International Journal Of Business Management
Available at www.ijbm.co.in
ISSN NO. 2349-3402
VOL. 2(1),2015

Development of corporate governance in India

Aarti Goyal[1]

Abstract

In recent years corporate governance emerges as a base for strategic decision making for every firm. The paper attempts to understand the nature of corporate governance in India. The study is analytical in nature. Paper examines the need of corporate governance in India. The need of international best practices with an emphasis on corporate governance. Paper includes recommendations to serve better good governance practices. Paper carries recommendations of clause 49 of listing agreement.

Keywords: Corporate governance, investor protection, shareholders, ethic

1 Asst Professor in Commerce, B.P.R College Kurukshetra

Introduction

Corporate governance refers to the mechanisms, processes, practices and relations by which corporations are controlled, directed and managed. It involves balancing the interests of many stakeholders in the company.

It provide framework how the objectives of the company are set and achieved.Good corporate governance is like DNA for organization.

Effective corporate governance structure encourages companies to create value and provide accountability and control system commensurate with the risks involved. It can be achieved through entrepreneurism, innovation, development; management and thus it provide returns in terms of accountability and controlled system commensurate with the risks involved.

It can apply to any kind of organization, regardless of size, legal nature, type of ownership. Good corporate governance will evolve with the changing circumstances of a company and must develop with development internationally. There is not a specific model to implement, recommendations and principles are provided to have effective corporate governance.

International Journal Of Business Management
Available at www.ijbm.co.in
ISSN NO. 2349-3402
VOL. 2(1),2015

Principles of corporate governance

Efficient corporate governance converts principles into objective recommendations, Aligning interests for purpose of enhancing the organization' value, facilitating its access to capital.

Transparency:

An adequate transparency results in an atmosphere of trust, both internal and external, in third-party relationships. It’s not an only duty imposed by laws or regulations, it’s a desire to provide transparency to interested parties.Timely and balanced disclosure of all material matters should be there.

Remunerate fairly and responsibly:

Fair treatment should be provided to all shareholders and stakeholders. Discriminatory attitudes or policies are totally unacceptable. Actively enhanced board and management effectiveness.

Recognize and manage risk:

Establish a sound system of risk shareholders and facilitate the effective exercise of those rights.

Safeguard integrity in financial reporting:

Install a system to independently verify and safeguard the integrity of the company's financial reporting.

Corporate responsibility:

Sustainability of organization to ensure their company's longevity by observing social and environmental principles when identifying business deals and operations.

Clause 49- Corporate Governance

49. Corporate Governance

The company agrees to comply with the following provisions:

I. Board of Directors

International Journal Of Business Management
Available at www.ijbm.co.in
ISSN NO. 2349-3402
VOL. 2(1),2015

(A) **Composition of Board**

i. The Board of directors of the company shall have an optimum combination ofExecutive and non-executive directors with not less than fifty percent of the board of Directors comprising of non-executive directors.

ii. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.

iii. For the purpose of the sub-clause (ii), the expression 'independent director' shallmean a non-executive director of the company who:

a. apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its Directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director;

b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;

c. has not been an executive of the company in the immediately preceding three financial years;

(D) Code of Conduct

i. The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.

ii. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.

II. **Audit Committee**

(A) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

i. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.

ii. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

iii. The Chairman of the Audit Committee shall be an independent director;

(B) Meeting of Audit Committee

The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum oftwo independent members present.

(C) Powers of Audit Committee

The audit committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

(D) Role of Audit Committee

The role of the audit committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.

(E) Review of information by Audit Committee

The Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2.Internal audit reports relating to internal control weaknesses; and
3.The appointment, removal and terms of remuneration of the Chief internal auditor shall
be subject to review by the Audit Committee

III. Subsidiary Companies

i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non listed Indian subsidiary company.

ii. The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.

IV. Disclosures

Clause 49- Corporate Governance

(A) Basis of related party transactions

i. A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee.

ii. Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee.

(B) Disclosure of Accounting Treatment

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of them underlying business transaction in the Corporate Governance Report.

(C) Board Disclosures – Risk management

The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodicallyreviewed to ensure that executive management controls risk through means of a properly defined framework.

(D) Proceeds from public issues, rights issues, preferential issues etc.When money is raised through an issue (public issues, rights issues, preferential issues etc.), it shall disclose to the Audit Committee, the uses / applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results.

(E) Remuneration of Directors

i. All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company shall be disclosed in the Annual Report.

ii. Further the following disclosures on the remuneration of directors shall be made in

the section on the corporate governance of the Annual Report:

a. All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.

b. Details of fixed component and performance linked incentives, along with the performance criteria.

(F) Management

i. As part of the directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:

1. Industry structure and developments.
2. Opportunities and Threats.
3. Segment–wise or product-wise performance.

4. Outlook
5. Risks and concerns.
6. Internal control systems and their adequacy.

ii. Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large

(G) Shareholders

Clause 49- Corporate Governance

i. 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 his expertise in specific functional areas;

c. Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and

d. Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v) above

ii. Quarterly results and presentations made by the company to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.

V. CEO/CFO certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act,
1956 and the CFO i.e. the whole-time Finance Director or any other person heading the

finance function discharging that function shall certify to the Board that:

a. They have reviewed financial statements and the cash flow statement for the year and
that to the best of their knowledge.

b. There are, to the best of their knowledge and belief, no transactions entered into by the
company during the year which are fraudulent, illegal or violative of the company's code of conduct.

VI. Report on Corporate Governance

i. There shall be a separate section on Corporate Governance in the Annual Reports of

International Journal Of Business Management
Available at www.ijbm.co.in
ISSN NO. 2349-3402
VOL. 2(1),2015

company, with a detailed compliance report on Corporate Governance. Noncompliance
of any mandatory requirement of this clause with reasons thereof.

VII. Compliance

1. The company shall obtain a certificate from either the auditors or practicing company
secretaries regarding compliance of conditions of corporate governance as stipulated in
this clause and annex the certificate with the directors' report, which is sent annually to
all the shareholders of the company. The same certificate shall also be sent to the Stock
Exchanges along with the annual report filed by the company.

Corporate Governance issues in India:

Banking sector have lowest proportions of non performing assets which indicates corporate fraud. Governance of business organization has thrived on unethical business practices in the market. The dominating & monopolistic state owned organisation in the country's economy passed on the costs of their corporate misgovernance to the helpless consumers of their goods.

impact of globalization

To preserve global integrity have to maintain these higher standards of cg. Foreign investors have better access to governance issues and ability to enforce governance codes and maintain sustainability.

unethical business practices

Unethical business practices are increasing day by day in India. Strictly follow up of principles of effective governance should be there to avoid such practices. Main key areas are these activity ans scam related to them.

security market scams:

1st unethical scam was came into light in 1992, harshad Mehta, securities scam "big bull". Followed by many further cases. Light up on this issues should be made.

privatization effect:

India has started privatization since 1990s. Thus new shareholders would insist on much better CG standards .new diversified ownership creates a demand of ethical and highly standardized cg standards.

driving forces :

Good cg reflects many things i.e. quality management, sustained operating performance, current growth rate are also effected and rely upon cg standard.

Findings:

International Journal Of Business Management
Available at www.ijbm.co.in
ISSN NO. 2349-3402
VOL. 2(1),2015

Many companies strive to have a high level of corporate governance. Only being profitable is not enough, they also need to have good corporate citizenship through environmental awareness, ethical behavior and sound corporate governance practices.

Illustration: America most notorious corporate criminals: Enron

They went from sporadic mentions on the business news outlets to the front page- the WHITE- COLLAR CRIMINALS who defrauded their way to short – term riches and long term imprisonment. While they weren't common street thugs who shed their victims' blood, they did cost justice system untold man hours and dollars- to say nothing of the money they stole in the first place.

Due to scandal like Enron, there is a greater need of high level of objectivity, integrity in cg. Principles of cg should be followed with due compliance to avoid scandals and corporate failure. Still there is greater need to have a check on major issues regarding transparency, disclosure, fairness and responsibility.

India is having good mechanisms but to make it more effective they need to update their standards and make considerable changes in principles of CG considering evolving changes in international standards principles, global changes for better implementation of CG.

Recommendations:

For companies:

The board should be accountable to the owners of the company, but not necessarily to the stakeholders. The company should, however, respect its contractual obligations to the stakeholders i.e. employees, suppliers, customers, environmental impact of the operations of the company etc.

Banks:

The boards of banks do not seem to subject themselves to high measure of accountability or performance either set by themselves voluntarily or made applicable to than externally. Thus this leaves them largely without any accountability largely ends up with efforts to fix accountability for loans / advances that go bad. Board shall be accountable.

Public sector companies:

The board shall be accountable to the ultimate owners of the govt company. Which is essentially public and conduct the affairs of the company. In such a way that the overall social and not sectional interests receive the highest priority. Co should remain viable and meet the objectives for which it has been set up.Interest of main stakeholders such as employees, creditors, suppliers, customers', etc receive due attention.

International Journal Of Business Management
Available at www.ijbm.co.in
ISSN NO. 2349-3402
VOL. 2(1),2015

Conclusion

Ancient Vedas give references regarding governance which existed during ancient times. There are many key areas where we can use ancient period governance like: learning on leadership qualities, system of spy, social welfare ideas, etc... Now corporate governance took a very important role in business organization.Recommendations should be followed for coordination between corporate governance and the institutional framework in India.

There is need to ensure transparency for good governance. Proper regulation framework is needed to be implementing to achieve international governance level.

References

1.Rajagopalan, N. and Y. Zhang (2008). "Corporate governance reforms in China and India: Challenges and opportunities." Business Horizons 51(1): 55-64.

2. Rathod R and Y. Dalvadi (2008). “Non statutory disclosure in India an analysis of selected companies.” The Journal of Indian Management & Strategy 13 (2): 113-132
Reed, A. M. (2002). "Corporate governance reforms in India." Journal of Business Ethics
37(3): 249-268.

3 .Samontaray, D. P. (2010): "Impact of Corporate Governance on the Stock Prices of the
Nifty 50 Broad Index Listed Companies." International Research Journal of Finance and
Economics 41 : 1- 8

4.Pitabas Mohanty, “Institutional Investors and Corporate Governance in India”, a study sponsored by the National Stock Exchange of India, September 2008.

5.Tarun Khanna and Palepu Krishna, “The Evolution of Concentrated Ownership in India — Broad Patterns and a History of the Indian Software Industry”, NBER Working paper No. 10613, June 2008.

6.Dewan S.M “Ethics and Corporate Governance: Banking on Scandal” The Journal of Accounting and Finance, 2008 - Vol. 2, No.1/2 pp. 183 - 196.

7. Silke Machold & Ajit Kumar Vasudevan (2004). Corporate Governance Models in Emerging Markets: The Case of India. International Journal of Business Governance and Ethics 1 (1):56-77.

8.Abhishek Agrawal, “Corporate Governance in India: Improving standards,