An Effective Board: Soul of a Company

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Introduction

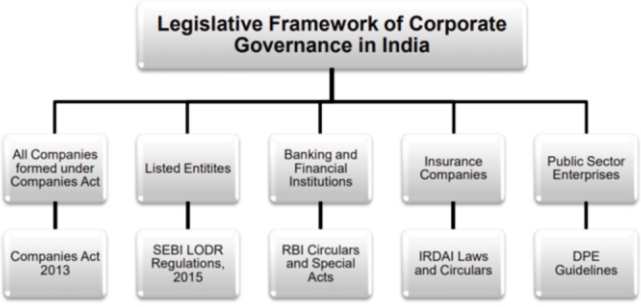
Board of Directors is the soul of any company and play an important role in its governance. The Board of director is the ultimate decision – making body and determines the delegation of powers throughout the company. It is considered to be the primary organ of the company. The root of the word governance is from the word '*gubernate*', that means to steer/wrestle/push. Corporate governance means to steer an organization in the desired direction as set in its mission and vision. The responsibility to steer lies with the board of directors/governing board. They are also referred as board of governors, board of managers, board of regents, board of trustees, or simply referred to as "the board".

Corporate Governance Principles

The following figure -1 depicts the broad headings under which the listed entity which has listed its specified securities shall comply with the corporate governance philosophy:

Figure 1: Corporate Governance Philosophy

Legislative Framework of Corporate Governance in India has been depicted in following figure 2:



An illustration

Role of the Board of Directors

The Board of directors of a company is a nucleus in the organisation. Board is selected according to the procedure prescribed in the Companies Act and in turn projected in the Memorandum of Association and Articles of Association of the Company. Members of the Board of directors are known as directors. Directors do not possess any power of management of the affairs of the company, unless especially authorised by the Board of directors of the Company. The Board of Directors oversees how the management serves and protects the long term interests of all the stakeholders of the company. The position of Board is that of trust as the board is entrusted with the responsibility to act in the best interests of the company. The Boards formulate policies and establish organisational set up for implementing those policies and to achieve the objectives contained in the Memorandum; muster resources for achieving the company objectives and control, guide, direct and manage the affairs of the company. Section 2(10) of the Companies Act, 2013 defines that "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company. The term 'Board of Directors' means a body duly constituted to direct, control and supervise the affairs of a company. As per Section 149 of the Companies Act, 2013, the Board of Directors of every company shall consist of individual only.

The board's role is to provide entrepreneurial leadership of the company, within a framework of prudent and effective controls, which enables risk to be assessed and managed. An effective board develops and promotes its collective vision of the company's

purpose, its culture, its values and the behaviours it wishes to promote in conducting its business. Boards have a responsibility for the health of the company and need to take a long-term view. This is in contrast to the priorities of some investors, not all of whom will be aligned with the pursuit of success over the long term. An effective board will manage the conflict between short-term interests and the long-term impacts of its decisions; it will assess shareholder and stakeholder interests from the perspective of the long-term sustainable success of the company.

The role of Board in particular, includes:

- providing direction for management;
- demonstrate ethical leadership, displaying – and promoting throughout the company – behaviours consistent with the culture and values it has defined for the organisation;
- create a performance culture that drives value creation without exposing the company to excessive risk of value destruction;
- make well-informed and high-quality decisions based on a clear line of sight into the business;
- create the right framework for helping directors meet their statutory duties under the Companies Act 2013, and/or other relevant statutory and regulatory regimes;
- being accountable, particularly to those that provide the company's capital; and
- think carefully about its governance arrangements and embraces evaluation of their effectiveness.

As per Section 2(34) of the Companies Act, 2013 'director' means a director appointed to the Board of the Company. A Company being an artificial person it requires certain natural persons to represent the company at various fronts. The position of directors in their relationship to the company is not only as the agents, but also trustees of the company.

The role of the Board is summarized as:

- Providing entrepreneurial leadership
- Setting strategy
- Ensuring the human and financial resources are available to achieve objectives
- Reviewing management performance
- Setting up company's values and standards
- Ensuring robustness of financial controls and risk management

Board Composition

Section 149(1) of the Companies Act, 2013 requires that every company shall have 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. A company can appoint maximum fifteen directors without any specific compliance. A company may appoint more than fifteen directors after passing a special resolution in general meeting.

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Section 149(3) provides that every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year. Further, Second proviso to Section 149(1) read Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one Women Director.

All Listed Companies Public companies:

(i) with paid up capital of Rs.100 crore or more or

(ii) with turnover of Rs. 300 crore or more

Types of directors under Companies Act 2013:

Under the Companies Act, 2013, a company may have various types of Directors viz. Executive Director, Non Executive Director, Shadow Director, Woman Director, Resident Director, Independent Director, Nominee Director and Small Shareholders Director.

"Small Company" Under Companies Act 2013:

The concept of "Small Company" has been introduced for the first time by the Companies Act, 2013. The Act identifies some companies as small companies based on their capital and turnover position for the purpose of providing certain relief/exemptions to these companies. Most of the exemptions provided to a small company are same as that provided to a one person company. The Act also provides for a simplified scheme of arrangement between two small companies, without requiring the approval of Tribunal, i.e. with the approval of Central Government (Regional Director). Section 2(85) of the Companies Act, 2013 defines a Small Company as –

"Small company" means a company, other than a public company,—

(i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

(ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this Section shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under Section 8; or

(C) a company or body corporate governed by any special Act;

A company may classify as a small company in a particular year but may become ineligible in the next year and may become eligible again in the subsequent year. There are certain special provisions and exemptions available to a Small Company as per the Companies Act, 2013.

Board Committees

A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board's work. Committees are generally formed to perform some expertise work. Members of the committee are expected to have expertise in the specified field. Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth

scrutiny and focused attention.

Mandatory Committees under the Companies Act 2013 are:

- Audit Committee
- Nomination and Remuneration Committee
- Stakeholders Relationship Committee
- Corporate Social Responsibility Committee

Performance evaluation of the board and management under the Companies Act 2013

A formal evaluation of the board and of the individual directors is one potentially effective way to respond to the demand for greater board accountability and effectiveness. The Board of every listed company and every other public company having paid- up share capital of twenty five crores or more calculated at the end of the preceding financial year except Government Companies has to do formal annual evaluation of the

- board
- its committees and
- all individual directors.

The Board's report of such companies must include a statement indicating the manner & criteria of formal Board Evaluation.

Other Good Practices

Other good practices to enhance board effectiveness include appointment of lead independent director; separation of role of chairman and chief executive officer; succession planning; directors training, development and familiarisation; performance evaluation of the board and management; board effectiveness and the role of the company secretary.

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