Roles & Responsibilities of Directors

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• Important functions:
• Advising corporate strategy,
• Main plans of action,
• Policy on risk management,
• business plans – annual/periodical,
• oversight on main capital expenditures/acquisitions/disposal, misuse of assets and related party transactions
• Adherence with corporate law and regulations viz. accounting & financial reporting systems, internal & operational systems

• ..........contd
• Guiding for achieving Stake holders interest

• Corporate social responsibilities
Independence of Directors

Retention of authority to decide the criteria of independence to be with the board
In case of Government Companies, the designation of Chairman & Managing Director often merged and hence the Chairman becomes inevitably an Executive Director.

This calls for a need of having 50% directors as Independent Directors on the board of Govt. Companies. There is a need to resolve this issue.
Clause 49 envisages a lot of responsibilities on the Audit Committee & Independent Directors with no inbuilt protection.
Directors-Confidentiality issue

- how to ensure confidentiality by Independent directors.
- confidentiality agreement needs to be signed by each director.
Directors-Training of independent directors

- Model of Training needs to be developed for training
- of Independent Directors in respect of:

- Role of Audit Committees
- How to make board meetings more effective.
- Independence a frame of mind-How to achieve it?
- Basic parameters of Internal Control and Risk
- Management Framework
- Application of Laws & Regulations
- Responsiveness in situation like fraud, handling of
- Whistle Blower or any other unusual situation etc.
Directors-Members Attributes

- Key is **good understanding of the business** —including company’s products, services, and industry

- **Willingness** to dedicate **substantial time** and energy

- **Other relevant attributes**
  - Extremely high **level of integrity**
  - Healthy **skepticism and courage** to challenge
  - **Inquisitiveness and independent judgment**

- **Chair needs strong leadership qualities, objectivity, and ability to promote effective working relationships**
Directors-Members Attributes

- **Financial knowledge**
  - Good understanding of financial reporting
  - Concern that “financial experts” may be subject to additional liability and “non-expert” members may over rely on them

- **Independence**
  - Essential, because committee must be willing to question management’s judgment or challenge its position
  - Regulators and various organizations have developed rules and definitions of independence
Directors : Codes of Conduct/Ethics

An effective approach to business ethics does much more than just state policies. An effective code of conduct framework consists of the following key elements:

- **Introductory Materials:**
  - Organizational mission statement
  - Letter from the CEO
  - Statement of values/organizational principles
  - General statement of compliance with laws and regulations

- **Ethical Conduct Policies:**
  - Statement of relevant values and the policy’s positive intent
  - Clear statement of the policy
  - Brief examples of acceptable and unacceptable conduct
  - Consequences of misconduct to the organization and employees
  - Reference to specific policies

- **Compliance Administration:**
  - Ethics and compliance certification form
  - Directory of key contact persons
  - Links/references to related information
  - Compliance and ethics reporting procedures
  - Due process regarding ethics and compliance
  - Decision making assistance
Audit Committee

- Entitled to attend: Committee Chair, Minimum 2 other Committee Members, Head of Internal Audit, Financial Director, External Auditors
- Attend by invitation: All independent non-executive directors (NEDs)
Audit Committee - Role of Audit Committee

Audit committees: areas of focus

Financial reporting
- Appropriateness of accounting policies
- Disclosure requirements
- Fairness and balance of MD&A/operating review
- GAAP conversion

Risk management & internal control
- Understanding key risk areas
- Effectiveness of controls
  - Fraud risk

External audit
- Appointment and remuneration
- Scope of work
- Independence requirements
- Significant audit findings/recommendations
- Reviewing the performance of external auditors

Internal audit
- Charter, authority and resources
  - Scope of work
  - Internal audit effectiveness
  - Responses to internal audit recommendations

Maintaining & measuring effectiveness
- Training needs
- Maintaining financial literacy
- Annual performance evaluation of audit committee

Communicating & reporting
- Relations with management
- Updates & recommendations to the full board
- Reports to board and shareholders

Regulatory, compliance & ethical matters
- Effectiveness of system for ensuring compliance with laws and regulations
- Code of conduct/ethics
- Whistleblowing
Audit Committee - Why Audit committee matters?

Corporate reporting supply chain

Management
- Creating value
- Business processes
- Financial information and controls

Board of directors
- Setting policy
- Approve the financial statements
- Appointment of audit committee

Independent external auditor and audit committee
- Review integrity of the financial statements and annual report
- Assurance to board of directors and shareholders

Regulators, investors and other stakeholders
- Institutional and other shareholder involvement
- Balanced reporting by media and analysts
- Regulatory monitoring
Audit Committee - Six suggestions to improve audit committee effectiveness

- Getting a grip on risk
- Understanding the business
- Injecting objectivity into the reporting process
- Overseeing the C-suite
- Honing effectiveness
- Disclosing what matters

- Communication to the market, the steps taken to improve audit effectiveness is equally important for assurance of the key stakeholders.
Financial reporting - Effectiveness of oversight based on:

- Applying robust knowledge of company to reviewing financial reports
- Understanding how materiality is evaluated, quantitatively and qualitatively
- Understanding significant accounting policies as well as estimates and other areas where management applies judgment
Committees can fully embrace the role of overseeing risk management by:

- Understanding how risk management process is tailored to company’s specific needs
- Probing whether process is ongoing—not just at a point in time
- Ensuring responsible individual has appropriate stature, expertise, and time
- Meeting periodically with chief risk officer
Audit Committee—Some Best practices

- Many committees also oversee compliance with laws and regulations
- Leading practices:
  - Understand design of program and how its effectiveness is maintained
  - Understand significant issues and management’s investigation and follow-up
  - Review trends in compliance and management’s plans to address systemic issues
  - Meet periodically with chief compliance officer and chief ethics officer
Audit Committee - Some Best practices

- Challenge is balancing advising and counselling management with fiduciary duty to monitor and oversee management.

- To build trust, need strong, open communications channels with senior management—continually, not just during meetings.

- Establish clear understanding and consensus on where management’s responsibilities end and committee’s begin.

- Management should seek committee’s input in advance of key decisions.
Audit Committee—Some Best practices—Charter

- Ensure board approves written charter and any changes
- Assess annually and ensure all responsibilities discharged
- Charter
  - Confirms scope of committee’s duties and authority
  - Guides agenda setting for meetings
  - Provides checkpoints for tracking activities
  - Provides important orientation information for new members
  - Communicates to shareholders
- Disclose on company’s website
Audit Committee—Some Best practices—evaluation

- Evaluate **committee performance** regularly by comparing activities against
  - Charter
  - Leading practice
- Assess **committee dynamics**, not only on *what* the committee does, but also on *how effectively* it functions
- Should be **robust**—not simply a “check the box” exercise
- Obtain feedback from board, management, internal audit, general counsel, and external auditors
• (c) **Boards disclosure-Risk management**

  ➢ Risk assessment & minimization procedure

  ➢ Periodical review

  ➢ Properly defined framework
Why Risk Management?

Increased change ...

- Globalization
- Competitive Pressures
- Technology Advancements
- Product and Market Innovation
- Mergers and Acquisitions
- Resource Retention
- Regulatory Changes
- Competitive Pressures
What Should Companies Do - Develop a Risk Management Framework

RISK ASSESSMENT METHODOLOGY

RISK MANAGEMENT FRAMEWORK

POLICIES
PROCEDURES
SYSTEMS
REPORTING

BUSINESS STRATEGY AND OBJECTIVES
RISK APPETITE
RISK IDENTIFICATION
RISK ASSESSMENT AND MEASUREMENT
CONTROL EVALUATION
CONTINUOUS IMPROVEMENT

What Should Companies Do
- Develop a Risk Management Framework
Clause 49 – Information to be placed before Board

- Annual operating plans, budgets and updates
- Quarterly results of company and its business segments
Clause 49 – Information to be placed before Board

- Minutes of the audit committee and other board committees
- Recruitment and remuneration of senior officers
- Appointment or removal of CFO and Company Secretary
- Show cause, demand, prosecution notices and penalty notices which are materially important
- Fatal or serious accidents, hazards, pollution issues and labor problems
Clause 49 – Information to be placed before Board

• Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company
• Issues involving possible public or product liability claims of substantial nature
• Details of joint ventures and collaborations
• Transactions involving payment towards goodwill, brand equity and intellectual property
• Any materially significant sale of business and investments
• Foreign currency and other risks and risk management
• Any regulatory non-compliance
Management Discussion and Analysis contents

- Industry structure and developments
- Opportunities and Threats
- Segment-wise or product wise performance
- Outlook
Management Discussion and Analysis

Contents

• Risks and concerns
• Internal control systems and their adequacy
• Discussion on financial performance with respect to operational performance
• Material developments in Human Resources/Industrial Relations front, including number of people employed
• They have reviewed the balance sheet and profit and loss account and all its schedules and notes on accounts, as well as cash flow statements and the Directors’ Report.

• The statements do not contain any materially untrue statement or omit any material fact nor do they contain statements that might be misleading.

• The statements together present a true and fair view of the company, and are in compliance with existing accounting standards and/or applicable laws/regulations.

• There are no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company’s code of conduct.
CEOCFO Certification

• They are responsible for establishing and maintaining internal controls and have evaluated the effectiveness of internal control systems of the company.

• They have also disclosed to the Auditors and the Audit Committee, deficiencies in the design or operation of internal controls.

• They have disclosed to the auditors as well as the Audit Committee instances of significant fraud, if any, that involves management or employees having a significant role in company’s internal control systems.

• They have indicated to the Auditors as well as the Audit Committee and in the notes to the accounts whether there were significant changes in internal control and/or of accounting policies during the year.
• Brief statement on company’s philosophy on code of governance
• Board of Directors
• Audit Committee
Report on Corporate Governance

- Remuneration Committee
- Shareholders Committee
- General Body Meetings
- Means of communication
- General shareholder information
• Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large
• Disclosure of accounting treatment if different from accounting standards, with explanation
• Details of non-compliance by company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets during last three years
• Whistle blower policy and affirmation that no personnel has been denied access to the audit committee
Risk Assessment Methodology

For illustration purposes only

Final score based on simple average of exposure matrix number
Control Activities
- Policies/procedures that ensure management directives are carried out.
- Range of activities including approvals, authorizations, verifications, recommendations, performance reviews, asset security and segregation of duties.

Monitoring
- Assessment of a control system’s performance over time.
- Combination of ongoing and separate evaluation.
- Management and supervisory activities.
- Internal audit activities.

Information and Communication
- Pertinent information is identified, captured and communicated in a timely manner.
- Access to internal and externally generated information.
- Flow of information that allows for successful control actions from instructions on responsibilities to summary of findings for management action.

Control Environment
- Sets tone of organization-influencing control consciousness of its people.
- Factors include integrity, ethical values, competence, authority, responsibility.
- Foundation for all other components of control.

Risk Assessment
- Risk assessment is the identification and analysis of relevant risks to achieving the entity’s objectives-forming the basis for determining control activities.

All five components must be in place for a control to be effective.