Board for independent decision making. It suggests that the Board sets out in writing the division of responsibilities between the Chairman and the CEO.<sup>139</sup>

Principle 1 on Lay solid foundations for management and oversight of the ASX Code recommends that a listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance. The Code recommends that a listed entity should have and disclose a board charter setting out: (a) the respective roles and responsibilities of its board and management; and (b) those matters expressly reserved to the board and those delegated to management.<sup>140</sup>

### *Understanding the difference between Roles of Director and Manager*

There are many fundamental differences between the role of a director and that of a manager. It is important that these distinctions be clearly understood by both—directors and managers. One of the most useful and important ways to promote accountability and transparency, and to demonstrate commitment to good governance, is to identify and communicate the core functions in the business together with lines of authority. A guiding principle for the board-versus-management concern is that directors may let the

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<sup>139</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), *available at*: <chrome-extension://efaidnbmnnnibpcjpcglclefindmkaj/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>

<sup>140</sup> ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (2019), *available on*: <chrome-extension://efaidnbmnnnibpcjpcglclefindmkaj/https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>

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management team handle the day-to-day operation of the company, while the board maintains proper vigilance and oversight of their activities.<sup>141</sup>

### *Board Trust is vital for smooth functioning and voicing*

One of the latest trends in corporate governance is to ensure that there exists a healthy, honest and open relationship between all directors of the Board. Building Board trust is an essential exercise to ensure effectiveness of the Board itself. The Chair is typically responsible for leading the tone for the meetings and voicing of opinions. All directors feel safe, secure and respected enough to share their opinions freely. Members are comfortable voicing dissent, in the same way they express favour. Leaving ego behind, directors may be able to objectively weigh, analyse and strategise during meetings. The past shows several governance failures that have emerged because of little or board trust.

### *Board Evaluation is essential for effective functioning*

A regular and unbiased performance evaluation and monitoring of Board members may take place. Subsequently, the organization may expand the roles and responsibilities of Board depending on Board's performance. Any increment or revision in Board members' compensation may be made based on their contribution in entity's growth and business.

The OECD Principles on Corporate Governance recommends that Boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences.<sup>142</sup> Annual evaluation of the board should consider its composition, diversity and how effectively members work together

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<sup>141</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ

<sup>142</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

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to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.<sup>143</sup>

Principle 5 of MAS Code states that Boards could undertake a formal annual assessment of its effectiveness as a whole, and that of each of its board committees and individual directors. The Nomination Committee could recommend the objective performance criteria and process for the evaluation of the effectiveness of the Board as a whole, and of each board committee separately, as well as the contribution by the Chairman and each individual director to the Board.<sup>144</sup>

### *Board Refreshment/ Rejuvenation needs focus*

The world is evolving and so are governance practices. Being responsible for leading culture, governance, management and operations of an organization, Board members need to be aware of all developments. While one cannot be an expert in all areas, they may most definitely have a working knowledge in the ways of the evolving business norms. There may be focus on upskilling Board members' competence.

The advent of technology has brought with it new age risks and security lapses. Development in financial management is changing the landscape of business operations. Regulatory frameworks are constantly being reformed. With heightened expectations from Board, directors are required to keep up and perform. The rise in shareholder activism, can result in negative voting against directors. In the light of these, directors today have to focus on refreshment, rejuvenation and upskilling, to keep up with the evolving times.

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<sup>143</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf>

<sup>144</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

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## 6.5. Internal Control Environment

Internal controls, as the name suggests, focus on the risks to the company's operating, reporting, and compliance objectives that can be addressed by better internal processes, policies, and procedures. Such risks include, for example, fraud, damage to company property, cost overruns, substandard quality of products, or mistakes in financial reporting. Implementation of the internal controls function is the responsibility of management, with guidance and oversight from the board of directors (when formed). An internal controls system deals with five critical areas of overall approach to internal controls, identification and monitoring risks, minimization of risks, getting, analysing and sharing risk-related information, and effective working of systems. These elements work continuously as an integrated system.<sup>145</sup>

The primary internal controls are prescribed in the company's articles or bye laws. In US, the certificate of incorporation and byelaws generally regulate a company's internal affairs. If the governing documents are silent, default rules under the relevant state law apply.<sup>146</sup> In India as well, the Companies prescribe articles for companies to adopt, if

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<sup>145</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

<sup>146</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", *available on*: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

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they fail to have drafted their own. However, larger entities will require policies, processes and mechanisms in place.

## **BEST PRACTICES**

**Companies following good corporate governance practices:**

- *Ensure compliance with laws and regulations*
- *Form and integrate Policies for ethical conduct and compliance by organisation*
- *Form Board Committees to oversee and review internal risk management systems*
  - *Audit Committee*
  - *Nomination and Succession*
  - *Risk and Crisis Management*
  - *Remuneration Structure*
  - *Investor Grievance*
  - *Cyber Security and Data protection*
- *Addressing issues related to Conflict of Interests*
  - *Related Party Transactions*
  - *Insider trading*
- *Devise mechanisms to report, investigate and address grievance, fraud, and harassment*
- *Ensure maintenance of proper books of accounts and Conduct of Internal Audits*

### ***Ensure compliance with laws and regulations***

Businesses may ensure compliance with law. In the initial stages, the process of compliance might be lesser in number and easier to comply. As organization grows, the



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compliance that need to undertake will also proportionately increase. A dedicated in-house team or engagement of professionals might be necessary to always ensure compliance. Ignorance of law is no excuse and as such, it is in the best interests of the organization to remain compliant.

Entities may also maintain and document all activities and operations. In the UAE, companies are required to maintain all minutes, documents, reports, and other papers needed to be maintained at the Company headquarters for a period not less than ten years, including minutes of the general assemblies, Board and its committees.<sup>147</sup>

### *Form and integrate Policies for ethical conduct and compliance by organisation*

Principle 3 of the ASX Code recommends that a listed entity should instill a culture of acting lawfully, ethically, and responsibly. It should also continually reinforce such culture across the organization.<sup>148</sup>

Entities can take a cue and ensure that policies on important issues, namely, anti-corruption and fraud, whistle blower, sexual harassment, conflict of interests, disclosures, are framed and circulated amongst the board, employees, and its partners. Policies determine the company's beliefs, ethics, and values. Enforcement of the policies ensure compliance by all concerned. Further, regular review and discussions by management with its stakeholders, will help in meaningful commitment of the entity towards such ethical conduct.

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<sup>147</sup> Securities and Commodities Authority, UAE, "The Governance Guide for Public Joint-Stock Companies" (2020), *available at*: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

<sup>148</sup> ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (2019), *available on*: <chrome-extension://efaidnbmnnnibpcjpcglclefindmkaj/https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>

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## *Form Board Committees to oversee and review internal risk management systems*

As boards are responsible for overall governance and management of the business and the ultimate liability also falls on them, globally, law requires public companies to form Board Committees to manage and oversee internal controls. The Committee itself remains answerable to the Board. The constitution would include some Board members and Management, with appropriate skills, competencies, and knowledge of the subject. Principle 9 of the MAS Code on Accountability and Audit Risk Management and Internal Control requires that 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.<sup>149</sup>

In the UAE, law prescribes joint stock companies to have committees and that they shall be accountable to the Board for its activities. This does not mean that the Board shall be exempted from responsibility for the activities, functions and powers delegated there by to this Committee. The Board shall ensure the proper composition, qualifications and competencies of the Board members Committees. The law also permits adoption of a Dual Governance Structure by companies, consisting of two sets of internal committees composed of Board members, where one of them would be the control committee and the other, an executive committee.<sup>150</sup>

Companies can form as many committees as may be required to function efficiently. However, it is advisable for businesses to have dedicated committees or teams to look into issues regarding Audit, Nomination, Risks, Remuneration, Investor Grievance and Cyber Security.

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<sup>149</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

<sup>150</sup> Securities and Commodities Authority, UAE, "The Governance Guide for Public Joint-Stock Companies" (2020), available at: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

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## Audit Committee

Audit is an important internal control function and formation of a committee that specifically oversees is critical. In fact public companies, globally are mandated to have such a committee in place. Principle 10 of the MAS Code states that the Board has an Audit Committee which discharges its duties objectively. The primary reporting line of the internal audit function is to the Committee, which also decides on the appointment, termination and remuneration of the head of audit function.

The Committee's duties would include reviewing significant financial reporting issues and judgements to ensure the integrity of the financial statements, adequacy and effectiveness of internal controls and risk management systems, CFO and CEO assurances on financial records and statements and making recommendations to the Board. The Committee also reviews the adequacy, effectiveness, independence, scope and results of the external audit and the company's internal audit function and mechanisms to raise complaints and independently investigate.<sup>151</sup>

The Chapter 4 of the UK Corporate Governance Code which pertain to Audit, risk and internal control, contain provisions regarding formation of audit committee, its role and responsibilities, board oversight on company's risk management and internal control processes.<sup>152</sup>

## Composition

The responsibilities of the committee need to be adequately discharged by competent and knowledgeable members of board. MAS Code requires the committee to have at least three directors, all of whom are non-executive and the majority of whom, including

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<sup>151</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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

<sup>152</sup> The UK Corporate Governance Code (July 2018) available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf> (Visited on October 19, 2022)

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the Chairman, are independent. The AC does not comprise former partners or directors of the company's existing auditing firm or auditing corporation.<sup>153</sup>

### *Nomination and Succession*

We define succession planning as the process of identifying and developing people within an organization to fill key business leadership positions in the future or to replace key persons in the event of sudden absence. This is done to ensure business sustainability and resilience in crisis. Given the benefits of succession planning in terms of ensuring business continuity and avoiding any disruptions due to sudden exit of key personnel, long-term as well as emergency succession planning exercise should be undertaken well in advance by Start-ups as well as SMEs. The penalty for failing to get ahead of changes in leadership or ownership can be significant. According to research in Asia by a prominent academic, Joseph Fan, in the five years after the company founder turns over the reins to the next generation, companies decline in value by an average of nearly 60 percent (IFC 2017). More than half the value gets wiped out!<sup>154</sup>

### *Clarity on Long-term goals*

Businesses need to be mindful of three types of succession, namely, ownership or equity succession, management succession and specialized expertise succession. Founders need to be clear about their long-term business goals, because they directly affect key succession decisions. For example, owners working toward building a business with the hope of eventually cashing out with external investors may opt to transition to

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<sup>153</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

<sup>154</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

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professional management. An owner that is focused on building an intergenerational legacy may prefer to develop family management talent.<sup>155</sup>

### *Succession Plans*

Once you have some clarity on the long-term goals for your business, it is time to start working on the succession plan. It may move from “a thought in the back of the owner’s mind” to a clear plan that has been shared with every key person in the business and other stakeholders. Companies at early stages need to develop emergency interim plans for each key risk position. In the later stages, companies need to focus on long-term systemic succession policies and plans that identify and develop potential succession candidates.<sup>156</sup>

Since decision-making power in start-ups and SMEs tend to concentrate with the promoters, these entities may face huge challenge in determining the successors for the leadership positions as family succession may or may not work depending on vision, direction, aptitude and business acumen of successor as compared to first-generation promoter of Start-up or SME.

Therefore, it may be a good idea to choose successor for leadership role based on professional qualifications and relevant experience which may help further the sustainability, growth and competitiveness of the organization. The existing management of the entity may lay down the qualifications, experience and other criteria besides the selection procedure as a part of succession planning. The management may maintain transparency in disclosing the selected candidate and basis of selection. Also, the same may be disclosed well in advance to develop acceptability within the organization for the future successor for the given role and position.

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<sup>155</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ>

<sup>156</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ>

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Chapter 3 of the UK Corporate Governance Code which pertain to Composition, Succession and Evaluation prescribe that effective succession plan should be maintained for board and senior management based on merit and objective criteria and should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths. It also requires establishment of nomination committee which can *inter-alia* oversee the development of a diverse pipeline for succession.<sup>157</sup>

In India, as per Section 178 of the Companies Act, 2013, a company is required to constitute a Nomination and Remuneration Committee (NRC) of the Board and one of the objects of the committee is to develop succession plan for the Board and senior management.

Further SEBI has mandated the need for succession planning and require the Boards of all listed companies to develop an action plan for successful transition of key executives vide Regulation 17(4) of the SEBI (LODR) Regulations, 2015.

### ***Risk and Crisis Management***

The organization may have in place appropriate policy for risk identification, assessment and mitigation so that businesses do not face consequences of various types of business risks.

**Principle 7 observes that the role of a risk committee is usually to recognise and manage risk.** Businesses would benefit from having in place a sound risk management framework and periodically review the effectiveness of that framework. Risks of every organisation is different and dependent on its nature, size and scale of operations, amongst others. It is therefore vital for the entity to have a dedicated team to identify key risks and crisis and have a preventive and coping mechanism to counter such risks.

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<sup>157</sup> The UK Corporate Governance Code (July 2018) available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf> (Visited on October 19, 2022)

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Millions of companies across the globe went under water during the Covid-19 pandemic, especially those that didn't already focus on risks and crisis management. Emerging from the pandemic and settling into the new normal, businesses may stay prepared to face any of such black swan events. They need to be able to identify in advance the possible risks and formulate preventive and counter actions to survive and prosper.

In India, as per Section 134(3)(n) of the Companies Act, 2013, the Board Report to the shareholders shall include 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;

Section 177(4) of the Act provides that the terms of reference of audit committee shall include evaluation of internal financial controls and risk management systems.

The Code for Independent Directors as per Schedule IV to the Act prescribe the role and functions of independent directors one of which is to satisfy themselves on the integrity of financial information, and that financial controls and the systems of risk management are robust and defensible.

The Regulation 21 along with Schedule II of the SEBI (LODR) Regulations, 2015 provide for the constitution, composition, meetings, role and responsibilities of the risk management committee.

As per Recommendation 15 (a) of the Guidelines on Integrity and Transparent in Governance and Responsible Code of Conduct, The CII Code 2020 (February 2020) <sup>158</sup>—

*“Boards of start-ups and MSMEs should proactively adopt good governance requirements as a complement to their business growth – including identifying and proactively addressing key compliance risks will formulate a compliance program after understanding the compliance requirements and the risks of non-compliance to the business.”*

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<sup>158</sup> Confederation of Indian Industry, Guidelines on Integrity and Transparent in Governance and Responsible Code of Conduct, The CII Code 2020 (February 2020)

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## Remuneration Structure

### Formulation of Policy

Director compensation or remuneration is a complex topic. The owner needs to strike a balance between the need to provide remuneration sufficient to attract and retain the best candidates and yet not pay them so much that it does not hinder their ability to remain effectively independent. The guideline is that a director's time is valued as much as the time of the top executive. Therefore, remuneration should reflect the time spent to prepare for and attend the yearly board sessions, plus coverage of expenses (travel, accommodations, and meals). It may also include long-term payment plans, such as share options, to ensure that board members' interests are aligned with long-term interests of the company.<sup>159</sup>

Principle 7 of the MAS Code on Level and Mix of Remuneration requires that 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. Principles P state that 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. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome. Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of company and individual performance, and wider circumstances.<sup>160</sup>

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<sup>159</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

<sup>160</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>



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## *Constitution of the Committee*

The Board may establish a Remuneration Committee ("RC") to review and make recommendations to the Board on a framework of remuneration for the Board and key management personnel, and specific remuneration packages. The committee could have at least three directors, all of whom could be non-executive directors, and the majority and Chairman remain independent directors.<sup>161</sup>

## *Structure and Determination of Compensation*

A significant and appropriate proportion of executive directors' and key management personnel's remuneration is structured to link rewards to corporate and individual performance. Performance-related remuneration is aligned with the interests of shareholders and other stakeholders, promotes and long-term success of the company. The remuneration of non-executive directors is appropriate to the level of contribution, taking into account factors such as effort, time spent, and responsibilities. Remuneration is appropriate to attract, retain and motivate the directors to provide good stewardship of the company and key management personnel to successfully manage the company for the long term.<sup>162</sup>

## *Disclosures*

In the US, public companies must annually disclose director compensation for the prior fiscal year (including fees, stock and option awards and other benefits) in a tabular format, along with a narrative description of the information in the table. The NYSE requires listed companies to adopt and disclose corporate governance guidelines which address director compensation. Since 2016, Nasdaq-listed companies must disclose compensatory arrangements between directors or nominees and third parties in

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<sup>161</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

<sup>162</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

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connection with that person's candidacy or service as a director (known as "golden leashes").<sup>163</sup>

Principle 8 of the MAS Code states that 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.<sup>164</sup>

### *Shareholder Approval*

NYSE and Nasdaq listing rules require companies to obtain shareholder approval of equity plans applicable to directors. Companies are not required to seek shareholder approval for cash compensation or specific equity grants awarded to directors.<sup>165</sup>

### *Investor Grievance*

A business entity operates to create value for its stakeholders, and in particular to shareholders. It is therefore of utmost importance for corporates to ensure that shareholder or investor grievances are adequately addressed. This also builds trust between the corporate and shareholder. Larger companies benefit from having a focused committee to address their grievances. Public companies are mandated to have such a committee, headed by an independent director.

### *Cyber Security and Data protection*

The digital revolution has changed the ways of business. No data or information is safe, and business need to ensure that they have in place adequate controls, security and

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<sup>163</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

<sup>164</sup> Monetary Authority of Singapore, Code of Corporate Governance (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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>

<sup>165</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

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protective measures to deal with cyber threats and risks. With the world moving on to the virtual mode owing to the pandemic, these risks have only increased multifold.

From being an IT function, now cyber security and risk management has become a board function with CSOs finding a nomination at the table. Trends suggest that boards will benefit from having a specialist as an addition, while the others need to upskill themselves to have a working knowledge. Further, to function effectively and timely, access and knowledge of technological developments and applications is a necessity. Boards need to lead organizations to this end. Companies that fail to adopt and upgrade are expected to perish.

Further, a detailed framework for identification of risks and threats, processes to counter them and coping mechanisms may be addressed by companies. A specific committee to address all these issues with members having technical and sound knowledge is desirable.

Recently, the Standing Committee on Finance chaired by Mr Jayant Sinha, in its report on “Strengthening Credit Flows to the MSME Sector” recommended inter-alia that adoption of an account aggregator framework (which allows secure sharing of digital financial data) by the SME sector, can help it improve access to credit, prevent fraud and reduce non-performing assets.<sup>166</sup>

### *Addressing issues related to Conflict of Interests*

Businesses may develop an explicit policy to guide directors, management, and staff on the issue of conflict of interests. This policy may spell out what constitutes conflicts of interest and outline how the organization will monitor and resolve them. It may also identify potentially high-risk functions. The policy may pay particular attention to procurement. Staff involved in the procurement process may declare if they have a

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<sup>166</sup> Tanvi Vipra, PRS Legislative Research, (May 2, 2022 ) “Standing Committee Report Summary Strengthening Credit Flows to the MSME Sector” available at: [https://prsindia.org/files/policy/policy\\_committee\\_reports/SCR\\_CreditFlowsMSME.pdf](https://prsindia.org/files/policy/policy_committee_reports/SCR_CreditFlowsMSME.pdf) (Visited on October 19, 2022)

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beneficial interest, relatives, or close friends in any entity being considered for selection as a supplier of goods or services to the company.<sup>167</sup>

### *Related Party Transactions*

In the US, directors owe a duty of loyalty to the company and its shareholders. This duty prohibits self-dealing and misappropriation of assets or opportunities. Directors cannot use their position to make a personal profit or achieve personal gain. The duty of loyalty requires directors to disclose any conflicts of interest. The board may recuse conflicted directors from board discussions and decision-making relating to the conflict.

Section 402 of the Sarbanes-Oxley Act 2002 prohibits companies from extending or maintaining personal loans to directors, with certain exceptions (for example, loans made by FDIC-insured institutions and ordinary course of business loans made by consumer lenders). Transactions with the company can also impact a director's independence.<sup>168</sup>

### *Insider trading*

In general, in the US, directors are not restricted from purchasing or selling shares and other securities of the company. However, a director is prohibited from trading in a company's securities when in possession of material, non-public information about the company (*rule 10b-5, Exchange Act 1934*). Companies generally have policies that impose black-out periods and otherwise regulate trading in the company's stock by directors and officers (for example, by requiring pre-clearance of trades). Directors must

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<sup>167</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

<sup>168</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", *available on*: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

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disclose their shareholdings and any transactions that result in a change in their share ownership (*section 16, Exchange Act 1934*).<sup>169</sup>

### *Devise mechanisms to report, investigate and address grievance, fraud, and harassment*

Companies are responsible to the entire ecosystem of stakeholders. Timely addressing of their grievances, while having the ability to conduct detailed investigation and actions is vital. These mechanisms provide teeth to company policies and resolution machinery and keep legal risks at bay.

Experience has shown that an important determinant of the degree to which shareholder rights are protected is whether effective methods exist to obtain redress for grievances at a reasonable cost and without excessive delay. As such, addressing investor grievance is vital for any organization.

Sexual harassment is one of such other mandatory workplace issues that need to be strongly addressed by businesses. With the POSH coming into place, companies have become more aware and active in protection from sexual harassments.

Taking a stance against fraudulent and anti-corruption issues is quintessential. While having appropriate policies in place, whistle blower mechanisms and employee harassment grievance mechanisms, can help from such issues being brought to light and taking actions against concerned personnel. Further, employees and others, forming an important part of a company's stakeholders feel protected and safe to highlight such issues.

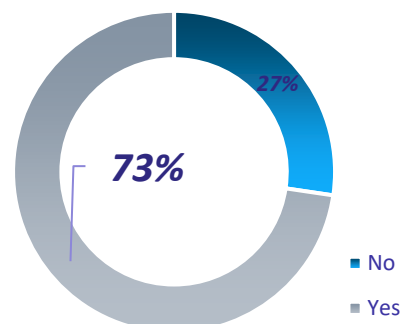
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<sup>169</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

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## Ensure maintenance of proper books of accounts and Conduct of Internal Audits

*73% respondents replied that their entities had dedicated personnel to work on internal audit and compliance functions*



Businesses may endeavour to maintain proper books of accounts in accordance with accounting standards which will ensure that the same reflect true, fair, accurate and complete financial position of the organization. Besides, it will lend credibility to the organization amongst creditors, shareholders and other stakeholders. Start-ups and SMEs may consider appointing internal auditors to ensure another level of checks and balances on the financial reporting, accuracy and internal controls within the organization. Internal audit is a function of internal controls, conducted at specific intervals. Internal audit aims to provide the board and management with reasonable assurance that the internal controls system (among others) is adequate, robust, and functioning well. As part of good governance, entities should have in place an internal audit function, and for it to be effective, the function should be independent of operations. Larger entities should report functionally to the board, with administrative reporting to the CEO.<sup>170</sup>

In the US, public companies must include in annual reports on Form 10-K, an internal control report that includes (*section 404, Sarbanes-Oxley Act 2002*), a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company, an assessment of effectiveness of company's internal control over financial reporting, identifying the framework used by management to evaluate as such the effectiveness and issuance of attestation report by

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<sup>170</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBz>

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independent auditor. In addition, the CEO and the chief financial officer must provide quarterly certifications in relation to internal control over financial reporting.

The Foreign Corrupt Practices Act (FCPA) requires companies to have a system of internal accounting controls sufficient to provide reasonable assurances that transactions are properly authorised and recorded and access to assets is properly authorised.<sup>171</sup>

In India, Chapter IX of the Companies Act, 2013 state various provisions relating to maintenance of books of accounts, preparation of financial statements and periodical financial results, board's report, CSR, internal audit, audited financial statements, accounting standards, etc.

## 6.6. Commitment to ESG, DE&I, CSR and Sustainability

### BEST PRACTICES

- *As responsible players in the society, corporates integrate ESG, DE&I, CSR and Sustainability practices into company culture*
- *Compliance with ESG, DE&I, CSR and Sustainability is a necessity and attracts positive investor attention*
- *Reporting of Practices*

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<sup>171</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

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Issues relating to ESG, DE&I, CSR and Sustainability practices are no longer only ‘good to have’ but are ‘must have’ in today’s scenario. Corporates at all stages are encouraged to imbibe these practices and ensure compliance. As responsible players in the society, corporates need to work towards and national and international agenda on these issues. Organisations may conduct business not just profitably, but purposefully. The Board is responsible for driving the practices.

*Compliance with ESG, DE&I, CSR and Sustainability practices is a necessity and attracts positive investor attention*

ESG is no longer a fringe issue of interest only to special issue investors. Mainstream institutional investors are recognising that attention to ESG and CSR impacts portfolio company financial performance. The rising interest in ESG among investors is apparent in the sharp rise over the past several years in US-domiciled assets under management using ESG strategies, increasing support for shareholder proposals relating to ESG issues, as well as in the focus of engagement efforts. In 2020, shareholder proposals relating to environmental and social issues were the most prevalent proposal type for the fourth year in a row and a record number (21) achieved majority support. The SEC also mandates public corporation from making disclosures in regard to CSR matters, typically in annual and/or quarterly reports.<sup>172</sup>

Start-ups and SMEs may consider complying with CSR provisions in light of the fact that stakeholders view those entities (who undertake CSR initiatives) favorably. Since SMEs are an extremely diverse group (size, history, sector, ownership, and so on), hence different approaches and strategies may be used to implement CSR provisions. For instance, CSR activities may be undertaken through an implementation agency.

In US, in recent years, large institutional investors have urged companies to disclose how long-term strategy incorporates corporate sustainability considerations. In 2018, State

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<sup>172</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, [Sidley Austin LLP](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)), “Corporate Governance and Directors’ Duties in the United States: Overview”, available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)



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Street sent letters to all companies in the S&P 500 encouraging them to proactively disclose their compliance with the Investor Stewardship Group's corporate governance and sustainability principles. State Street votes against the independent board leader at companies that do not comply with the principles and companies that cannot explain the nuances of their governance structure effectively, either publicly or through engagement.

In January 2021, BlackRock's chair and CEO released his annual letter (see [www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter](http://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter)) to the CEOs of its portfolio companies warning that BlackRock will vote against directors at companies that do not make sufficient progress on implementing sustainable business practices and improving their climate change and sustainability-related disclosures. He called for a single global standard for ESG disclosure but, in the meantime, BlackRock continues to endorse the ESG disclosure framework of the SASB and the recommendations of the TCFD. He also noted that BlackRock expects public companies to incorporate climate risk as part of their oversight of long-term strategies and to disclose how they are addressing climate-related risks. Finally, BlackRock asked companies to disclose in their sustainability reports their long-term strategies for improving diversity, equity and inclusion.<sup>173</sup>

In the UAE, under Article (83) on Corporate Social Responsibility, the General Assembly shall, in the light of a Board recommendation, set a policy to ensure a balance between the objectives of the Company and those of the community in order to promote the socio-economic conditions of the community. The Board shall develop the programs and shall determine the means necessary for proposing socio-economic initiatives by the Company.<sup>174</sup>

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<sup>173</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

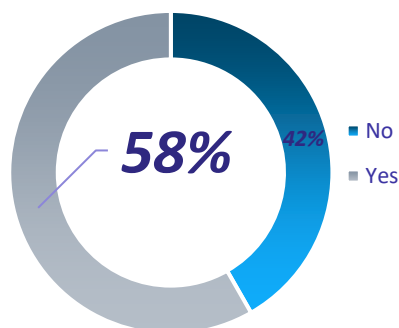
<sup>174</sup> Securities and Commodities Authority, UAE, "The Governance Guide for Public Joint-Stock Companies" (2020), available at: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

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## Reporting of Practices

While reporting of ESG, CSR and Sustainability practices is not mandatory for all, in the light of its increased importance, it is in the interests of the entity to voluntarily comply. In India, top 500 listed companies are mandatorily required to file the new BRSR reporting on ESG. Since knowledge about many outstanding CSR initiatives taken by SMEs is not widely publicized, there is urgent need to mass educate Indian SMEs to report their CSR activities within the prescribed reporting framework.

In India, companies beyond a threshold are required to undertake CSR activities. Section 135 of the Companies Act, 2013 lays down the provisions regarding formation of corporate social responsibility (CSR) committee and other related provisions concerning CSR to be fulfilled by companies having net worth/ net profit/ turnover beyond a prescribed limit. Schedule VII lays down the list of activities that may be included as CSR activity. Recently, Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 have been notified which provide that a company having any allocated CSR amount which is unspent within the financial year to open a special unspent CSR account and transfer the unspent amount to that account within 30 days of end of the financial year or transfer the same to a public CSR fund mentioned in Schedule VII of the Companies Act, 2013. Also, in the said rules, new class of implementing agencies have been added, through which CSR activities can be undertaken.



*58% of respondents replied that they had concerns regarding financial or non-financial statements/reporting in past 3 years*

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## 6.7. Disclosure & Transparency

### BEST PRACTICES

- *Entities make timely and balanced disclosures that have a material effect on price or value of securities*
- *Transparent Policies and Procedures are established to ensure independence and effectiveness of audit functions, and Integrity of reporting*
- *Timely Disclosures by Board Members and KMPs*

Disclosure and transparency are the partners of good governance; they demonstrate the quality and reliability of information—financial and non-financial, provided by management to lenders, shareholders, and the public. The organization may try to ensure timely and accurate disclosure of information to its stakeholders on various aspects such as performance, financial condition, compliance, etc. to help the stakeholders decide on building business relationship with the entity. The need and benefits of transparency and disclosure shift along with changing shareholder composition. In the early stages, the shareholders are typically few and heavily involved in running the business, and hence the key internal stakeholders are well informed about material developments. Therefore, focus at this stage is on preparing accurate and timely financial information to all shareholders. At the later stages new non-managing shareholders may appear, old shareholders may no longer be directly involved in operations, and the business itself becomes larger and more complicated. The importance of non-financial information increases, and its target audience becomes

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more diverse—external advisers, directors, company staff, shareholders, and clients can be some of the key groups that the company may need to keep informed.<sup>175</sup>

*Entities make timely and balanced disclosures that have a material effect on price or value of securities*

Principle 5 of the ASX Code recommends that a listed entity 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.<sup>176</sup> Principle V of the OECD Principles recommends that 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.<sup>177</sup>

In the UAE, joint stock companies are required to maintain a record of Board members' and executive department members' disclosure and update the same regularly in accordance with law. They should also make these records freely available to shareholders. The companies are required to ensure that accurate and timely disclosures are made on all material events related to the Company, including its financial affairs, performance, ownership of its shares and governance in an accessible manner by all concerned parties. As per Article (79) of The Governance Guide for Public Joint-Stock Companies (UAE) Corporate Governance Information - The company shall submit a governance report signed and approved in accordance with the form prepared by the Authority and available on the Authority website and market. The annual report shall include a corporate governance report including details specified in the Guide.<sup>178</sup>

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<sup>175</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), *available at*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUbZ>

<sup>176</sup> ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (2019), *available on*: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>

<sup>177</sup> OECD (2015), G20/OECD Principles of Corporate Governance, *available on*: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>178</sup> Securities and Commodities Authority, UAE, "The Governance Guide for Public Joint-Stock Companies" (2020), *available at*: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

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## *Transparent Policies and Procedures need to be established to ensure independence and effectiveness of audit functions, and Integrity of reporting*

The UK Code provides that 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. The board should present a fair, balanced and understandable assessment of the company's position and prospects. 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.<sup>179</sup> The UK Corporate Governance Code lay down provisions regarding various disclosures in the annual report – risks and opportunities, board's activities and action taken, working of the nomination committee, audit committee, directors responsibility for preparing annual report and accounts, board's evaluation of risk management and risk mitigation processes, etc.<sup>180</sup>

Principle 4 of the AUX Code on Safeguarding the integrity of corporate reports recommends that a listed entity should have appropriate processes to verify the integrity of its corporate reports.<sup>181</sup>

## *Timely Disclosures by Board Members and KMPs*

Obligations of making disclosures is not only incumbent upon on the company, but also on the board, KMPs and other members. As responsible actors in the company, these

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<sup>179</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf

<sup>180</sup> The UK Corporate Governance Code (July 2018) available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf> (Visited on October 19, 2022)

<sup>181</sup> ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (2019), available on: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf

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personnel may be forthcoming about making disclosures. The compliance may be timely, adequate and in a transparent manner. Typically. Disclosures regarding Related Party Transactions, Insider Trading, Conflict of Interests, Share Acquisition and Takeover, etc., are some mandatory provisions under the Companies Act and SEBI Regulations. For instance, Regulations 33 to 36, Reg. 52 of the SEBI (LODR) Regulations, 2015 prescribe the various disclosures to be filed by listed entities with the stock exchanges and/or to be published on the entity's website or to be sent to shareholders. It further provides the modified disclosure requirements in case the listed entity has listed its specified securities on the SME Exchange. The Schedule IV annexed to the said regulations provides the list of disclosures in financial results. The Schedule V annexed to the said regulations provides the list of additional disclosures to be made in the Annual Report in terms of Regulation 34(3) and 53(f) of the SEBI (LODR) Regulations, 2015.

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## 6.8. Governance of Stakeholder Engagement

### BEST PRACTICES

- *Stakeholders are fully and equally informed about company activities and involved in decision making*
- *All stakeholders are treated fairly*
- *Board carries out effective engagement with stakeholders*
- *Companies keep all channels of communication open with Stakeholders*

Principle IV of the OECD Principles recommend that 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.<sup>182</sup>

*Stakeholders are fully and equally informed about company activities and involved in decision making*

Equity investors have certain property rights. For example, an equity share in a publicly traded company can be bought, sold, or transferred. An equity share also entitles the investor to participate in the profits of the corporation, with liability limited to the amount of the investment. In addition, ownership of an equity share provides a right to

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<sup>182</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

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information about the corporation and a right to influence the corporation, primarily by participation in general shareholder meetings and by voting. The responsibility for corporate strategy and operations is typically placed in the hands of the board and a management team that is selected, motivated and, when necessary, replaced by the board. Shareholders' rights to influence the corporation on certain fundamental issues, such as the election of board members, or other means of influencing the composition of the board, amendments to the company's organic documents, approval of extraordinary transactions, and other basic issues as specified in company law and internal company statutes.<sup>183</sup>

Investors' confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is an important factor in the development and proper functioning of capital markets. Corporate boards, managers and controlling shareholders may have the opportunity to engage in activities that advance their own interests at the expense of non-controlling shareholders.<sup>184</sup>

Prior notices all with agenda and necessary information may be shared with all stakeholders. Opportunity to vote by way of postal ballot may be provided.

### *All stakeholders be treated fairly*

Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly. The board should apply high ethical standards. It should take into account the interests of stakeholders. The rights and equitable treatment of shareholders and key ownership functions.<sup>185</sup>

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<sup>183</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>184</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>185</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)



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MAS - Principle: 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.

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

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.<sup>186</sup>

### *Board carries out Effective Engagement with stakeholders*

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. 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.<sup>187</sup>

Principle 12 of the MAS Code requires that 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 their rights. Principle 13 on Managing Stakeholders Relationships Engagement with Stakeholders requires that the Board adopts an inclusive

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<sup>186</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

<sup>187</sup> Financial Reporting Council, The UK Corporate Governance Code (2018), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-uk-corporate-governance-code-final.pdf>

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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.<sup>188</sup>

Most states require companies to hold an annual shareholders' meeting, (for example, for the election of directors), to be held at a date, time, and place prescribed or determined in accordance with the company's certificate of incorporation or bye-laws (*section 211(b)*, *DGCL*). Typically, the board determines when and where to hold the meeting, including whether a meeting should be held at a physical location, virtually or both.

The NYSE requires companies to hold an annual shareholders' meeting during each fiscal year. Nasdaq requires each company to hold an annual shareholders' meeting no later than one year after the end of the company's prior fiscal year.<sup>189</sup>

Principle 6 on Respecting the rights of security holders of the AUX Code recommends that a listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.<sup>190</sup>

### *Companies keep all channels of communication open with Stakeholders*

In the age of instant information and social media interactions, apart from complying with law and making the mandated disclosures, corporates are expected to keep the stakeholders updated on company activities. This can be achieved through their official websites and social media platforms. Information shared may be timely and in a transparent manner.

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<sup>188</sup> [Monetary Authority of Singapore](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), Code of Corporate Governance (2018), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/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

<sup>189</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

<sup>190</sup> ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (2019), available on: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf

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## 6.9. Treatment of Minority Shareholders

### BEST PRACTICES

- *Minority shareholders are able to voice their opinions*
- *There are no differential treatment in voting right amongst the same class of shareholders*

Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly. <sup>191</sup>

#### *Minority shareholders are able to voice their opinions*

All shareholders may be meted equal treatment by the company and the board. They may be provided with all information as shared with other majority shareholders and investors. Their right to vote and participate in decision making may be protected and respected.

#### *There may not be any differential treatment in voting right amongst the same class of shareholders*

Between shareholders of the same class, there may not be any differential treatment in voting rights. While there are differences between preferential and equity shareholders

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<sup>191</sup> OECD (2015), G20/OECD Principles of Corporate Governance, available on: [https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015\\_9789264236882-en](https://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en)

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and different classes of shareholders, minority shareholders in a particular may be treated fairly and equally.

### **BEST PRACTICES**

- *Annual financial statement are audited by an external independent auditor*
- *External Auditor is rotated once in a few years*
- *Conflict of Interests from external auditors are prevented*

## **6.10. Auditor Independence and Transparency**

### *Audit of Annual financial statement by an external independent auditor*

Independence and reliability of external auditors may be ensured and a clear policy for their timely rotation and to assess the effectiveness of external audit function may also be laid out.

A public company's annual financial statements may be audited by a registered independent accounting firm. A public company's audit committee may be directly responsible for the appointment, compensation and oversight of the independent auditors (*section 301, Sarbanes-Oxley Act 2002*). The audit committee has authority to approve all audit engagement terms and fees, as well as the authority to terminate the

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engagement. Companies typically seek shareholder ratification of independent auditor appointments.<sup>192</sup>

UAE - External Auditing Article (72) Auditor Selection 1. The Company shall assign the function of auditing its annual accounts to an independent external auditor having the necessary experience and qualifications to prepare an objective and independent report to the Board and shareholders, indicating whether the financial statements of the Company clearly and impartially reflect the financial position and performance of the Company in key areas. 2. The Board shall nominate one or more auditor upon the recommendation of the audit committee. The auditor shall be appointed, and its remuneration shall be fixed under a resolution of the general assembly of the Company. 3. Such auditor shall be recorded in the Authority register of professional auditors. 4. The auditor shall be selected based on criteria of efficiency, reputation and experience. 5. None of the employees of the auditing office may be appointed at the Company Senior Executive Management before the lapse of two years at least as of the date of such employee leaving the auditing of the Company accounts.<sup>193</sup>

### *External Auditor rotates once in a few years*

Lead audit partners must rotate every five years (*section 203, Sarbanes-Oxley Act 2002*). Audit firm rotation is not required. Any firm auditing a public company's financial statements must be registered with the Public Company Accounting Oversight Board (PCAOB). They must also meet independence requirements provided in the federal securities laws (such as rule 10A-2 of the Exchange Act 1934) and PCAOB rules (*rule 3520, PCAOB*).<sup>194</sup>

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<sup>192</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

<sup>193</sup> Securities and Commodities Authority, UAE, "The Governance Guide for Public Joint-Stock Companies" (2020), available at: <https://www.sca.gov.ae/assets/923a6983/the-governance-guide-for-public-joint-stock-companies-attached-to-the-sca-board-chairmans-decision.aspx> (Visited on October 19, 2022)

<sup>194</sup> Holly J Gregory, Rebecca Grapsas and Claire H Holland, *Sidley Austin LLP*, "Corporate Governance and Directors' Duties in the United States: Overview", available on: [https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-011-8693?transitionType=Default&contextData=(sc.Default)) (Last modified 1 September 2021)

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## *Conflict of Interests from external auditors is prevented*

Internal and external audits serve different functions. Internal auditors examine issues related to company business practices and risks, and internal audits are conducted throughout the year. External auditors examine the financial records and conduct a single annual audit. Large and mature companies need to have both.

In India, Chapter X of the Companies Act, 2013 contain provisions regarding audit and auditors such as appointment, removal, resignation, eligibility, qualifications, remuneration, powers and duties of auditors, services that they cannot render, compliance with auditing standards, etc.

Section 144 of The Companies Act, 2013 prescribe the list of services which the auditor of a company cannot render directly or indirectly to the company or its holding/subsidiary company. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 also provides certain safeguards w.r.t. appointment and fees of auditors. Section 204 of the Companies Act 2013 lay down the requirements of secretarial audit for bigger companies i.e. every listed company and companies belonging to prescribed class or classes of companies. The revised Code of Ethics and Standard on Quality Control (SQC 1) by The Institute of Chartered Accountants of India provide the regulatory framework on independence of auditors.

Best practice for managing external auditors includes the following actions:

- Restrict the auditor from providing other services that may cause conflicts of interest.
- Consider rotation of auditor—or at least senior audit partner—every five years.
- Disclose fees paid to the auditor for audit, and if the company still choses to obtain non-audit services, disclose the amount paid for those as well.<sup>195</sup>

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<sup>195</sup> International Finance Corporation, World Bank Group, SME Governance Guidebook (2020), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ifc.org/wps/wcm/connect/acc873c9-5cb2-42da-aa72-0b46e6c1b48b/IFC+SME+Guide+2020+Web.pdf?MOD=AJPERES&CVID=n7bAUBZ>

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## 6.11. Raising finances, Restructuring, and Regulator Investigations

### BEST PRACTICES

- *Ensure relevant compliances involved in various methods of raising finances and restructuring*
- *Prepare and follow a checklist of compliances and disclosures*
- *Co-operate with the regulators and work towards closing and settling any issues*

Corporates that are in the process of incorporation or receiving further funding have multiple sources for doing so, namely, from investors, banks, private placement, deposits, GDR, etc. Whichever method the company opts for, the corresponding compliances may be carried out, while ensuring necessary agreements are executed.

Activities that result in restructuring, including entering into M&A transactions, IPO and listing attract provision of Companies Act, SEBI (LODR) and other related regulations. Failure to comply will result in reputation and legal risks, and loss of faith. Apart from conducting due-diligence before entering such transactions, business entities may consider preparing and following a checklist of compliances and disclosures required in such transactions so as to avert unintended non-compliance by the entity.

In day-to-day conduct of business, corporates may comply with applicable laws of the land and pay taxes, cess, and levies. There might be occasions that result in interactions with regulators. Corporates are encouraged to co-operate with the regulators and work towards closing and settling issues.

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## 7. CONCLUSION

Corporate governance is based on the principles of accountability, fairness, integrity, transparency, disclosure and responsibility. Being a dynamic concept, more and more dimensions keep getting added to corporate governance such as ESG and sustainability. The underlying principles of Corporate Governance are basic values which aims to enhance effectiveness, professionalism, sustainability and credibility of the organizations. The responsibility of adhering to good governance norms cannot only be limited to large-scale industries and big corporates. Given the crucial role played by Start-ups and SMEs in India's economic growth and development of entrepreneurship, they are also expected to conduct business while observing good governance principles. Good Governance can be the key for transforming SMEs and Start-ups into large businesses of the future by helping them gain stakeholders' trust, mitigate risks, give improved access to capital, safeguard against mismanagement, scale up operations, make businesses sustainable in the long-run and attract investment.

Therefore, all Start-ups and SMEs can implement sound corporate governance practices at a broader principal level, flexibly, on voluntary basis even if not required statutorily without incurring significant additional costs keeping in view, the scale of operations, size and structure of the business and specific business scenarios faced by SMEs which are essentially heterogenous in nature. It will enable these basic values of responsibility, accountability, fairness, disclosures, trust and transparency to seep through the entire culture of the organization and lay a strong foundation of good governance for the organization. This will empower the organization to overcome various governance challenges successfully even when the organization expands in terms of scale and volume of business, thrive amidst the growing competition and complexities involved in the ever-changing business scenario and become globally competitive in the long run.



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95. Manu Kaushik, [www.businesstoday.in](https://www.businesstoday.in/magazine/cover-story/story/mystery-of-the-oyo-rooms-ritesh-agarwal-investors-business-model-250370-2020-02-18), “Mystery of the Oyo Rooms” (March 08, 2020), available at: <https://www.businesstoday.in/magazine/cover-story/story/mystery-of-the-oyo-rooms-ritesh-agarwal-investors-business-model-250370-2020-02-18> (Visited on October 3, 2022)

# APPENDIX I - Questionnaire for Survey

## Corporate Governance in Start-up's and SME's

### How is your entity doing?

We are undertaking a study on current standards of corporate governance practices in Indian Start-ups and SME's. Below, you will find simple questions regarding your internal policies and practices. Your responses will remain anonymous and confidential. Please click on the appropriate box and provide your comments, if any, in space provided in this questionnaire. Once completed, please e-mail it back to us. Thank you.

### INTERVIEWEE DETAILS

Entity Type  
Listed Co. ☐ Unlisted Co. ☐ Trust ☐  
Partnership ☐ Sole Proprietorship ☐ LLP ☐  
Other Click or tap here to enter text.

Entity Name Click or tap here to enter text.

Start-up / MSME /Other Click or tap here to enter text.

Your name and designation Click or tap here to enter text.

(M) Click or tap here to enter text.

(e-mail) Click or tap here to enter text.

### CORPORATE GOVERNANCE

#### Would you say your entity –

Has a fair understanding of principles? ☐ Yes I ☐ No  
Integrated them into entity's culture? ☐ Yes I ☐ No  
Complies with the principles in true spirit? ☐ Yes I ☐ No  
Committed to be a good corporate citizen? ☐ Yes I ☐ No  
Committed to strong ethical and integrity-based practices? ☐ Yes I ☐ No

Click or tap here to enter text.

### FORMATION

#### Is/Has your entity –

Duly formed and registered? ☐ Yes I ☐ No  
Obtained necessary licenses? ☐ Yes I ☐ No  
Filed incorporation documents? ☐ Yes I ☐ No

Click or tap here to enter text.

## BOARD/GOVERNING BODY

Does your Board/Governing body have -

### Composition & Structure

Directors/Members as per scale and complexity of business? ☐ Yes I ☐ No  
Executive directors/members? ☐ Yes I ☐ No  
Non-executive directors/ members? ☐ Yes I ☐ No  
Independent directors/External members? ☐ Yes I ☐ No  
Women directors/ members? ☐ Yes I ☐ No  
Necessary competency and expertise? ☐ Yes I ☐ No  
Separation of CEO/Management from Chair of Board/ Governing Body? ☐ Yes I ☐ No  
Understanding of how to read and interpret financial and non-financial statements and reports? ☐ Yes I ☐ No  
Receive orientation on entity's objectives, culture, and policies during induction? ☐ Yes I ☐ No  
Criteria for retirement (rotation or other)? ☐ Yes I ☐ No

### Functioning

Regular meetings as per entity's needs? ☐ Yes I ☐ No  
Opportunity for all directors/members to voice opinions freely? ☐ Yes I ☐ No  
Trust between directors/members? ☐ Yes I ☐ No  
Performance Evaluation process? ☐ Yes I ☐ No  
Understanding of role and responsibilities? ☐ Yes I ☐ No  
Access to timely and complete information, including sensitive issues? ☐ Yes I ☐ No

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## COMMITMENT ESG, CSR, DE&I AND SUSTAINABILITY

### Is/Does your entity –

Focus on conducting business purposefully and not just profitably? ☐ Yes I ☐ No  
In Compliance (voluntarily/ otherwise)? ☐ Yes I ☐ No  
Have targets to reduce carbon emissions? ☐ Yes I ☐ No  
Enforce compliance from associated entities/ third party partners? ☐ Yes I ☐ No  
Internal mechanisms to verify efficacy of its programmes and initiatives? ☐ Yes I ☐ No

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## CONTROL ENVIRONMENT

### Does/Has your entity –

- Formed Committees/Core Groups to focus on specific issues (voluntarily/otherwise)? ☐ Yes I ☐ No
- Linked managerial remuneration to profits? ☐ Yes I ☐ No
- Pay managerial compensation commensurate with responsibilities or performance? ☐ Yes I ☐ No
- Policies to disclose interests and Related Party Transactions? ☐ Yes I ☐ No
- Policy on succession planning for senior management and Board? ☐ Yes I ☐ No
- Identified risks and impact, and Adopted crisis management/ risk mitigation plans? ☐ Yes I ☐ No
- Dedicated personnel to work on internal audit and compliance functions? ☐ Yes I ☐ No
- Formed grievance redressal mechanisms (voluntarily or otherwise)? ☐ Yes I ☐ No
- Committed to ethical practices and towards anti-corruption and anti-bribery? ☐ Yes I ☐ No
- Conduct Secretarial audit regularly? ☐ Yes I ☐ No

[Click or tap here to enter text.](#)

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## DISCLOSURE & TRANSPARENCY

### Would you say your entity –

- Makes prompt and timely disclosures? ☐ Yes I ☐ No
- Submits timely returns and statements? ☐ Yes I ☐ No
- Reflects correct and true picture/ information (financial/non-financial) in its disclosures and statements? ☐ Yes I ☐ No
- Issues prompt and effective communications to stakeholders? ☐ Yes I ☐ No
- Has had concerns regarding financial or non-financial statements/reporting in past 3 years? ☐ Yes I ☐ No
- Makes timely payment of dividends? ☐ Yes I ☐ No
- Proactively shares information on website? ☐ Yes I ☐ No

[Click or tap here to enter text.](#)

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## STAKEHOLDER ENGAGEMENT

### Would you say your entity is/has/provides –

#### General

- Committed to develop stakeholder relationships? ☐ Yes I ☐ No
- Transparent supplier/ contractor selection and management processes? ☐ Yes I ☐ No

## Shareholders/Investors

- Adequate measures for minority shareholders to voice opinions? ☐ Yes I ☐ No
- Equitable Treatment to all shareholders? ☐ Yes I ☐ No
- Intimation of basic rights to shareholders? ☐ Yes I ☐ No
- Policy towards oppression and mismanagement? ☐ Yes I ☐ No
- Conduct sufficient and regular meetings? ☐ Yes I ☐ No
- Sufficient time to engage with shareholders during meetings? ☐ Yes I ☐ No
- Permit Proxy and e-voting? ☐ Yes I ☐ No
- Effective Investor Grievance Redressal Mechanism? ☐ Yes I ☐ No
- Presence of all board members and auditors during general meetings? ☐ Yes I ☐ No

## Employees

- Provide training on culture and policies on entity? ☐ Yes I ☐ No
- Educate and inform their rights and responsibilities? ☐ Yes I ☐ No
- Fair policies on appointment, compensation, and termination of employees/consultants? ☐ Yes I ☐ No
- Policies to address health, welfare, and safety (including on sexual harassment, whistle blower, etc.)? ☐ Yes I ☐ No

[Click or tap here to enter text.](#)

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## AUDITOR INDEPENDENCE

### Would you say –

- Auditors are independent and competent? ☐ Yes I ☐ No
- Appointed on a rotation basis? ☐ Yes I ☐ No
- Audit Committee is headed by an Independent/ Non-executive director? ☐ Yes I ☐ No

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## FINANCE, RESTRUCTURING & REGULATOR ISSUES

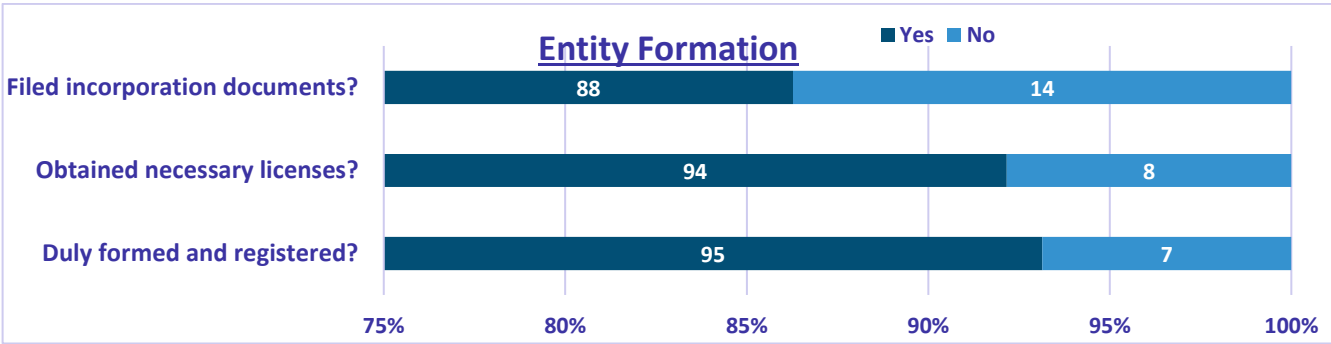
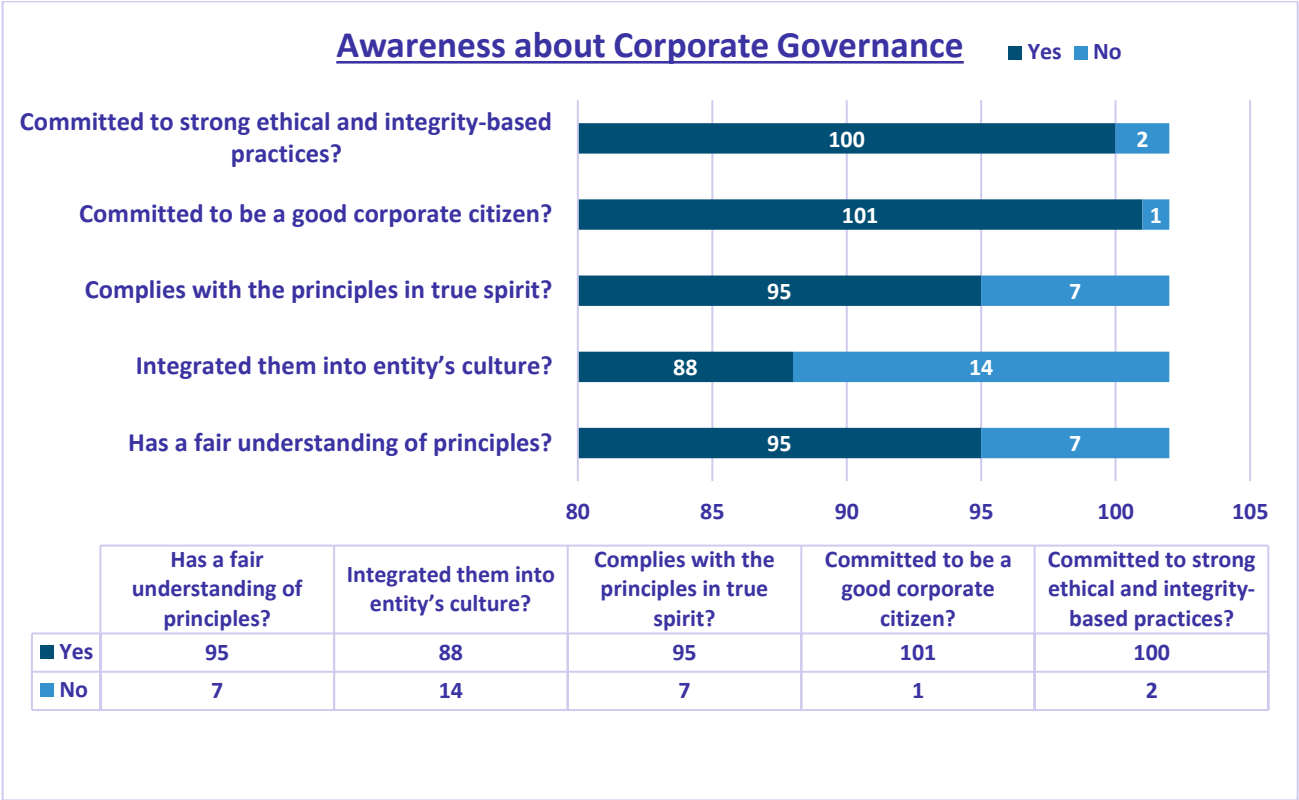
### Does/Has your entity –

- Raised finance through an IPO? ☐ Yes I ☐ No
- Entered into agreements for M&As? ☐ Yes I ☐ No
- Faced issue with Regulator or Govt. agency? ☐ Yes I ☐ No

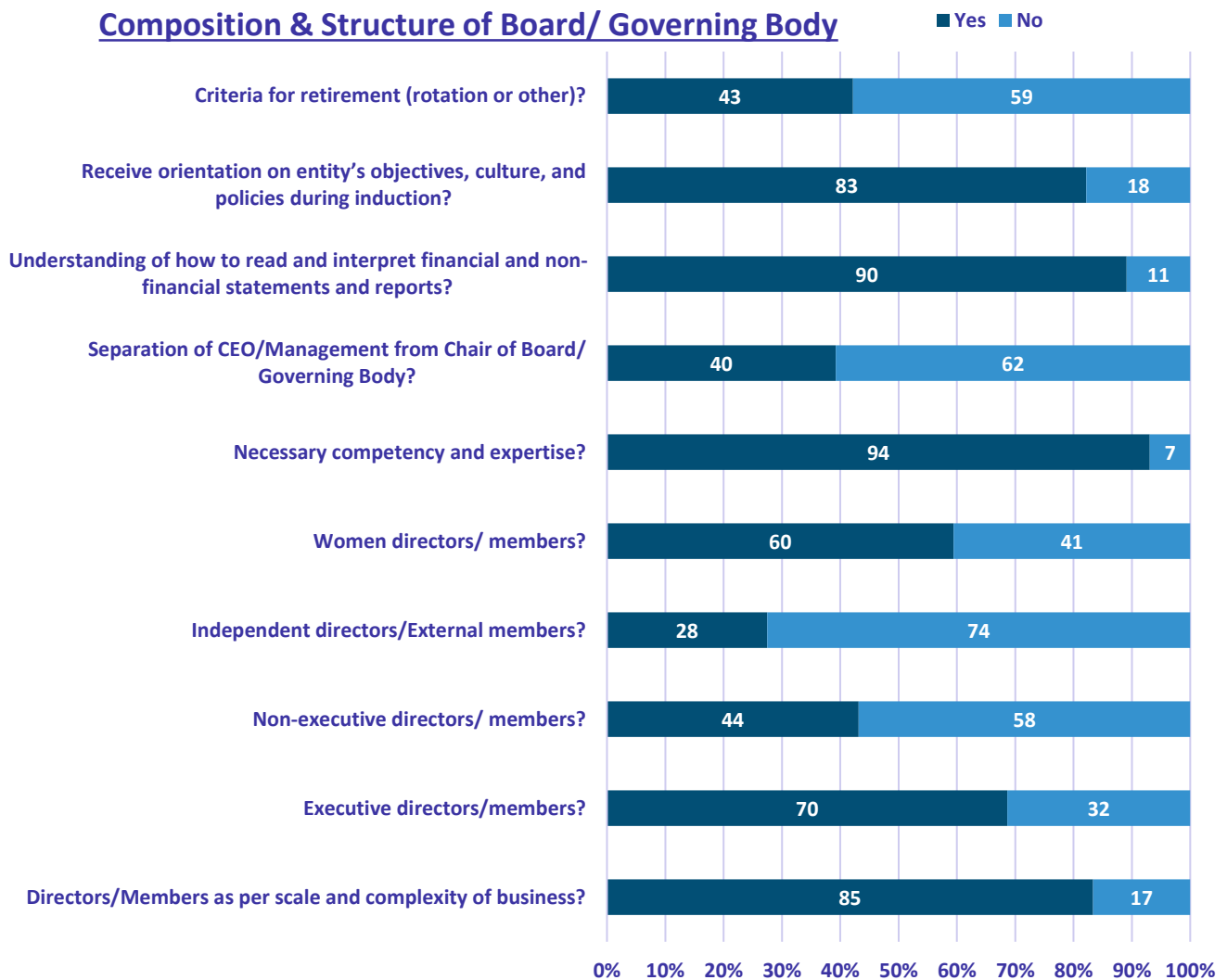
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# APPENDIX II - Survey Results

The responses received to the sample survey were analyzed and the important findings of the survey are presented as follows:

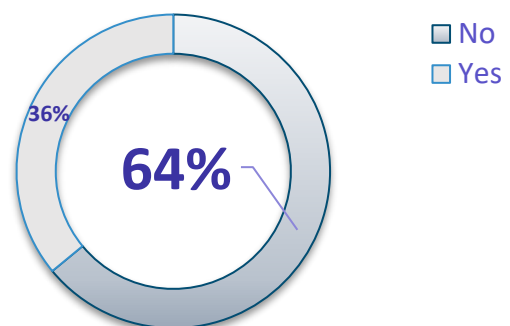


## Composition & Structure of Board/ Governing Body



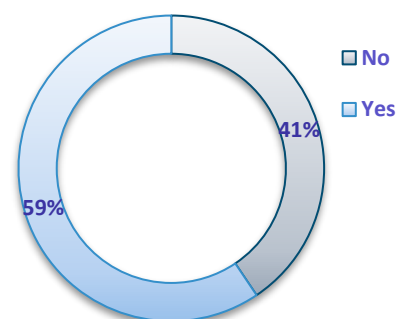
- One of the survey questions was regarding **inclusion of Independent directors/ External members on the governing Board of the entity** and the responses are as follows:

Response	Independent directors/ External members
No	64%
Yes	36%
Grand Total	100%



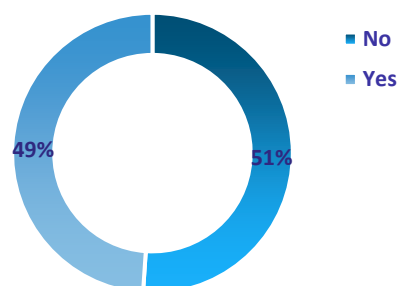
- Another question was pertaining to **inclusion of women directors/ members on board** which revealed following responses:

Response	Women directors/ members
No	41%
Yes	59%



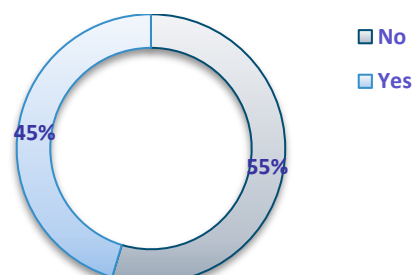
- In response to question on inclusion of Non-executive directors/ members on Board:

Response	Non-executive directors/ members
No	51%
Yes	49%



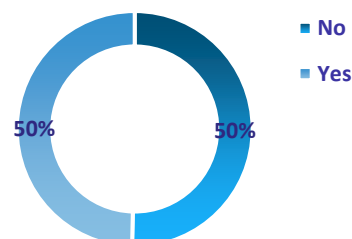
- When asked about **Separation of CEO/ Management from Chair of Board/ Governing Body**, the respondents replied as follows:

Response	Separation of CEO/ Management from Chair of Board/ Governing Body
No	55%
Yes	45%



- Regarding **Criteria for retirement (rotation or other)**, the responses revealed:

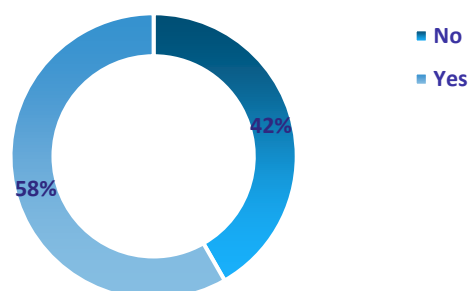
Response	Criteria for retirement (rotation or other)
No	50%
Yes	50%





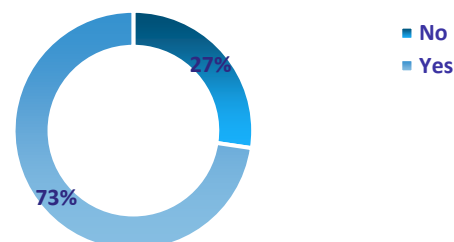
- On existence of **Policy on succession planning for senior management and Board**, the respondents replied:

Response	Policy on succession planning for senior management and Board
No	42%
Yes	58%



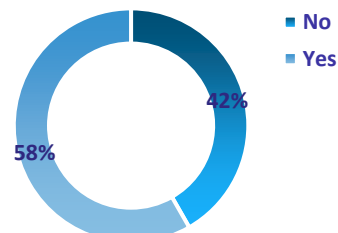
- Whether there were **Dedicated personnel to work on internal audit and compliance functions**, following responses were recorded:

Response	Dedicated personnel to work on internal audit and compliance functions
No	27%
Yes	73%

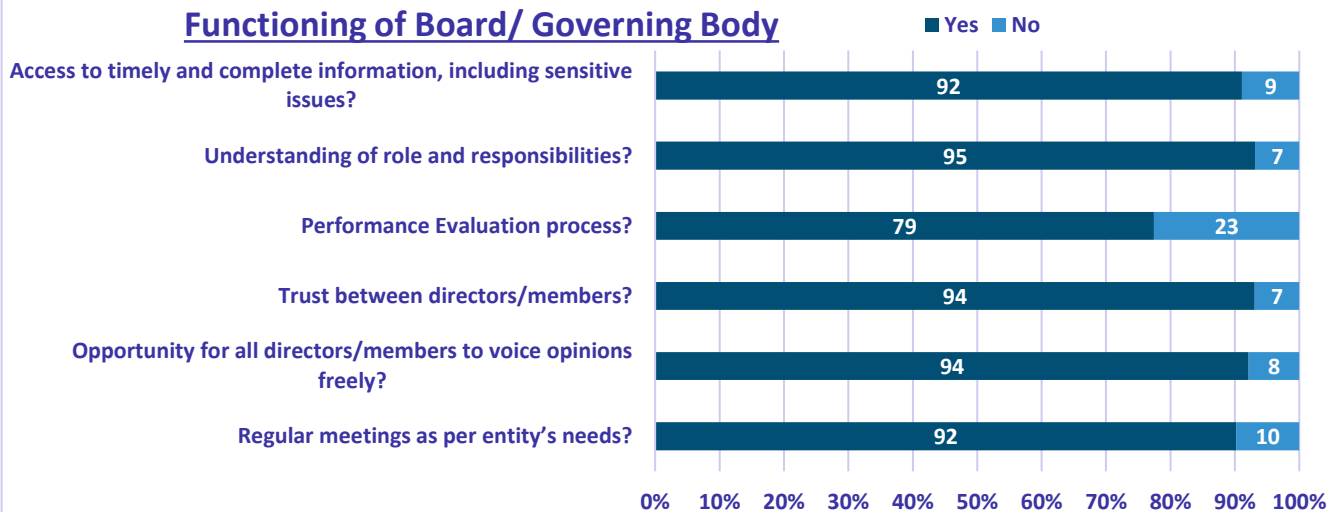


- Whether they had **concerns regarding financial or non-financial statements/reporting in past 3 years**, the responses were:

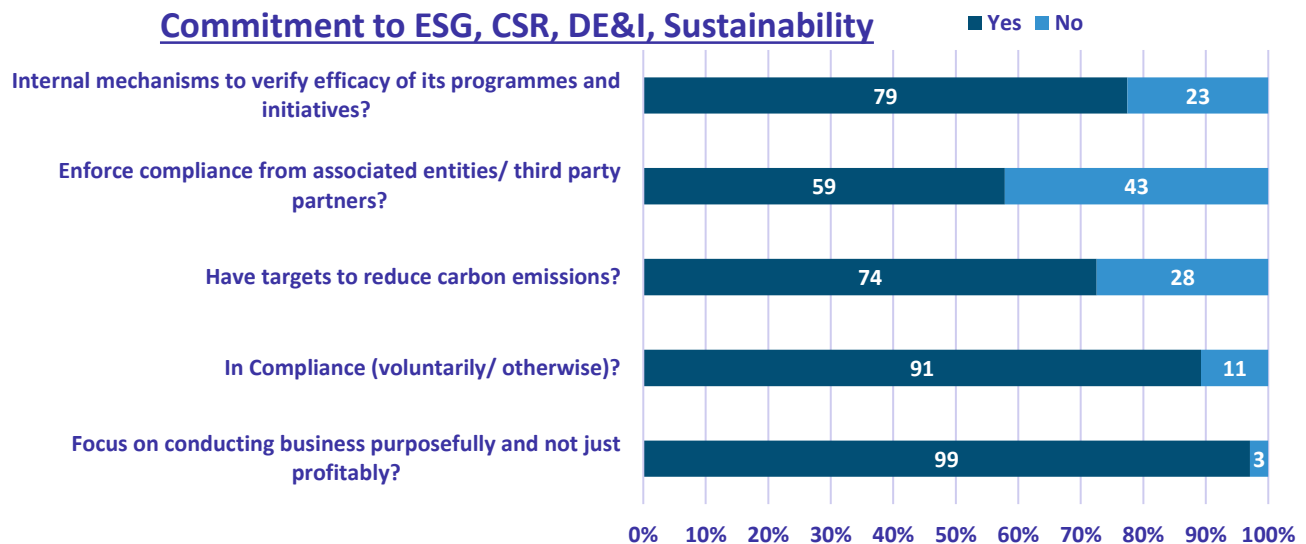
Responses	had concerns regarding financial or non-financial statements/reporting in past 3 years
No	42%
Yes	58%



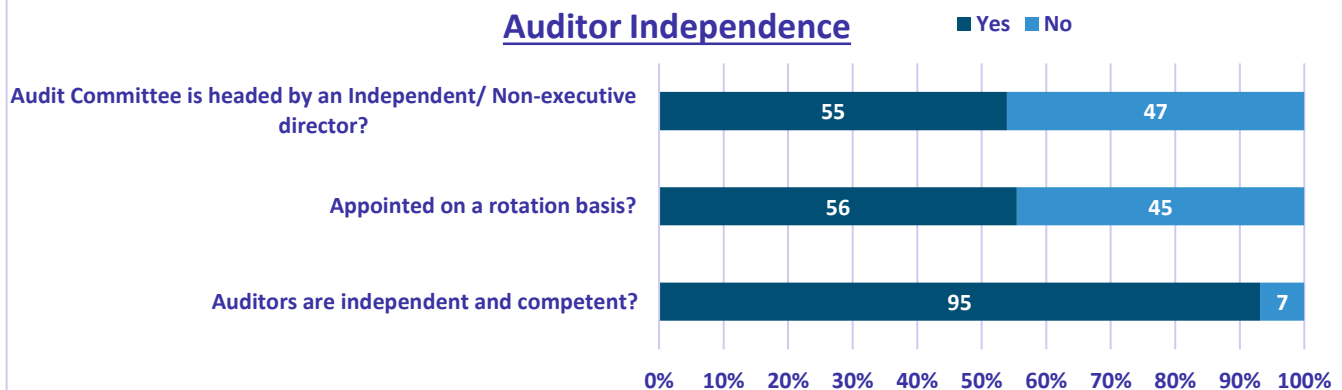
### Functioning of Board/ Governing Body



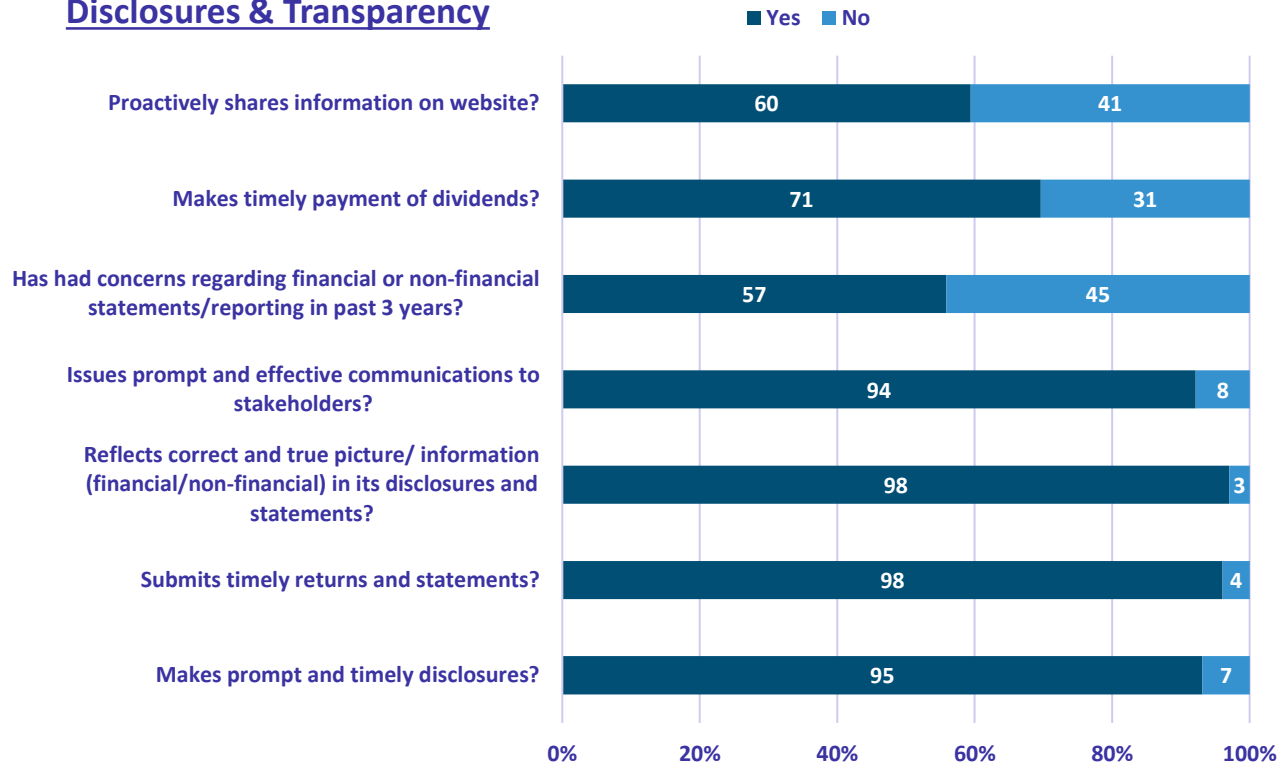
### Commitment to ESG, CSR, DE&I, Sustainability



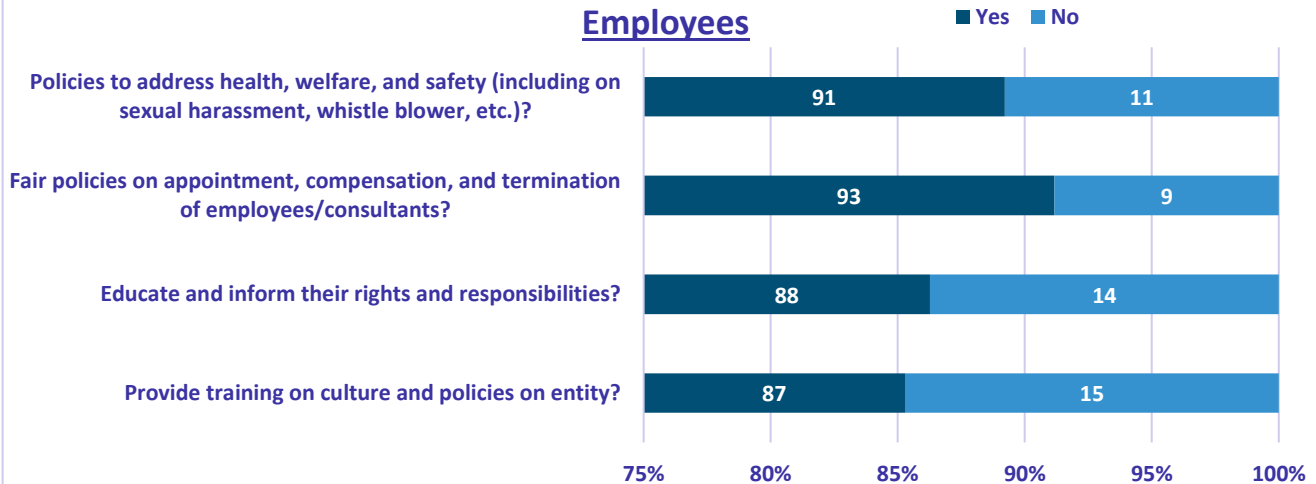
### Auditor Independence

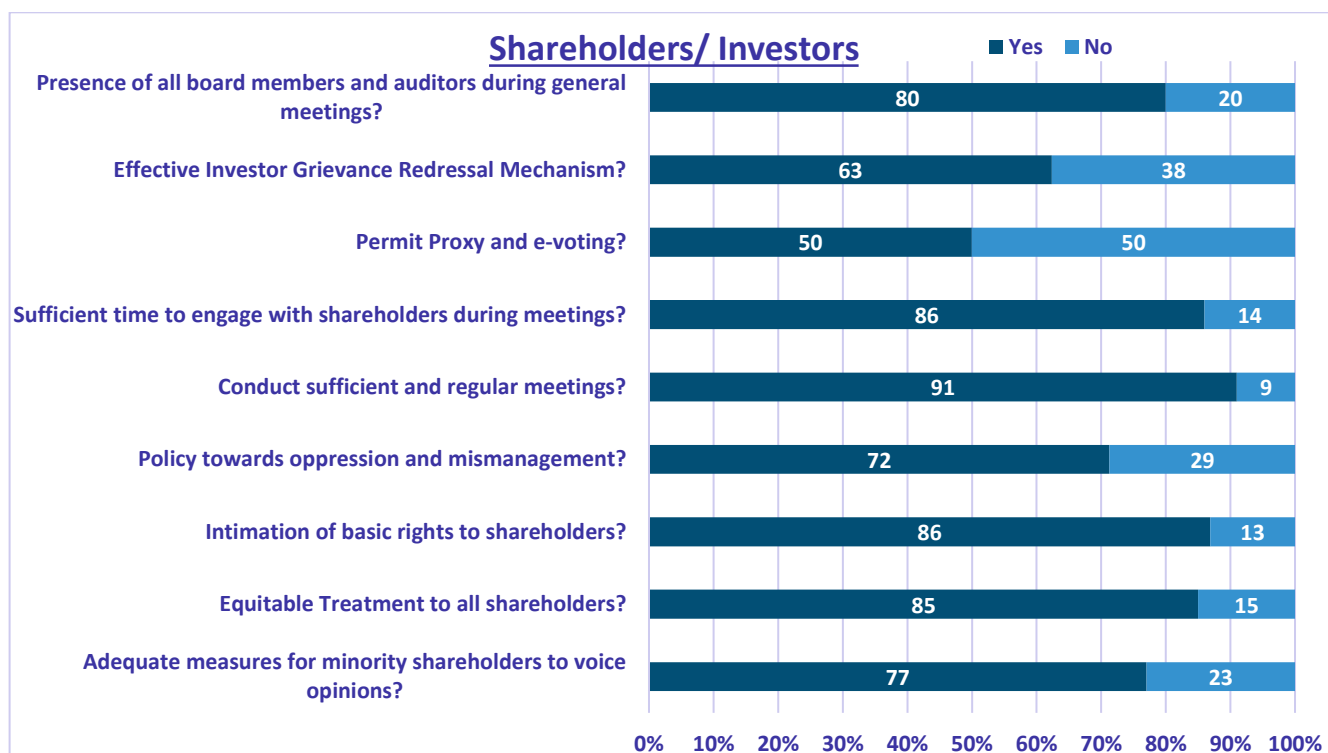
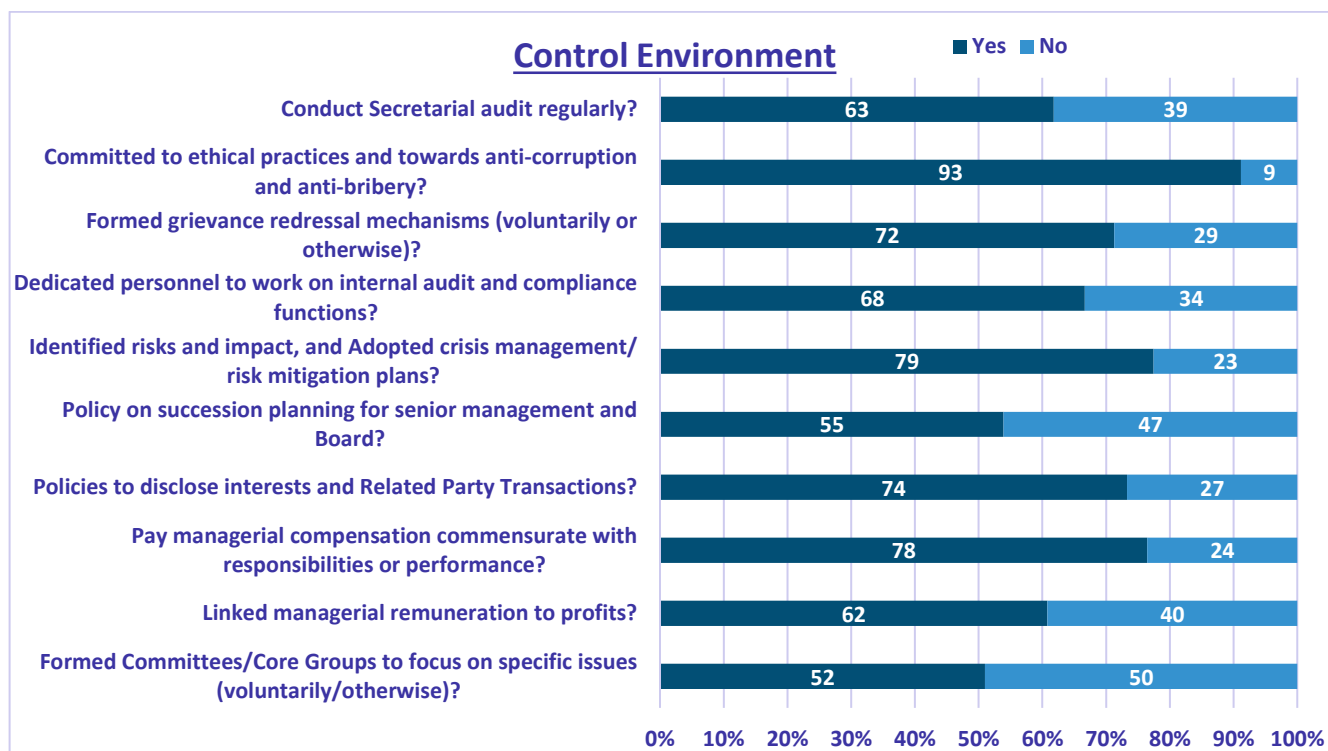


## Disclosures & Transparency



## Employees





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# APPENDIX III - Extracts of the Companies Act, 2013<sup>196</sup>

## Chapter II

### Incorporation of Company and Matters Incidental Thereto

#### 3. Formation of Company

(1) A company may be formed for any lawful purpose by—

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

**Provided** that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

**Provided further** that such other person may withdraw his consent in such manner as may be prescribed:

**Provided also** that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

**Provided also** that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

**Provided also** that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(2) A company formed under sub-section (1) may be either—

(a) a company limited by shares; or

(b) a company limited by guarantee; or

(c) an unlimited company.]

#### Exceptions/ Modifications/ Adaptations

In case of Specified IFSC Public Company- In Sub-section (2) of section 3 the following proviso shall be inserted, namely :-

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<sup>196</sup> The Companies Act, 2013, (2020) available at: <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==> (Visited on October 19, 2022)

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“Provided that a Specified IFSC public company shall be formed only as a company limited by shares.” - Notification Dated 4th January, 2017

In case of Specified IFSC Private Company - In sub-section (2) of Section 3, the following proviso shall be inserted, namely:-

“Provided that a Specified IFSC private company shall be formed only as a company limited by shares.” Notification Dated 4th January, 2017

## **7. Incorporation of Company**

(1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:—

(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;

(b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(c) <sup>1</sup>[a declaration] from each of the subscribers to the memorandum and from persons named as the first Directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) the address for correspondence till its registered office is established;

(e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(f) the particulars of the persons mentioned in the articles as the first Directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

(g) the particulars of the interests of the persons mentioned in the articles as the first Directors of the company in other firms or bodies corporate along with their consent to act as Directors of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.

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(5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

(6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first Directors of the company and the persons making declaration under clause (b) of sub-section (1) shall each be liable for action under section 447.

\*(7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

\*\*(c) direct removal of the name of the company from the register of companies; or

\*\*(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit:

**Provided** that before making any order under this sub-section,—

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

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## CHAPTER IX

### ACCOUNTS OF COMPANIES

#### **Books of Account, etc., to be kept by Company**

**128.** (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner [as may be prescribed](#).

(2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions [as may be prescribed](#):

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

(4) Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable ~~with imprisonment for a term which may extend to one year or~~ with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees ~~or with both~~.



## Corporate Social Responsibility

**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 <sup>3</sup>[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.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(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 <sup>5</sup>[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.

(4) 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.

(5) The Board of every company referred to in sub-section (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 <sup>7</sup>[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 <sup>8</sup>[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.

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.

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

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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.

(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.

(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.

1. Clarification related to Schedule VII -Dated 18.06.2014. (Point (iv) has been Omitted - Refer Clarification Dated-17.09.2014)

2. Clarification related to above Clarification Dated-17.09.2014.

3. Clarification with regard to provisions under section 135 (5) of the Companies Act, 2013.

### **Exceptions/Modifications/Adaptations**

1. In case of Specified IFSC Public Company - Section 135 shall not apply for a period of five years from the commencement of business of a Specified IFSC public company - Notification Dated 4th January, 2017.

2. In case of Specified IFSC Private Company - Section 135 shall not apply for a period of five years from the commencement of business of a Specified IFSC private company - Notification Dated 4th January, 2017

## Internal Audit

138. (1) 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.

(2) 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.

## CHAPTER X AUDIT AND AUDITORS

### Appointment of Auditors

139. (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such [as may be prescribed](#):

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions [as may be prescribed](#), shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in [section 141](#):

Provided also that the company shall inform the auditor concerned of his or its appointment, and also [file a notice](#) of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.—For the purposes of this Chapter, “appointment” includes reappointment.

(2) No listed company or a company belonging to such class or classes of companies [as may be prescribed](#), shall appoint or re-appoint—  
(a) an individual as auditor for more than one term of five consecutive years; and  
(b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—  
(i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;  
(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this sub-section within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act.

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

(3) Subject to the provisions of this Act, members of a company may resolve to provide that—  
(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or  
(b) the audit shall be conducted by more than one auditor.

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(4) The Central Government may, by rules, [prescribe](#) the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

Explanation.—For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

(5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or [any other company](#) owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or [any other company](#) owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, \*the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

(8) Any casual vacancy in the office of an auditor shall—  
(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;  
(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

(9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—  
(a) he is not disqualified for re-appointment;  
(b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and  
(c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(11) Where a company is required to constitute an Audit Committee under [section 177](#), all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

\* [Responsibility to Inform C&AG](#)

**Exceptions/ Modifications/ Adaptations**

1. In case of Specified IFSC Public Company- In fourth proviso to sub section (1) of section 139, for the words “ fifteen days” read as “ thirty days”. - Notification Dated 4th January 2017.
2. In case of Specified IFSC Public Company- All provisos to sub section (2) of section 139 shall not apply. - Notification Dated 4th January 2017.
3. In case of Specified IFSC Private Company- In fourth proviso to sub section (1) of section 139, for the words “ fifteen days” read as “ thirty days”. - Notification Dated 4th January 2017.
4. In case of Specified IFSC Private Company- All provisos to sub section (2) of section 139 shall not apply. - Notification Dated 4th January 2017.

## **Eligibility, Qualifications and Disqualifications of Auditors**

141. (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant:

Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.

(2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144.

(4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

### Exception/ Modification/ Adaptation

1. In case of private company - in clause (g) of sub-section 3 after the words twenty companies", the following words shall be inserted;

"other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupee"- Notification Dated 5th June, 2015

### Auditor not to Render Certain Services

**144.** An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed:

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor,—

- (i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;
- (ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

## CHAPTER XI

### APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

Company to have Board of Directors

**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 may be prescribed](#), shall have at least one woman director.

(2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).

(3) Every company shall have at least one director who stays 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.

(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.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

(6) 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 <sup>12</sup>[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 may be prescribed 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 may be prescribed 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 nonprofit 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 may be prescribed](#).

(7) 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, give a declaration that he meets the criteria of independence as provided in sub-section (6).  
Explanation.—For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in [Schedule IV](#).

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of [sections 197](#) and [198](#), an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of [section 197](#), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.

(10) 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.

(11) 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.

(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.

(13) 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.

#### Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors

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 be 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



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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 may be prescribed](#).

(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 Director Elected by Small Shareholders**

151. A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions [as may be prescribed](#).

Explanation.—For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

### **Duties of Directors**

**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.

### **Audit Committee**

**177.** (1) The Board of Directors of <sup>5</sup>[every listed public company](#) and such other class or classes of companies, [as may be prescribed](#), shall constitute an Audit Committee.

(2) The Audit Committee shall consist of a minimum of three directors <sup>2</sup>[\[with independent directors forming a majority\]](#):

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

(3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).

(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;

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(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.

(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.

(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.

(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.

(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.

(9) 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.

(10) The vigil mechanism under sub-section (9) 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:

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.

## **Nomination and Remuneration Committee and Stakeholders Relationship Committee**

178. (1) The Board of Directors of every listed public 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:

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.

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(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 <sup>5</sup>[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.

(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.

(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.

(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.

(6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.

(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.

(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 <sup>7</sup>[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.

#### Disclosure of Interest by Director

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.

(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.]

(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.

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

(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 or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate 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.

### Related Party Transactions

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 may be prescribed, 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 not exceeding such sums, as may be prescribed, 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 <sup>1</sup>[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.

(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.

(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.

(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.

(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

## **CHAPTER XIV**

### **INSPECTION, INQUIRY AND INVESTIGATION**

#### **Power to Call for Information, Inspect Books and Conduct Inquiries**

206. (1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

(a) to furnish in writing such information or explanation; or

(b) to produce such documents, within such reasonable time, as may be specified in the notice.

(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within

such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in [section 447](#).

(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose. - ([Notification dated on 29th April, 2014.](#))

(6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.

(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

### **Investigation into Affairs of Company**

210. (1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

- (a) on the receipt of a report of the Registrar or inspector under [section 208](#);
- (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
- (c) in public interest, it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

### **Penalty for Furnishing False Statement, Mutilation, Destruction of Documents**

229. Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,—

- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
- (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
- (c) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in [section 447](#).

## **CHAPTER XVI PREVENTION OF OPPRESSION AND MISMANAGEMENT**

**Application to Tribunal for Relief in Cases of Oppression, etc**

241. (1) Any member of a company who complains that—  
(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests



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of the company; or  
(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

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# **APPENDIX IV - Extracts of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015**

**[Last amended on July 25, 2022]<sup>197</sup>**

## **CHAPTER II**

### **PRINCIPLES GOVERNING DISCLOSURES AND OBLIGATIONS OF LISTED ENTITY**

#### **Principles governing disclosures and obligations.**

4. (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.

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<sup>197</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on July 25, 2022] available at: <https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-july-25-2022-61405.html>



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(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:** 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:** 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:** 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 shareholder 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.

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

(d) **Role of stakeholders in corporate governance:** 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 <sup>40</sup>[vigil mechanism/] whistle blower <sup>41</sup>[policy] enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

(e) **Disclosure and transparency:** 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:** The board of directors of the listed entity shall have the following responsibilities:

(i) Disclosure of information:

(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-

(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.

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(7) Ensuring the integrity of the listed entity'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.

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

(iii) Other responsibilities:

(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 into account the interests of stakeholders.

(7) The board of directors shall exercise objective independent 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 mandate, 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 their responsibilities, 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 this Chapter shall prevail.

...

## **CHAPTER IV**

### **OBLIGATIONS OF [A] LISTED ENTITY WHICH HAS LISTED ITS SPECIFIED SECURITIES [AND NON-CONVERTIBLE DEBT SECURITIES]**

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#### **Board of Directors.**

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17. (1) 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 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;

Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.]

(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.

[(c) The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) 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.]

[(d) where the listed company has outstanding SR equity shares, atleast half of the board of directors shall comprise of independent directors.]

[(1A) No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.]

[\*\*\*]

[(1C). The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors <sup>80</sup>[or as a manager] is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier:]

[Provided that the appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders:

Provided further that the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment.]

(2) 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.

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[(2A) The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and 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.

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.

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.]

(3) The board of directors shall periodically review compliance reports pertaining to all laws applicable to the listed entity, prepared by the listed entity as well as steps taken by the listed entity to rectify instances of non-compliances.

(4) The board of directors of the listed entity shall satisfy itself that plans are in place for orderly succession for appointment to the board of directors and senior management.

(5) (a) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.

(b) The code of conduct shall suitably incorporate the duties of independent directors as laid down in the Companies Act, 2013.

(6) (a) The board of directors shall recommend all fees or compensation, if any, paid to non-executive directors, including independent directors and shall require approval of shareholders in general meeting.

(b) The requirement of obtaining approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

(c) The approval of shareholders mentioned in clause (a), shall specify the limits for the maximum number of stock options that may be granted to non-executive directors, in any financial year and in aggregate.

[(ca) The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.]

(d) Independent directors shall not be entitled to any stock option.

[(e) The fees or compensation payable to executive directors who are promoters or members of the promoter group, shall be subject to the approval of the shareholders by special resolution in general meeting, if-

(i) the annual remuneration payable to such executive director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or

(ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity:

Provided that the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.]

(7) The minimum information to be placed before the board of directors is specified in Part A of Schedule II.

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(8) The chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.

(9) (a) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures.

(b) The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.

[(10) The evaluation of independent directors shall be done by the entire board of directors which shall include -

(a) performance of the directors; and

(b) fulfillment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.]

[(11). The statement to be annexed to the notice as referred to in sub-section (1) of section 102 of the Companies Act, 2013 for each item of special business to be transacted at a general meeting shall also set forth clearly the recommendation of the board to the shareholders on each of the specific items.]

**[Maximum number of directorships.**

**17A.** The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

(1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:

Provided that a person shall not serve as an independent director in more than seven listed entities.

(2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

[Explanation,—] For the purpose of this 89[regulation], the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.]

**Audit Committee.**

**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 91[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.



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- (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.

(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.

(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.

**Nomination and remuneration committee.**

**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 93[two-thirds] of the directors shall be independent directors [\*\*\*].

(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.

[(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.]

(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.

[(3A) The nomination and remuneration committee shall meet at least once in a year.]

(4) The role of the nomination and remuneration committee shall be as specified as in Part D of the Schedule II.

**Stakeholders Relationship Committee.**

**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.

(2) The chairperson of this committee shall be a non-executive director.

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[(2A) At least three directors, with at least one being an independent director, shall be members of the Committee <sup>99</sup>[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].]

[(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.]

<sup>101</sup>[(3A) The stakeholders relationship committee shall meet at least once in a year.]

(4) The role of the Stakeholders Relationship Committee shall be as specified as in Part D of the Schedule II.

### **Risk Management Committee.**

**21.** (1) The board of directors shall constitute a Risk Management Committee.

(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.]

(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.

(3A) The risk management committee shall meet at least [twice] in a year.]

(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.

(3C) The meetings of the risk management committee shall be conducted in such a manner that on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings.]

(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 <sup>106</sup>[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.]

[(5) The provisions of this regulation shall be applicable to:

i. the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,

ii. a 'high value debt listed entity'.]

[(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.]

### **Vigil mechanism.**

**22.** (1) The listed entity shall formulate a vigil mechanism [/whistle blower policy] for directors and employees to report genuine concerns.

(2) The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

### **Related party transactions.**

**23.** (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



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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 <sup>116</sup>[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:

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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 <sup>120</sup>[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) [\*\*\*]

(8) 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.

[(9) 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.]

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**Corporate governance requirements with respect to subsidiary of listed entity.**

**24.** [(1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.

Explanation - For the purposes of this provision, notwithstanding anything to the contrary contained in regulation 16, the term “material subsidiary” shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.]

(2) The audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.

(3) The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.

(4) The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

Explanation. - For the purpose of this regulation, the term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted [\*\*\*] subsidiary for the immediately preceding accounting year.

(5) A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than or equal to] fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal, or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed

to the recognized stock exchanges within one day of the resolution plan being approved.

(6) Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal[, or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

(7) Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

**Secretarial Audit and Secretarial Compliance Report.**

**24A.** (1) Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity.

137{(2) Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.

**Obligations with respect to independent directors.**

**25.** (1) No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.

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(2) 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.

(2A). 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.

(3) The independent directors of the listed entity shall hold at least one meeting in a financial year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

(4) The independent directors in the meeting referred in sub-regulation (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.

(5) 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.

(6) 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.

(7) The listed entity shall familiarise the independent directors through various programmes about the listed entity, including the following:

(a) nature of the industry in which the listed entity operates;

(b) business model of the listed entity;

(c) roles, rights, responsibilities of independent directors; and

(d) any other relevant information.

(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.

(9) 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.

(10) With effect from January 1, 2022, the top 1000 listed entities by market capitalization calculated as on March 31 of the preceding financial year, 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. (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

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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.

(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.

**Obligations with respect to employees including senior management, key managerial persons, directors and promoters.**

**26.** (1) A director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities in which he /she is a director which shall be determined as follows:

(a) the limit of the committees on which a director may serve in all public limited companies, whether listed or not, shall be included and all other companies

including private limited companies, foreign companies, 'high value debt listed entities' and companies under Section 8 of the Companies Act, 2013 shall be excluded;

(b) for the purpose of determination of limit, chairpersonship and membership of the audit committee and the Stakeholders' Relationship Committee alone shall be considered.

(2) Every director shall inform the listed entity about the committee positions he or she occupies in other listed entities and notify changes as and when they take place.

(3) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.

(4) \*\*\*

(5) 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.

Explanation.- For the purpose of this sub-regulation, conflict of interest relates to dealing in the shares of listed entity, commercial dealings with bodies, which have shareholding of management and their relatives etc.

(6) No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself [/herself] or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution:

Provided that such agreement, if any, whether subsisting or expired, entered during the preceding three years from the date of coming into force of this sub-regulation, shall be disclosed to the stock exchanges for public dissemination:

Provided further that subsisting agreement, if any, as on the date of coming into force of this sub-regulation shall be placed for approval before the Board of Directors in the forthcoming Board meeting:

Provided further that if the Board of Directors approve such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting:

Provided further that all interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.

Explanation - For the purposes of this sub-regulation, 'interested person' shall mean any person holding voting rights in the listed entity and who is in any manner, whether directly or indirectly, interested in an agreement or proposed agreement, entered into or to be entered into by such a person or by any employee or

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key managerial personnel or director or promoter of such listed entity with any shareholder or any other third party with respect to compensation or profit sharing in connection with the securities of such listed entity.

**Other corporate governance requirements.**

**27.** (1) The listed entity may, at its discretion, comply with requirements as specified in Part E of Schedule II.

(2) (a) The listed entity shall submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within twenty one days from [the end of each] quarter.

(b) Details of all material transactions with related parties shall be disclosed along with the report mentioned in clause (a) of sub-regulation (2).

(c) The report mentioned in clause (a) of sub-regulation (2) shall be signed either by the compliance officer or the chief executive officer of the listed entity.

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**Financial results.**

**33.** (1) While preparing financial results, the listed entity shall comply with the following:

(a) The financial results shall be prepared on the basis of accrual accounting policy and shall be in accordance with uniform accounting practices adopted for all the periods.

(b) The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/ Ind AS 34 – Interim Financial Reporting), 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.

(c) The standalone financial results and consolidated financial results shall be prepared as per Generally Accepted Accounting Principles in India:

Provided that in addition to the above, the listed entity may also submit the financial results, as per the International Financial Reporting Standards notified by the International Accounting Standards Board.

(d) The listed entity shall ensure that the limited review or audit reports submitted to the stock exchange(s) on a quarterly or annual basis are to be given only by an auditor who has subjected himself /herself to the peer review process of Institute of Chartered Accountants of India and holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India.

(e) The listed entity shall make the disclosures specified in Part A of Schedule IV.

(2) The approval and authentication of the financial results shall be done by listed entity in the following manner:

(a) The quarterly financial results submitted shall be approved by the board of directors:

Provided that while placing the financial results before the board of directors, the chief executive officer and chief financial officer of the listed entity shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.



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(b) The financial results submitted to the stock exchange shall be signed by the chairperson or managing director, or a whole time director or in the absence of all of them; it shall be signed by any other director of the listed entity who is duly authorized by the board of directors to sign the financial results.

(c) The limited review report shall be placed before the board of directors, at its meeting which approves the financial results, before being submitted to the stock exchange(s).

(d) The annual audited financial results shall be approved by the board of directors of the listed entity and shall be signed in the manner specified in clause (b) of sub-regulation (2).

(3) The listed entity shall submit the financial results in the following manner:

(a) The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.

(b) In case the listed entity has subsidiaries, in addition to the requirement at clause (a) of sub-regulation (3), the listed entity <sup>174</sup>[shall] also submit quarterly/year-to-date consolidated financial results

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(c) The quarterly and year-to-date financial results may be either audited or unaudited subject to the following:

(i) In case the listed entity opts to submit unaudited financial results, they shall be subject to limited review by the statutory auditors of the listed entity and shall be accompanied by the limited review report.

Provided that in case of public sector undertakings this limited review may be undertaken by any practicing Chartered Accountant.

(ii) In case the listed entity opts to submit audited financial results, they shall be accompanied by the audit report.

(d) The listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and [Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion):

Provided that if the listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results also submit annual audited consolidated financial results along with the audit report and [Statement on Impact of Audit Qualifications (applicable only)]<sup>179</sup> for audit report with modified opinion[:

Provided further that, in case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange(s) while publishing the annual audited financial results.

(e) The listed entity shall also submit the audited <sup>182</sup>[or limited reviewed] financial results in respect of the last quarter along-with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

(f) The listed entity shall also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities as at the end of the half-year.

(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way of a note, statement of cash flows for the half-year.

(h) The listed entity shall ensure that, for the purposes of quarterly consolidated financial results, at least eighty percent of each of the consolidated revenue, assets and profits, respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

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(i) The listed entity shall disclose, in the results for the last quarter in the financial year, by way of a note, the aggregate effect of material adjustments made in the results of that quarter which pertain to earlier periods.]  
(4) The applicable formats of the financial results and [Statement on Impact of Audit Qualifications (for audit report with modified opinion)]<sup>184</sup> shall be in the manner as specified by the Board [\*\*\*].

(5) For the purpose of this regulation, any reference to “quarterly/quarter” in case of listed entity which has listed their specified securities on SME Exchange shall be respectively read as “half yearly/half year” and the requirement of submitting ‘year-to-date’ financial results shall not be applicable for a listed entity which has listed their specified securities on SME Exchange.

(6) \*\*\*

(7) \*\*\*

(8) The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.

### **Annual Report.**

#### **34. (1) 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.

(2) The annual report shall contain the following:

(a) audited financial statements i.e. balance sheets, profit and loss accounts 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 report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board from time to time:

Provided that the requirement of submitting a business responsibility report shall be discontinued after the financial year 2021–22 and thereafter, with effect from the financial year 2022–23, the top one thousand listed entities based on market capitalization shall submit a business responsibility and sustainability report in the format as specified by the Board from time to time:

Provided further that even during the financial year 2021–22, the top one thousand listed entities may voluntarily submit a business responsibility and sustainability report in place of the mandatory business responsibility report:

Provided further that the remaining listed entities including the entities which have listed their specified securities on the SME Exchange, may voluntarily submit such reports.



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Explanation: For the purpose of this clause, market capitalization shall be calculated as on the 31st day of March of every financial year.]

(3) The annual report shall contain any other disclosures specified in Companies Act, 2013 along with other requirements as specified in Schedule V of these regulations.

#### **Annual Information Memorandum.**

**35.** The listed entity shall submit to the stock exchange(s) an Annual Information Memorandum in the manner specified by the Board from time to time.

#### **Documents & Information to shareholders.**

**36.** (1) 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) [\*\*\*] 193[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.

(2) The listed entity shall send annual report referred to in sub-regulation (1), to the holders of securities, not less than twenty-one days before the annual general meeting.

(3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:

- (a) a brief resume of the director;
- (b) nature of [\*\*\*] expertise in specific functional areas;
- (c) disclosure of relationships between directors inter-se;
- (d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board 195[along with listed entities from which the person has resigned in the past three years]; and
- (e) shareholding of non-executive directors 196[in the listed entity, including shareholding as a beneficial owner];

f). In case of independent directors, the skills and capabilities required for the role and the manner in which the proposed person meets such requirements.]

4) The disclosures made by the listed entity with immediate effect from date of notification of these amendments-

- (a) to the stock exchanges shall be in XBRL format in accordance with the guidelines specified by the stock exchanges from time to time; and
- (b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool:

Provided that the requirement to make disclosures in searchable formats shall not apply in case there is a statutory requirement to make such disclosures in formats which may not be searchable, such as copies of scanned documents.

(5) The notice being sent to shareholders for an annual general meeting, where the statutory auditor(s) is/are proposed to be appointed/re-appointed shall include the following disclosures as a part of the explanatory statement to the notice:

- (a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;

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(b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.]

...

## **SCHEDULE II: CORPORATE GOVERNANCE**

### **PART A: MINIMUM INFORMATION TO BE PLACED BEFORE BOARD OF DIRECTORS**

[See Regulation 17(7)]

A. Annual operating plans and budgets and any updates.

B. Capital budgets and any updates.

C. Quarterly results for the listed entity and its operating divisions or business segments.

D. Minutes of meetings of audit committee and other committees of the board of directors.

E. The information on recruitment and remuneration of senior officers just below the level of board of directors, including appointment or removal of Chief Financial Officer and the Company Secretary.

F. Show cause, demand, prosecution notices and penalty notices, which are materially important.

G. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.

H. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by the listed entity.

I. 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 listed entity or taken an adverse view regarding another enterprise that may have negative implications on the listed entity.

J. Details of any joint venture or collaboration agreement.

K. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.

L. 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.

M. Sale of investments, subsidiaries, assets which are material in nature and not in normal course of business.

N. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.

O. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

### **PART B: COMPLIANCE CERTIFICATE**

[See Regulation 17(8)]

The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:

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(1) these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;

(2) these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.

B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity during the year which are fraudulent, illegal or violative of the listed entity's code of conduct.

C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity pertaining to financial reporting and they have disclosed to the auditors and the audit committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.

D. They have indicated to the auditors and the Audit committee

(1) significant changes in internal control over financial reporting during the year;

(2) significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and

(3) instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

## **PART C: ROLE OF THE AUDIT COMMITTEE AND REVIEW OF INFORMATION BY AUDIT COMMITTEE**

**[See Regulation 18(3)]**

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

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monitoring the utilisation of proceeds of a public or rights issue, 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) [\*\*\*]

(3) management letters / letters of internal control weaknesses issued by the statutory auditors;

(4) internal audit reports relating to internal control weaknesses; and

(5) the appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.

(6) 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).

## **PART D: ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE)**

See Regulation 19(4), 20(4) and 21(4)]

**A. ROLE OF NOMINATION AND REMUNERATION COMMITTEE :Role of committee shall, inter-alia, include the following:**

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(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.]

#### **B. Stakeholders Relationship Committee**

The role of the committee shall *inter-alia* include the following:

- (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.]

#### **368[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;

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(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.]

## **PART E: DISCRETIONARY REQUIREMENTS**

[See Regulation 27(1)]

### **A. The Board**

A non-executive chairperson may be entitled to maintain a chairperson's office at the listed entity's expense and also allowed reimbursement of expenses incurred in performance of his 369[/her] duties.

### **B. Shareholder Rights**

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

### **C. Modified opinion(s) in audit report**

The listed entity may move towards a regime of financial statements with unmodified audit opinion.

### **370[D. Separate posts of Chairperson and the Managing Director or the Chief Executive Officer**

The listed entity may appoint separate persons to the post of the Chairperson and the Managing Director or the Chief Executive Officer, such that the Chairperson shall –

(a) be a non-executive director; and

(b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term “relative” defined under the Companies Act, 2013.]

### **E. Reporting of internal auditor**

The internal auditor may report directly to the audit committee.

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## **About NFCG**

In 2003, the Ministry of Corporate Affairs (MCA) led a unique PPP model to set up the National Foundation for Corporate Governance in partnership with the Confederation of Indian Industry, the Institute of Company Secretaries of India, and the Institute of Chartered Accountants of India. Subsequently, the Institute of Cost Accountants of India, National Stock Exchange and the Indian Institute of Corporate Affairs also joined with an objective to promote good Corporate Governance practices both at the level of individual corporates and Industry as a whole.

NFCG endeavours to create a business environment that promotes voluntary adoption of good corporate governance practices.

## **Vision**

Be the Key Facilitator and Reference Point for highest standards of Corporate Governance in India

## **Mission**

- To foster a culture of good Corporate Governance
- To create a framework of best practices, structure, processes and Ethics
- To reduce the existing gap between Corporate Governance framework & actual compliance by corporates
- To facilitate effective participation of different stakeholders
- To catalyse capacity building in emerging areas of Corporate Governance

For further details, please visit [www.nfcg.in](http://www.nfcg.in)





## Confederation of Indian Industry

The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the development of India, partnering Industry, Government and civil society, through advisory and consultative processes.

CII is a non-government, not-for-profit, industry-led and industry-managed organization, with around 9000 members from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 300,000 enterprises from 286 national and regional sectoral industry bodies.

For more than 125 years, CII has been engaged in shaping India's development journey and works proactively on transforming Indian Industry's engagement in national development. CII charts change by working closely with Government on policy issues, interfacing with thought leaders, and enhancing efficiency, competitiveness and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus-building and networking on key issues.

Extending its agenda beyond business, CII assists industry to identify and execute corporate citizenship programmes. Partnerships with civil society organizations carry forward corporate initiatives for integrated and inclusive development across diverse domains including affirmative action, livelihoods, diversity management, skill development, empowerment of women, and sustainable development, to name a few.

As India completes 75 years of Independence in 2022, it must position itself for global leadership with a long-term vision for India@100 in 2047. The role played by Indian industry will be central to the country's progress and success as a nation. CII, with the Theme for 2022-23 as Beyond India@75: Competitiveness, Growth, Sustainability, Internationalisation has prioritized 7 action points under these 4 sub-themes that will catalyze the journey of the country towards the vision of India@100.

With 62 offices, including 10 Centres of Excellence, in India, and 8 overseas offices in Australia, Egypt, Germany, Indonesia, Singapore, UAE, UK, and USA, as well as institutional partnerships with 350 counterpart organizations in 133 countries, CII serves as a reference point for Indian industry and the international business community.

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