

# CORPORATE GOVERNANCE

Miles travelled and miles to go

VINOD KOTHARI & COMPANY

2024

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**VINOD KOTHARI & COMPANY**

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# Preface

The birth of everything great takes place in something abject, harsh and oppressive. 1988, the year with which we start the backdrop of this Book, was a bad year from many perspectives, and especially so when it comes to corporate governance.

The country was still under the continuing chains of centralised controls, shortages and the license Raj. Economic laws were still based on bureaucratic controls, resulting in delays, graft and fixers who could make things happen at the Ministries. Multiple laws, such as the MRTP Act and Industries (Development and Regulation) Act were applicable on businesses, containing provisions which no one could understand, much less apply.

The country was shortly moving towards one of the worst balance of payments crisis in its history, worsened by political instability. Political instability was not just limited to India – there was much larger turmoil in the rest of the world, with Communism heading for a collapse by 1989. In the next 3 years, the Gulf War sent oil prices through the roof, and India was left with wafer-thin forex reserves.

As regards capital markets, there was no central regulator at all. The prevailing settlement system, the ability of brokers to do *vyaaji badla* transactions, ready forwards in securities, etc. are now all a part of fictions, movies, and OTT contents, thanks to the Harshad Mehta scam. Public issues of new companies, particularly financial services companies, were widely manipulated. Insider trading was rampant.

Was there corporate governance elsewhere in the world? Not much, except in academic texts. Corporate governance attracted little attention till 1990 in the UK, which is still regarded as the leader in implementing these standards world-over. The *Economist* did not use this term till 1990. The appointment of a Committee, called The Committee on the Financial Aspects of Corporate Governance, popularly known as *Cadbury Committee*, was constituted by the Financial Reporting Council, London Stock Exchange and the accounting profession. The accounting profession was involved in this ablation exercise, as public confidence in veracity of financial reporting was its lowest, owing to sudden collapse of a company called Poly Peck, for allegedly faulty accounting. This backdrop was clearly stated in the report itself: “Its sponsors were concerned at the perceived low level of confidence both in financial reporting and in the ability of auditors to provide the safeguards which the users of company reports sought and expected. The underlying factors were seen as the looseness of accounting standards, the absence of a clear framework for ensuring that directors kept under review the controls in their business, and competitive pressures both on companies and on auditors which made it difficult for auditors to stand up to demanding boards.”

The Committee’s report recommended that listed companies on LSE make a self-declaration as a part of their annual reports of their adherence to the Code, which was later to be published by the LSE. Thus, corporate governance was born in the form of a “code” and not a regulation. It was only much later that the securities regulators started enforcing corporate governance through regulations. Many of the present-day concepts in corporate governance – composition of boards, role of non-executive directors, independent directors, board committees, etc., all owe their origin to the seminal work done by the Cadbury Committee. The institution of independent directors, which would later become the very fulcrum of corporate governance world-over, was also envisaged by the Committee.

The Audit Committee, of course, has a much longer history. The 1987 Report of National Commission on Fraudulent Financial Report, aka Treadway Commission report, recommended that the Audit Committee of the board, consisting *entirely* of independent directors, is responsible for integrity of

financial reports, internal financial controls and frauds. The New York Stock Exchange had been requiring publicly traded companies to have audit committees since 1978.

In India, corporate governance can easily be said to be the foster-child of SEBI. SEBI itself was born as a non-statutory entity in 1988, and got statutory recognition in 1992. From the CII's Desirable Corporate Governance Code to the Kumar Mangalam Birla Committee report, leading to the Clause 49 of the Listing Agreement, Indian listed companies joined the global mainstream, implementing what was by now well-known – audit committees, independent directors, as also a Corporate Governance Code. These were introduced by a Feb., 2000 circular of the SEBI, directing exchanges to add a clause 49 to their Listing Agreement.

The collapse of Enron in 2001 and WorldCom in 2002 brought a new impetus; Sarbanes Oxley was introduced in the USA in 2002. WorldCom, whose accounts had inflated values in billions, had several independent directors on the board as well. Same was the case *Satyam*, which broke out in 2009 in India. Therefore, whether the existence of these institutions help prevent scams, is a question that we constantly struggle to find an answer for. The only possible answer is – how would the stakes of the entire system be if these controls and agencies did not exist.

The enactment of the Companies Act 2013 gave a new strength to corporate governance. In particular, comprehensive regulation of related party transactions, including their approval by the audit committee and requirement of a majority of minority vote for transactions exceeding thresholds made conflicts of interest the core theme of corporate governance. Controls on related party transactions have continued to be stronger ever thereafter, with SEBI regulations giving new dimensions. The recent addition to “purpose and effect” test to related party transactions introduces a substance-over-form approach, such that these controls are not made slaves of language or ingenious structuring of transactions, to wriggle out of controls.

SEBI's regulations have shown dynamism and the ability to quickly adapt to the needs of time. Provisions on related party transactions have been amended several times. Similarly, provisions related to independent directors, managerial remuneration, etc have been toned up with experience. This is so very essential with the fast-changing corporate practices.

Shareholders' interest is not the only essence of corporate governance. As companies have continued to be ever important to our lives, and key players of the economic system, corporate sector exerts influence in all spheres, the sustainability reporting standards are also being enforced. Sustainability reporting itself wouldn't have been meaningful unless there were agencies of the ecosystem – sustainability rating, which is also being done. This area will, for obvious reasons, be far more dynamic and challenging than any other aspect of corporate governance, and in time to come, there will be a lot of work to do here.

This book consolidates our various writings over time on different topics of corporate governance. These writings would have been a motley collection, unless they were all shaped and paraphrased for being brought under a comprehensive and cohesive theme. This tough task has been done with deftness and ease by Payal. The remarkable part is that this entire consolidation exercise has been done in a matter of barely 25 days or so.

We are so glad to be presenting this publication to companies and corporate professionals.

Kolkata  
17th January 2024

VINOD KOTHARI

# From the Editor

As a part of our practice, almost our entire working day is spent, some way or the other, in dealing with corporate governance matters. Therefore, we are deeply immersed into the subject - for us, the topic is existential and essential. Naturally, therefore, we have been writing on this issue over the years. Most of our senior and other colleagues have done work on a range of issues that may fall under the wide ambit of corporate governance.

As we were preparing for the celebration of completion of 35 years of our journey, the thought of consolidating our work done over the last few years on this range of issues came. I was fortunate that I was assigned the task, which, at first seemed easy, but once into it, it was natural to realise that there was a substantial extent of consolidation, updation, re-paraphrasing, shaping up, synthesizing, etc., to be done. There were several areas where there were gaps, and therefore, we had to do work afresh.

The task was taken up by the entire team. I am so lucky that I am guided by seniors who themselves can slog and sweat; I could see many seniors work during late hours to provide the text. The result of this strenuous work of the entire team over the last 3 weeks or so is this wonderful compilation. It is now a complete guide on various aspects of corporate governance.

We have a total of 25 Chapters arranged into 9 Parts based on different aspects of corporate governance.

In **Part A**, we begin by tracking the evolution of corporate governance - the scandals and influential committee recommendations that have shaped the corporate governance framework into its existing form. Evidently, corporate governance, reactive to the needs of the changing business environment, is ever-evolving. While the future course of corporate governance may not be predictable, we attempt to discuss the possible trends in corporate governance in the near future.

As the governing body of the company, the effectiveness of the board is of primary importance. We discuss the various principles of board effectiveness, and the essential pillars of corporate governance, viz., independent directors, board committees, an effective board composition including diversity and succession planning, etc. in **Part B**. This Part also deals with the functioning, duties and liabilities of the board.

Managing conflicts of interest is an essential element in corporate governance, and **Part C** deals with the same. It covers aspects like conflicting interests of directors vis-a-vis their duties in dealings with the company directly or indirectly, including financial transactions, and managerial remuneration involving their direct personal interests. This Part also covers discussion on related party transactions, that does not restrict itself to related parties of the directors, but extends to the related parties of the company itself.

The board of directors, acting in the fiduciary capacity, is responsible to ensure maximum benefits to the principal, and is required to report the financial and non-financial information to the shareholders and other stakeholders at least on an annual basis. Here comes the role of audit and auditors, in providing reasonable assurance to the users of the reported information, as discussed in **Part D**.

A well-functional and active shareholder engagement is the key to effective corporate democracy. **Part E** deals with proxy advisors and stewardship responsibility of institutional investors, guiding the overall voting process in listed entities, enhancing corporate democracy.

Information symmetry is an important aspect in decision-making and a company is expected to provide timely information to the stakeholders. **Part F** discusses the various stages of information and disclosure requirements, starting from insider trading controls for unpublished price sensitive information, to prompt disclosure of material information to stock exchanges, including verification of market rumors and disclosure of agreements impacting the listed entities.

Corporates often create group structures, either for operational efficiency or to hide the actual controlling entity/ person behind a web of complex cross holdings. Hence group governance becomes significant, and particular focus is given on governance of subsidiaries, as discussed in **Part G**.

Companies cannot survive by chasing profits only, keeping their social responsibility and environmental sustainability aside. **Part H** deals with the corporate responsibility towards sustainability, primarily climate change, sustainable financing options and sustainability reporting requirements, along with the legal mandate of social responsibility put on the companies through mandatory CSR provisions. The very tricky and sensitive issue of board responsibility for climate change is also discussed in this part.

While a strong corporate governance is crucial for companies operating in every sector, the failure of corporate governance in financial sector entities pose a greater threat to the economy. An account of the additional elements of corporate governance controls for banks and NBFCs has been presented in **Part I**.

Guided by our mentor Mr. Vinod Kothari, this Book is a combined effort of the entire team of Vinod Kothari & Company. We hope this Book serves its purpose and readers get a 360° view of the significant aspects of corporate governance dealt with in this Book.

Kolkata

18th January, 2024

PAYAL AGARWAL



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# List of Abbreviations

1988 Amendment	the Companies (Amendment) Act, 1988
2000 Amendment	Companies (Amendment) Act, 2000
AAP	Annual Action Plan
AC	Audit Committee
Accounts Rules	Companies (Accounts) Rules, 2014
ACRA	Accounting and Corporate Regulatory Authorit
Act 1956/ 1956 Act	Companies Act, 1956
ADT Rules	Companies (Audit and Auditors) Rules, 2014)
AFS	Australian Financial Services
AGM	Annual General Meeting
AI	Artificial Intelligence
AIF	Alternative Investment Funds
AMC-MF	Asset Management Companies- Mutual Fund
AoA	Articles of Association
AOC Rules	Companies (Accounts) Rules, 2014
AQD Rules	Companies (Appointment and Qualification of Directors) Rules, 2014
ASC Report	Annual Secretarial Compliance Report
ASIC	Australian Securities and Investments Commission
ASX	Australian Stock Exchange
ASX Principles	ASX Corporate Governance Principles and Recommendations
BoD/ Board	Board of Directors
BR Act	Banking Regulation Act, 1949
BRR	Business Responsibility Statement
BRSR	Business Responsibility and Sustainability Statement
BSE	Bombay Stock Exchange

C&AG	Comptroller and Auditor-General of India
CA / Act 2013	Companies Act, 2013
CAA 2017	Companies Amendment Act 2017
CAA 2019	Companies (Amendment) Act, 2019
CAA 2020	Companies (Amendment) Act, 2020
CARO	Companies (Auditor's Report) Order
CBI	Central Bureau of Investigation
CCO	Chief Compliance Officer
CDSB	Climate Disclosure Standards Board
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CG	Corporate Governance
UPSI	Unpublished Price Sensitive Information
CIC	Core Investment Companies
CII	Confederation of Indian Industries
Circular on Resignation of Auditors	SEBI circular on Resignation of statutory auditors from listed entities and their material subsidiaries dated October 18, 2019
CIRO	Chief Investor Relations Officer
Clause 5	Clause 5 of Para A Part A of Schedule III
Clause 5A	Clause 5A of Para A Part A of Schedule III
CLC Report, 2022	Company Law Committee Report, 2022
CLC, 2016	Company Law Committee, 2016
Compensation Guidelines	Guidelines on Compensation of Key Managerial Personnel (KMP) and Senior Management in NBFCs
Compliance Circular/Framework	Compliance Function and Role of Chief Compliance Officer (CCO) - NBFCs dated April 11, 2022
Consultation Paper on Resignation of Auditors	Consultation Paper on policy proposals with respect to resignation of statutory auditors from listed entities dated July 18, 2019
COO	Chief Operational Officer

COSO	Committee of Sponsoring Organisations
Cost Audit Rules	Companies (Cost Record and Audit) Rules, 2014
CP	Connected Person
CPSE	Central Public Sector Entities
CRL Rules	Companies (Restriction on number of layers) Rules, 2017
CRO	Chief Risk Officer
CS	Company Secretary
CSR	Corporate Social Responsibility
CSR Rules	Companies (Corporate Social Responsibility Policy) Rules, 2014
CSRD	Corporate Sustainability Reporting Directive
Databank Rules	Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019
Definitions Rules	Companies (Specifications of Definitions Details) Rules, 2014
Delisting Regulations	SEBI (Delisting of Equity Shares) Regulations, 2021
Depositories Act	Depositories Act, 1996
DIN	Director Identification Number
DIR Rules	Companies (Appointment and Qualification of Directors) Rules, 2014
DP	Designated Person
DRS	Directors Responsibility Statement
ED	Executive Directors
EDITDA	Earnings Before Interest, Taxes, Depreciation, and Amortization
EFRAG	European Financial Reporting Advisory Group
EIV	Expected Impact in terms of Value
EOGM	Extra ordinary general meeting
ESG	Environmental, Social and Governance
ESOPs	Employee Stock Option Plans
ESRS	European Sustainability Reporting Standards



EU	European Union
FCA	Financial Conduct Authority
FPO	Further Public Offer
FRC	Financial Reporting Council
FRC Guidance	Guidance on Board Effectiveness by FRC
FY	Financial Year
GAAP	Generally Accepted Accounting Principles
GFC	Global Financial Crisis
GRI	Global Reporting Initiative
Guidelines	Loans and Advances – Regulatory Restrictions – NBFCs
HFCs	Housing Finance Companies
HoldCo	Holding Company
HR Policy	Human Resource Policy
HUF	Hindu Undivided Family
HVDLE	High Value Debt Listed Entity
ICDR	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
ICGN	International Corporate Governance Network
ID	Independent Director
IDF- NBFC	Infrastructure Debt Fund- NBFCs
IEPF	Investor Education and Protection Fund
IFC	Internal Financial Control
IICA	Indian Institute of Corporate Affairs
ILNCS	SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021
IND AS/ IndAS	Indian Accounting Standards
IOSCO	The International Organization of Securities Commissions
IPC	Indian Penal Code

IPO	Initial Public Offer
IRDAI	Insurance Regulatory and Development Authority of India
IT Act	Income Tax Act
IT	Information Technology
ITAT	Income Tax Appellate Tribunal
JV	Joint Venture
KMP	Key Managerial Personnel
KPIs	Key Performance Indicators
Kumar Mangalam Birla Committee	Committee Appointed by the SEBI on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla
KYC	Know Your Customer
LAS	Loan Against Securities
LE	Listed Entity
LLP	Limited Liability Partnership
LoC	Letter of Credit
LODR / Listing Regulations	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
LODR Master Circular	Master circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities
LTV	Loan to Value
MAP	Monitorable Action Plan
MAR	Market Abuse Regulation
MAS	Monetary Authority of Singapore
MBP Rules	Companies (Meetings of Board and its Powers) Rules, 2015
MCA	Ministry of Corporate Affairs
MD	Managing Director
MoM	Majority of Minority
MoU	Memorandum of Understanding

MR Rules	Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014
NASDAQ Rules	NASDAQ Stock Market LLC Rules
NBFC-BL	NBFC-Base Layer
NBFC-ICC	NBFC – Investment and Credit Company
NBFC-IFC	NBFC-Infrastructure Finance Company
NBFC-MFI	NBFC- Microfinance Institution
NBFC-ML	NBFC-Middle Layer
NBFC-UL	NBFC-Upper Layer
NBFCs	Non-banking Financial Companies
NC HLC Report	Report of the High Level Committee on Corporate Audit and Governance chaired by Mr. Naresh Chandra
NCD	Non-convertible Debentures
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NCRPS	Non- Convertible Redeemable Preference Shares
NCS	Non-Convertible Securities
NDA	Non Disclosure Agreement
NDI Rules, 2019	FEMA (Non-debt Instruments) Rules, 2019
NED	Non Executive Directors
NFCG	National Foundation for Corporate Governance
NFRA	National Financial Reporting Authority
NFRA Rules	National Financial Reporting Authority Rules, 2018
NPO	Non-profit Organization
NRC	Nomination and Remuneration Committee
NSE	National Stock Exchange
NVGs	National Voluntary Guidelines
NYSE	New York Stock Exchange

NZX Code	NZX Corporate Governance Code
OA	Omnibus Approval
OECD	Organisation for Economic Co-operation and Development
OECD CG Factbook	OECD Corporate Governance Factbook, 2023
OECD Principles	G20/ OECD Principles of Corporate Governance, 2023
OIP	Office of Informant Protection
OpCos	Operating Companies
P&E	Purpose and Effect
P&L	Profit & Loss
PBT	Profit Before Tax
PCS	Practising Company Secretary
PFI	Public Financial Institutions
PFRDA	Pension Fund Regulatory and Development Authority
PG	Promoter Group
PIT Regulations	SEBI (Prohibition of Insider Trading) Regulations, 2015
R&D	Research and Development
RBI	Reserve Bank of India
RD	Regional Director
Report of the Expert Committee	Report of the Expert Committee on Company Law, 2005 chaired by Dr. JJ Irani
Report of the Standing Committee	21st Report of the Standing Committee on Finance on the Companies Bill, 2009.
RMC	Risk Management Committee
RMP	Risk Mitigation Plan
RoC	Registrar of Companies
RP	Related Party
RPT	Related Party Transaction
RTA	Registrar & Share Transfer Agent

SA	Standards on Auditing
SASB	Sustainability Accounting Standards Board
SAST	Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
SBO	Significant Beneficial Ownership
SBR Circular	Scale Based Circular: A Revised Regulatory Framework for NBFCs
SBR Framework	Collectively for SBR Circular and SBR Master Directions
SBR Master Directions	Master Direction – Reserve Bank of India (Non-Banking Financial Company– Scale Based Regulation) Directions, 2023
SCRA, 1956	Securities Contracts (Regulation) Act, 1956
SDD	Structured Digital Database
SEBI	Securities Exchange Board of India
SEBI BM Agenda for Reg. 30	Amendments to requirements for disclosure of material events or information by listed entities under LODR enclosed as agenda for SEBI BM dated March 29, 2023
SEBI Circular on Reg. 30	SEBI Circular on Disclosure of material events / information by listed entities under Regulations 30 and 30A of LODR
SEBI Scheme Circular	Master Circular on Scheme of Arrangement by Listed Entities
SEBI Stewardship Code	Stewardship code for Mutual Funds and all categories of AIFs, in relation to their investment in listed equities
SEC	Securities Exchange Commission
SEC Act	Securities Exchange and Commission Act
SGX	Singapore Stock Exchange
SHA	Shareholders' Agreement
Singapore Code	Code of Corporate Governance of Singapore
SME IPO	Initial Public Offer by Small and Medium Enterprise
SMP	Senior Management Personnel
SoA	Scheme of Arrangement
SOP	Standard Operating Procedures

SOX	Sarbanes Oxley Act
SOX	Sarbanes-Oxley Act
SPAs	Share Purchase Agreements
SR Equity Shares	Special Rights Equity Shares
SRC	Stakeholders Relationship Committee
SS 1	Secretarial Standards 1
SS 2	Secretarial Standards 2
TCFD	Task Force on Financial Disclosures
ToR	Terms of Reference
UK Act	Companies Act 2006 of UK
UK Code	UK Corporate Governance Code 2018
UKC Report on CG	Uday Kotak Committee's report on Corporate Governance
UPSI	Unpublished Price Sensitive Information
WOS	Wholly Owned Subsidiary
WTD	Whole-time Director
XBRL	eXtensible Business Reporting Language



## Part A – Miles Travelled, Miles to Go



*“To improve is to change; to be perfect is to change often.” — Winston Churchill*

*This quote by Winston Churchill holds immense relevance in the evolution of corporate governance from its early mentions, introduction as a voluntary code, to its wider acceptance and regulatory backing, to the shape it has taken today. The concept of corporate governance is said to have been academically discussed way back in the 1970s, and practiced by some publicly traded companies; however, clearer signs of development were not witnessed until late 1990s. It is currently over 40 years old.*

*Much of the evolution of corporate governance emanates from the corporate scandals, compelling regulators to re-think the controls and plug the loopholes that caused break-out of the scandals resulting in loss of public money and public trust on law and accounting. In addition, the dynamic business environment and the need to adapt to the same makes it essential for the regulators to align rulebooks to the needs of the changing environment.*

*Corporate governance frameworks are generally embedded in the company law. However, the more common way to introduce corporate governance has been through manuals and rulebooks of stock exchanges. This is explained by the fact that in addition to basic principles of fiduciary duties or rules applicable to all companies (which are enforced through corporate laws), the additional considerations for effective governance, transparency, etc. are relevant for listed and traded entities. It is the listing manuals of leading global exchanges which implement corporate governance codes. Back home, corporate governance was, for many years, hosted in the listing agreement, before it was imposed as a part of regulations by the LODR Regulations.*

*Read on to find out more about the history of “corporate governance”, how far has it come from its point of origin in India, and the role of various events in shaping the corporate governance framework in India the way it appears as on date.*

*Will there ever be a point of arrival for corporate governance? The answer is obviously in the negative. In fact, it is quite natural that as business realities change fast enough, corporate governance will constantly require to be shaped to fit.*

# Chapter 1 - Corporate Governance: Miles Travelled

## Executive Summary

This Chapter discusses the evolution of corporate governance against the backdrop of global economic changes and the rise of large corporations. It emphasizes the reactive nature of corporate governance norms, shaped by major scandals such as Enron and the Global Financial Crisis.

The Chapter addresses the year 1988 as the phase of “*glaani*” that resulted in SEBI being formed as a non-statutory body and the first statutory exclusive recognition to practicing company secretaries. The economic liberalization in 1991 is identified as a turning point, bringing about regulatory and taxation changes. [Para 1]

In 1992, SEBI was granted statutory recognition following the Narasimham Committee's recommendations, and Insider Trading Regulations were notified. [Para 2]

1996 marked the advent of dematerialization, facilitated by the Depositories Act. [Para 3]

The first institutional initiative of codifying corporate governance norms was done in 1998 by CII. [Para 4] These norms were later incorporated into Clause 49 of the Listing Agreement pursuant to Kumar Mangalam Birla Committee Report. Significant developments were also notified in the Companies Act, 1956. [Para 5]

Between 2005 and 2008, MCA launched the MCA21 e-governance initiative, aiming to digitize and streamline services related to company filing and registration. The requirement of DIN was introduced to prevent fraud and identity forgery in director appointments. Statutory recognition was granted to LLPs in India. [Para 6]

Between 2009 and 2012, significant changes in India's corporate governance landscape resulted in inclusion of “sustainability” in corporate governance norms, although in the form of voluntary guidelines. [Para 7]

Between 2013 and 2015, the most significant changes included replacement of CA, 1956 by CA, 2013 and the Listing Agreement by LODR Regulations, including revision in PIT Regulations by repealing 1992 Regulations with 2015 Regulations. [Para 8]

The corporate governance landscape has, since then, further moved towards decriminalisation of offences, introduction of NFRA, stewardship codes for institutional investors etc. [Para 9].

The years ranging between 2021 and 2023 has witnessed significant regulatory developments, especially for listed entities – with a revised regulatory framework for related party transactions, extension of corporate governance norms to high value debt listed entities, revised thresholds for material disclosures etc. [Para 10]

## Introduction

Before we talk about the evolution of corporate governance (CG), it is important to understand what are the factors that lead to its evolution over the years.

The working of our economic system – capital markets, mass production, global markets access and economies of scale and scope - all taken together have promoted large enterprises. With the collapse of socialism and the debacle of state-run enterprises, most economic activity, even public utilities in several countries, are now run by corporations. The modern corporation has presence across the world in every sphere – it has employees and offices in dozens of countries, sources materials across continents, supplies its products to governments and enterprises world over, outsources services to far-flung countries, and so on. It has shareholders scattered across the world. More so, it has major money from institutional investors, which in turn have accumulated savings of common people all over the world. In short, today's multinational enterprise decides the destiny of millions in many countries<sup>1</sup>. Every large corporate scandal in the world's history bears testimony to the power these corporations yield, including the power to shake economies across the globe. The *Enron scandal* of 2001, for instance, is regarded as one of the largest bankruptcies in the history of the U.S. which caused investors to lose trust in the US capital markets and prompted enforcement of stringent reforms for listed companies including their management and auditors<sup>2</sup>. Then, the ill-famed *Global Financial Crisis* (GFC) (2007-08) had a lasting impact on economic growth<sup>3</sup>. Closer home, the stock market manipulation scam of Harshad Mehta (1992) left the stock market and investors crippling, and then the *Satyam fiasco* (2009), one of the then renowned names in IT industry, besides jolting the Indian Inc., also tarnished the image of the Indian IT industry in the global IT market. And talking about dupes, how can anyone not recall the *Sahara scam* (2008-2011)? There are innumerable similar examples.

Corporate governance norms are substantially reactive - every major crisis has a regulatory lesson to teach, which finds its way into corporate governance norms. Almost every major corporate scandal has led to fresh thinking on corporate governance practices. The Enron debacle eventually led to the enactment of Sarbanes Oxley Act (popularly called SOX). After the GFC, Dodd-Frank Wall Street Reform and Consumer Protection Act was introduced. In India, the securities scam led to the emergence of SEBI (which was established in 1988 as a replacement for the Controller of Capital Issues) as a statutory regulator. Similarly, the Satyam and Sahara scam and similar other incidents were in the background of several provisions of the Companies Act, 2013.

Since then, corporate governance has travelled miles (and still continues its journey). Reasons are obvious:

- *First*, corporations, as we have discussed above, have become immensely powerful in an ever-integrated and networked economy; they impact common man's lives and not just the resources of their shareholders and stakeholders. As such, there has to be a balancing mechanism which ensures that the corporations use the power they have with due care and responsibility. Corporate governance is just another name for that balancing mechanism.
- *Second*, history repeats itself. Despite ever evolving and maturing regulatory and supervisory oversight, the precedents of misuse of managerial power, conflicts of interest, opacity in reporting, lack of balance in meeting diverse stakeholder needs, continue to come to limelight. Changing times have seen innovative means of perpetuating corporate misconduct; and therefore, corporate governance also needs to be dynamic and ready to deal with such situations.
- *Thirdly*, for specialised sectors which have systemic sensitivities, such as the financial sector, the corporate governance norms need to be customised to address the needs and risks of the sector. While a manufacturing company going bust might affect several investors, employees,

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<sup>1</sup> See also, *Corporate Governance - Global trends and national moves* by Mr. Vinod Kothari

<sup>2</sup> See an article in TIME, [here](#): The bankruptcies following the Global Financial Crisis were in fact several times larger - say Lehman or Washington Mutual. But Enron gets the distinction of being a reporting-related failure, whereas the GFC was a business model case.

<sup>3</sup> See the working paper published by International Monetary Fund [Lessons and Policy Implications from the Global Financial Crisis](#)

consumers, etc.; a bank going out-of-money can cause severe handicap in the financial, payment and settlement systems.

Further, as we progress with the discussion on the evolution of CG, we realise that initially, CG was more a product of separation between ownership and management in a corporate entity and thus, the focus was only on shareholder interests. However, with evolving times, the interlinkages between corporate conduct and various other stakeholders, including the environment, were recognised. We have now come to a phase, where the air-conditioned boardrooms are witnessing discussions on carbon footprints and ways to reduce them; whereas the institutional investors are looking beyond the promoters and credit scores of the corporates; and where the regulators are pushing compliances not through the stick of penalties and punishments but through the subtle dose of disclosures.

This Chapter is an attempt to provide a narrative account of major milestones of corporate governance in the Indian landscape over a span of the last 35 years. Of course, we will want to end the chapter with what is the future of corporate governance.

## 1. 1988-1991: The *glaani* phase

Lord Krishna says that he incarnates himself in situations of abject decline in righteousness and there is rise of evil. *Glaani* may loosely be translated as substantial damage. 1988 is precisely that phase. Corporate governance wasn't heard anywhere; instead, companies were run by promoters for self-interest, stock market manipulation was easy and common, institutional investors could be used to serve vested interests, and there was no securities market regulator at all. Macroeconomic situation was getting precarious with global geopolitical disturbances, the fall of Communism, etc.

With the beginning of economic liberalisation and the Perestroika of tax and economic reforms, the stock markets started reaching new highs. The situation was absolutely conducive for the rise of Harshad Mehta, giving assurance that the stock market could turn people into overnight millionaires. Sensex gave a 1-year return of 49.5% in 1991 and a whopping 267% in 1992. And then the scam happened, with the next year's returns a negative 47%.

However, as Lord Krishna says, in this period of *glaani* of corporate responsibility and stakeholder interest protection, the institutions of governance, which would change the course of governance of the years to come, would take birth.

Two important institutions took birth in 1988. SEBI made its appearance as a non-statutory body, and the profession of practising company secretaries was born with the first exclusive statutory exclusive recognition.

### 1.1. Companies (Amendment) Act, 1988

One of the first substantive steps towards the footing of CG in India was [the Companies \(Amendment\) Act, 1988](#) ('1988 Amendment') which sowed the first shoots of the profession of company secretaries in practice, by creating the first exclusive area of practice - certification of annual return. If practising company secretaries have later become important agents in providing assurance and advisory support for corporate governance, this was the beginning.

### 1.2. Setting up of SEBI

The year 1988 also saw the establishment of SEBI, *albeit* as a non-statutory body, to replace the then Controller of Capital Issues under the Capital Issues (Control) Act.

### 1.3. Economic liberalization; the beginning of the end of government controls over business

The process of liberalization, privatization, and globalization was introduced in 1991. This was spearheaded by a New Economic Policy, which changed the direction of the policies of the socialistic pattern of society that the country was so far headed for. The year marked the beginning of a series of changes, both in regulations and taxation.

## 2. 1992: Strengthening of the securities market regulator and insider trading regulations

### 2.1. Statutory recognition to SEBI

While SEBI was so far existing as a non-statutory body, [Narasimham Committee](#)'s recommendations included granting of a statutory recognition to SEBI, and the formation of mutual funds for institutionalisation of savings. This was soon followed by enactment of the SEBI Act, 1992. SEBI was entrusted with the task of protecting the interests of investors in securities and promoting the development of, and regulating, the securities market in India.

### 2.2. Prohibition of insider trading

One of the first regulations to be brought about by SEBI was the SEBI (Prohibition of Insider Trading) Regulations, 1992. Insider trading was a malaise widely prevalent in Indian markets. Regulations for stock brokers and merchant bankers were also brought in the same year.

## 3. 1996: Securities go paperless: The beginning of dematerialisation

Corporate professionals of today would scarcely believe that the major time of a company secretary of a large company would go in endorsing share transfers at the back of share certificates. In fact, the concept of “book closure” before an AGM or dividend declaration belongs to that period, because the secretarial team would spend a few days to complete all pending transfers, and in the meantime, would therefore need to close the receiving of new transfer requests<sup>4</sup>.

This would soon become history, as the process of dematerialisation, already prevalent in the USA, was pushed with the enactment of the Depositories Act, 1996 (**‘Depositories Act’**). Thereafter, SEBI introduced SEBI (Depositories and Participants) Regulations, 1996<sup>5</sup> providing registration of depositories and depository participants.

The Depositories Act made certain important amendments to the Act 1956 - free transferability of shares and debentures (except in case of private companies) was explicitly coded in the law and provisions were inserted to facilitate appeals in case of refusal to register transfer of shares without sufficient cause.

Dematerialisation of shares allowed easy monitoring of securities thereby reducing fraud and discrepancies faced in physical certificates. Streamlining of payment of dividends, transfer and voting, increased the shareholders' participation in the decision-making process of the companies, thereby leading to more transparency. With real-time access to trades and shareholding patterns of the Companies, SEBI was able to monitor and regulate market trades.

The process that started with listed companies has subsequently been extended to unlisted public companies ([2018](#)) and recently, to private companies (other than small companies) ([October 2023](#)). Read an [article](#) or our detailed [FAQs](#) on the said amendments and listen to our [youtube lecture](#).

## 4. 1998: Codifying corporate governance

The first institutional initiative for codifying corporate governance was taken by the Confederation of India Industries (CII) in 1998. The Code, for the first time, introduced the concept of independent directors (IDs) for listed companies and compensation paid to them. Other major recommendations involved the presence of non-executive directors on the board, key information to be placed before the board, constitution of the audit committee, compliance certificate by the CFO & CEO.

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<sup>4</sup> Vinod Kothari, as a practising company secretary in 1989, recalls that when the first annual return of ITC Limited was to be certified, some 21 big books containing transfer records, computer-printed on the-then dot-matrix printer with 26-inch width, were transported to his office, along with huge arch files containing the transfer deeds. Since he focused only on the first month and the last month of the period for test checking, he said he went through several thousands of physical transfer deeds. A major observation was that the stamps put at the back of the transfer deeds were not cancelled.

<sup>5</sup> Now, SEBI (Depositories and Participants) Regulations, 2018

The Code introduced by CII was the first and probably unique instance where an industry association took the lead in prescribing corporate governance standards for listed companies in the form of voluntary recommendations. The final code named [Desirable Corporate Governance: A Code](#) was published in April 1998.

It is worth noting that most of the CII Code were subsequently incorporated in SEBI's Kumar Mangalam Birla Committee Report and thereafter in Clause 49 of the Listing Agreement ([see below](#)).

## 5. 1999-2004: SEBI's corporate governance regulations; amendments in Companies Act, 1956

### 5.1. Clause 49 of Listing Agreement

After CII introduced voluntary guidelines on corporate governance, it was felt that under Indian conditions a statutory rather than a voluntary code would be far more purposive and meaningful, at least for essential features of corporate governance. The issue of CG for listed companies came into prominence with the report of the [Kumar Mangalam Birla Committee](#).

SEBI appointed the said Committee in 1999 with the primary objective to view CG from the perspective of the investors and shareholders and to prepare a code to suit the Indian corporate environment.

Recommendations of the said Committee served as a foundation for subsequent changes in regulations, majorly Clause 49 of the Listing Agreement issued by SEBI, which primarily focused on corporate governance for listed companies. Clause 49 served as a footprint for the present LODR, as LODR amalgamated various clauses and regulations into a unified framework on the basis of norms outlined in Clause 49 and expanded upon them - setting higher standards for corporate governance.

Notably, Clause 49 for the first time introduced the concept of an Audit Committee in India which was later on adopted in the Act 1956 in the year 2002 *vide* Companies (Amendment) Act, 2000 (Section 292A of the Act 1956).

Later, in the year 2004, Clause 49 was [amended](#) on the basis of recommendations on [Narayana Murthy Committee](#) with respect to provisions relating to definition of independent directors, strengthening the responsibilities of audit committees, improving quality of financial disclosures, including those related to related party transactions and proceeds from public/rights/preferential issues, requiring Boards to adopt formal code of conduct, requiring CEO/CFO certification of financial statements and for improving disclosures to shareholders. Certain non-mandatory clauses like whistle blower policy and restriction of the term of independent directors were also included.

### 5.2. IEPF, postal ballot, director responsibility statement, certification by practicing CS, etc.

The [amendment](#) in 2019 introduced various important provisions in the Act 1956, e.g. investor education and protection fund, setting up of National Advisory Committee of Accounting Standards and mandatory compliance of Accounting Standards, etc.

Along with the introduction of the concept of audit committee under the Act 1956 (section 292A), the [Companies \(Amendment\) Act, 2000](#) ('the 2000 Amendment') also brought other significant amendments for the first time to provide certain measures of good corporate governance and meaningful shareholders' democracy which are present till date, such as mandatory passing of resolutions by way of postal ballot for specified matters (section 192A of the Act 1956), inclusion of Director Responsibility Statement in annual report, appointment of small shareholders' director. The 2000 Amendment also brought in provisions relating to the appointment of debenture trustees and debenture trust deeds. Notably, the 2000 Amendment also introduced the concept of a compliance certificate from a practicing company secretary (Section 383A) which later evolved as secretarial audit under the Act 2013.

### 5.3. Introduction of provisions relating to NCLT

The Companies (Amendment) Act, 2002 called for establishing the [National Company Law Tribunal \(NCLT\)](#) for substitution of the then Company Law Board based on Eradi Committee recommendations.

The provisions of the Companies (Second Amendment) Act, 2002 could not be notified due to non-establishment of the NCLT pursuant to petition filed before the Madras High Court<sup>6</sup>. Finally, the provisions relating to NCLT and its functioning were notified later in the year 2016.

#### 5.4. Other important developments

This era also witnessed the recommendations of several committee and amendments, such as the:

- **Task Force on Corporate Excellence through Governance Report:** A committee was formed under the chairmanship of Sanjeev Reddy, Secretary of DCA, with an aim to examine the entire gamut of the Act 1956, and suggest necessary amendments to modernize and update the law in line with contemporary requirements. Pursuant to their recommendations National Foundation for Corporate Governance (NFCG) was set up in 2003 as a non-governmental body to promote corporate governance in India.
- **Naresh Chandra Committee of Corporate Audit and Governance:** In light of the various scandals such as Enron and after the enactment of SOX, the [Naresh Chandra Committee](#) gave recommendations on corporate governance based on SOX. The committee majorly emphasized that the definition of IDs is required to be specified in a precise manner and gave the definition of IDs, which was later incorporated in Companies Act, 1956. Other recommendations of this committee were later incorporated and introduced under the Companies (Amendment) Bill, 2003 (which could not be passed by the Parliament).
- **Ganguly Committee:** The recommendations of [Ganguly committee](#) set up by RBI emphasized that the boards of banks should have a blend of a 'historical skills' set (regulation-based representation) and a 'new skills' set (need-based representation), based on which RBI issued detailed guidelines on the responsibilities of directors, including independent and non-executive directors, committees of the board, the composition of the board, and fit and proper criteria for directors in banks..
- **J.J. Irani Committee on Company Law:** The significant recommendations of [J.J. Irani Committee](#) such as class action suits, mandatory rotation of auditors, cross border mergers, etc, presently form part of the regulatory regime in India.

To respond to corporate governance developments across the globe and in the light of various corporate scandals, [OECD Principles on Corporate Governance](#) were also revised in 2004. Among other updates, major revisions were introduced in the role of institutional investors, protection of minority shareholders, free communication with stakeholders, disclosure of key information of board including remuneration, report of independent analysts and agencies, etc.

### 6. 2005-2008: E-governance initiative, introduction of DIN and LLPs

#### 6.1. MCA21 - the e-governance initiative of MCA

MCA [launched](#) an e-governance project titled 'MCA21', where various e-services relating to company filing, registration, inspection of documents, etc. were introduced. The MCA21 project intended to empower the stakeholders to access information on companies (G2C services), and to facilitate interactions and transactions between business and government (B2G and G2B services)<sup>7</sup>.

#### 6.2. Director identification number

In line with the above, the [Companies \(Amendment\) Act, 2006](#) introduced allotment of unique DIN to any person intending to appoint or is appointed as a director in a company. While the Act 1956 allowed an individual to hold directorships in 15 companies at the same time, there was a possibility of fraud and forged identity by the individuals. Allotment of and tracking by DIN helped to untangle the identification process of the directors.

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<sup>6</sup> See a [detailed presentation](#)

<sup>7</sup> See Chapter VII of [Annual Report \(2007-2008\)](#) of MCA



### 6.3. Introduction of LLPs

Another significant step during this period was the introduction of the Limited Liability Partnership Act, 2008, which gave legal standing to the concept of LLPs in India.

Later, as LLPs became a hybrid form of entity with lesser regulatory burden compared to a company, the conversion of companies into LLPs was being sought as a means of regulatory arbitrage. Given the prevailing situation, the attention of the regulatory authorities shifted towards the LLPs. Hence, with an intent to monitor the activities of LLPs, MCA, in 2022, *vide* [Amendment Notification](#) specified certain sections of the Companies Act, 2013 as applicable on LLPs as well. These included some very significant provisions like identification of Significant Beneficial Ownership (SBO), application of the criteria for disqualification, capping on the maximum number of partners/ DPs, etc<sup>8</sup>. The amendments resulted in an increased level of supervision and control on the working and management of the LLPs. Overtime, the integration of various provisions of the Act with the LLPs indicates an era of LLPs becoming similar with companies. As on 30th November 2023, a total number of 3,06,899 LLPs were active in the country with an increase of new 14,178 Limited Liability Partnerships (LLPs) during the quarter Sept' 2023 to Nov' 2023 alone<sup>9</sup>.

## 7. 2009-2012: MPS, sustainability, and voluntary corporate governance

### 7.1. Revised limits of minimum public shareholding (MPS)

Amendment in [Securities Contract \(Regulation\) Rules, 1957](#) in 2010 made a significant change by setting minimum public shareholding to 25%. The aim was to broaden the shareholder base for public sector undertakings. In addition, this contributed to the improvement of corporate governance in a significant percentage of listed companies.

### 7.2. Embracing sustainability into corporate governance norms

In 2011, MCA issued '[National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business](#)' which laid down the comprehensive principles to be adopted by companies as part of their business practices and a structured business responsibility reporting format requiring certain specified disclosures. In line with MCA Guidelines, SEBI decided to mandate the inclusion of Business Responsibility Reports ("BRR") as part of the annual report, urging the listed entities to adopt responsible business practices. BRR later became "Business Responsibility and Sustainability Report" (BRSR)<sup>10</sup> and presently forms part of LODR. Although based on the same principles, BRSR is much more comprehensive as compared to its former counterpart. Further, it is notable that as one of the universally accepted sustainability standards, [Global Reporting Initiative Standards](#) can be closely referred to for the enhanced requirements under BRSR and therefore, serve as a guide for reporting under BRSR.<sup>11</sup> Elaborate discussion on the same may be referred to in **Chapter - 21**.

### 7.3. Various guidelines on corporate governance

With initiatives being taken all around the world as well as in India, several regulators, agencies and other institutions came up with best practices on CG, which are briefly mentioned below:

- **[Guidelines on Corporate Governance for Central Public Sector Enterprises](#):** Issued by Department of Public Enterprises., these guidelines were formulated with the objective that central public sector enterprises (CPSEs) follow the CG guidelines in their functioning, voluntarily. The guidelines were categorized into two groups, for listed and unlisted companies, majorly covering board and board committees-related provisions, code of conduct for board

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<sup>8</sup> See a detailed [presentation](#) here.

<sup>9</sup> MCA monthly information bulletin as on November, 2023

<sup>10</sup> To see additionalities involved in BRR moving to BRSR, refer to our article **[Cartload of details in BRSR](#)** by Ms. Pammy Jaiswal and Ms. Megha Saraf

<sup>11</sup> Excerpts taken from **[Getting ready to implement BRSR from FY 2022-23 \(Part-I\)](#)** by Team VKCo



and senior management, risk management, compliances related to subsidiary companies, disclosure to be made board and committees, report on corporate governance, etc.

- **NASSCOM Guidelines:** Other [Voluntary Guidelines](#) were introduced by NASSCOM for the companies in IT-BPO sector, to be followed in addition to the compliance under Clause 49. These guidelines also highlighted the key elements of whistle-blower policy covering important terms, reporting structure, manner of investigation, remedies, etc.
- **CII's Task Force on Corporate Governance:** A task force set up by CII enumerated a set of voluntary recommendations [CII Corporate Governance Recommendations for Voluntary Adoption](#) to establish higher standards of probity and corporate governance in the country. The recommendations were majorly focused on listed companies and wholly owned subsidiaries of listed companies. A total of 25 recommendations were made by this committee revolving around the Board and its committees, RPTs, the auditor's independence and rotation, related party transactions, provisions related to auditors, whistle-blower policy, risk management, role of institutional investors, etc.
- **Corporate Governance Voluntary Guidelines:** Later, on the basis of CII Corporate Governance Recommendations for Voluntary Adoption and [ICSI Recommendations to Strengthen Corporate Governance Framework](#), MCA also introduced [Corporate Governance Voluntary Guidelines 2009](#) to provide for a set of good practices which may be voluntarily adopted by the public companies. Private companies, particularly the bigger ones, may also adopt these guidelines. The Companies (Amendment) Bill, 2011 was passed based on recommendations of Dr J.J. Irani Committee on Company Law as well as these Voluntary Guidelines of MCA.
- **Policy Document on Corporate Governance:** A committee constituted by MCA issued [Guiding Principles of Corporate Governance](#) (Guiding Principles) to advocate some practical suggestions on strengthening the actual performance of Indian corporate governance within the existing legal framework. The committee introduced 17 Guiding Principles, including aspects such as board composition, training and education of directors, board evaluation, succession planning, risk management, whistleblower, etc.

## 8. 2013-2015: Birth of new Company law and Listing Regulations

### 8.1. Companies Act, 2013 and rules

The Companies Act, 2013 was enacted on 29<sup>th</sup> August, 2013 replacing the Act 1956, on the basis of recommendations of J.J. Irani committee and envisaged radical changes in the sphere of CG in India. Several new concepts such as definition of key managerial persons (KMP), code of independent directors, appointment of women director, establishment of vigil mechanism, constitution of stakeholders' relationship committee, codification of duties of directors, etc. Thereafter, various Companies Rules were introduced in 2014 pursuant to the Companies Act, 2013.

Also, as recommended by the Eradi Committee and initially enabled in the year 2002 in the Companies Act, 1956 (see above), NCLT was later constituted under Section 408 of the Companies Act, 2013. National Company Law Appellate Tribunal (NCLAT) was also constituted along with the NCLT. With the setting up of NCLT, the [National Company Law Tribunal Rules, 2016](#) were also introduced.<sup>12</sup>

Later, the Companies (Amendment) Act, 2015 was passed. This amendment brought forward new concepts such reporting of fraud by auditors to the audit committee under Section 143, omnibus approval by the audit committee for RPTs and the exemptions for holding companies to provide loans to its wholly owned subsidiaries, etc.

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<sup>12</sup> Refer to our article [NCLT- A Single Window Tribunal for Corporate Litigations](#) by Ms. Megha Saraf

## 8.2. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI felt the need to enhance the enforceability of the regulatory provisions contained in the Listing Agreement. It was also seen that in various international jurisdictions (viz. USA, UK, etc.) the securities market regulator directly or indirectly scrutinizes/ reviews continuous disclosures. Accordingly, a committee consisting of members from stock exchange(s) and SEBI was formed to draft an all-encompassing umbrella listing regulations providing listing conditions and disclosure requirements for various categories of securities. Before that, SEBI had already issued one [Consultative paper on review of Corporate Governance norms in India](#).

As a follow-up to its Press Release dated PR No. 130/2014 and [draft regulations](#) issued in the year 2014, SEBI on September 02, 2015 issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 to consolidate and streamline the provisions of existing listing agreements and regulations applicable to debt securities, thereby ensuring better enforceability.

Presently, Regulation 16 to 27 (Chapter IV) of LODR governs the provisions of corporate governance applicable to listed entities (including debt-listed entities).<sup>13</sup>

## 8.3. Revised PIT Regulations

The PIT Regulations, 1992 which remained in force for more than two decades received a much needed update in 2015 with the advent of the 2015 Regulations based on the recommendations of [NK Sodhi Committee](#). The new regulations sought to mend the loopholes in the erstwhile law by providing a comprehensive mechanism of checking insider trading so that no instances were omitted. In furtherance of its objective, amongst other things, the new regulations expanded the definition of UPSI, designated persons and connected persons, brought in the concept of trading plan, introduced, for the first time, the need for maintenance of database of designated persons as well as the concept of sharing of information for legitimate purpose on a need-to-know basis. Over the years, these regulations have undergone further amendments which have given the regulation its present form. Refer **Chapter - 14** for detailed discussion on the subject.

## 8.4. Transitioning to Indian Accounting Standards

With the overall slogan of ‘substance over form’, and to align the presentation of financial statements in accordance with the internationally accepted IFRS, the Indian Accounting Standards (Ind AS) were introduced. The MCA introduced the [Companies \(Indian Accounting Standards\) Rules, 2015](#) and announced the roadmap for implementation of Ind AS.<sup>14</sup>

## 8.5. Other developments

The [committee constituted by RBI under the chairmanship of Dr. P. J. Nayak](#) made several noteworthy recommendations, which were later implemented by RBI. Among other recommendations, the committee emphasized on board deliberations, board skills, and the removal of a calendar of reviews. Later RBI removed the calendar of reviews and instructed banks to focus on seven broad themes introduced by the committee for deliberation by their board.

# 9. 2017-2020: Decriminalisation of offences, SBO, auditors etc.

## 9.1. Decriminalisation of offences<sup>15</sup>

Contributing to the significant shift in corporate governance framework in India, MCA *vide* its [press release](#) constituted a committee in the year 2018 to review the penal provisions of the Companies Act,

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<sup>13</sup> Refer to our [LODR Resource Centre](#)

<sup>14</sup> Excerpts taken from [Indian Accounting Standards- An Overview](#) by Mr Rahul Maharshi

<sup>15</sup> Refer to our resources on decriminalisation:

(1) [Decriminalization of offences under commercial laws- A step further towards ease of doing business;](#)

2013. With an intent to ensure speedy trial of offences and promote ease of doing business under which offences which are of a technical nature or those that do not affect public interest prejudicially should be considered to be decriminalized. Based on the [report of the committee](#), decriminalized the first tranche of 16 compoundable offences vide the [Companies \(Amendment\) Act, 2019](#).

The second tranche of decriminalization was introduced in the [Companies \(Amendment\) Act, 2020](#)<sup>16</sup> on the basis of the report of the [Company Law Committee](#) set up in 2019, wherein MCA decriminalized 35 offences along with reduction in punishment of 23 offences and removal of penal provisions for 6 offences.

With the same motive to de-clog the courts or the NCLTs thereby reducing their burden from non-serious matters, Company Law Committee in its [report](#) recommended to decriminalise the provisions under LLP Act, 2008 on similar lines. The [LLP \(Amendment\) Act, 2021](#) thereafter decriminalised 8 offences and introduced in-house adjudication and compounding procedures.<sup>17</sup>

This move streamlined the prosecution regime by introducing mechanisms to reduce burden on courts and escalated ease of doing business in India.

## 9.2. Significant Beneficial Owners

MCA notified the Companies (Significant Beneficial Interest) Rules, 2018 with an intent to capture beneficial interest in the shareholding of companies. The concept of ultimate beneficial owners/ significant beneficial owners/ persons with significant control was not a new concept as it was already present in India. SEBI<sup>18</sup> and RBI<sup>19</sup>, for the purpose of client due diligence under KYC requirements, mandated the identification of ultimate beneficial owners in case of clients being a company, partnership firm, LLP, Trust, or association of individuals.<sup>20</sup> Learn more about the concept of SBO and related provisions from our [resources](#).

## 9.3. National Financial Reporting Authority

Akin to other countries having independent audit regulators and keeping in mind the scams and accounting frauds in India, the [National Financial Reporting Authority \(NFRA\)](#) was constituted under the powers conferred under Section 132 of the Companies Act, 2013. NFRA is entrusted with recommending and enforcing compliance with accounting standards as well as conducting quality reviews. NFRA became a step ahead in corporate governance as its enhanced reporting standards and regulatory oversight aimed toward greater transparency and protection of investors.

## 9.4. Stewardship Code for institutional investors

“Stewardship” literally means the act of protecting the rights of the person to whom it is acting as a steward. In the context of shareholders’ governance and capital markets, the institutional investors play the stewardship role for their clients/ beneficiaries as the funds invested by the institutional investors in the companies actually belong to the large pool of diversified investors who had invested in the institutional investors and hence it will not be wrong to say that the institutional investors are the “stewards” and not the “owners” of the funds invested by them. SEBI, in December 2019, introduced the [Stewardship code for Mutual Funds and all categories of AIFs, in relation to their investment in listed equities](#) (**‘SEBI Stewardship Code’**). Although the stewardship responsibilities are tied to institutional investors; however, the monitoring and engagement required to be done by institutional

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- (2) [CLC Report: Moving company law a step closer to ease, and peace](#);
  - (3) [Decriminalisation of offences- MCA forms a review committee](#);
  - (4) [Recommendations of MCA’s Committee Report on Decriminalisation](#);
  - (5) [Major highlights of the Companies \(Amendment\) Bill, 2020](#);
  - (6) [Company Law Committee Report: Ease of life during an uneasy time](#)

<sup>16</sup> Also see [our resource on Companies \(Amendment\) Act, 2020](#)

<sup>17</sup> To know more about the amendments, refer our resources - [Applicability of Provisions of the Companies Act on LLPs & Reporting requirements: Recent changes](#)

<sup>18</sup> SEBI Circular dated January 24, 2013 - [Guidelines on Identification of Beneficial Ownership](#)

<sup>19</sup> [Master Direction - Know Your Customer \(KYC\) Direction, 2016](#)

<sup>20</sup> Excerpts taken from [SBO Rules dilute the intent of Section 90](#) by Ms. Vinita Nair

investors pursuant to such stewardship responsibilities, serve as a constant check as well as motivator for the listed entities to level up their CG practices. Elaborate discussion on stewardship responsibilities of institutional investors can be referred in **Chapter – 13**.

Notably, before 2019, SEBI had issued the principles on voting by mutual funds *vide* Circular dated [15th March, 2010](#) and Circular dated [24th March, 2014](#) which provided for mandatory disclosure of voting policies and actual voting by the mutual fund on different resolutions of the investee company. The first time a formal code governing stewardship in India was notified by IRDAI in 2017 (later, revised in [2020](#)). Following the same, PFRDA issued the [Common Stewardship Code](#) for pension funds in 2018.<sup>21</sup>

## 9.5. Informant mechanism in PIT Regulations

Direct evidence of insider trading is not easily detected and that which is detected is purely circumstantial. In such a situation, information provided by the persons having inside knowledge of any violation is often helpful in timely and successful action against the violators. In order to facilitate communication of such information and to strengthen the mechanism for early detection and safeguarding of persons from victimization who have disclosed such information, SEBI amended PIT Regulations *vide* [Securities and Exchange Board of India \(Prohibition of Insider Trading\) \(Third Amendment\) Regulations, 2019](#). It is a formalized process of receiving information that provides a reporting mechanism for violations relating to insider trading and incentivizing and protecting informants who report information, useful for detecting such violations of PIT Regulations. This process enables the person to submit information to the Office of Informant Protection (OIP) directly or through a practicing advocate.<sup>22</sup>

## 9.6. Other amendments to the Companies Act, 2013

This period saw various amendments to the Act 2013, namely, [Companies \(Amendment\) Act, 2017](#), [Companies \(Amendment\) Act, 2019](#) and [Companies \(Amendment\) Act, 2020](#).

The CAA 2017 was based on the recommendations of the Company Law Committee and among others, made changes to various provisions relating to IDs, related party transactions, definition of KMPs, etc. A brief of the said amendments can be read [here](#).

The CAA 2019 was mainly aimed at decriminalisation of offences (see above). See an [analysis](#) of CAA 2019. The CAA 2020, besides decriminalisation, provided for exclusion of debt listed companies from the purview of listed companies. See detailed [presentation](#).

# 10. 2021-2023: Web of controls on RPTs, CG norms for HVDLEs, enhanced CG norms for banks/NBFCs

## 10.1. Amendments in the framework of Related Party Transactions

Related Party Transactions ('RPTs'), though a vital and indispensable part of the functioning of companies, have a scope of being abused to derive undue benefits. With an aim to regulate and monitor related party transactions undertaken by entities, the regulators have, time and again, made changes in the RPT framework.

SEBI constituted a Working Group in November 2019 to review the policy space pertaining to related party transactions. The Working Group submitted its [report](#) in January, 2020, making far-reaching recommendations. The WG called for expanding the definition of RP to include all persons belonging to the promoter and promoter group, irrespective of their shareholding, and any person or any entity, holding equity shares of ten per cent or more. Definition of RPT was proposed to be expanded to include cross-RPTs (transactions of listed entity with related parties of subsidiaries, and those of subsidiaries with related parties of listed entity and fellow subsidiaries). Most importantly, the WG recognised those

<sup>21</sup> Excerpts taken from [Stewardship Responsibilities of Institutional Investors in India: Global perspectives and the Way Ahead](#) by Sikha Bansal, Partner & Neha Malu, Senior Executive

<sup>22</sup> Excerpts taken from [SEBI empowers Informants to quash any Insider Trading attempts](#) by Henil Shah

transactions done with unrelated parties, which have the purpose and effect of benefitting related parties, as related party transactions. Several other important amendments, including materiality thresholds, introduction of concept of material modification, requirement of approval of transactions undertaken by subsidiaries from the audit committee of parent listed entity, etc. were proposed by WG.

The recommendations led to comprehensive amendments in the form of SEBI LODR (Sixth Amendment) Regulations, 2021. The advent of stricter and widened RPT framework has prompted audit committees and the boards to re-think, and re-model their internal controls around RPTs. Elaborate discussion on the legal framework for RPTs and the amendments mentioned above, has been done in **Chapter - 10**.

## 10.2. CG norms for HVDLEs

Post introduction of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, SEBI *vide* amendment in 2021 extended the corporate governance requirements<sup>23</sup>, largely equivalent to that applicable to equity listed entities, to High Value Debt-Listed Entities (HVDLEs). A relaxation was provided to comply with the applicable CG requirements on a “*comply or explain*” basis till March 31, 2023 (later extended to March 31, 2024).<sup>24</sup>

## 10.3. Annual secretarial compliance report

Regulation 24A was introduced in LODR *vide* LODR (Second Amendment) Regulations, 2021, which requires every listed entity to submit a secretarial compliance report to stock exchanges, within sixty days from end of each financial year. The said provision was inserted based on recommendations of CG committee chaired by Shri Uday Kotak. The report is focused on compliance, observations as well as the action taken by the company on applicable SEBI Regulations and circulars. See a detailed presentation [here](#).

## 10.4. Enhanced CG norms for banks and NBFCs

RBI released a Discussion Paper on ‘[Governance in Commercial Banks in India](#)’ with the objective of aligning the current regulatory framework with global best practices while being mindful of the context of domestic financial system. Based on the said discussion paper, RBI issued a circular titled [Corporate Governance in Banks – Appointment of Directors and Constitution of Committees of the Board](#). The Circular consists of instructions by RBI on certain aspects viz. chair and meetings of the board, composition of certain committees of the board, age, tenure and remuneration of directors, and appointment of the whole-time directors (‘WTDs’).<sup>25</sup>

Besides, based on concerns arising from adverse regulatory arbitrage posing systemic risk in the NBFC sector and in order to align the regulatory provisions with the objective of preserving financial stability and reducing systemic risks, a Scale Based Regulatory (SBR) framework was introduced, effective from October 1, 2022. The SBR is a calibrated and graded regulatory framework proportional to the systemic significance of NBFCs. In line with the above, the corporate governance structure of an NBFC also needs to be adequately enabled and made sufficiently independent so that it can ensure strict observance of all statutory and regulatory provisions. Therefore, to ensure an effective compliance culture, the RBI had proposed an independent corporate compliance function and a strong compliance risk management programme, along with the appointment of a functionally independent Chief Compliance Officer (CCO), who should be sufficiently senior in the organization hierarchy<sup>26</sup>.

For detailed discussion on CG norms for banks and NBFCs, refer **Chapter - 24 & Chapter - 25**.

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<sup>23</sup> Excerpts taken from [High value’ debt listed entities under full scale corporate governance requirements](#) by Vinod Kothari and Vinita Nair

<sup>24</sup> Refer to our [FAQs on LODR amendment on ‘High Value’ debt listed entities](#) for detailed provisions.

<sup>25</sup> [Strengthening Corporate Governance Norms in Banks – An after dose to a wounded governance system](#) by Aanchal Kaur Nagpal/

<sup>26</sup> Excerpts taken from [Enhanced Corporate Governance and Compliance Function for larger NBFCs](#) by Anita Baid



## 10.5. Revised norms for materiality-based disclosures

The LODR (Second Amendment) Regulations, 2023 introduced revised norms for materiality-based disclosures under regulation 30 of LODR. From quantitative thresholds to revised disclosure timelines and verification of market rumours, Regulation 30 has undergone many changes pursuant to the said Amendment Regulations. For detailed discussion on this aspect, refer *Chapter - 15*.

Besides, Regulation 30A was also introduced which requires disclosure of agreements (including subsisting agreements) having an impact on the management and control of the company. For detailed discussion on this aspect, refer *Chapter - 16*.

## Closing Remarks

With an ever-evolving capital market and dynamic investor base, the principles, norms and practices around corporate governance continue to evolve. Notably, the OECD Principles of Corporate Governance have been recently revised as [G20/OECD Corporate Governance Principles, 2023](#) in the recent G20 summit in order to strengthen policy and regulatory frameworks for corporate governance that support sustainability and access to finance from capital markets, which in turn can contribute to the resilience of the broader economy<sup>27</sup>. Similarly, law-makers and regulators in India have been constantly monitoring the CG developments and issuing various amendments in the laws and regulations to elevate corporate governance practices for entities<sup>28</sup>.

However, with India's economy becoming more integrated with the global market, growing relevance of ESG concerns and technological evolution, and in general, as the capital market evolves and investors' expectations change, CG will continue to grow. As such, one can never say that CG has evolved; as the world evolves, the legislative and the regulators will have to keep up the pace with the changing times. Therefore, the journey of CG is not meant to stop; rather, it shall continue to evolve and set milestones. Take for example, the fascinating capabilities of information technology and artificial intelligence and the potential contribution these can make in the field of corporate governance. With growing needs of real-time information dissemination, stakeholder engagement, data assimilation, verification and protection, and ever-increasing regulatory compliances, the need for an IT/AI-driven governance function cannot be undermined. In an article [Governance by technology: The future of corporate governance](#), we discuss the ways in which the immense potential of the information technology can be used in rewriting the CG standards and norms for changing the face of it as it looks to be. Simultaneously, the inherent possibilities of misuse of IT/AI would also compel law-makers and regulators to come-up with governing laws around the same, similar to those relating to cyber security. Similarly, the role of independent intermediaries like proxy advisors is gaining a lot of attention (refer discussion in *Chapter – 12*). Besides, there are certain cribbing issues like succession planning, executive compensation, etc. which continue to haunt the corporates not only in India but across the world. One can expect CG to evolve around these aspects as well. We detail out certain emerging trends in CG in *Chapter – 2*.

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<sup>27</sup> Detailed analysis can be read [here](#).

<sup>28</sup> For detailed discussion, refer this [article](#).