CORPORATE GOVERNANCE- A CONCEPTUAL FRAMEWORK

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ABSTRACT

This paper introduces the special issue on corporate governance co-sponsored by the review of financial studies and the national bureau of economic research reviews and comments on the state of corporate governance research. The present paper aims at reviewing the various developments in corporate governance in India. The objective of corporate governance as set of systems, process and principles which ensure that a company is governed in the best interest of all stakeholders. In short corporate governance is about promoting corporate fairness, transparency and accountability.

INTRODUCTION

Corporate governance refers to the system by which corporations are directed and controlled. The governance structure specifies the distribution of rights and responsibilities among different participants in the corporation(such as bod, manegers, shareholders, creditors, auditors, regulators and other stakeholders) and specifies the rules and procedures for making decisions in corporate affairs. Governance provide the structure through which corporations set and pursuer their objectives which reflecting the context of the social, regulatory and market environment. Governance is a mechanism for monitoring the actions, policies and decisions of corporations. Governance involves the alignment of interest among the stakeholders.

"The framework of rules and practices by which a board of directors ensures accountability, fairness and transparency in a company's relationship with its all stakeholders (financers, customers, management, employees, government and community)"

1. Explicit and implicit contracts between the company and the stakeholders for distribution of responsibilities right and rewards.

2. Procedures for reconciling the sometimes conflicting interest of stakeholders in accordance with their duties, privileges and roles.
3. Procedures for proper supervision control and information- flows to serve as a system of checks-and-balances.

CORPORATE GOVERNANCE (Clause 49 listing agreement)

1. **BOARD OF DIRECTORS:-**

   (i) **Composition of board of directors:** The board of directors of a company should have an optimum combination of executive and non-executive directors with not less than 50% comprising non-executive directors .where the chairman of the board is a non-executive directors, at least 1/3 of the board should comprise independent directors and in case he is an executive directors, at least half of the board should comprise independent directors.

   (ii) **Non-executive directors compensation and disclosures:** All fees/compensation, if any paid to non-executive directors including independent directors would be fixed by the board of directors and require previous approval of shareholders in general meeting. The shareholders resolution should specify the limits for the maximum number of stock options that can be granted to non-executive directors, including independent directors, in any financial year and in aggregate.

   (iii) **Other provision as to board of directors and committees:** The board should meet at least four times a year, with a maximum time gap of four months between any two meeting.

   (iv) **Code of conduct:** The board should lay down a code of conduct for all board members and senior management of two companies. The code of conduct should be posted on the website of the company. All board members and senior management personnel of firm compliance with the code on an annual basis. The annual report of company should contain a declaration to this effect signed by the CEO.

2. **AUDIT COMMITEE:-** A qualified and independent audit committee should be set up giving the terms of reference subject to following :
   (i) The audit committee should have minimum three directors as member. Two third of the member of audit committee should be independent.
   (ii) All members of the audit committee should be financially literate and at least one member should have accounting or related financial management expertise.
3. **SUBSIDIARY COMPANIES:** At least one independent director of the board of directors of the holding company should be a director on the board of directors of a material non-listed Indian subsidiary company. The audit committee of the listed holding company should also re-view the financial statement; in particular the investment made by the unlisted subsidiary company. The minutes of the board meeting of the unlisted subsidiary company should be placed at the board meeting of the listed holding company. The management should periodically bring to the attention of the board of directors of the listed holding company, a statement of all significant transaction and agreement entered into by the unlisted subsidiary company.

"Material non- listed company Indian subsidiary":-should mean an unlisted subsidiary, in corporate in India, whose turnover on net worth (i.e. paid up capital and free reserve) exceed 20% of the consolidated turnover or net worth respectively of listed holding company and its subsidiaries in the immediately preceding accounting year.

"Significant transaction or arrangement":-Means any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenue or total expenses or total liabilities as the case may be of the material unlisted subsidiary for the immediately preceding accounting year.

4. **DISCLOSURES:-** A statement of all transactions with related party including their basis shall be placed before the audit committee for formal approvel.If any transaction is not on an arm's length basis ,management shall provide an explanation to the audit committee justifying the same

(i) Basis of related party transaction
(ii) Disclosure of accounting treatment
(iii) Board disclosure-risk management

(iv) Proceeds from public issues, rights issues, preferential issues etc.

(v) Remuneration of directors

(vi) Management

(vii) Shareholders.

5. **CEO/CFO CERTIFICATION:-**The CEO that is the managing director or manager appointed in in terms of the companies act,1956 an the CFO that is, the whole time finance director or any other person heading the finance function discharging that function shall certify to the board that:-

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

ii. There are to the best of their knowledge and belief, no transaction entered to by the company during the year which are fraudulent, illegal or violative of the ‘’code of conduct’’ etc.

6. **REPORT ON CORPORATE GOVERANCE:-** There should be a separate section on corporate governance in the annual reports of company with a detailed compliance report on corporate governance non-compliance of any mandatory requirement of this clause with reason thereof and the extent to which the non mandatory requirement have been adopted given in annexure 29. 1-C and the list non mandatory requirements is given in annexure 29.1-D.Companies should submit a quarterly compliance report to the stock exchange within 15 days from the close of quarter as per formet give in annexure 29.1-B .The report should be signed either by the compliance officer or the chief executive officer of the company.

7. **COMPLIANCE :-**The company should obtained 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 director’s reports, which is sent annually to all the shareholders of the company. The same certificate should also to be sent to the stock exchange along with annual report filled by the company.

Annexure 29.1-B

Format of Quarterly compliance report on corporate governance.

Name of the company:

Quarterly ending on…………….

Particulars	Clause of listing Agreement	Compliance status Yes/No	Remarks
1. Board of Directors	49 I		
i. Composition of Board	49(IA)		
ii. Non-executive Director's Compensation & disclosures	49 (IB)		
iii. Other provision as to Board & committees	49 (IC)		
iv. Code of conduct	49 (ID)		
2. Audit committee	49(II)		
i. Qualified & independent Audit committee	49 (IIA)		
ii. Meeting of Audit committee	49 (IIB)		
iii. Powers of Audit committee	49 (IIC)		
iv. Role of Audit committee	49 (IID)		
v. Review of information by Audit committee	49 (IIE)		
3. Subsidiary companies	49 (III)		
4. Disclosures	49 (IV)		
i. Basis of related party transactions	49 (IV A)		
ii. Board Disclosures	49 (IV B)		
iii. Proceeds from public issues, rights, Issues, preferential issues etc.	49 (IV C)		
iv. Remuneration of Directors	49 (IV D)		
v. Management	49 (IV E)		
vi. Shareholders	49(IV F)		
5. CEO/CFO Certification	49 (V)		
6. Report on corporate governance	49(VI)		
7. Comliance	49(VII)		

Conclusion:-

At least in India, the ministry of corporate affairs has issued the above guidelines in Dec 2009 which will provide the corporate India a framework to govern themselves voluntarily as per the highest standards of ethical & responsible conduct of business & these guidelines will also translate into a much higher level of stakeholders confidence which is crucial to ensure the long term sustainability & value generation by business.

“Success is not the art of making mistakes when nobody is looking at, true success is the truthful expression of the performance when it is measured. Corporate governance has assumed vital role & significance due to globalisation & liberalization. The excellence in terms of customer’s satisfaction, in terms of social responsibilities to words society and people cannot be achieved without practicing good corporate governance.

“Corporate governance practices and concept has been recently raised due to growing level if all out in corporate sector leading to serve injury not only to the stakeholders but to the whole eco.”

References:-

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5. www.clause49.com