

Corporate Governance

Corporate governance is the combination of rules, processes and laws by which businesses are operated, regulated and controlled. The term encompasses the internal and external factors that affect the interests of a company's stakeholders, including shareholders, customers, suppliers, government regulators and management.

Principles of Corporate Governance

1. Rights and fair treatment of shareholders: Businesses should respect shareholders' rights and assist them in exercising such rights.
2. The board's role and responsibilities: The board must have the necessary knowledge and expertise to evaluate and question management performance. Additionally, it needs to be the right size and have the right amounts of independence and dedication.
3. Honesty and moral conduct:
4. Transparency and disclosure:
5. Ecologically sound policies:
6. Trade-off between Profit and Social Welfare: While profit is a legitimate goal for every organisation, it should not be the sole one. The organisation ought to give back to the community where it is making money.
7. Free from Political intervention: There must be no political intervention in the organisation.
8. Independent external auditors are required.
9. Clear Dividend Policy: A company shall have clear dividend policy so that investors are aware about the logic on which dividends are being declared
10. Accountability and Responsibility: There shall be proper accountability and responsibility for everyone. Proper punishment must be there for every type of aberration

There are three acts which talk about governance in banking which are

1. Banking regulation act 1949
2. Companies act 2013
3. SEBI Clause 9

Lets learn about important clauses of the above acts.

1. Banking Regulation act 1949

Clause 10 A: Minimum 51% of directors should have special knowledge or practical experience in respective fields and out of this minimum 2 directors should have knowledge in agriculture and rural economy, co-operation or small-scale industry

Directors should not have exceeding 5 Lakh or 10% of paid up capital of the company

Director can hold office for maximum tenure 8 years, except Chairman

Clause 10 B: Banking company must have whole time Chairman else RBI approval required for part-time basis

Clause 10BB: If position of Chairman is vacant then RBI can appoint a person to be the Chairman in depositor's interest

Clause 10 C: Chairman and certain directors cannot hold qualification shares Clause 10 D: Any appointment or removal of a Director shall not be entitled to claim any compensation for the loss or termination of office

Clause 16: Banking company cannot have any of its director to be in the board of directors of other banking company and it should not have any such 3 directors who are holding more than 20% voting rights

Clause 36AA: In the depositor's interest, RBI can remove Chairman, chief executive officer or any person of the banking company

Clause 36AB: In the depositor's interest, RBI can appoint additional directors in the banking company

Clause 36AC: Provisions of 36AA and 36AB overrides any other contrary provision in the Companies Act, 1956 or any other law operating at that time

2. Companies act

As per Section 163 of the Companies Act, the company may authorize the board of directors to appoint any person as a director nominated by any institution as a nominee Director. Nominee Directors are normally appointed by large shareholding institutions like Investment bank to act as their representative

As per section 151 of the companies Act, a listed company may have one director elected by such small shareholders. Small shareholders" means a shareholder holding shares of nominal value (face value) of not more than twenty thousand rupees

As per Section 164 of the companies Act, any person of unsound mind, an insolvent person or who has been convicted of the offence dealing with related party transaction at any time during the last preceding five years cannot be appointed as director

As per Section 164 of the companies Act, any person who has been convicted by a court of any offence and has been sentenced to imprisonment for not less than six months cannot be appointed as director

As per Section 178 of the companies Act, every Listed Public Company and non-listed companies having paid capital more than 10 crore or Turnover more than 100 Crore, or outstanding loans, debentures and deposits more than 50 crore shall constitute a Nomination and Remuneration Committee. This committee shall a. Shall formulate the criteria for determining qualifications and independence of a director b. Shall identify persons who are qualified to become directors and recommend to the board for appointment

As per section 149 (4) of the companies Act, each listed company shall have at least 1/3rd of its directors as independent directors. Moreover, all public companies having capital more than 10 crore or Turnover more than 100 Crore, or outstanding loans, debentures and deposits more than 50 crore must have at least 2 independent directors

As per section 149 (6), the Companies Act, 2013 states that independent directors should not have any material pecuniary relationship with the company, its promoters, directors, and subsidiaries which can affect the independence of the director either in the current financial year or immediately preceding two years b. Section 149 (6) also states that none of relatives of independent director shall be holding security of more than 50 lakh or 2% of the paid-up capital of the company, whichever is higher c. Section 149 (6) also states that none of relatives of independent director shall be indebted more than 50 lakhs to the company

1. SEBI clause 9/ LODR

If Chairman is Non-Executive, then Minimum of 1/3rd directors shall be independent b. If Chairman is Executive, then Minimum of 1/2 i.e., 50% directors shall be independent Since executive directors are the one which are involved in day-to-day functioning, so when executive director is the chairman of board there is more risk that decisions taken are not in the best interest of minority shareholders or other stakeholders because executive

director would be more focused towards profit. Hence when chairman is executive director the number of independent directors has been mandated at 50%. This ensures independent directors have decent representation. A person shall not serve as an independent director in more than seven listed entities. Moreover, any person who is serving as a whole-time director in any listed entity shall serve as an independent director in not more than three listed entities. The logic behind this is that if you are involved at too many places then conflict of interest will arise at one place or the other.

The Securities Exchange Board of India (SEBI) in June 2021 approved amendments for listed companies. As per the new rules, appointment, removal of independent directors will be through a “special resolution” approved by shareholders. All the new rules will be applicable post January 2022. The regulations for appointment Independent Directors (IDs) include:

- Appointment/Re-appointment and Removal of IDs shall be through a special resolution of shareholders for all listed entities.
- A cooling off period of three years has been introduced for Key Managerial Personnel
- Shareholder approval for appointment of all directors including IDs shall be taken at the next general meeting, or within three months of the appointment on the Board, whichever is earlier. The regulations for resignation Independent Directors (IDs) include:
 - The entire resignation letter of an ID shall be disclosed along with a list of her/his present directorships and membership in board committees.
 - A cooling-off period of one year has been introduced for an ID transitioning to a whole-time director in the same company/ holding/ subsidiary/ associate company or any company belonging to the promoter group.

There shall be min. of 3 members in Audit committee and at least 2/3rd members shall be independent directors. All related party transactions shall be approved by only Independent Directors on the Audit Committee. This ensures that Audit Committee is answerable to independent directors. c. 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. This ensures that Audit Committee is constantly working towards its goal.

Nomination & Remuneration Committee shall consist of min of 3 members, and it should include 2/3rd of Independent Directors (IDs) instead of existing requirement of majority of IDs. This ensures that the senior management who is running day to day affairs is not able to make remuneration policy which is to their advantage.