M.COM. – FIRST YEAR

(II SEMESTER)

Paper: Corporate Laws and Governance

UNIT -IV: Corporate Governance- I

Topic: Regulatory Framework of Corporate Governance

Lecture: 17

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Generally, Corporate Governance refers to practices by which organizations are controlled, directed and governed. The fundamental concern of Corporate Governance is to ensure the conditions whereby organization’s directors and manager’s act in the interest of the organization and its stakeholders and to ensure the means by which managers are held accountable to capital providers for the use of assets. To achieve the objectives of ensuring fair corporate governance, the Government of India has put in place a statutory framework.

Regulatory framework on corporate governance

The Indian statutory framework has, by and large, been in consonance with the international best practices of corporate governance. Broadly speaking, the corporate governance mechanism for companies in India is enumerated in the following enactments/ regulations/ guidelines/ listing agreement:

1. **The Companies Act, 2013** *inter alia* contains provisions relating to board constitution, board meetings, board processes, independent directors, general meetings, audit committees, related party transactions, disclosure requirements in financial statements, etc.

2. **Securities and Exchange Board of India (SEBI) Guidelines:** SEBI is a regulatory authority having jurisdiction over listed companies and which issues regulations, rules and guidelines to companies to ensure protection of investors.

3. **Standard Listing Agreement of Stock Exchanges:** For companies whose shares are listed on the stock exchanges.

4. **Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI):** ICAI is an autonomous body, which issues accounting standards providing guidelines for disclosures of financial information. Section 129 of the New Companies Act *inter alia* provides that the financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under s 133 of the New Companies Act. It is further provided that items contained in such financial statements shall be in accordance with the accounting standards.

5. **Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI):** ICSI is an autonomous body, which issues secretarial standards in terms of the provisions of the New Companies Act. So far, the ICSI has issued Secretarial Standard on "Meetings of the Board of Directors" (SS-1) and Secretarial Standards on "General Meetings" (SS-2). These Secretarial Standards have come into force w.e.f. July 1, 2015. Section 118(10) of the New Companies Act provide that *every company* (other than one person company) shall observe Secretarial Standards specified as such by the ICSI with respect to general and board meetings.

Key legal framework for corporate governance in India

The Companies Act, 2013

The Government of India has recently notified Companies Act, 2013 ("New Companies Act"), which replaces the erstwhile Companies Act, 1956. The New Act has greater emphasis on corporate governance through the board and board processes. The New Act covers corporate governance through its following provisions:

- New Companies Act introduces significant changes to the composition of the boards of directors.
- Every company is required to appoint 1 (one) resident director on its board.
- Nominee directors shall no longer be treated as independent directors.
- Listed companies and specified classes of public companies are required to appoint independent directors and women directors on their boards.
- New Companies Act for the first time codifies the duties of directors.
- Listed companies and certain other public companies shall be required to appoint at least 1 (one) woman director on its board.
- New Companies Act mandates following committees to be constituted by the board for prescribed class of companies:
    - Audit committee
    - Nomination and remuneration committee
    - Stakeholders relationship committee

- Corporate social responsibility committee

Listing agreement – Applicable to the listed companies

SEBI has amended the Listing Agreement with effect from October 1, 2014 to align it with New Companies Act.

Clause 49 of the Listing Agreement can be said to be a bold initiative towards strengthening corporate governance amongst the listed companies. This Clause intends to put a check over the activities of companies in order to save the interest of the shareholders. Broadly, cl 49 provides for the following:

1. Board of Directors

The Board of Directors shall comprise of such number of minimum independent directors, as prescribed. In case where the Chairman of the Board is a non-executive director, at least one-third of the Board shall comprise of independent directors and where the Chairman of the Board is an executive director, at least half of the Board shall comprise of independent directors. A relative of a promoter or an executive director shall not be regarded as an independent director.

2. Audit Committee

The Audit Committee to be set up shall comprise of minimum three directors as members, two-thirds of which shall be independent.

3. Disclosure Requirements

Periodical disclosures relating to the financial and commercial transactions, remuneration of directors, etc, to ensure transparency.

4. CEO/ CFO Certification

To certify to the Board that they have reviewed the financial statements and the same are fair and in compliance with the laws/ regulations and accept responsibility for internal control systems.

5. Report and Compliance

A separate section in the annual report on compliance with Corporate Governance, quarterly compliance report to stock exchange signed by the compliance officer or CEO, company to disclose compliance with non-mandatory requirements in annual reports.

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