Report of the Committee constituted by MCA to formulate a Policy Document on Corporate Governance

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Preface

Members of the Committee are thankful to the Ministry of Corporate Affairs for constituting this Committee to enunciate the Policy document on Corporate Governance.

At a time when, in terms of norms, guidelines and standards set for the board of directors, disclosure of financial and non-financial information; Indian corporate governance standards can unarguably be considered as one of the best in the world; the task of the Committee to raise the bar even further was not easy.

Our country's current corporate governance framework has been the result of a numerous efforts, both regulatory and industry-driven. Incidentally, country's first ever corporate governance code was developed by CII for voluntary adoption by listed companies in 1998. This is a unique instance where an industry association took the lead in recommending corporate governance practices. Many of its recommendations were subsequently incorporated in the report of the Kumar Mangalam Birla Committee (1999) set up by SEBI and were subsequently incorporated under Clause 49 of the Listing Agreement. SEBI's Narayana Murthy Committee (2003) reviewed Clause 49 and suggested further measures to improve corporate governance standards. Corresponding to these developments, the Ministry of Corporate Affairs has also proposed an overhaul of the existing Companies Act, 1956 and introduced governance reforms through the proposed company law viz. the Companies Bill, 2011. These have largely been based on the recommendations of the Expert Committee on Company Law under the chairmanship of Dr J J Irani (2005) and the Voluntary Guidelines on Corporate Governance 2009.

Given the erudite edifice developed by these and such other committees, a decision was taken by the Committee to advocate some practical suggestions on strengthening the actual performance of Indian corporate governance within the existing legal framework. The Committee recognizes that better practices can be encouraged only through voluntary adoption and has therefore suggested '**Guiding Principles of Corporate Governance'** - which would help to transform corporate governance from a 'tick-box' exercise to an actual roadmap. Boards need to map social, environmental, non-financial boundaries of corporate governance - for the successful progression of sustainable business. All this cannot be legislated. It is thus only natural that this report enumerates a set of voluntary recommendations, which can improve corporate governance both in letter and in spirit. The recommendations outlined in this report are aimed at listed companies and wholly owned subsidiaries of listed companies.

Members place on record their appreciation for the efforts of ICSI in convening the Committee. A comprehensive comparative statement prepared by ICSI, covering the mandatory framework of corporate governance served as the foundation for this report. Building thereupon, the Committee developed the Guiding Principles of Corporate Governance. The same has been annexed to the Report.

Adi Godrej
Chairman

18 September 2012

Guiding Principles of Corporate Governance

"Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?"

-Edward, First Baron Thurlow

The lacuna in Indian corporate governance is arguably not what is missing in the letter of the law, but what is missing in the internalisation and implementation of it. The mandatory provisions of the law (be it the provisions of the listing agreement (as applicable to listed companies), or the proposed provisions of the Companies Bill, 2011) as they exist today and as are proposed to be supplemented are not far from the global standard – in fact the broad features of Indian corporate governance norms have been transplanted from other jurisdictions such as the USA and the UK. Possibly a part of the problem with implementation of corporate governance in India has been the fact that rules have simply been transplanted from other jurisdictions rather than emerged organically. We need to understand what makes the Indian scenario distinct so as to forge some practical suggestions on how to strengthen the actual performance of Indian corporate governance within the existing legal framework.

Corporate governance models may be bifurcated into the "outsider" model and the "insider" model. The outsider model displays dispersed share ownership with large institutional shareholdings due to which "the position of ownership has changed from that of an active to that of a passive agent." There is therefore a "separation of ownership and control" in which the individual interest of shareholders is made subservient to that of managers who are in control of a company. The model is referred to as the "outsider" model because shareholders typically have no interest in managing the company and retain no relationship with the company except for their financial investments. The U.S. and U.K. are classic examples of countries that follow the outsider model. Interestingly, while India has borrowed much of its corporate governance principle from these countries – the model that is applicable in the ground in India is the "insider" model. The insider model is characterized by cohesive groups of "insiders" who have a closer and more long-term relationship with the company. The insiders, (essentially the controlling shareholders) are the single largest group of shareholders, with the rest of the shareholding being diffused and held by institutions or individuals constituting the "public". The insiders typically tend to have a controlling interest in the company and thereby possess the ability to exercise dominant control over the company's affairs. In such a system the management owes allegiance to the controlling shareholders, if not in fact actually being the same as the controlling shareholders. Therefore what may work in an outsider model – where for instance "independent directors" may in fact be independent – does not translate that simply into the Indian context.

This is not to say that models that have worked elsewhere and concepts that are used the world over should not be implemented in India, however the same should also be supplemented with practical guidelines which would help to transform corporate governance from a list of rules to be ticked off a list, to an actual roadmap. We have outlined below a few steps that may be a move in the right direction.

• Tone From the Top

Good governance cannot be imposed, it must emerge from a changed social culture, taken down to the level of the corporation by capable and committed directors and executives. The tone set by top management, the corporate environment or culture within which governance occurs, is the most important factor contributing to the integrity of the process. Consequently one of the most important factors in ensuring that a board functions effectively is getting the right "tone at the top" of the corporation. Setting corporate culture, and the values by which executives throughout a group will behave, should be one of a board's highest priorities. The tone at the top translates and permeates into every relationship of a corporation, whether it be with investors, employees, customers, suppliers, regulators, local communities or other constituents. If the senior management is not personally committed to high ethical standards, no amount of board process or corporate compliance programs will serve their true purpose.

Transparency is the key here, the board's vision for the corporation, including its commitment to ethics and zero tolerance for compliance failures, should be set out in its annual report and communicated effectively within the corporation at every level. History suggests that it is never the little guys who are to blame and that, whatever a forensic review reveals, ignoring the tone set by the leaders of a business is unlikely to produce a change in corporate behavior or values.

• Balancing Act

Governance analysis must serve as a means to organize, structure and to establish an efficient prioritization and balancing of interests. The need for corporate governance, in part, arises out of the divorce in modern corporations between the rights of shareholders (in the Indian context largely minority – non promoter shareholders) and other suppliers of capital on the one hand, and the operational control, which is in the hands of majority shareholders/professional managers, on the other. The most well-known definition of corporate governance originates from the Cadbury Committee, which was set up in the UK in 1991 to raise standards in corporate governance:

"Corporate governance is the system by which companies are directed and controlled'"

Corporate governance is about relationships and structures. First, it is the relationship between a company's management, its board of directors, its auditors, its shareholders, its creditors and other stakeholders. Corporate governance is based on structures through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.

Corporate governance has two primary dimensions that need to be in balance: conformance or conformity (i.e. with laws, codes, structures and roles) and performance. Good corporate governance on its own cannot make a company successful. Companies must balance the two. However, without good corporate governance, the long-term success of the company is in serious doubt. In other words, good corporate governance is necessary but not sufficient for business success.

Other, broader definitions would extend the concept of control beyond that exercised by the managers, the board of directors and the shareholders to a larger number of stakeholders, including creditors, employees and business partners, such as suppliers and the local community. The nub of corporate governance remains the relationships between management and shareholders, with the auditors (and their impact on the financial statements) playing a key role. Shareholders want to ensure that the company is run to maximize long-term shareholder wealth, and therefore that managers do this and do not reward themselves to the detriment of shareholders. The auditors need to be protected from undue management influence so that their role as guardian of the accuracy of the financial statements is not put in jeopardy. However, it is now more explicitly accepted that the shareholders have responsibilities towards other stakeholders, and in particular the host communities within which the company operates. Failure to respect these obligations is likely to provoke negative interventions from government or negative market reactions in the long term. If the interests of all the relevant stakeholders are balanced, good corporate governance should maximize the shareholders' wealth and maintain the company's surrounding relationships. Therefore managers need to satisfy and balance the interests of a wider set of stakeholders, not simply the shareholders. Fair and balanced stakeholders' perspective results in long-term shareholder maximization value. Good corporate governance is the reconciliation of otherwise (possibly) diverging interests.

- **Board Composition and Diversity**

Board composition and diversity is one area that deserves significant focus and is in fact linked to our previous point in relation to good corporate governance needing to balance diverging stakeholder interests. Without diversity – who would address the perspectives of different stakeholders? A lack of diversity is not simply a problem of "optics". It looks skewed not to have a diverse board, not just because in the modern world it looks odd, but also because its makes a difference in real economic terms. Diversity is not being sought for diversity's sake, but because diversity on the board contributes to the success of the business. In other words, there is a fundamental economic reason why diversity is important: diversity of thought, experience, knowledge, understanding, perspective and age means that a board is more capable of seeing and understanding risks and coming up with robust solutions to address them. Businesses led by diverse boards that reflect the whole breadth of their stakeholders and their business environment will be more successful businesses. They are more in touch with their customers' demands, their investors' expectations, their staff's concerns, and they have a forum in the board room where these different perspectives come together and successful business strategies can be devised.

This is not to say that board cohesion is not vital: it is, and everyone needs to be moving in the same direction, but in order to come to the most robust conclusion about how an organisation should respond to the challenges it faces, there needs to be rigorous consideration of a whole range of stakeholder perspectives, fuelled by as much diversity of thought and experience as possible. If everyone on the board is the same, the discussions could be stagnant, decisions mundane, and the business would not get the full benefit of a rigorous debate. In other words, in order for boards to be effective, and to encourage healthy discussion, debate, and action, there needs to be independence and diversity in thought and action.

Indian boards do have a fairly high diversity quotient (DQ) in terms of work experience and socio-cultural and values/attitude/lifestyle, because of the inherent diversity of India -even among people who went to the same colleges/institutions. However, they have a less visible, less-widelydiscussed problem of high familiarity between board members. It is decreasing the familiarity quotient (FQ) of the Indian board that should be the first priority in improving governance, even ahead of increasing the DQ. FQ is not necessarily the result of cronyism but because of "birds of a feather" tending to flock together, in a relatively small band of participants.

Board members tend to have several shared workspaces at present, or have been connected in past workspaces, perhaps even in earlier avatars of boss-subordinate or board member-CEO or customer-supplier and so on, and, hence, know each other very well or have a past established pattern of power or hierarchy. This high level of familiarity increases the risk that board deliberations become less rigorous than they could or should have been, and results in more quick "negotiated" settlements on issues, even without the people themselves noticing the implicit negotiation process. Very often a "shadow" informal board meeting precedes the real one with decisions having been tied up in advance.

Nomination committees then compound this FQ in the way they often work: "Who do we know who has xyz skills/background/personal traits?" Sometimes, it is the CEO who proposes the shortlist of names for the nominations committee, to deliberate on, and an increased FQ between the CEO and the board further weakens governance. The starting point of a nomination committee asking "who do we know" is not wrong. Boards are a sensitive social system, and, of course, it is critical to have shared values and mutual respect among members, and new entrants to the team must have enough points of commonality with the rest, for boards to be effective. Personal experience and vouchsafing by present board members is a very good way to do this. But if we start with a board with high FQ, then this way we end up with even higher FQ.

A good working solution is to say that at given time intervals, one or more new members will be introduced into the board, who are not known to half the existing members, except maybe by name or reputation. The positive effects of "outsiders" joining a board are, to name a few, that fresh questions get raised for deliberation and there are fresh articulations, hopefully leading to review, on the "doesn't everybody know these are the rules and thoughts of the house". One could also consider that a committee of independent directors be required to appoint the next independent.

• Gender Diversity

Related to the issue of board diversity is that of gender diversity in particular. Studies from various countries show that companies with a higher share of women at top levels deliver strong organizational and financial performance[1]. Amongst these studies, research from McKinsey & Company shows that companies with the most gender-diverse management teams had 17 percentage-point higher stock price growth between 2005 and 2007 compared to the industry average and their average operating profit was almost double the industry average between 2003 and 2005[2]. Catalyst research found that companies

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[1]*Some examples: Smith and Verner, Do Women in Top Management Affect Firm Performance? A Panel Study of 2500 Danish Firms, International Journal of Productivity and Performance Management, 2004, 55 (7), "Women matter" by McKinsey (2007, 2008, 2010); "The Bottom Line: Connecting Corporate Performance and Gender Diversity" by Catalyst, 2007; "Female Leadership and Firm Profitability", Finnish Business and Policy Forum (EVA), 2007, "Groundbreakers, using the Strength of Women to rebuild the World Economy", Ernst & Young, Deutsche Bank Research (2010), www.dbresearch.com; "Women on Boards", Lord Davies of Abersoch Report, UK, 2011.*

[2]*Women matter: gender diversity, a corporate performance driver", 2007, and "Women at the top of corporations: making it happen", 2010.*

with more women on their boards were found to outperform their rivals with a 42 % higher return on sales, 66 % higher return on invested capital and 53 % higher return on equity[3]. It appears that gender diversity is not just the "right" thing to do[4], but also the "bright" thing to do. Studies have also shown that where governance is weak, female directors can exercise strong oversight and have a "positive, value-relevant impact" on the company. A gender-balanced board is more likely to pay attention to managing and controlling risk

According to recent estimates[6], women control about 70 % of global consumer spending. More women in management positions can therefore provide a broader insight in economic behavior and consumers' choices, leading to market share gains through the creation of products and services more respondent to consumers' needs and preferences.

Diversity among employees and board members boosts creativity and innovation by adding complementary knowledge, skills and experience. A more diverse board of directors contributes to better performance because decisions are based on evaluating more alternatives compared to homogenous boards. Diversity, in all its aspects, serves an important purpose for board effectiveness. It can widen perspectives when making decisions, avoid similarity of attitude and help companies better understand and connect with their customers and workforces. For this reason, a low percentage of women directors may weaken the board by creating a culture of "group think" and demonstrates a failure to make full use of the talent pool. In other words, ignoring the benefits of gender diversity is likely to undermine board effectiveness, which in turn may have negative consequences for shareholders.

Increased female board participation can, of course, never be an end in itself; tangible benefits must be associated with such increased participation. The female perspective is neither necessarily better, not more insightful, but different. Frequently, it will be based on experience drawing from sources different from that of a male board colleague. Furthermore the manner in which women process issues often seem at least as rigorous and diligent as that of men. Also, arguably, the presence of women on the board contributes to an atmosphere in which it is easier to pose the simple questions that are often the hardest to ask. Ultimately board diversity is about combining alternative and complementary views that in the end, lead to better board decision making. In this context, increasing female board participation is but one of several measures, but certainly an important one.

This is one aspect in which India has significant room for improvement. The recent GMI Ratings' 2012 Women on Boards Survey finds that "despite the presence of a few high-profile female entrepreneurs and CEO's, India's percentage of female directors is only 5.2%, below the developing-world percentage of 7.2%, and it has not increased significantly since 2009." The Companies Bill, 2011 has taken some positive steps in this regard by providing the Central Government with the power to prescribe rules for providing minimal women's representation on corporate boards in certain classes of companies. Although mandating board diversity through law may have its own share of issues to contend with, the norms and practices followed by boards and their nomination

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[3]*The Bottom line: corporate performance and women's representation on boards", 2007.*

[4]*The Conference Board of Canada: Insights You Can Count on; May 2002.*

[5]*Diversity and gender balance in Britain plc": a study by TCAM in conjunction with The Observer and as part of the Good Companies Guide, London, UK: TCAM, 2009.*

[6]*http://www.bloomberg.com/news/2011-07-24/ women-controlling-70-of -consumer-spending-sparse-incentral-bankers-club.html*

committees should set out criteria for ensuring diversity (including gender diversity) on their boards.

• Selection Process

There is a need to adopt a more professional, independent and transparent approach to appointing independent directors. It is important for companies to align their strategic priorities to skills required in the board room and accordingly seek candidates for non-executive positions on the board. For instance, a company which has embarked on a strategy of growth through acquisitions will need someone on the board with good experience in post acquisition integration. Similarly, a company with a strong domestic presence and expanding internationally will need someone on its board with experience of growing businesses internationally.

One practice that Indian companies have not adopted is that of having senior management executives in large diversified groups, other than CEOs/ MDs / promoters, taking up non-executive positions in other company boards. This is so because employing organizations are reluctant to give their senior executives the leeway to undertake such roles outside of their regular employment.

In order to ensure that board composition is right, it is important for the Board Chair, CEO and the rest of the board to work cohesively to identify as to what is the mix of skills that is required to take the company to the next level. Board succession planning is a process that the full board should own.

• On-boarding / Induction Process

Independent directors on the board of a company often come from diverse backgrounds and more often than not, they are not from the same industry. Therefore, a formal on-boarding program for new directors would be most helpful in getting new board members up to speed quickly and enabling them to contribute sooner.

Although companies have been slow to put in place robust orientation/induction and training programs for independent directors, it is also true that independent directors have not necessarily taken this aspect seriously. At a time when independent directors are being given additional responsibilities, it is essential for new members to get up to speed quickly on the key issues facing the company. The need is often more pronounced when directors are new to the company.

Companies do tend to have a general on-boarding process that involves meetings with the board chair, CEO, CFO, chief internal auditor, legal counsel, etc. However, most believe that these processes are ineffective in terms of giving independent directors a solid overview of the industry, the company and its key challenges.

It is essential to educate the independent directors on the company's business model, industry, competitive landscape, as well as its recent history of successes or problems with financial reporting.

A leading practice is to create a director manual for on-boarding purposes. Among others, the manual could provide a broad overview of the board's oversight processes as well as the company's critical financial,\operational and other risks. Research by KPMG's Audit

Committee[7] Institute indicates that business unit updates are important in assisting independent directors in understanding the unit's strategy and operational results, as well as the significant financial and non-financial risks. External auditor, internal auditor, or legal counsel could also be called upon to discuss these risks in more detail.

The on-boarding program should also address the unique legal and regulatory compliance issues facing the company and its industry. Often, the company can call upon outside professionals to discuss these issues with the audit committee and independent directors on the board either during formal meetings, in case time permits, or during special in-house educational sessions.

Ultimately, the effectiveness of an on-boarding program would largely depend on whether the program was customized to the individual needs of a director considering his or her current expertise and role expectations.

• Lead Independent Director

The concept of a lead director (appointed as such from among the non-executive/independent directors) is a relatively new concept and has recently been implemented by some companies in India. The lead director serves as an independent chief among all board members and assists in co-ordinating the activities and decisions of the other non-executive and/or independent directors, thereby helping to ensure that board relations run smoothly and in a streamlined manner. The purpose of appointing a lead director is to foster greater transparency and accountability among senior leadership. For instance, under the Sarbanes-Oxley Act in the United States it has been mandated that the independent directors meet independently without the management and non-independent directors. This is a practice that though not required statutorily is something that should be adopted in the Indian context as well. Each board should determine the frequency and agenda for these meetings. Such separate sessions provide the opportunity for meaningful review of management performance and succession review (among other issues). In addition, they also serve as a safety valve to deal with possible sensitive issues. The lead director would chair such meetings. Of course one should be mindful of the fact that such sessions do not corrode board congeniality and relations as that is also essential to effective governance.

Globally, lead directors have been seen to be contributing to improved corporate performance in at least four key areas; (a) taking responsibility for improving board performance, (b) building a productive relationship with the CEO and acting as a liaison between the senior management, (c) supporting effective communications with shareholders, and (d) providing leadership in crisis situations.

In the Indian context, a lead director could be particularly useful as the point of contact between the promoters and the independent directors. The lead director could, help identify the critical issues for the board to deal with; assist the board in achieving consensus on significant issues; play the role of a facilitator outside the board room, especially on contentious issues; work with the CEO to prioritize issues, and enable focus on substantative issues; ensure that board conversations do not veer in the direction of certain unwanted topics / individual preferences; and provide candid feedback to CEO, CFO post an executive session.

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[7] *http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/Role_of_Independent_Directors.pdf*

- ## Information Acquisition

Information acquisition and quality is another area of importance. The decision-making of the board is subject to the information available with it. Independent directors need to be clear about the role they play and also be suitably armed to be able to effectively undertake the same. Existing law considers in detail the issues with regard to the liability of independent directors, however, little is codified about the positive steps that such directors can or need to take, and also the tools available to them to practically function.

Board members are ideally required to receive all relevant information about board resolutions and decisions, seven days before the meeting. However, practically, often documents are given immediately prior to the meeting or just a couple of days in advance. Further a vast majority of boards depend largely on management reports and informal management discussions for business information. Third party reports and stakeholder views are rarely used as tools. With such limited information, and high dependability on company sources, informed decision making is not a natural outcome.

As set forth above, independent directors today are largely dependent on the Board to provide information to them. They consider what is presented to them to consider, and that is an inherent weakness in the system. The ability to obtain information and the quality of such information is key. There is a need to encourage direct conversations between the independent directors, and possible one-on-one meetings between a committee of independent directors with the auditors, in the absence of other members of the Board. Further, independent director training is very important. Independent directors need to be aware of what the right questions to ask are, what they should be particularly looking out for. There is a need to increase the powers, ability and responsibility of the independent directors. Mere presence in the quorum is not sufficient. Independent directors must have right to get any data of the company and should be authorised and in fact encouraged to take any experts opinion to help them along the decision making process.

- ## Recording of Minutes

Another improvement area is that boards could write their minutes more explicitly than many do today. Even as one demands that more and more government comes within the ambit of Right to Information, 2005 the less and less boards record their deliberations, and the process and logic of arriving at decisions. The board that minutes unanimity of views should no longer be the gold standard. The very act of writing down, perhaps for revisiting by someone some day, what the board thought will make for more informed board discussion, and fewer hastily-disposed-of table items, hopefully.

- ## Continuing Board Training and Education

As part of good governance it is important that the people heading the organisation are up to date with the latest trends in their field. In order to ensure that they are kept up to date regular training session can be conducted. Such training sessions could also include human resources activities, which help develop soft skills. Such training sessions should be conducted over a few days, thus, giving members a chance to get to know each other. Such a comfort level would help in creating better understanding. This could have a very positive impact on good governance. Most codes of best practice in corporate governance require directors to undergo periodic training to improve their knowledge and skills, so they can become better leaders and change agents of their companies. On site visits to better understand the working of the business is another possible suggestion that could be implemented – where practical and useful. Companies should be encouraged to disclose their board training and education programs.

- ## Board Evaluation

A further step for improving corporate governance is to take on very seriously the tasks of evaluating the performance of the Board. Each Board is different and the dynamics differ from company to company therefore it may be difficult to prescribe a methodology that works for all companies, however as a task this is something that must be undertaken. Good corporate governance warrants that the performance of the board of a company be evaluated. This would help improve effectiveness and better decision making by individual members of the board and would help deal with strengths and weaknesses of a board. Such a system would encourage employees within an organisation to perform better as it reflects that the performance of everyone within an organisation is being evaluated. It creates a system of checks and balances and doesn't allow for resentment amongst the employees to set in. Further evaluations help the board to perform better as it is a systematic way of detecting the shortcomings and identifying which decisions have had the best impact. Better performance by the Board would reflect in better performance of a company. In 2010 the new UK Corporate Governance Code required that companies state how a board evaluation had been conducted and how members of the board had fared in such an evaluation. Possibly such evaluation, in the Indian context could be disclosed as a part of the annual report of companies.

In some cases it may be advisable for an external evaluator to conduct such an evaluation. However, it is not always required that the board receive outside assistance, and it is not required that multiple-choice questionnaires and/or essays be the means of evaluation. Many boards may find that a discussion with or without an outside consultant is the best way to conduct evaluations. It is also essential that the post evaluation changes are actually implemented.

Just as there is no "one fits all" standard for how a board evaluation should be conducted, there are also no definite requirements on which areas must be evaluated. Below are however some possible indications in this regard:

(a) Board effectiveness: preparation, commitment, quality of board materials, contents of the agenda, distribution of roles/tasks, discussion climate, monitoring of decisions;

(b) The Board's strategy work: Vision and strategic planning, risk and crisis management, a clear directive from the owners;

(c) Board evaluation: succession plan for CEO and board, coaching and evaluation of new members;

(d) Board composition: The committee structure, board composition in terms of necessary skills, frequency of change of board members, cooperation between the board and CEO; and

(e) CEO's role: Leadership, relationship with other directors, readiness to listen to divergent views.

• Maintaining Board Confidentiality

"If something is discussed in a board meeting, it is confidential," said Lloyd Blankfein, the chief executive of Goldman Sachs Group Inc, at the ongoing insider-trading trial of one of the investment bank's former directors. For an organization to be effective, its board, governing officers, and executive staff must conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making. These twin pillars of good corporate governance, transparency and confidentiality can sometimes be confused as seemingly opposite and non-reconcilable values – however what it is, is a delicate balance.

Transparency is the disclosure of information to the shareholders and other relevant stakeholders to indicate that the organization is well managed, functions in an ethical manner, and handles its finances with efficiency and responsibility. Confidentiality is the obligation and right not to disclose information to unauthorized individuals, entities, or processes if it would harm the organization, its business relationships, or an individual. The question that then arises is, does transparency extend to boardroom decision making? The answer here would be a delicately balanced, no. Why is the confidentiality so critical? Board members must feel at liberty to express their ideas and opinions in an open and welcoming atmosphere, and nothing chills condor like the fear that one's words will be repeated (or worse, misquoted) outside the boardroom. Confidentiality is essential for an effective board process and for the protection of the corporation and its stockholders. A board should function as a collegial body, with directors respecting the confidentiality of all discussions that take place in the boardroom.

A strict adherence to transparency and disclosure ensures that the board is firmly grounded in compliance with the law, while a culture of confidentiality ensures that the board has the freedom to tackle the tough issues in a frank manner.

• Succession Planning

At some point, every company reaches a time when its existing owner-manager leaves the business, either through a planned departure, such as a full or partial retirement, or because of a sudden and often unexpected occurrence, such as illness or injury. Further, in the current environment, CEOs and senior management have been under tremendous pressure from shareholders, employees, customers and other constituencies to manage difficult market conditions, and not surprisingly, several surveys have reported a recent upward spike in the CEO turnover rate. As a result, the board's role in selecting and evaluating the CEO and the senior executive leadership, and planning for their succession, has never been more important. A protracted delay in finding a suitable replacement can detract significantly from the stability of a company and its ability to react quickly and decisively to rapidly evolving challenges.

Often family-owned businesses are sold and never survive to a new generation of owners. Many of those that are sold, go at a less than optimal price since they go on the market without their biggest asset – the owner-manager who built the business, understands it and its customers and suppliers, and best knows how to make it a success.

The best way to ensure that a company does not suffer due to a sudden unplanned for gap in leadership is to develop an action plan for a successful succession transition. A plan should be put in place early, so it is there as a contingency in case an emergency arises that requires a sudden transition. Action steps for a successful succession should include, an action plan, a timeline, clear definition of skills required of the future leader to enable the business to succeed, identification of potential successors, an objective analysis of the strengths and weaknesses of each potential successor, strengthening any areas of weakness which could be an impediment to the company in the future, integrating the best succession candidate over time, rather than waiting until the last minute, having a valuation performed, drafting the required legal documents, developing a contingency plan, and certain other case by case considerations – such as developing an oversight advisory board, consisting possibly of a strong set of independent directors. There can be no prescribed procedures for succession planning and selecting the CEO, and the board should fashion the principles and procedures it deems most appropriate. The existence of well-conceived and defined succession plan can go a long way in enhancing the confidence levels for all the stakeholders and can be an enormous source of reassurance.

At least annually, the full board or some committee (usually the compensation and nominating or governance committee) should have a discussion with the CEO about successors for his or her position. The CEO should identify those within or outside the organization who have the skills to lead the organization. A debate on succession is definitely bound to evoke passionate debates on whether the successor needs to be an insider or should be lateral selection from outside. One can never give an opinion on this that a perfect fit in all circumstances. An insider would definitely be the choice if the organisation is already on good growth path and it just requires management. On the other hand if organisation requires a transformation or a dramatic shift in strategy an outsider would be a more appropriate choice.

For those within the company, the CEO should analyze the skills these individuals already possess and should note competency gaps. A plan should be designed for each to fill the competency gaps over the next few years. For example, if one likely successor has significant operations experience, but little experience on the financial side consider ways that individual can gain greater expertise in the financial area.

In conclusion, in today's environment of increased corporate governance scrutiny, succession planning through both departures and crises is a focal point for shareholder interests and transparency-related issues. Gone are the days where succession planning happens in a vacuum. With activism increasing to ever higher levels, shareholder value is again stepping up as a primary driver in corporate processes. Poor succession planning and time-consuming executive searches can dampen investor confidence, often leading to falling stock values and generating uncertainty about the strategic objectives of a company. Succession planning can no longer be ignored as an integral part of effective corporate governance.

• Risk Management

The financial markets have experienced significant events in the first decade of the 21st century that have drastically altered corporate governance principles. Some of these major events include the "tech bubble" of the early 2000s, large corporate scandals such as Enron, and the recent financial crisis of 2008. This is an illustration of how the topics of risk management and corporate governance principles are strongly interrelated.

An organization implements strategies in order to reach its goals. Each strategy has related risks that must be managed in order to meet these goals. Following strong corporate governance principles that focus on risk management allows organizations to reach their goals. Expertise in the area of risk management therefore is a fundamental requirement for effective corporate governance. Good governance reduces risk and facilitates its management.

In such a situation, the board's role should be to steer the corporation towards corporate governance policies that support long-term sustainable growth in shareholder value. The board should, eliminate policies that promote excessive risk-taking for the sake of short-term increases in stock price performance, establish compensation plans that align goals to long-term value creation, taking into consideration incentive risks, ensure that appropriate risk management systems are in place to avoid excessive risk taking and to this end be comprised of primarily independent, diverse members, which is helpful to access an organization's risk profile

In particular the board could also consider establishing a risk management committee (comprising of some independent directors as well) to undertake this function.

• Crisis Management

Developing an effective crisis management plan is not an option for an organisation but a hallmark of good corporate governance. The source for a crisis may be events like an industrial accident, product failure, financial improprieties, sexual harassment allegations, or a hostile takeover. Recent examples include prominent Indian corporate brands like Cadbury's, Satyam, Infosys, and Zandu Pharma. Any event that suddenly threatens a company's financial performance, reputation, employee retention, customer relations has the potential to become a full blown out crisis. An organisation response to a crisis will have a significant bearing on its shortterm and long-term performance.

The ability of management or the leadership team to recognise the fact a crisis is brewing or emerging is critical. For initiating an effective crisis management strategy, it is critical to understand the impact that the event could have on the various assets of the organisation including and more importantly its reputation and brand. The next step would be to draw up a vulnerability assessment to determine the implications of a potential threat on the various assets.

Having understood the vulnerabilities and sources for possible disruption, one should then identify mitigating measures that are proactive and preventive. The singularly critical aspect of this would be to have a well-defined “crisis management team” the constitution of which should be cross-functional with clearly defined roles and responsibilities. More often than not, most potential sources of crisis are avoidable or at least the impact of the event can be minimized. This category would include crisis caused by employee or mismanagement, poor oversight, or inadequate operating procedures.

The next key step is for management to be prepared for is a containment action in the event of a crisis. The crisis management team should act fast to assert control over events. Decisions need to be quick and effective. The management would be better served in presuming that the crisis would get worse and become public rather than assuming the opposite. Management must be honest and open with their stakeholders. Board of directors, more importantly the independent directors, can play a significant role in this early phase of the crisis especially when the source of the crisis is the existing senior management including the CEO. Good corporate governance assumes even more significance as a badly handled crisis can cause major damage on the organisation's reputation and financial results. The board, comprising of both promoter and independent persons, have an important responsibility in ensuring that the management have a comprehensive crisis management strategy in place and more importantly, the plan is exercised regularly and reviewed no differently from any other audit, financial or performance. It would not be out of context for the audit committee to shoulder this responsibility.

• Whistle Blowing

Whistle Blowing is an important contributor towards better corporate governance. It helps create an environment of high ethical standards, professionalism and honesty. It has been defined as the disclosure of illegal, immoral or illegitimate practices in an organisation by a current or former employee of the organisation for the benefit of the company, stakeholders and society at large. In India, the whistle blower policy is restricted to public servants or in works connected with the Central Government and there exists no provision for corporate whistle blowers, except in clause 49 of the Listing Agreement. The Companies Bill 2011 has mentioned the concept in respect of higher accountability standards to be maintained by companies. The need for an effective legislation is essential in India with the growing number of scams related to corrupt practices in corporate India.

There are global legislations in place, which protect whistleblowers such as The Public Interest Disclosure Act, 1998, in the UK (which protects whistle blowers from victimization and dismissal) and the Sarbanes Oxley Act, 2002 (which provides for the protection of whistle blowers and is applicable even to employees in public listed companies). Till such time that an effective legislation is brought into force in India, companies should look to formulate and implement their own whistleblower policies. Several large organisations have implemented the same. A committee that looks into such claims should be set up and investigate any such disclosures. A non-executive director could act as an ombudsman and take charge of such an investigation. The identity of the whistleblower and any other employee investigating the matter should be protected. If the disclosures are found to be true suitable action should be taken and efforts should be made to protect the whistleblower. The action that it takes should be adequate and should act as a deterrent against such offences in the future. The policy should be such that it encourages such disclosures to be made but ensures that frivolous accusations do not become a means to harass senior management.

• Investor Activism

India is now witnessing a new brand of shareholder activism, albeit nascent, led by proxy advisory firms, which is more structured, sophisticated and analytical. The Companies Bill, 2011 has also made movement in this direction with introducing the concept of "class action" suits by shareholders.

India Inc. can no longer expect shareholders to remain passive. Not just big institutional investors, but even minority shareholders are now turning increasingly assertive to influence corporate decision-making. Recent developments in the financial markets and in business practices suggest a growing trend in shareholder activism, wherein investors attempt to influence management and corporate practices by raising uncomfortable questions.

The real issues that determine the quality of corporate governance are issues of principle. Only a law or rule may not be an effective measure.

This is the right time for corporate India to look inward and improve its own corporate governance, moving it beyond regulatory compliances to better oversight.

Shri Adi Godrej

Dr. Kiran Mazumdar Shaw

Shri Sidharth Birla

Shri Chandrajit Banerjee

Shri R N Dhoot

Dr. Bhaskar Chatterjee

Shri M.K.Chouhan

Shri R. S Sharma

Shri G Ramaswamy

Shri Y M Deosthalee

Shri S. Balasubramanian

Shri S K Roongta

Shri Keki Mistry

Ms. Zia Mody

Shri Rakesh Singh

Shri S. Ravindran

Shri Nesar Ahmad

Annexure

COMPARATIVE STATEMENT OF PROVISIONS ON CORPORATE GOVERNANCE IN CLAUSE 49 OF LISTING AGREEMENT, GUIDELINES ON CORPORATE GOVERNANCE FOR CENTRAL PUBLIC SECTOR ENTERPRISES, COMPANIES BILL, 2011 AND CORPORATE GOVERNANCE VOLUNTARY GUIDELINES, 2009

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
I. Board *(i) Composition*	**49 I. (A)** ● Board to have optimum combination of executive and non-executive directors with not less than 50% of board of directors comprising of non-executive directors. ● If Chairman is non-executive director, at least 1/3rd of the Board should comprise of independent directors and in case he is executive director, at least 1/2 of Board should comprise of independent directors. ● If non-executive Chairman is promoter or related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least 1/2 of Board shall consist of independent directors. **An independent director who resigns or is removed from Board of Company shall be replaced by a new independent director within a period of not more than 180 days from the day of such resignation or removal, as the case may be. Where company fulfils requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director within the period of 180 days shall not apply.**	**3.1** ● Have optimum combination of Functional, Nominee and Independent Directors. ● No. of Functional Directors (including CMD/MD) should not exceed 50% of actual strength of Board. ● No. of Nominee Directors appointed by Government/ other CPSEs to be restricted to maximum 2. ● In CPSE listed on Stock Exchanges and whose Board is headed by Executive Chairman, number of Independent Directors shall be at least 50% of Board Members; and in all other CPSEs (i.e. listed on Stock Exchange but without an Executive Chairman, or not listed CPSEs), at least 1/3rd of Board should be Independent Directors.	**Clause 149** ● Board to have- (a) minimum 3 directors in public company, 2 directors in private company, and 1 director in One Person Company; (b) maximum 15 directors ● May appoint more than 15 directors after passing special resolution ● **Prescribed class of companies to have at least one woman director.** ● **A listed company may have one director elected by small shareholders.** ● **Every company shall have at least one director who has stayed in India for total period of not less than 182 days in previous calendar year.** ●**Listed public company to have at least 1/3rd of total number of directors as independent directors.**	**No Provision**

Observation:

1. **Companies Bill, 2011 provides -**
   - **for appointment of one woman director by prescribed class of companies;**
   - **every company shall have at least one resident director who has stayed in India for total period of not less than 182 days in previous calendar year;**
   - **listed public company to have at least 1/3rd of total number of directors as independent directors. However, there is no specific provision of a higher number of IDs in case chairman is a promoter as is the case in Clause 49 or CPSE Guidelines.**
2. **Clause 49 provides that if an independent director resigns or is removed from the Board of the Company, then he shall be replaced by new independent director within a period of not more than 180 days from the day of such resignation or removal. However, where company fulfils requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director within 180 days does not apply. Such a provision is not there either in Companies Bill or CPSE Guidelines.**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
(ii) Definition of Independent Director	**49 I. (A) (iii) & (iv)** **'Independent Director'** means a non-executive director of the company who: a. apart from receiving director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director; b. is not related to promoters or persons occupying management positions at the board level or at one level below the board; c. has not been an executive of the company in the immediately preceding three financial years; d. is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following: (i) statutory audit firm or the internal audit firm that is associated with the company, and (ii) legal firm(s) and consulting firm(s) that have a material association with the company. e. is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director. f. is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares. g. **is not less than 21 years of age.** For the above purposes: a. **Associate** means a company, which is an "associate" as defined in Accounting Standard (AS) 23, "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India. b. **"Senior management"** shall mean personnel of the company who are members of its core	**3.14** **"Independent Director"** means a part-time Director of company who: (a) apart from receiving Director's remuneration, does not have any material pecuniary relationship or transaction with the company, its Directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the Director; (b) is not related to persons occupying management positions at the Board level or at one level below the Board; (c) has not been a senior executive or managerial personnel of the company in the immediately preceding three financial years; (d) Is not a partner or an executive, or was not a partner or an executive during the preceding three years, of any of the following: (i) statutory audit firm or internal audit firm or tax audit firm or energy audit firm or management audit firm or risk audit firm or insurance audit firm that is associated with the company, and (ii) the panel advocate(s) or legal firm(s) or consultant(s) and consulting firm(s) or expert(s) that have a material association with the company. (e) is not a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director; (f) is not a substantial shareholder of the company i.e. owning two percent or more of the block of voting shares. For the above purposes: (i) "Associate" means a company which is an "associate" as defined in Accounting Standard 23 (AS-23), "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered	**Clause 149 (5)** An independent director means a director other than a managing director or a whole-time director **or a nominee director,—** (a) who, in opinion of Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship with company, its holding, subsidiary or associate company, or their promoters, or directors, during 2 immediately preceding financial years or during current financial year; (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to 2 % or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year; (e) who, neither himself nor any of his relatives— (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of 3 financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in practice or cost auditors of	"Independent Director" has not been defined. However certain attributes of Independent Directors have been specified. **I. B.1 Attributes for Independent Directors** **i. Board should put in place a policy for specifying positive attributes of Independent Directors** such as integrity, experience and expertise, foresight, managerial qualities and ability to read and understand financial statements. **Disclosure about such policy should be made by the Board in its report to the shareholders. Such a policy may be subject to approval by shareholders.**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
	management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads. c. **“Relative”** shall mean “relative” as defined in section 2(41) and section 6 read with Schedule IA of the Companies Act, 1956. **49 I (A) (iv) Nominee directors appointed by an institution, which has invested in or lent to the company shall be deemed to be independent directors.** ***Non-Mandatory Requirements*** Company may ensure that the person who is being appointed as an independent director has the requisite qualifications, experience and can contribute effectively to the company as an independent director.	Accountants of India. (ii) "Senior management" means personnel of company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the Functional Directors, including all functional heads. (iii) "Relative" means "relative" as defined in Section 2(41) and Section 6 read with Schedule IA of the Companies Act, 1956. **Annexure -I - III. Age of retirement of part-time Chairmen and criteria for appointment of part-time non-official Directors in Central PSUs.** **1. The age of retirement of part-time Chairmen of public enterprises should be 62 years.** 2. Following are the criteria for selection and appointment of part-time non-official Directors. (a) **Minimum qualification should be graduate degree from a recognized university.** (b) **experience should not be less than 10 years at the level of Joint Secretary and above in the Government; CMD/MD in Corporate Sector/PSU; Professor level in an Academic Institution or professionals of repute like eminent Chartered Accountants/Cost Accountants at the level of Directors of Institutes/Heads of Department.** The academics should be in fields relevant to the company's area of operation, e.g. management, finance, marketing, technology, human resources. (c) **Age should be between 45-65 years (minimum/maximum limit). This could be relaxed for eminent professionals upto 70 years.**	the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of gross turnover of such firm; (iii) holds together with his relatives 2 % or more of total voting power of company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives 25 % or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses prescribed qualifications.	

Observation:

1) Clause 49 provides that nominee directors appointed by an institution, which has invested in or lent to the company shall be deemed to be independent directors. However as per Companies Bill, an independent director means a director other than a nominee director. The definition given in the explanation to clause 149(6) reads as under:

"nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(2) The definition under clause 49 lists out negative criteria defining when an individual is not regarded as independent while the provisions under other mentioned legislations spell out some positive attributes also.

(3) (a) Under the CPSE Guidelines following criteria is provided for appointment of part-time non-official directors/Chairman:

(i) Minimum qualification should be graduate degree from a recognized university.

Experience of not be less than 10 years at the level of Joint Secretary and above in the Government; CMD/MD in Corporate Sector/PSU; Professor level in an Academic Institution or professionals of repute like eminent Chartered Accountants/Cost Accountants at the level of Directors of Institutes/Heads of Department.

(ii) Age should be between 45-65 years (minimum/maximum limit). This could be relaxed for eminent professionals upto 70 years.

(iii) The age of retirement of part-time Chairman of public enterprises should be 62 years.

(b) Clause 49 provides that the minimum age for appointment of independent director shall be 21 years.

(4) As per clause 149(5)(a) of the Companies Bill, Independent director means a person who in the opinion of the Board is a person of integrity and possess relevant expertise and experience.

(5) Corporate Governance Voluntary Guidelines, 2009 provide that the Board should put in place a policy for specifying positive attributes of Independent Directors and also provides for disclosure about such policy to be made by the Board in its report to the shareholders.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
iii. Separation of Offices of Chairman & Chief Executive Officer	No provision	No provision	**Proviso to clause 203 (1)** An individual cannot be chairperson of company as well as the managing director or CEO of company at same time unless articles provide otherwise.	**I. - A.2** There should be a clear demarcation of roles and responsibilities of Chairman of Board and of MD/ CEO. Offices of Chairman and CEO should be separated, as far as possible.
iv. Manner of Appointment to the Board	No provision	**Annex I - V. 4.** While selection of full-time Directors and part-time Government nominee Directors is done as per laid down procedures, for selection of the non-official part time Directors in these companies, a **Search committee** comprising Chairman-PESB, Secretary-DPE, Secretary of the Administrative Ministry and an eminent person to be nominated by Industry Minister has been set up.	**Clause 178 (2)** Nomination and Remuneration Committee shall identify persons who are qualified to become directors in accordance with the criteria laid down and recommend to the Board their appointment and removal. The Company and Independent directors shall abide by code of independent directors (Schedule IV). **Schedule IV** ● Appointment process of independent directors shall be independent of company management; and in selecting independent directors, it should be ensured that there is appropriate balance of skills, experience and knowledge so as to enable it to discharge functions and duties effectively. ● Appointment of independent directors shall be approved at meeting of shareholders. ● Explanatory statement to notice of meeting to include a statement that in opinion of Board, proposed independent director fulfils	**I. - A.1** ● **Companies should issue formal letters of appointment to Non-Executive Directors (NEDs) and Independent Directors** - as is done by them while appointing employees and Executive Directors. Letter should specify: o Term of appointment; o Expectation of Board from appointed director; ● Committees in which he is expected to serve and its tasks; o Fiduciary duties alongwith liabilities; o Provision for Directors and Officers insurance, o Code of Business Ethics; o List of do and don'ts; o Remuneration; Such Letter is to be disclosed to shareholders and be placed on website of company and stock exchange.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			conditions specified in the Act/Rules and is independent of management. ● **Appointment of independent directors shall be formalised through a letter of appointment, which shall set out :** (a) term of appointment; (b) expectation of Board from appointed director; committees in which he is expected to serve and its tasks; (c) fiduciary duties along with liabilities; (d) provision for Directors and Officers insurance, (e) Code of Business Ethics; (f) List of do and don'ts; (g) remuneration, ● Terms & conditions of appointment of independent directors be- - open for inspection at registered office by any member during normal business hours; - posted on company's website. **Clause 150** **Manner of selection of Independent directors and maintenance of databank.** Independent director may be selected from data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may by notified by Central Government, having expertise in creation and maintenance of such data bank and put on their website for use by company making appointment of such directors: Responsibility of exercising due diligence before selecting a person from data bank referred above, as an independent director shall lie with company making such appointment.	

Observation:

1. **Clause 150 of Companies Bill, 2011 provides that Independent director may be selected from data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by Central Government, having expertise in creation and maintenance of such data bank. But the responsibility of exercising due diligence of person shall be with the company making such appointment.**
2. **Companies Bill, 2011 and Corporate Governance Voluntary Guidelines, 2009 provide for issuing formal letters of appointment to Non-Executive Directors (NEDs) and Independent Directors, which should list out their fiduciaries duties, expectation of board from appointed director, code of business ethics to be followed, list of do's and don'ts etc.**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
v. Certificate of Independence by Independent Director	**No provision**	**No provision**	**Clause 149 (6)** Independent directors have to **give a declaration that he meets criteria of independence as provided in clause 132 (5)** in first meeting of Board in which he participates as a director and thereafter at first meeting of Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director.	**I. - B.1 (ii)** All Independent Directors should **provide a detailed Certificate of Independence at time of their appointment, and thereafter annually**. This certificate should be placed by company on its website and on website of the stock exchange if it is listed company.
vi. Tenure of Independent Director	**Non-Mandatory Requirement** **Annexure I D (1)** Independent Directors may have a tenure not exceeding in the aggregate a period of 9 years on the Board.	**(DPE Circular No. 18(6)/84-GM dated 21st May, 1986)** The tenure of part-time non-official Directors may be for a period not exceeding 3 years commencing from the date of their appointment provided that they shall retire on the conclusion of the Third Annual General Meeting during their tenure notwithstanding the fact that the said Third Annual General Meeting is held before or after completion of precise 3 year tenure referred to above.	**Clause 149 (9)** An independent director can hold office for a term up to 5 consecutive years on Board of company. He can be reappointed by passing special resolution by company and disclosure of such appointment in the Board's report. **Clause149 (10)** Independent director cannot hold office for more than 2 consecutive terms. But he can be eligible for appointment after the expiration of three years of ceasing to become an independent director and during that period of 3 years, he should not be associated with the company directly or indirectly. For the above purposes, any tenure of an independent director on the date of commencement of this Act shall not be counted as a term.	**I. - B.1 2** i. Tenure of independent Directors should not exceed a period of 6 years. ii. A period of 3 years should elapse before such an individual is inducted in the same company in any capacity. iii. No independent director can have more than 3 tenures.

Observation:

- **Clause 49 provides that the tenure of independent director shall not exceed 9 years in aggregate. This is, however, a non-mandatory requirement.**
- **Tenure of ID in CPSEs cannot exceed 3 years.**
- **As per the Companies Bill, 2011, the tenure of ID cannot exceed 10 consecutive years (2 terms of 5 years each). He may be re-appointed as ID after a cooling period of 3 years. There is no restriction as to the number of terms.**
- **In case of Corporate Governance Voluntary Guidelines, 2009, the tenure of ID cannot exceed 6 years at a time. He can be re-appointed after a gap of 3 years and a maximum of 3 terms have been specified.**

vii. No. of Board Meetings	**49. I. (C) (i)** Board to meet least 4 times a year, with a maximum time gap of 4 months between any 2 meetings. Minimum information to be made available to the board has been prescribed.	**3.3.1** Board to meet at least once in every 3 months and at least 4 meetings shall be held every year. Time gap between any 2 meetings should not be more than 3 months. Minimum information to be made available has been prescribed.	**Clause 173 (1)** First meeting to be held within 30 days of incorporation and thereafter hold minimum number of 4 meetings every year in such manner that not more than 120 days shall intervene between 2 consecutive meetings.	**No provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
viii.Number of Directorships	**No provision**	**No provision**	**Clause 165** ● Not to be director, including any alternate director, in more than 20 companies at same time ● Maximum no. of public companies in which a person can be appointed as director shall not exceed 10. ● For reckoning the limit of ten directorships, directorship in private companies that are either holding or subsidiary company of a public company shall be included. ● Members may, by special resolution, specify lesser number of companies in which director of company may act as directors.	**I. - A. 4** ● For reckoning maximum limit of directorships, following to be included:- - public limited companies, - private companies that are either holding or subsidiary companies of public companies. ● If he is Managing Director or Whole-time Director in a public company, maximum no. of companies in which he can serve as a Non-Executive Director or Independent Director should be restricted to 7. I- B.2 ● Maximum no. of pubic companies in which he may serve as Independent Director should be restricted to 7.
II. Number of memberships in committees	**49. I. - (C) (ii)** ● Not to be member in more than 10 committees or Chairman of more than 5 committees across all companies in which he is a director. ● Mandatory annual requirement for every director to inform company about the committee positions he occupies in other companies and notify changes as and when they take place. ● For considering limit of committees on which Director can serve, all public limited companies, whether listed or not, to be included and all other companies including private limited companies, foreign companies and Section 25 Companies to be excluded. ● For reckoning the limit Chairmanship/membership of Audit Committee & Shareholders' Grievance Committee alone will be considered.	**3.3.2.** ● Not to be member in more than 10 committees or Chairman of more than 5 committees across all companies in which he is Director. ● Mandatory annual requirement and notify changes as and when they take place. ● For considering the limit of the committees on which a Director can serve, all public limited companies, whether listed or not, shall be included. ● For reckoning the limit Chairmanship/membershi p of Audit Committee & Shareholders Grievance Committee alone to be considered.	**No Provision**	**No Provision**

Observation:

Clause 49 and CPSE Guidelines do not provide for restriction on number of companies in which a person may become a director. However, they restrict membership in Committees.

Companies Bill, 2011 and CGVG Guidelines provide for restriction on number of companies in which a person may become director. However, they do not restrict membership on Committees.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
(ix) Training of Board Members	**Non-Mandatory Requirement Annexure I D - (5)** The company may provide training to its Board members in the business model, risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.	**3.7** ● Company should provide training to its new Board members (Functional, Government, Nominee and Independent) in business model, risk profile of the business parameters of company, their responsibilities as directors, and best ways to discharge them. ● Training on Corporate Governance, model code of business ethics and conduct applicable for respective Directors should also be given.	**Schedule IV** **Code for Independent Directors** **III. Duties :** Independent directors should undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;	**II. - A.** I. Induction process for directors covering there roles, responsibilities and liabilities should be in place. Every director should have the ability to understand basic financial statements and information and related documents/papers and a statement to this effect should be published by the Board in the Annual Report. ii. The board should also adopt suitable methods to enrich the skills of directors from time to time.

Observation:

Clause 49 contains, as a non-mandatory requirement, that the company may provide training to directors on business model, risk profile of business, their responsibilities and the way to discharge them. This is mandatory in the case of CPSEs.

The Companies Bill, 2011 in schedule iv which is a code of conduct for independent directors provides to undertake induction training and regularly update and refresh their skills, knowledge and familiarity with the company. However, the code is applicable only to independent directors and not all directors

Corporate Governance Voluntary Guidelines, 2009 in addition to requiring directors to undergo induction training also requires every director to have ability to understand the basic financial statements.

(x) Evaluation of Directors	**Non-Mandatory Requirement Annexure I D (6) Mechanism for evaluating non-executive Board Members** **Peer group** comprising the entire Board of Directors, excluding the director being evaluated; can evaluate the performance of non executive board members and it could be the mechanism to determine whether to extend /continue the terms of appointment of non-executive directors.	**No provision**	**Clause 178 (2)** ● Nomination and Remuneration Committee will be responsible to identify persons who are qualified to become directors and senior management, lay down the criteria and recommend to the Board their appointment and removal and ***carry out evaluation of every director's performance.*** **Clause 134 (3)** There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;	**I. - A. 3.** **Nomination Committee should consider:** ● **proposals for searching, evaluating,** and recommending appropriate Independent Directors and Non-Executive Directors [NEDs], based on an objective and transparent set of guidelines which should be disclosed and should, inter-alia, include the criteria for determining qualifications, positive attributes, independence of a director and availability of time with him or her to devote to the job; ● determining processes for evaluating the skill, knowledge, experience and effectiveness of individual directors as well as the Board as a whole. **II. - D.** **Evaluation of Performance of Board of Directors, Committees thereof and of Individual Directors**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			Schedule IV. VIII. Evaluation mechanism (1) Performance evaluation of independent directors should be done by the entire Board of Directors, excluding the director being evaluated. (2) On the basis of the report of performance evaluation, whether to extend or continue the term of appointment of independent director should be determined.	Board should undertake formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. Board should state in Annual Report how performance, evaluation of Board, its committees and its individual directors has been conducted.
xi) Independent Directors to seek clarification /advice	**No provision**	**No provision**	**Schedule IV** Independent directors shall- (i) Regularly update and refresh their skills, knowledge and familiarity with the company; (ii) Seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company (iii) Keep themselves well informed about the company and the external environment in which it operates.	**I. - B. 3** **Independent Directors to have the Option and Freedom to meet Company Management periodically** I. In order to enable Independent Directors to perform their functions effectively, they should have the option and freedom to interact with the company management periodically. ii. Independent Directors should be provided with adequate independent office space and other resources and support by the companies including the power to have access to additional information to enable them to study and analyze various information and data provided by the company management.
(xii) Immunity of Independent Director	**No provision**	**No provision**	**Clause 149 (11)** An independent director or a non-executive director if he is not promoter or key managerial personnel, will be liable only for such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.	**No provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
(xiii) Duties of Directors	**No provision**	**No provision**	**Clause 166.** (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company. (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and **in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.** (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. 5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company. (6) A director of a company shall not assign his office and any assignment so made shall be void. (7) If a director of the company contravenes the provisions of this clause such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	**II. -** **Responsibility of the Board** **B. Enabling Quality Decision making** Board should ensure that there are systems, procedures and resources available to ensure that every Director is supplied, in a timely manner, with precise and concise information in a form and of a quality appropriate to effectively enable/ discharge his duties. The Directors should be given substantial time to study the data and contribute effectively to Board discussions. **E. Board to place Systems to ensure Compliance with Laws** i. In order to safeguard shareholders' investment and the company's assets, the Board should, at least annually, conduct a review of the effectiveness of the company's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems. ii. The Directors' Responsibility Statement should also include statement that proper systems are in place to ensure compliance of all laws applicable to the company. It should follow the **"comply or explain" principle.** iii. For every agenda item at the Board meeting, there should be attached an "Impact Analysis on Minority Shareholders' proactively stating if the agenda item has any impact on the rights of minority shareholders. The Independent Directors should discuss such Impact Analysis and offer their comments which should be suitably recorded.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
II. Committees ***(i) Audit Committee*** ***(a) Composition***	**49 II. (A)** • Audit Committee to be constituted as under : (i) Minimum 3 directors shall be members. (ii) **2/3rd of members of audit committee shall be independent directors.** • Chairman of Audit Committee shall be an Independent Director • All members of audit committee to be financially literate and at least one member shall have accounting or related financial management expertise. • "financially literate" means ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows. • A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a CEO, CFO or other senior officer with financial oversight responsibilities.	**4.1.** • A qualified and independent Audit Committee shall be set up, giving terms of reference. • **Audit Committee shall have minimum 3 Directors as members. 2/3rd of members of audit committee shall be Independent Directors.** • Chairman of Audit Committee shall be an Independent Director. • All members of Audit Committee shall have knowledge of financial matters of Company, and at least one member shall have good knowledge of accounting and related financial management expertise. • "Knowledge of financial matters of Company" means ability to read and understand basic financial procedures and statements i.e. balance sheet, profit and loss account, and statement of cash flows. • A member will be considered to have accounting and related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a CEO, CFO or other senior officer with financial oversight responsibilities.	**Clause 177** • Board of every listed company and prescribed class of companies shall constitute Audit Committee. • **Shall consist of minimum of 3 directors with independent directors forming majority.** • Majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.	**III- A.** • **Should have at least a 3 member Audit Committee, with Independent Directors constituting majority.** Chairman of Committee should be Independent Director. All members of committee should have knowledge of financial management, audit or accounts.

Observation:

While the Companies Bill, 2011 and Corporate Governance Voluntary Guidelines, 2009 provide that the majority of Audit Committee should comprise independent directors, Clause 49 and CPSE guidelines require atleast 2/3rd of members to be independent.

(b) Meetings of Audit Committee	**49 II. (B)** **Should meet at least 4 times in a year and not more than 4 months shall elapse** between 2 meetings. The quorum shall be either 2 members or 1/3rd of members of audit committee whichever is greater, but there should be a minimum of 2 independent members present.	**4.4** **Should meet at least 4 times in a year and not more than 4 months shall elapse** between 2 meetings. The quorum shall be either 2 members or 1/3rd of members of Audit Committee whichever is greater, but a minimum of two independent members must be present.	**No Provision**	**No Provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
(c) Powers and Role of Audit Committee	**49 II. (c), (D) and (E)** **(C) Powers of Audit Committee include to:** 1. Investigate any activity within its terms of reference. 2. Seek information from any employee. 3. Obtain outside legal or other professional advice. 4. Secure attendance of outsiders with relevant expertise, if it considers necessary. (E) Audit Committee shall **mandatorily review** the following information: 1. Management discussion and analysis of financial condition and results of operations; 2. Statement of significant related party transactions (as defined by the audit committee), submitted by management; 3. Management letters / letters of internal control weaknesses issued by the statutory auditors; 4. Internal audit reports relating to internal control weaknesses; and 5. The appointment, removal and terms of remuneration of the Chief internal auditor (D) **Role of Audit Committee:** 1. Oversight of the company's financial reporting process and its disclosure. 2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees. 3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors. 4. **Reviewing, with the management,** -- the annual financial statements before submission to the board for approval, with particular reference. -- the quarterly financial	**4.2, 4.3 and 4.5** Audit Committee should have **sufficient powers**, which should include to : (i) investigate any activity within its terms of reference. (ii) seek information on and from any employee. (iii) obtain outside legal or other professional advice, subject to the approval of Board . (iv) secure attendance of outsiders with relevant expertise, if it considers necessary. (v) protect whistle blowers. **4.5** Audit Committee shall **review the following information:** 1. Management discussion and analysis of financial condition and results of operations; 2. Statement of related party transactions submitted by management; 3. Management letters / letters of internal control weaknesses issued by the statutory auditors; 4. Internal audit reports relating to internal control weaknesses; 5. The appointment and removal of the Chief Internal Auditor shall be placed before the Audit Committee; and 6. Certification/declaration of financial statements by the Chief Executive/Chief Finance Officer. **Role of Audit Committee** -- Oversight of the company's financial reporting process and its disclosure. -- Recommending to the Board the fixation of audit fees. -- Approval of payment to statutory auditors for any other services rendered by the statutory auditors. --- **Reviewing, with the management** -- the annual financial statements before submission to the Board for approval. -- the quarterly financial statements before submission to the Board	**Clause 177 (6)** Audit Committee shall have authority to investigate into any matter in relation to the items specified above or referred to it by Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in records of company. **Clause 177 (4)** ● Audit Committee shall act in accordance with the terms of reference specified in writing by Board which shall inter alia, include,— (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company; (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process; (iii) examination of financial statement and auditors' report ; (iv) approval or any subsequent modification of transactions of company with related parties; (v) scrutiny of inter-corporate loans and investments; (vi) valuation of undertakings or assets of the company, wherever it is necessary; (vii) evaluation of internal financial controls and risk management systems; (viii) **monitoring the end use of funds raised through public offers and related matters.** **Clause 177 (5)** ● May call for comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and management of company.	**III. - B. & C.** **Power** Audit Committee should: ● have independent back office support and other resources from the company; ● have access to information contained in the records of the company; and ● obtain professional advice from external sources. Should have facility of separate discussions with both internal and external auditors as well as the management. **Responsibility:** (i) Should have the responsibility to - ● monitor the integrity of the financial statements of the company; ● review the company's internal financial controls, internal audit; ● function and risk management systems; ● make recommendations in relation to the appointment, reappointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor. ● review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process. ii. Should also monitor and approve all Related Party Transactions including any modification/amendment in any such transaction. iii. A statement in a prescribed/structured format giving details about all related party transactions taken place in a particular year should be included in the Board's report for that year for disclosure to various stakeholders. **Appointment of Auditors** i. The Audit Committee of the Board should be the first point of reference regarding the appointment of auditors. ii. The Audit Committee should have regard to the profile of the audit firm, qualifications and experience of audit

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
	statements before submission to the board for approval -- the statement of use of funds through the different issues of shares. -- performance of statutory and internal auditors, adequacy of the internal control systems. -- the adequacy of internal audit function. -- Discussion with internal auditors any significant findings and follow up there on. -- Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board. -- Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern. -- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders. -- To review the functioning of the Whistle Blower mechanism. -- Approval of appointment of CFO after assessing qualifications, experience. -- Carrying out any other function as is mentioned in the terms of reference of the Audit Committee. to internal control weaknesses;	for approval. -- performance of internal auditors and adequacy of the internal control systems. -- Reviewing the adequacy of internal audit function. -- Discussion with internal auditors and/or auditors any significant findings and follow up there on. -- Reviewing the findings of any internal investigations by the internal auditors/auditors/agencies into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the Board. -- Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern. --- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors. -- To review the functioning of the Whistle Blower Mechanism. -- To review the follow up action on the audit observations of the C&AG audit. -- To review the follow up action taken on the recommendations of Committee on Public Undertakings (COPU) of the Parliament. -- Provide an open avenue of communication between the independent auditor, internal auditor and the Board of Directors -- Review all related party transactions in the company. -- Review with the independent auditor the co-ordination of audit efforts to assure completeness of coverage, reduction of redundant efforts, and the effective use of all audit resources. -- **Consider and review the**		partners, strengths and weaknesses, if any, of the audit firm and other related aspects. iii. To discharge its duty, the Audit Committee should: ● discuss the annual work programme and the depth and detailing of the audit plan to be undertaken by the auditor, with the auditor; ● examine and review the documentation and the certificate for proof of independence of the audit firm; and ● recommend to the Board, with reasons, either the appointment / re-appointment or removal of the statutory auditor, along with the annual audit remuneration;

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
		following with the independent auditor and the management: - The adequacy of internal controls including computerized information system controls and security, and - Related findings and recommendations of the independent auditor and internal auditor, together with the management responses. -- **Consider and review the following with the management, internal auditor and the independent auditor:** -Significant findings during the year, including the status of previous audit recommendations -Any difficulties encountered during audit work including any restrictions on the scope of activities or access to required information, -- Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.		

Observation:

Sufficient powers have been given to Audit Committee constituted under Clause 49, CPSE Guidelines, Companies Bill, 2011 and Corporate Governance Voluntary Guidelines, 2009. These powers include full access to information and records of company, reviewing the adequacy of internal financial control and risk management systems, related party transactions, internal audit process, obtaining professional advice from external sources etc. Companies Bill, 2011 in addition provides for monitoring the end use of funds raised through public offers and related matters, by the Audit Committee.

(ii) Remuneration Committee	**Non-Mandatory Requirement** **Annexure I D** **(2)** i. Board may set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, **the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment.** ii. To avoid conflicts of interest, remuneration committee, which would determine remuneration packages of executive directors **may comprise of at least 3 directors, all of whom should be non-executive directors,**	**5.1** Each CPSE has to constitute a Remuneration Committee comprising of **at least 3 Directors, all of whom should be part-time Directors** (i.e. Nominee Directors or Independent Directors). The Committee should be **headed by an Independent Director**. CPSE will not be eligible for Performance Related Pay unless the Independent Directors are on its Board. Remuneration Committee will decide the annual bonus/variable pay pool **and policy for its distribution across the** executives and non unionized supervisors, within the prescribed limits.	**Clause 178** · Every listed company and prescribed class of companies shall constitute **Nomination and Remuneration Committee consisting of 3 or more non-executive directors out of which not less than 1/2 shall be independent directors.** ● Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.	**I. - C.2** i. Companies should have Remuneration Committee of the Board. This Committee should comprise of at least 3 members, majority of whom should be non executive directors with **at least one being an Independent Director.** ii. This Committee should have responsibility for determining the remuneration for all executive directors and the executive chairman, including any compensation payments, such as retirement benefits or stock options. It should be ensured that no director is involved in deciding his or her own remuneration. iii. This Committee should also determine principles, criteria and the basis of

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
	Chairman of committee being an independent director. iii. All members of the remuneration committee could be present at the meeting.		● Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and **recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.**	**remuneration policy** of the company which should be disclosed to shareholders and their comments, considered suitably. **Whenever, there is any deviation from such policy, the justification/reasons should also be indicated/disclosed adequately.** iv. This Committee should also recommend and monitor level and structure of pay for senior management. v. This Committee should make available its terms of reference, its role, the authority delegated to it by the Board, and what it has done for the year under review to the shareholders in the Annual Report.
(iii) Nomination Committee	***No provision***	***No provision***	***Clause 178 Nomination and Remuneration Committee - as referred above.***	**I – A.3.** Company may have a **Nomination Committee** comprising of majority of Independent Directors, including its Chairman. (i) This Committee should consider: ● **proposals for searching, evaluating, and recommending appropriate Independent Directors and Non-Executive Directors [NEDs],** based on an objective and transparent set of guidelines which should be disclosed and should, inter-alia include the criteria for determining qualifications, positive attributes, independence of a director and availability of time with him or her to devote to the job; ● determining processes for evaluating the skill, knowledge, experience and effectiveness of individual directors as well as the Board as a whole. ii. With a view to enable Board to take proper and reasoned decisions, Nomination Committee should ensure that the Board comprises of a balanced combination of Executive Directors and Non-Executive Directors.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
				iii. Nomination Committee **should also evaluate and recommend the appointment of Executive Directors.** iv. A separate section in the Annual Report should outline the guidelines being followed by the Nomination Committee and the role and work done by it during the year.
(iv) Shareholder Grievance Committee or Stakeholders Relationship Committee	**49. IV. G. (iii)** A board committee under the chairmanship of a non-executive director shall be formed to specifically look into the redressal of shareholder and investors complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. This Committee shall be designated as **'Shareholders/Investors Grievance Committee'**	**No Provision**	**Clause 178(5)** ● Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. ● This Committee shall consider and resolve grievances of security holders of company	**No Provision**
III Remuneration	**49. I (B)** ● All fees/compensation, paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, including independent directors, in any financial year and in aggregate. ● Requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 1956 for payment of sitting fees without approval of the Central Government.	**3.2** ● All fees/compensation, paid to part-time Directors, including Independent Directors, to be fixed by Board subject to DPE guidelines for remuneration and the Companies Act, 1956. **5.1** ● **Remuneration Committee will decide annual bonus/variable pay pool and policy for its distribution** across the executives and non unionized supervisors, within prescribed limits.	**Clause 197** (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed 11 per cent. of the net profits of that company for that financial year computed in the manner laid down in clause 198 except that the remuneration of the directors shall not be deducted from the gross profits: Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V. **Clause 197(4)** ● Remuneration payable to directors of a company, including any managing or	**I-C.1** Level and composition of remuneration to be reasonable and sufficient to attract, retain and motivate directors of quality required to run company successfully. ● **Relationship of remuneration to performance to be clear.** ● **Incentive schemes to be designed around appropriate performance benchmarks** and provide rewards for materially improved company performance. **Benchmarks for performance laid down by the company to be disclosed to members annually.** ● **Remuneration Policy for members of Board and Key Executives to be clearly laid down and disclosed.** ● Remuneration packages to involve a balance between fixed and incentive pay, reflecting

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this clause, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of remuneration payable to him for the services rendered by him in any other capacity: ● Any remuneration for services rendered by any such director in other capacity shall not be so included if— (a) services rendered are of a professional nature; (b) in opinion of Nomination and Remuneration Committee, if company is covered under clause 178 (1), or Board of Directors in other cases, director possesses requisite qualification for the practice of the profession. (5) A director may receive remuneration by way of fee for attending meetings of Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board. ● Amount of such fees not to exceed prescribed amount. ● Different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed. **Clause 197 (12)** ● **Every listed company shall disclose in the Board's report the ratio of remuneration of each director to the median employees remuneration.** **Clause 149 (8)** ● Subject to clause 198, **independent director not to be entitled to any remuneration, other than a fee** provided under clause 197 (5), **reimbursement of**	short and long term performance objectives appropriate to company's circumstances and goal. ● **Performance-related elements of remuneration to form a significant proportion of total remuneration package of Executive Directors** and should be designed to align their interests with those of shareholders and to give these Directors keen incentives to perform at the highest levels. **Companies may use following structure of remuneration to NEDs:** ● Fixed component: This should be relatively low, so as to align NEDs to a greater share of variable pay. These **should not be more than 1/3rd of total remuneration package.** ● **Variable component: Based on attendance of Board and Committee meetings (at least 75% of all meetings should be an eligibility pre-condition)** ● **Additional variable payment(s)** for being: ● Chairman of the Board, especially if he/she is a non executive chairman ● Chairman of Audit Committee and/or other committees ● Members of Board committees. ● If such structure or similar structure is adopted it should be disclosed to shareholders in Annual Report. **Remuneration of NEDs** ● Companies to have option of giving fixed contractual remuneration, not linked to profits, to NEDs. Should have option to: (a) Pay fixed contractual remuneration, subject to appropriate ceiling depending on size of company; or (b) Pay upto an appropriate percent of net profits. ● **Choice should be uniform for all NEDs, i.e. some should not be**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			expenses for participation in Board and other meetings and profit related commission approved by members.	**paid commission on profits while others are paid fixed amount.** ● If option chosen is '(a)' above, then NEDs should not be eligible for commission on profits. ● **If stock options are granted to NEDs, then these should be held by them until 3 years of his exit from Board.** ● **Remuneration of Independent Director-** In order to attract, retain and motivate Independent Directors of quality to contribute to company, **they should be paid adequate sitting fees which may depend upon twin criteria of Net Worth and Turnover.** ● **IDs may not be paid stock options or profit based commissions, so that their independence is not compromised.**

Observation:

1. Corporate Governance Voluntary Guidelines, 2009 -

- **Performance-related elements of remuneration to form a significant proportion of total remuneration package of Executive Directors.**
- **Independent Directors may not be paid stock options or profit based commissions.**
- **Relationship of remuneration to performance to be clear.**
- **Remuneration Policy should be clearly laid down.**

2. Only the Companies Bill, 2011 provides for -

- **Overall limit of 11% for managerial remuneration.**
- **Every listed company shall disclose in Board's Report the ratio of remuneration of each director to the median employees remuneration.**

IV Disclosures ***i) Management Discussion and Analysis Report /Board's report***	**Clause 49 (IV). F** -- As part of directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to Shareholders on different matters. -- Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives.	**7.5** -- As part of directors' report or as an addition thereto, a **Management Discussion and Analysis report** should form part of the Annual Report to Shareholders on different matters including environment protection and conservation, technological conservation, renewable energy developments, foreign exchange conservation and CSR. -- Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the	**Clause 134 (3)** **Board' Report** There shall be attached to statements laid before a company in general meeting, **a report by its Board of Directors,** which shall include— (a) the extract of the annual return (b) number of meetings of the Board; (c) Directors' Responsibility Statement; (d) a statement on declaration given by independent directors (e) in case of a company covered under clause 178, company's policy on directors' appointment and remuneration including criteria for determining	**No provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
	"senior management" shall mean personnel of the company who are members of its. core management team excluding the Board of Directors). This would also include all members of management one level below the executive directors including all functional heads.	interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives. "senior management" means personnel of company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the Functional Directors, including all functional heads.	qualifications, positive attributes, independence of a director and other matters provided under clause 178 (3); (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made- (i) by the auditor in his report; and (ii) by the company secretary in his secretarial audit report; (g) particulars of loans, guarantees or investments under section 186; (h) particulars of contracts or arrangements with related parties referred to in clause 188 (1) in the prescribed form; (i) the state of the company's affairs; (j) the amounts, which it proposes to carry to any reserves; (k) the amount, which it recommends should be paid by way of dividend; (l) material changes and commitments, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report; (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, which in the opinion of the Board may threaten the existence of the company; (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year; (p) in case of a listed company and every other public company having such	

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors; (q) such other matters as may be prescribed.	

Observation:

The Management and Discussion Analysis report (MDA) in terms of CPSE Guidelines covers aspects relating to environment, technology conservation, foreign exchange conservation, renewable energy development and CSR. This is not covered in Clause 49. In the Companies Bill, 2011, the Board's report includes the disclosures as required under MDA.

Ensuring Compliance with all the laws	**No provision**	**No provision**	**Clause 134(5)** **Directors' Responsibility Statement:** Shall state that- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures; (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period; (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (d) the directors had prepared the annual accounts on a going concern basis; and (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; *Explanation*.-For the purposes of this clause,	**II E - Board to place Systems to ensure Compliance with Laws** (i) In order to safeguard shareholders' investment and the company's assets, the Board should, at least annually, conduct a review of the effectiveness of the company's system of internal controls and should report to shareholders that they have done so. The review should cover all materials controls, including financial, operational and compliance controls and risk management systems. **(ii) The Directors' Responsibility Statement should also include a statement that proper systems are in place to ensure compliance of all laws applicable to the company. It should follow the "comply or explain" principle.**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; **(f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.**	
(ii) Related Party Transactions	**49 IV. (A)** (i) A statement in summary form of **transactions with related parties** in the ordinary course of business shall be placed periodically before the audit committee. (ii) Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee. (iii) Details of material individual transactions with related parties or others which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same.	**7.1** (i) A statement in summary form of **transactions with related parties** in the ordinary course of business shall be placed periodically before the audit committee. (ii) Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee. (iii) Details of material individual transactions with related parties **or others,** which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same	**Clause 134 (3)(h)** There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include (h) particulars of contracts or arrangements with related parties referred to in clause 188 (1) in the prescribed form; **Clause 177 (4)(iv)** Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,- (iv)approval or any subsequent modification of transactions of the company with related parties; In Balance Sheet, Loans and Advances from related parties have to be disclosed. **DUTIES OF INDEPENDENT DIRECTORS (Schedule IV)** The **independent directors shall pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions** and assure themselves that the same are in the interest of the company; **Clause 188.** (1) Except with the consent of the Board of Directors	**C. Audit Committee - Role and Responsibilities** Audit Committee should also monitor and approve all Related Party Transactions including any modification/amendment in any such transaction. iii. A statement in a prescribed/structured format giving details about all related party transactions taken place in a particular year should be included in the Board's report for that year for disclosure to various stake holders.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into **any contract or arrangement with a related party.** No contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution: Further **no member of the company shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party:** This shall not apply to transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis. RPTs not at arms length and not in the normal course of business has to be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.	

Observation:

1. **Clause 49 and CPSE Guidelines require review by the Audit Committee of disclosure of Related Party Transactions (RPTs).**
2. **The Companies Bill, 2011 requires the Audit Committee to approve/modify related party transactions and in addition, it also requires that:-**
   - **(i) A company shall not enter into related party transaction except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to prescribed conditions.**
   - **(ii) no contract or arrangement, in the case of a company having a paid-up share capital of not less than prescribed amount, or transactions not exceeding prescribed sums, shall be entered into except with the prior approval of the company by a special resolution.**

Further, the Bill also provides that no member of the company who is a related party shall vote on such special resolution, to approve any contract or arrangement which may be entered into by the company.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
iii) Risk Management	**49. IV (c)** Company shall lay down procedures to inform Board members about **the risk assessment and minimization procedures.** These procedures shall be periodically reviewed.	**7.3** Company shall lay down procedures to inform Board members **about the risk assessment and minimization procedures.** These procedures shall be periodically reviewed. The Board should implement policies and procedures which should include: (a) staff responsibilities in relation to fraud prevention and identification (b) responsibility of fraud investigation once a fraud has been identified (c) process of reporting on fraud related matters (d) reporting and recording processes to be followed to record allegations of fraud (e) requirements of training to be conducted on fraud prevention and identification.	**Clause 134 (3)** There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include- (n) a statement indicating development and implementation of **a risk management policy for the company including identification therein of elements of risk**, if any, which in the opinion of the Board may threaten the existence of the company; **Clause 177 (4)(vii)** Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include,- **(vii) evaluation of internal financial controls and risk management systems;** The independent directors shall help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct. **(From Schedule IV)**	**II. C.** i. Board, its Audit Committee and its executive management should collectively identify risks impacting the company's business and document their process of risk identification, risk minimization, risk optimization as a part of a **risk management policy or strategy.** ii. Board should also affirm and disclose in its report to members that it has put in place critical risk management framework across the company, which is overseen once every six months by the Board. The disclosure should also include a statement of those elements of risk, that the Board feels, may threaten the existence of the company.
(iv) Appointment of director	**Clause 49. IV. (G)** (i) In case of appointment of new director or re-appointment of a director shareholders must be provided with the following information: Brief resume of director; nature of his expertise in specific functional areas; names of companies in which the person also holds the directorship and the membership of Committees of the Board; and Shareholding of non-executive directors. (ii) Disclosure of relationships between directors inter-se shall be made in Annual Report, notice of appointment of a director.	**Annexure VII 2. (v)** v. In case of appointment of new Director/re-appointment of a Director following information may be provided: Brief resume of Director; nature of his expertise in specific functional areas; and names of companies in which the person holds the Directorship and membership of committees of Board.	**Proviso to Clause 152 (5)** In case of appointment of independent director in general meeting, an explanatory statement for such appointment, attached to notice for general meeting, shall include a statement that in opinion of Board, he fulfils conditions specified in this Act for such appointment.	**No Provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
(v) Disclosure about Remuneration of Directors	**49. IV. (E)** (i) All pecuniary relationship or transactions of the non-executive directors' vis-à-vis the company shall be disclosed in the Annual Report. (ii) Further disclosures corporate governance part in the Annual Report: (a) All elements of remuneration package of individual directors (b) Details of fixed component and performance linked incentives, along with the performance criteria. (c) Service contracts, notice period, severance fees. (d) Stock option details, and over which exercisable. (iii) The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report. (iv) The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report. (v) Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis).	**7.4** (I) All pecuniary relationship or transactions of the non-executive directors' vis-à-vis the company shall be disclosed in the Annual Report. (ii) Further disclosures corporate governance part in the Annual Report: (a) All elements of remuneration package of individual directors (b) Details of fixed component and **performance linked incentives, along withthe performance criteria.** (c) Service contracts, notice period, severance fees. (d) Stock option details, and over which exercisable.	**Clause 134 (3) (e)** There shall be attached to statements laid before company in general meeting, report by its Board, which shall include in case of company covered under clause 178 (1), company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of director and other matters provided under clause 178 (3). **Clause 197** **Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.** **Schedule V- Part II, Section II, IV** Following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors; (ii) details of fixed component and performance linked incentives along with the performance criteria; (iii) service contracts, notice period, severance fees; (iv) stock option details, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.	**I. C.1** Benchmarks for performance laid down by the company **should be disclosed** to the members annually. Remuneration Policy for the members of the Board and Key Executives should be **clearly laid down and disclosed.** **C.2** This Committee should also determine principles, criteria and the basis of remuneration policy of the company **which should be disclosed to shareholders and their comments, if any, considered suitably.** Whenever, there is any deviation from such policy, the **justification/reasons should also be indicated/disclosed adequately.** **C.1.3 Structure of Compensation to NEDs** i. The companies may use the following manner in structuring remuneration to NEDs: • **Fixed component:** • **Variable component:** • **Additional variable payment(s)** ii. If such a structure (or any similar structure) of remuneration is adopted by the Board, it **should be disclosed to the shareholders in the Annual Report of the company.**
vi) Proceeds from Public/Right/ Preferential Issues etc	**49. IV. (D)** **Proceeds from Public/Right/Preferential Issues etc.** When money is raised through the above issues, it shall disclose to the Audit Committee, the uses / applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis ,also on an annual basis, the company shall	**No provision**	26. (1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall set out for the purposes of the financial information, reports about the	**No provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
	prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.		business or transaction to which the proceeds of the securities are to be applied directly or indirectly; **Clause 177 (4)** Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include **monitoring end use of funds raised through public offers and related matters.**	
(vii) Disclosure of Accounting treatment-	**49 IV. (B)** While preparing the financial statements, if a **treatment different than Accounting Standard has been followed,** the fact shall be disclosed in the financial statements, together with explanation by management.	**7.2** - While preparing the of financial statements, if a treatment different than Accounting Standard has been followed, the **fact shall be disclosed in the financial statements,** together with explanation by management. -- All CPSEs are required to **publish segment wise profit and loss** as per Accounting Standard 17 "Segment Reporting" issued by ICAI.	**Clause 129 (5)** Where **financial statements of a company do not comply with the accounting standards, the company shall disclose** in its financial statements, the deviation from accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.	**No provision**

Observation:

Clause 49 and CPSE Guidelines require that there should be a separate section in the Annual Report on Corporate Governance. Companies Bill, 2011 provides for certain disclosures under the head 'Corporate Governance' relating to remuneration under Schedule V. However, there is no such requirement under the Corporate Governance Voluntary Guidelines, 2009.

(vii) Corporate Governance Report	**49 (VI)** There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted.	**8.1** There shall be **a separate section on Corporate Governance** in each Annual Report of company, with details of compliance on Corporate Governance. The suggested list of items to be included in the report on Corporate Governance is in Annex-VII.	**Schedule V** **IV. Disclosures:** The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:— (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors; (ii) details of fixed component and performance linked incentives along with the performance criteria; (iii) service contracts, notice period, severance fees; (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.	**No provision**

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
V **Whistle Blower**	**Clause 49 - Non-mandatory requirement** **Annexure ID. (7)** **The companies may establish a mechanism for employees to report to the management** concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. The existence of the mechanism may be appropriately communicated within the organization. Whistle Blower Policy is included in the suggested list of Items on the Report of Corporate Governance in the Annual Report of Companies in Annexure I C.	**Annexure VII- 10.** The companies may establish a **mechanism for employees** to report to the management concerns about unethical behaviour, actual or suspected fraud, or violation of the company's General guidelines on conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases. The existence of the mechanism may be appropriately communicated within the organization. **Whistle Blower Policy is included in the suggested list of Items on the Report of Corporate Governance in the Annual Report of Companies.**	**Clause 178** Provides for establishment **vigil mechanism** for directors and employees to report genuine concerns in prescribed manner by all listed companies or prescribed class of companies. There should be adequate safeguards against victimisation of persons who use vigil mechanism. The provision should be there for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. The details of vigil mechanism should be disclosed by company on its website and in Board's report.	**VI.** Companies should ensure **the institution of a mechanism** for employees to report concerns about unethical behaviour, actual or suspected fraud, or violation of the company's code of conduct or ethics policy. Companies should also provide for adequate safeguards against victimization of employees who avail of the mechanism, and also allow direct access to the Chairperson of the Audit Committee in exceptional cases.
VI Audit **(i) Rotation of audit partners and firms**	**No provision**	The process for **rotation of auditors is in place** in CPSEs.	**Clause 139** No listed company or a company belonging to prescribed class can appoint or re-appoint- (a) **an individual as auditor for more than one term of 5 consecutive years;** (b) **audit firm as auditor for more than 2 terms of 5 consecutive years:** (i) individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment in same company for 5 years from completion of his term; (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment in same company for 5 years from the completion of such term: Further as on date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.	**IV. C.** In order to maintain independence of auditors with a view to look at an issue (financial or non-financial) from a different perspective and to carry out the audit exercise with a fresh outlook, the company may adopt a policy of rotation of auditors which may be as under:- ● **Audit partner - to be rotated once every 3 years** ● **Audit firm - to be rotated once every 5 years.** **ii. A cooling off period of three years** should elapse before a partner can resume the same audit assignment. This period should be five years for the firm.

Observation:

There is no provision as regards rotation of auditors in the listing agreement. The Companies Bill, 2011 provides for rotation of auditors in case of an individual auditor - one term of five consecutive years and in case of a firm - two consecutive terms of five years with a cooling period of five years. CGVG provides for rotation once in three years, in case of audit partner and five years in case of audit firm. This is subject to cooling period of three years.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
(ii) Internal Audit	**49. II. D. (6, 7,8)** Audit Committee to **review the performance of internal audit** function.	**4.2.9** Audit committee to review findings of **internal investigation by internal auditor.**	**Clause 138** All prescribed companies will have to appoint an internal auditor, who can be chartered accountant or a cost accountant, or any other professional as decided by the Board **to conduct internal audit** of the functions and activities of the company. The manner and intervals in which internal audit will be conducted and reported to the Board may be prescribed by the Central Government.	**IV. E.** In order to ensure the independence and credibility of the internal audit process, the Board may appoint an **internal auditor** who should not be an employee of the company.
(iii) Certificate of Independence from Auditor	**No provision**	**No provision**	**Clause 139** Before the appointment of a auditor, a written consent to such appointment and **a certificate that the appointment wil**l be made in accordance with the conditions as may be prescribed is to be obtained from the auditor: The Certificate should also indicate whether the auditor satisfies the criteria provided in clause141.	**IV. B** i. Every company should **obtain a certificate from the auditor certifying his/its independence and arm's length relationship with the client company.** ii. Certificate of Independence should certify that auditor together with its consulting and specialized services affiliates, subsidiaries and associated companies or network or group entities has not/have not undertaken any prohibited non-audit assignments for company and are independent vis-à-vis the client company.
VII Code of Conduct for Directors or Independent Directors	**49.(I).D** A code of conduct for all Board members and senior management of the company should be laid and posted on the website of the company. All Board members and senior management personnel should affirm compliance with the code on an annual basis and the Annual Report of the company should contain a declaration to this effect signed by the CEO. ("Senior management" mean personnel of the company	**3.4** 1. A **code of conduct for all Board** members and senior management of the company should be laid and posted on the website of the company. 2. All Board members and senior management personnel should affirm compliance with the code on an annual basis and the Annual Report of the company should contain a declaration to this effect signed by the Chief Executive.	Company and independent directors will have **to abide by provisions specified in Schedule IV.** **SCHEDULE IV** **CODE FOR INDEPENDENT DIRECTORS** The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote	**I A.1** The appointment letter to NEDs and IDs should specify the code of business ethics that the company expects its directors and employees to follow. However, no code has been prescribed.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
	who are members of its core management team excluding Board of Directors. Normally, it comprises of all members of management one level below the executive directors, including all functional heads.)	3. Guidelines and policies evolved by the Central Government with respect to the structure, composition, selection, appointment and service conditions of Boards of Directors and senior management personnel shall be strictly followed. 4. There shall be no extravagance in expenditure on the part of Board members and senior management personnel. CPSEs executives shall be accountable for their performance in conformity with established norms of conduct. "senior management" means personnel of company who are members of its core management team, excluding Board of Directors. Normally, this would comprise all members of management one level below Functional Directors, including all functional heads. 5 Any external/internal changes made from time to time, due to addition of or amendment to laws/regulatory rules, applicable to CPSEs, need to be dealt with carefully by the respective Boards/senior management personnel. 6. A suggested list of items to be included in the code of conduct is given at **Annex-V.** Further, to assist the CPSEs in the formulation of the code, a model Code of Business Conduct and Ethics for Board Members and Senior Management is given at **Annex-VI.**	confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors. It contains: **I. Guidelines of professional conduct** **II. Role and functions** **III. Duties** **IV. Manner of appointment** **V. Reappointment** **VI. Resignation or removal** **VII. Separate meetings** **VIII. Evaluation mechanism:**	

Observation:

Clause 49 and CPSE Guidelines require that code of conduct be laid down for all director and senior management, whereas in the Companies Bill, 2011, a code for independent directors has been prescribed which company and IDs have to abide by.

VIII Corporate Social Responsibility/ Sustainability	**No provision**	CPSEs have **a separate set of Guidelines** on Sustainable Development for CPSEs and Guidelines on **"Corporate Social Responsibility** for Central Public Sector Enterprises"	**Clause 135** ● Every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more or net profit of rupees 5 crore or more during any financial year to constitute **Corporate Social Responsibility Committee of Board consisting of 3 or more directors, out of which at least 1 director shall**	Ministry of Corporate Affairs has released the **"National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business"** that will mainstream the subject of business responsibilities. The Guidelines emphasize that the businesses have to endeavour to become responsible actors in society, so that their every action leads to sustainable growth and economic development.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
			be independent director. ● Board's report to disclose composition of Corporate Social Responsibility Committee. ● Corporate Social Responsibility Committee shall,— (a) **formulate and recommend to Board, a Corporate Social Responsibility Policy** which shall indicate the activities to be undertaken by the company as specified in Schedule VII; (b) **recommend amount of expenditure** to be incurred on activities referred to in clause (a); and (c) **monitor Corporate Social Responsibility Policy of company.** ● Board of every company referred above shall,— (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, **approve the Corporate Social Responsibility Policy** for the company and disclose contents of such Policy in its report and also place it on company's website, in prescribed manner; and (b) ensure that the activities as are included in Corporate Social Responsibility Policy of company are undertaken by company. ● Board of every company referred above to **make every endeavour to ensure that company spends, in every financial year, at least 2 % of average net profits of company made during 3 immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy** & if the company fails to spend such amount, the Board shall, in its report specify reasons for not spending.	

Observation:

The Companies Bill, 2011 requires companies to have a CSR policy, the contents of which have to be disclosed in the Board's report. The CSR activities that can be undertaken by the Companies has been specified in the Bill. The Companies are required to allocate a budget for CSR. MCA has issued National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business. In addition to guidelines for responsible governance practices, NVGs also provides for a format for reporting.

Basis of Comparison	Clause 49	CPSE Guidelines	Companies Bill, 2011	Corporate Governance Voluntary Guidelines, 2009
IX Miscellaneous provisions **(i) Impact Analysis on Minority Shareholders**	**No provision**	**No provision**	**No provision**	**II.E.iii** An **"Impact Analysis on Minority Shareholders"** should be attached for every agenda item at Board meeting. It should proactively state if agenda item has any impact on rights of minority shareholders. Independent Directors should discuss such Impact Analysis their comments should be recorded.
(ii) Subsidiary Companies	**Clause 49. III** 1. At least one independent director of **holding company should be a director of a material non listed Indian subsidiary company.** 2. Audit Committee of listed holding company will review financial statements, in particular, investments made by unlisted subsidiary company. 3. Minutes of Board meetings of unlisted subsidiary company to be placed at Board meeting of the listed holding company. The management is responsible to bring the attention of the Board of Directors of the listed holding company about all the significant transactions and arrangements entered into by the unlisted subsidiary company.	**Chapter 6.** 1. **At least one independent director of holding company should be a director of its subsidiary company.** 2. Audit Committee of holding company will review financial statements of its subsidiary company. 3. Minutes of Board meetings of subsidiary company to be placed at Board meeting of the holding company. The management is responsible to bring the attention of the Board of Directors of the listed holding company about all the significant transactions and arrangements entered into by the unlisted subsidiary company.	**129 (3)** Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2). **Clause 2(87)** ● "Subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company— (i) controls the composition of the Board of Directors; or (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies: ● **Such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond**	**No provision**
(iii) Class Action	**No provision**	**No provision**	**Clause 245.** (1) **Such number of member or members, depositor or depositors or any class of them**, as the case may be, as are indicated in sub-clause (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the specified orders.	**No provision**

Composition of Committee

Chairman

1. **Shri Adi Godrej**
   Chairman, Godrej Group
   Godrej Industries Ltd.

Members

2. **Dr. Kiran Mazumdar Shaw**
   Chairman & Managing Director
   Biocon Limited

3. **Shri Sidharth Birla**
   Vice President, FICCI

4. **Shri Chandrajit Banerjee**
   Director General, CII

5. **Shri R N Dhoot**
   MP & President - ASSOCHAM

6. **Dr. Bhaskar Chatterjee**
   Director General
   Indian Institute of Corporate Affairs

7. **Shri M.K.Chouhan**
   Vice Chairman
   Global Advisory Board
   Asian Centre for Corporate Governance & Sustainability and
   Chairman - Mahendra & Young Knowledge

8. **Shri R. S Sharma**
   Former CMD, ONGC

9. **Shri Sudhir Mital***
   Additional Secretary
   Ministry of Corporate Affairs

10. **Shri G Ramaswamy**
    Former President - ICAI

11. **Shri Y M Deosthalee**
    Chairman & Managing Director
    L&T Finance Holdings Limited

12. **Shri S. Balasubramanian**
    (Former Chairman, CLB)

* since transfered to Ministry of Fertilizers

13. **Shri S K Roongta**
Ex-CMD, SAIL

14. **Shri Keki Mistry**
Vice Chairman
HDFC Bank Ltd.

15. **Ms. Zia Mody**
Managing Partner
AZB & Partners

16. **Shri Rakesh Singh**
President
The Institute of Cost Accountants of India

17. **Shri S Ravindran**
Executive Director
Securities & Exchange Board of India

Member Secretary/Convenor

18. **Shri Nesar Ahmad,**
President, The Institute of Company Secretaries of India

Observer

19. **Shri Manoj Kumar**
Joint Secretary
Ministry of Corporate Affairs
Shastri Bhawan
New Delhi

Notes