

The Draft Report of the Committee Appointed by the SEBI on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla

Draft Report of the Kumar Mangalam Committee on Corporate Governance

Preface

1. It is almost a truism that the adequacy and the quality of corporate governance shape the growth and the future of any capital market and economy. The concept of corporate governance has been attracting public attention for quite some time in India. The topic is no longer confined to the halls of academia and is increasingly finding acceptance for its relevance and underlying importance in the industry and capital markets. Progressive firms in India have voluntarily put in place systems of good corporate governance. Internationally also, while this topic has been accepted for a long time, the financial crisis in emerging markets has led to renewed discussions and inevitably focussed them on the lack of corporate as well as governmental oversight. The same applies to recent high-profile financial reporting failures even among firms in the developed economies. Focus on corporate governance and related issues is an inevitable outcome of a process, which leads firms to increasingly shift to financial markets as the pre-eminent source for capital. In the process, more and more people are recognizing that corporate governance is indispensable to effective market discipline. This growing consensus is both an enlightened and a realistic view. In an age where capital flows worldwide, just as quickly as information, a company that does not promote a culture of strong, independent oversight, risks its very stability and future health. As a result, the link between a company's management, directors and its financial reporting system has never been more crucial. As the Boards provide stewardship of companies, they play a significant role in their efficient functioning.
2. Studies of firms in India and abroad have shown that markets and investors take notice of well-managed companies, respond positively to them, and reward such companies. A common feature of such companies is that they have systems in place, which allow sufficient freedom to the boards to take decisions towards the progress of their companies, to innovate, while remaining within a framework of effective accountability. In other words they have system of good corporate governance.
3. Strong corporate governance is thus indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high-quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure. Without financial reporting premised on sound, honest numbers, capital markets will collapse upon themselves.

4. Another important aspect of corporate governance relates to issues of insider trading. It is important that insiders, which include corporate insiders also, do not use their position of knowledge and access to inside information, to take unfair advantage over the uninformed stockholders and other investors transacting in the stock of the company. To achieve this, the corporates are expected to disseminate the material price sensitive information in a timely and proper manner and also ensure that till such information is made public, insiders abstain from transacting in the securities of the company. The principle should be 'disclose or desist'. This calls for companies to devise an internal procedure for adequate and timely disclosures, reporting requirements, confidentiality norms and code of conduct for its directors and employees with regard to their dealings in securities.

However, the need for such procedures, rules and guidelines also goes beyond corporates to other entities in the financial markets such as Stock Exchanges, Intermediaries, Financial institutions, Mutual Funds and other professionals who may have access to inside information. This also needs to be dealt with in a comprehensive manner.

5. The Committee's recommendations look at corporate governance from the point of view of the stakeholders and in particular that of the shareholders, because they are the *raison de etre* for corporate governance and also the prime constituency of SEBI. The control and reporting functions of boards, the roles of the various committees of the board, the role of management, all assume special significance when viewed from this perspective. The other way of looking at corporate governance is from the contribution of corporate governance to the efficiency of a business enterprise, to the creation of wealth and to the country's economy. In a sense both these points of view are related and during the discussions at the meetings of the Committee, there was a clear convergence of both the points of view.
6. At the heart of the Committee's report is the set of recommendations which distinguishes the responsibilities and obligations of the boards and the management in instituting the systems for good corporate governance and restates the rights of shareholders in demanding corporate governance. A large part of the recommendations are mandatory and are intended to be enforced on the listed companies for initial and continuing disclosures in a phased manner within specified dates. The companies will be required to disclose separately in their annual reports, a report on corporate governance, delineating the steps they have taken to comply with the recommendations of the Committee. This will enable shareholders to know where the companies in which they have invested stand with respect to specific initiatives taken to ensure robust corporate governance. Companies above a particular size will be required to comply with the mandatory recommendations of the report by April 2000 and the remaining companies in the next year. For the non-mandatory recommendations the Committee felt that it would be desirable for companies to voluntarily follow these. It has been recommended that the SEBI may write to the appropriate regulatory bodies and governmental authorities to incorporate the recommendations in their respective regulatory or control framework.
7. The Committee agreed that India had in place a basic system of corporate governance and SEBI has already taken a number of initiatives towards raising the existing standards. The Committee also recognised that the Confederation of Indian Industries had published a Desirable Code of Corporate Governance and was encouraged to note that some of the forward looking companies have already reviewed or are in the process of reviewing their board structures and have also reported in their 1998-99 annual reports the extent to which they have complied with the Code. The Committee felt that under the Indian conditions a statutory rather than a voluntary code would be far more purposive and meaningful. The Committee however recognised that no system of control could eliminate the risk of fraud without so hamstringing the companies so as to impede their

ability to compete in the market place. The Committee was convinced that the recommendations made in this report mark an important step forward and if accepted and followed by the industry, would raise the standards in corporate governance, strengthen the unitary board system, significantly increase its effectiveness and ultimately serve the objective of maximising shareholder value.

The Constitution of the Committee and the Setting for the Draft Report

1. There are some Indian companies, which have voluntarily established high standards of corporate governance, but there are many more, whose practices are a matter of concern. There is also an increasing concern about standards of financial reporting and accountability, especially after losses suffered by investors and lenders in the recent past, which could have been avoided, with better and more transparent reporting practices. Investors have suffered on account of unscrupulous management of the companies, which have raised capital from the market at high valuations and have performed much worse than the reported figures leave alone the financial projections at the time of raising money. Another example of bad governance has been the allotment of promoter's shares, on preferential basis at preferential prices, disproportionate to market valuation of shares, leading to further dilution of wealth of minority shareholders. This practice however was later contained.
2. There are also many companies, which are not paying adequate attention to the basic procedures for shareholders' service; for example, many of these companies do not pay adequate attention to redress investors' grievances such as delay in transfer of shares, delay in despatch of share certificates and dividend warrants and non-receipt of dividend warrants. SEBI has been daily receiving large number of investor complaints on these matters. While enough laws exist to take care of many of these investor grievances, the implementation and inadequacy of penal provisions have left a lot to be desired. As corporate governance is considered a major instrument for investor protection, it is a priority on SEBI's agenda, as much as it is for most of the securities market regulators. To further improve the level of corporate governance, need was felt for a comprehensive approach at this stage of development of the capital market, to accelerate the adoption of globally acceptable practices of corporate governance. This would ensure that the Indian investors are in no way less informed and protected as compared to their counterparts in the best developed capital markets and economies of the world.
3. In the above mentioned context, the Committee on Corporate Governance was set up on May 7, 1999, by the Securities and Exchange Board of India (SEBI) under the Chairmanship of Shri Kumar Mangalam Birla, member SEBI Board, to promote and raise the standards of Corporate Governance. The committee's membership is given in *Annexure 1* and the detailed terms of the reference are as follows:
 - a. to suggest suitable amendments to the listing agreement executed by the stock exchanges with the companies and any other measures to improve the standards of corporate governance in the listed companies, in areas such as continuous disclosure of material information, both financial and non-financial, manner and frequency of such disclosures, responsibilities of independent and outside directors;
 - b. to draft a code of corporate best practices; and

- c. to suggest safeguards to be instituted within the companies to deal with insider information and insider trading.
1. A number of reports and codes on the subject have already been published internationally – notable among them are the Report of the Cadbury Committee, the Report of the Greenbury Committee, the Combined Code, the OECD Code on Corporate Governance, The Blue Ribbon Committee on Corporate Governance in the US. In India, the CII has published a Code of Corporate Governance. While the Committee drew on these documents, to the extent appropriate in preparing this report, the primary objective of the committee has been to view corporate governance from the perspective of the investors and shareholders. The Committee also took note of the various steps already taken by SEBI for strengthening corporate governance, some of which are:
 - strengthening of disclosure norms for Initial Public Offers following the recommendations of the Committee set up by SEBI under the Chairmanship of Shri Y H Malegam;
 - providing information in director's report for utilisation of funds and variation between projected and actual use of funds according to the requirements of the Companies Act; inclusion of cash flow and funds flow statement in annual reports ;
 - declaration of quarterly results;
 - mandatory appointment of compliance officer for monitoring the share transfer process and ensuring compliance with various rules and regulations;
 - timely disclosure of material and price sensitive information including details of all material events having a bearing on the performance of the company;
 - despatch of one copy of complete balance sheet to every household and abridged balance sheet to all shareholders;
 - issue of guidelines for preferential allotment at market related prices; and
 - issue of regulations providing for a fair and transparent framework for takeovers and substantial acquisitions.
 1. At the first meeting of the Committee the three key constituents of corporate governance were identified as the **Shareholders**, the **Board of Directors** and the **Management**. The board of directors is responsible for the governance of the company. They steward the company, set its strategic aim, the financial policy and oversee the implementation and the financial controls and report the activities and the progress of the company to the shareholders to whom they are accountable. The board's actions are subject to applicable laws, rules and regulations. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the management include ensuring that control systems are in place to achieve the objectives laid down by the board, and to help the board discharge its responsibilities to the shareholders.
 2. The Committee felt that it would be necessary to identify and define the rights, roles, responsibilities and accountability of each of these constituents. Accordingly, three sub groups were formed to look more closely at each of these constituencies. Each of these sub groups was required to examine the existing situation, and the provisions of the existing laws, rules and regulations; define the desired situation; and make recommendations to the Committee to achieve the desired situation.
 3. Another sub group was formed to deal with issues related to insider information and insider trading, which will give its report separately.
 4. Financial reporting and disclosure which are also related to the accounting policies of a company and the existing accounting standards and auditing practices, are corner stones of corporate

governance. A separate Committee appointed by the SEBI under the Chairmanship of Shri Y H Malegam (who is also a member of this Committee) has been examining these issues in association with the Institute of Chartered Accountants of India. The Committee on Corporate Governance also considered the following critical issues having a bearing on the quality of financial reporting:

- Consolidation of Accounts of subsidiaries
- Segment reporting where a company has multiple lines of business
- Disclosure and treatment of related party transactions
- Treatment of deferred taxation

The Recommendations

1. The recommendations are being made by the Committee keeping in view the fact that, any code of Corporate Governance should be dynamic, and should change with changing context and times. This code is the first formal and comprehensive attempt, in the context of prevailing conditions of governance in Indian companies, as well as the state of capital markets. This code may need to be reviewed from time to time, keeping pace with the changing expectations of the stakeholders and increasing sophistication achieved in capital markets.

Corporate Governance –the Objective

1. *The Committee agreed that the fundamental objective of corporate governance is the "enhancement of the long-term shareholder value while at the same time protecting the interests of other stakeholders."* This definition harmonises the need for a company to strike a balance at all times between the need to enhance shareholders' wealth whilst not in any way being detrimental to the interests of the other stakeholders in the company such as suppliers, customers, creditors, the bankers, the employees of the company, the government and the society at large.
2. In the opinion of the Committee, the imperative for corporate governance lies not merely in drafting a code of corporate governance, but in practising it. Even now, some companies, are following exemplary practices, without the existence of formal guidelines on this subject. Structures and rules are important because they provide a framework, which will encourage and enforce good governance; but alone, these cannot raise the standards of corporate governance. What counts is the way in which these are put to use. *The Committee is thus of the firm view, that the best results would be achieved when the companies begin to treat the code not as a mere structure, but as a way of life.*
3. It follows that the real onus of achieving the desired level of corporate governance, lies in the proactive initiatives taken by the companies themselves and not in the external measures like breadth and depth of a code or stringency of enforcement of norms. The extent of discipline, transparency and fairness, and the willingness shown by the companies, will be the crucial factors in achieving the desired confidence of stakeholders and the goals of the company.

Applicability of the Recommendations

4. The Code is to be followed by listed companies, their directors, management, employees and professionals associated with the companies. They should be responsible for complying with the code in letter and spirit and interpreting it always in a manner that always gives precedence to substance over form. The ultimate responsibility for putting the Code into practice however lies directly with the boards of directors.

Mandatory and non mandatory recommendations

The Committee recognised, that it will be difficult to immediately implement and follow this code, to the last letter, by relatively smaller companies. Equally, implementation of some of the recommendations will require change in existing law. The Committee felt that it would be desirable to divide the recommendations into mandatory and non-mandatory categories.

Schedule of implementation

5. The Committee recognises that compliance with the recommendations would involve restructuring the existing boards of companies. It also recognises that some companies, especially the smaller ones, may have difficulty in immediately complying with these conditions. The Committee has taken this into consideration.
6. *The Committee recommends that the mandatory recommendations of the Committee, such as composition of the Board, constitution of the various sub-committees of the Board of Directors, should be implemented by companies within the time prescribed below:*
 - ***Immediately***, by all companies seeking listing for the first time.
 - ***By April 2000***, by those companies, which satisfy any of the following criteria:

Paid up share capital is Rs. 10 crore and above; or networth, has reached Rs. 25 crores, any time in the history of the company
 - ***By April 2001***, by those companies, which qualify for following criteria:

Paid up share capital of Rs. 5 crore and above

This is a mandatory recommendations.

Board of Directors

1. The board of a company provides leadership and strategic guidance, objective judgement independent of management to the company and exercises control over the company, while remaining at all times accountable to the shareholders. The measure of the board is not simply whether it fulfils its legal requirements but more importantly, the board's attitude and the manner it translates its awareness and understanding of its responsibilities. An effective corporate governance system is one, which allows the board to perform these dual functions efficiently. The Board of Directors of a company, thus **directs** and **controls** (the management) of a company and is **accountable** to the shareholders.
2. The Board **directs** the company, by formulating and reviewing company's policies, strategies, major plans of action, risk policy, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestitures, change in financial control and compliance with applicable laws, taking into account the interests of stakeholders. It **controls** the company and its management by laying down the code of conduct, overseeing the process of disclosure and communications, ensuring that appropriate systems for financial control and reporting and monitoring risk are in place, evaluating the performance of management, chief executive, executive directors and providing checks and balances to reduce potential conflict between the specific interests of management and the wider interests of the company and shareholders including misuse of corporate assets and abuse in related party transactions. It is **accountable** to the shareholders for creating, protecting and enhancing wealth and resources for the company, and reporting to them on the performance in a timely and transparent manner. However, it is not involved in day-to-day management of the company, which is the responsibility of the management.

Composition of the Board of Directors

3. The Committee is of the view that the composition of the board of directors is critical to the independent functioning of the board. There is a significant body of literature on corporate governance, which has guided the composition, structure and responsibilities of the board. The Committee took note of these while framing the recommendations on the structure and composition of the board.
4. Till recently it has been the practice of most of the companies in India to fill the board with representatives of the promoters of the company, and independent directors if chosen were also handpicked thereby ceasing to be independent. This has undergone a change and increasingly the boards comprise of following groups of directors - promoter director, (promoters being defined by the erstwhile Malegam Committee), executive and non executive directors, a part of whom are independent. The composition of the board is important inasmuch as it determines the ability of the board to collectively provide the leadership and ensures that no one individual or a group is able to

dominate the board. Among the three classes of directors, the executive directors (like director-finance, director-personnel) are involved in the day to day management of the companies; the non-executive directors bring external and wider perspective and independence to the decision making.

Independent directors and the definition of independence

Among the non-executive directors are independent directors, who have a key role in the entire mosaic of corporate governance. *Independent directors are directors who apart from receiving director's remuneration do not have any material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgement of the board may affect their independence of judgement.* Further, all pecuniary relationships or transactions of the non-executive directors should be disclosed in the annual report.

5. The law does not make any distinction between the different categories of directors and all directors are equally and collectively responsible in law for the board's actions and decisions, *the Committee is of the view that the non-executive directors bring an independent judgement to bear on board's deliberations especially on issues of strategy, performance, management of conflicts and standards of conduct. The Committee therefore lays emphasis on the calibre of the non-executive directors, especially of the independent directors.*
6. Good corporate governance dictates that the board be comprised of individuals with certain personal characteristics and core competencies such as recognition of the importance of the board's tasks, integrity, a sense of accountability, track record of achievements, and the ability to ask tough questions. Besides, having financial literacy, experience, leadership qualities and the ability to think strategically, the directors must show significant degree of commitment to the company and devote adequate time for meeting, preparation and attendance.
7. Independence of the board is critical to ensuring that the board fulfils its oversight role objectively and holds the management accountable to the shareholders. The Committee has, therefore, suggested the definition of independence, the structure and composition of the board and of the committees of the board.
8. *The Committee recommends that the board of a company have an optimum combination of executive and non-executive directors with fifty percent of the board comprising the non-executive directors. The number of independent directors (independence being as defined in the foregoing paragraphs) would depend on the nature of the chairman of the board. In case of a non-executive chairman, at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should be independent. This is a mandatory recommendation.*
9. The tenure of the directors will be as prescribed in the Companies Act.

Nominee Directors

10. Besides the above categories of directors, there is another set of directors in Indian companies who are the nominees of the financial or investment institutions to safeguard their interest. The nominees of the institutions are often chosen from among the present or retired employees of the institutions or from outside.
11. The Committee recognises the pioneering role of financial institutions in the industrial development of the country. However, to avoid potential conflicts of interest, it is desirable that the financial institutions maintain an arm's length relationship with the company by not seeking a seat on the board of a company, which would imply their involvement in the management of the company. *Instead they would serve their cause and protect their interests better and provide direction to the individual shareholders if they make more effective and pro-active use of their significant voting power at the General Body meetings.* Alternatively they may also decide to dis-invest their holdings in the market which could have an adverse impact on the prices of the stocks. Besides, the investment institutions, by virtue of their position on the board of the company, become privy to unpublished price sensitive information. This could easily expose these institutions and their nominees to the charge of insider trading, when these institutions or their nominees deal in the securities of the company. It is also to be noted that by occupying a board seat, implicitly the nominee directors share equal responsibility as any other director on the board of the company.
12. *The Committee recommends that the financial institutions should have no direct role in managing the company, and should normally not have nominees on the board, merely by virtue of their financial exposure by way of investment in the securities of a company. There is however a case for the term lending institutions to have nominees on the Boards of the borrower companies, to protect their interests as creditors, in case of loan default or a potential of loan default, the determination of which may be left to the judgement of the lending institutions themselves.* In such cases, the nominee directors should take an active interest in the activities of the board and have to assume equal responsibility, as any other director in the board.

Chairman of the Board

13. The Committee believes that the role of Chairman is to ensure that the board meetings are conducted in a manner which secures the effective participation of all directors, executive and non-executive alike, and encourages all to make an effective contribution, maintain a balance of power in the board, make certain that all directors receive adequate information, well in time and that the executive directors look beyond their executive duties and accept full share of the responsibilities of governance. The Committee is of the view that the Chairman's role in principle be different

from that of the chief executive.

14. *Given the importance of Chairman's role, the Committee recommends that a non-executive Chairman should be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties. This will enable him to discharge the responsibilities effectively. This is a mandatory recommendation.*

Audit Committee

1. There are few words more reassuring to the investors and shareholders than accountability. A system of good corporate governance promotes relationships of accountability between the principal actors of sound financial reporting – the board, the management and the auditor. It holds the management accountable to the board and the board accountable to the shareholders. The audit committee's role flows directly from the board's oversight function. It acts as a catalyst for effective financial reporting.
2. The Committee is of the view that the need for having an audit committee grows from the recognition of the audit committee's position in the larger mosaic of the governance process, as it relates to the oversight of financial reporting.
3. A proper and well functioning system exists, therefore when the three main groups responsible for financial reporting – the board, those responsible for the financial management including the internal auditor and the outside auditors – form the three-legged stool that supports responsible financial disclosure and active and participatory oversight. The audit committee has an important role to play in this process, since audit committee is a sub-group of the full board and hence the monitor of the process. Certainly, it is not the role of the audit committee to prepare financial statements or engage in the myriad of decisions relating to the preparation of those statements. The committee's job is clearly one of oversight and monitoring and in carrying out this job it relies on senior financial management and the outside auditors. However it is important to ensure that the boards function efficiently for if the boards are dysfunctional, the audit committees will do no better. The Committee believes that the progressive standards of governance applicable to the full board should also be applicable to the audit committee.
4. *The Committee therefore recommends that a qualified and independent audit committee should be set up by the board of a company. This would go a long way in enhancing the credibility of the financial disclosures of a company and promoting transparency. This is a mandatory recommendation.*
5. The following recommendations of the Committee, regarding the constitution, functions and procedures of audit committee would have to be viewed in the above context. But just as there is no "one size fits all" for the board when it comes to corporate governance, same is with audit committees. The Committee can thus lay down some broad parameters, within which each audit committee has to evolve its own guidelines.

Composition

6. The composition of the audit committee is based on the fundamental premise of independence and expertise.

The Committee therefore recommends that

- *the audit committee should have minimum three non executive directors, majority being independent, with at least one director having financial and accounting knowledge;*
- *the chairman of the committee should be an independent director;*
- *the chairman should be present at Annual General Meeting to answer shareholder queries;*
- *the finance director, head of internal audit and a representative of external auditor should be present as invitees for the meetings of the audit committee;*
- *the Company Secretary should act as the secretary of the committee.*

These are mandatory recommendations.

Frequency of meetings and quorum

1. *The Committee recommends that to begin with the audit committee should meet at least thrice a year. One meeting must be held before finalisation of annual accounts and one necessarily every six months.*
2. *The quorum should be either two members or one-third of the members of the audit committee, whichever is higher.*

The recommendations in paragraphs 6.8 and 6.9 are mandatory.

Powers of the audit committee

3. Being a committee of the board, the audit committee derives its powers from the authorisation of the board. The Committee recommends that such powers should include:
 - *To investigate any activity within its terms of reference.*
 - *To seek information from any employee.*
 - *To obtain outside legal or other professional advice.*
 - *To secure attendance of outsiders with relevant expertise, if it considers necessary.*

This is a mandatory recommendation.

Functions of the Audit Committee

6.11 As the audit committee acts as the bridge between the board, the statutory auditors and internal auditors, the Committee recommends that its role should include the following

- *Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.*
- *Recommending the appointment and removal of external auditor, fixation of audit fee and also approve payment for any other services.*
- *Reviewing with management the annual financial statements before submission to the board, focussing primarily on:*
 - *Any changes in accounting policies and practices.*
 - *Major accounting entries based on exercise of judgement by management.*
 - *Qualifications in draft audit report.*
 - *Significant adjustments arising out of audit.*
 - *The going concern assumption.*
 - *Compliance with accounting standards*
 - *Compliance with stock exchange and legal requirements concerning financial statements.*
 - *Any related party transactions i.e. transactions of the company of material nature, with promoters or the management, their subsidiaries or relatives etc. that may have potential conflict with the interests of company at large.*
- *Reviewing with the management, external and internal auditors, the adequacy of internal control systems.*
- *Reviewing the adequacy of internal audit function, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure, coverage and frequency of internal audit.*
- *To discuss with internal auditors any significant findings and follow-up thereon.*
- *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.*
- *To discuss with external auditors before the audit commences, the nature and scope of audit. Also have post-audit discussion to ascertain any area of concern.*
- *Reviewing the company's financial and risk management policies.*
- *To look into the reasons for substantial defaults in the payments to the depositors, debenture holders, share holders (in case of non-payment of declared dividends) and creditors.*

This is a mandatory recommendation

Remuneration Committee of the Board

1. The Committee was of the view that a company must have a credible and transparent policy in determining and accounting for the remuneration of the directors. The policy should avoid potential conflicts of interest between the shareholders, the directors, and the management. The overriding principle in respect of directors' remuneration is that of openness and shareholders are entitled to a full and clear statement of benefits available to the directors.

2. *For this purpose the Committee recommends that the board should 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. This is a mandatory recommendation.* The Committee however recognised that the remuneration package should be good enough to attract, retain and motivate the Directors of the quality required, but not more than necessary for the purpose. The remuneration committee should be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Composition, Quorum etc. of the Remuneration Committee

3. *The Committee recommends that to avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors should comprise minimum of three non-executive directors, the chairman of committee being an independent director.*
4. *The Committee deliberated on the quorum for the meeting and was of the view that remuneration is mostly fixed annually or after specified periods. It would not be necessary for the committee to meet very often. *The Committee was of the view that it should not be difficult to arrange for a date to suit the convenience of all the members of the committee. The Committee therefore recommends that all the members of the remuneration committee should be present at the meeting.**
5. *The Committee also recommends that the Chairman of remuneration committee should be present at Annual General Meeting, to answer the shareholder queries.*
6. *The Committee recommends that the remuneration of non-executive directors should be decided by the entire board of directors.*
7. *The Committee further recommends that the recommendations of the board of directors would need to be ratified at the General Body meeting of shareholders and in case the board disagrees with the recommendations of the remuneration committee, the matter should be decided at the General body meeting of the shareholders who should be provided with sufficient information about the remuneration policy and package.*

All the above recommendations in paragraphs 7.3 to 7.7 are mandatory.

Disclosures of Remuneration Package

8. It is important for the shareholders to be informed of the remuneration of the directors of the company. *The Committee therefore recommends that the following disclosures should be made in the section on corporate governance of the annual report:*
- *All elements of remuneration package of all the directors i.e. salary, benefits, bonuses, stock options, pension etc.*
 - *Details of fixed component and performance linked incentives, along with the performance criteria.*
 - *Service contracts, notice period, severance fees.*
 - *Stock option details, if any – and whether issued at a discount as well as the period over which accrued and over which exercisable.*

This recommendation is mandatory

Board Procedures

1. The measure of the board is buttressed by the structures and procedures of the board. The various committees of the board recommended in this report would enable the board to have an appropriate structure to assist it in the discharge of its responsibilities. These need to be supplemented by certain basic procedural requirements in terms of frequency of meetings, the availability of timely information, sufficient period of notice for the board meeting as well as circulation of agenda items well in advance, and more importantly, the commitment of the members of the board.
2. *The Committee therefore recommends that board meetings should be held at least four times in a year, with a maximum time gap of four months between any two meetings. The minimum information as given in Annexure 3 should be available to the board.*

This is a mandatory recommendation.

3. *The Committee further recommends that to ensure that the members of the board give due importance and commitment to the meetings of the board and its committees, there should be a ceiling on the maximum number of committees across all companies in which a director could be a member or act as chairman. The Committee recommends that a director should not be a member in more than 10 committees or act as chairman of more than five committees across all companies in which he is a director.*

This is a mandatory recommendation.

Accounting Standards and Financial Reporting

9.1 Over time the financial reporting and accounting standards in India have been upgraded. This

however is an ongoing process and we have to move speedily towards the adoption of international standards. This is particularly important from the angle of corporate governance. *The Committee took note of the discussions of the SEBI Committee on Accounting Standards referred to earlier and makes the following recommendations:*

- Consolidation of Accounts of subsidiaries

The companies should be required to give consolidated accounts in respect of all its subsidiaries in which they hold 51 % or more of the share capital. The Committee was informed that SEBI was already in dialogue with the Institute of Chartered Accountants of India to bring about the changes in the Accounting Standard on consolidated financial statements. The Institute of Chartered Accountants of India should be requested to issue the Accounting Standards for consolidation expeditiously.

- Segment reporting where a company has multiple lines of business.

Equally in cases of companies with several businesses, it is important that financial reporting in respect of each product segment should be available to shareholders and the market to obtain a complete financial picture of the company. *The Committee was informed that SEBI was already in dialogue with the Institute of Chartered Accountants of India to introduce the Accounting Standard on segment reporting. The Institute of Chartered Accountants of India should be requested to issue these Accounting Standards expeditiously.*

- Disclosure and treatment of related party transactions.

This again is an important disclosure. The Committee was informed that the Institute of Chartered Accountants of India had already issued a preliminary exposure draft on the subject. *The Committee recommends that the Institute of Chartered Accountants of India should be requested to finalise this at the earliest. In the interim, the Committee recommends the disclosures set out in Clause 7 of Annexure-2*

- Treatment of deferred taxation

The treatment of deferred taxation and its appropriate disclosure has an important bearing on the true and fair view of the financial status of the company. *The Committee recommends that the Institute of Chartered Accountants of India issue Accounting Standard for the treatment of deferred tax liability.*

Management

10.1 In the view of the Committee, the over-riding aim of management is to maximize shareholder value without being detrimental to the interests of other stakeholders. The management however, is subservient to the board of directors and must operate within the boundaries and the policy framework laid down by the board. While the board is responsible for ensuring that the principles of corporate governance are adhered to and enforced, the real onus of implementation lies with the management. It is responsible for translating into action, the policies and strategies of the board and implementing its directives to achieve corporate objectives of the company framed by the board.

10.2 The Committee therefore recommends that the board should clearly define the role of the management.

This is a mandatory recommendation.

Functions of the Management

3. The management comprises the Chief Executive, Executive-directors and the key managers of the company, involved in day-to-day activities of the company.

4. *The Committee recommends that the management should carry out the following functions:*
 - *Assisting the board in its decision making process in respect of the company's strategy, policies, code of conduct and performance targets, by providing necessary inputs.*
 - *Implementing the policies and code of conduct of the board.*
 - *Managing the day to day affairs of the company to best achieve the targets and goals set by the board, to maximize the shareholder value.*
 - *Providing timely, accurate, substantive and material information, including financial matters and exceptions, to the BOD, board-committees and the shareholders.*
 - *Ensuring compliance of all regulations and laws.*
 - *Ensuring timely and efficient service to the shareholders and to protect shareholder's rights and interests.*
 - *Setting up and implementing an effective internal control systems, commensurate with the business requirements.*
 - *Implementing and comply with the Code of Ethics as laid down by the board.*
 - *Co-operating and facilitating efficient working of board committees.*

10.5 As a part of the disclosure related to Management, the Committee recommends that in addition to the director's report, Management Discussion and Analysis report should form part of the annual report to the shareholders. This Management Discussion & Analysis should include the following within the limits set by the company's competitive position:

- *Industry structure and developments.*

- *Opportunities and Threats*
- *Segment-wise or product-wise performance.*
- *Outlook.*
- *Risks and concerns*
- *Internal control systems and their adequacy.*
- *Discussion on financial performance with respect to operational performance.*
- *Material developments in Human Resources /Industrial Relations front, including number of people employed.*

This is a mandatory recommendation

10.6 Good corporate governance casts an obligation on the management in respect of disclosures. *The Committee therefore recommends that disclosures must be made by the management 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 etc.)*

This is a mandatory recommendation.

Shareholders

11.1 The shareholders are the owners of the company and as such they have certain rights and responsibilities. But in reality companies cannot be managed by shareholder referendum. The shareholders are not expected to assume responsibility for the management of corporate affairs. A company's management must be able to take business decisions rapidly. The shareholders have therefore delegated many of their responsibilities as owners of the company to the directors who then become responsible for corporate strategy and operations. The implementation of this strategy is done by a management team. This relationship therefore brings in the accountability of the boards and the management to the shareholders of the company. A good corporate framework is one that provides adequate avenues to the shareholders for effective contribution in the governance of the company while insisting on a high standard of corporate behaviour without getting involved in the day to day functioning of the company.

Responsibilities of shareholders

2. The Committee believes that the General Body Meetings provide an opportunity to the shareholders to address their concerns to the board of directors and comment on and demand any explanation on the annual report or on the overall functioning of the company. It is important that the shareholders use the forum of general body meetings for ensuring that the company is being stewarded for maximising the interests of the shareholders. This is important especially in the Indian context. *It follows from the above, that for effective participation shareholders must maintain decorum during the General Body Meetings.*
3. The effectiveness of the board is determined by the quality of the directors and the quality of the

financial information is dependent to an extent on the efficiency with which the auditors carry on their duties. The shareholders must therefore show a greater degree of interest and involvement in the appointment of the directors and the auditors. Indeed, they should demand complete information about the directors before approving their directorship.

4. *The Committee recommends that in case of the appointment of a new director or re-appointment of a director a shareholder must be provided with the following information:*
 - *A brief resume of the director;*
 - *Expertise in specific functional areas; and*
 - *Names of companies in which the person also holds the directorship and the membership of Committees of the board.*

This is a mandatory recommendation

Shareholders' rights

2. The basic rights of the shareholders include right to transfer and registration of shares, obtaining relevant information on the company on a timely and regular basis, participating and voting in shareholder meetings, electing members of the board and sharing in the residual profits of the corporation.
3. The Committee therefore recommends that as shareholders have a right to participate in, and be sufficiently informed on decisions concerning fundamental corporate changes, they should not only be provided information as under the Companies Act, but also in respect of other decisions relating to material changes such as takeovers, sale of assets or divisions of the company, changes in capital structure which will lead to change in control or may result in certain shareholders obtaining control disproportionate to the equity ownership.
4. *The Committee recommends that information like quarterly results, presentation made by companies to analysts may be put on company's web-site or may be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.*
5. The Committee recommends that the half-yearly declaration of financial performance including summary of the significant events in last six-months, should be sent to each household of shareholders.

This is a mandatory recommendation

6. A company must have appropriate systems in place which will enable the shareholders to participate effectively and vote in the shareholders' meetings. The company should also keep the

shareholders informed of the rules and voting procedures, which govern the general shareholder meetings.

This is recommendatory.

7. The annual general meetings of the company should not be deliberately held at venues or the timing should not be such which makes it difficult for most of the shareholders to attend. The company must also ensure that it is not be inconvenient or expensive for shareholders to cast vote.

This is recommendatory.

8. *Currently, although the formality of holding the general meeting is gone through, in actual practice only a small fraction of the shareholders of that company do or can really participate therein. This virtually makes the concept of corporate democracy illusory. It is imperative that this situation which has lasted too long needs an early correction. In this context, for shareholders who are unable to attend the meetings, there should be a requirement which will enable them to vote by postal ballot for key decisions such as investment proposals, appointment of directors, auditors, committee members, loans and advances above a certain percentage of net worth, changes in capital structure which will lead to change in control or may result in certain shareholders obtaining control disproportionate to equity shareholding, sale of assets or divisions and takeovers etc. A detailed list of the matters which should require postal ballot is given in Annexure 3. This would require changes in the Companies Act. The Committee was informed that SEBI has already made recommendations in this regard to the Department of Company Affairs. The Committee recommended that the Department of Company Affairs should again be requested to implement this recommendation at the earliest, if possible by issue of an ordinance so that the corporate democracy becomes a reality in the true sense.*

9. *The Committee recommends that a board committee under the chairmanship of a non-executive director should be formed to specifically look into the redressing of shareholder complaints like transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends etc. The Committee believes that the formation of such a committee will help focus the attention of the company on shareholders' grievances and sensitise the management to redressal of their grievances.*

This is a mandatory recommendation

10. *The Committee further recommends that to expedite the process of share transfers the board of the company should delegate the power of share transfer to the registrars and share transfer agents.*

This is a mandatory recommendation.

Institutional shareholders

11. Institutional shareholders have acquired large stakes in the equity share capital of listed Indian companies. They have or are in the process of becoming majority shareholders in many listed companies and own shares largely on behalf of the retail investors. They thus have a special responsibility given the weightage of their votes and have a bigger role to play in corporate governance as retail investors look upon them for positive use of their voting rights.
12. *The Committee recommends that institutional investors maintain an arm's length relationship with management and do not seek participation at the board level which may make them privy to unpublished price sensitive information. Given the weight of their votes, the institutional shareholders can effectively use their powers to influence the standards of corporate governance. Practices elsewhere in the world have indicated that institutional shareholders can sufficiently influence because of their collective stake, the policies of the company so as to ensure that the company they have invested in, complies with the corporate governance code in order to maximise shareholder value. What is important in the view of the Committee is that, the institutional shareholders put to good use their voting power*
13. *The Committee recommends that the institutional shareholders*
 - *Take active interest in the composition of the Board of Directors*
 - *Be vigilant*
 - *Maintain regular and systematic contact at senior level for exchange of views on management, strategy, performance and the quality of management.*
 - *Ensure that voting intentions are translated into practice*
 - *Evaluate the corporate governance performance of the company*

Manner of Implementation

1. *The Committee recommends to SEBI, that as in other countries, the mandatory provisions of the recommendations may be implemented through the listing agreement of the stock exchanges.*
2. *The Committee recognises that the listing agreement is not a very powerful instrument and the*

penalties for violation are not sufficiently stringent to act as a deterrent. The Committee therefore recommends to SEBI, that the listing agreement of the stock exchanges be strengthened and the exchanges themselves be vested with more powers, so that they can ensure proper compliance of code of Corporate Governance. In this context the Committee further recommends that the Securities Contract (Regulation) Act, 1956 should be amended, so that in addition to the above, the concept of listing agreement be replaced by listing conditions.

3. *The Committee also recommends that SEBI write to the Department of Company Affairs for suitable amendments to the Companies Act in respect of the recommendations which fall within their jurisdiction.*

4. *The Committee recommends that there should be a separate section on Corporate Governance in the annual reports of companies, with a detailed compliance report on Code of Corporate Governance. Non-compliance of any section of the code and the reasons thereof should be specifically highlighted. This will enable the shareholders and the securities market to assess for themselves the standards of corporate governance followed by a company. A Format for compliance report is enclosed. in Annexure 4.*

This is a mandatory recommendation

End Note

There are several corporate governance structures available in the developed world but there is no one structure, which can be singled out as being better than the others. There is no "one size fits all" structure for corporate governance. The Committee's recommendations are not therefore based on any one model but are designed for the Indian environment.

Corporate governance extends beyond corporate law. Its fundamental objective is not mere fulfillment of the requirements of law but in ensuring commitment of the board in managing the company in a transparent manner for maximising long term shareholder value. The corporate governance has as many votaries as claimants. Among the latter, the Committee has primarily focussed its recommendations on investors and shareholders, as they are the prime constituencies of SEBI. Effectiveness of corporate governance system cannot merely be legislated by law neither can any system of corporate governance be static. As competition increases, technology pronounces the death of distance and speeds up communication, the environment in which firms operate in India also changes. In this dynamic environment the systems of corporate governance also need to evolve. The Committee believes that its recommendations will go a long way in raising the standards of corporate governance in Indian firms and make them attractive destinations for local and global capital. These recommendations will also form the base for further evolution of the structure of corporate governance in consonance with the rapidly changing economic and industrial environment of the country in the new millenium.

Names of the Members of the committee

1. Shri Kumar Mangalam Birla, Chairman, Aditya Birla group

- Chairman of the Committee

1. Shri Rohit Bhagat, Country Head, Boston Consulting Group
2. Dr. J Bhagwati, Jt. Secretary, Ministry of Finance.
3. Shri Samir Biswas, Regional Director, Western Region, Department of Company Affairs, Government of India
4. Shri S.P. Chhajed, President of Institute of Chartered Accountants of India
5. Shri Virender Ganda, President of Institute of Company Secretaries of India
6. Dr. Sumantra Ghoshal, Professor of Strategic Management, London Business School
7. Shri Vijay Kalantri, President, All India Association of Industries
8. Shri Pratip Kar, Executive Director, SEBI — Member Secretary
9. Shri Y. H. Malegam, Managing Partner, S.B. Billimoria & Co
10. Shri Narayanan Murthy, Chairman and Managing Director, Infosys Technologies Ltd.
11. Shri A K Narayanan, President of Tamil Nadu Investor Association
12. Shri Kamal Parekh, Ex-President, Calcutta Stock Exchange
13. Dr. R. H. Patil, Managing Director, National Stock Exchange Ltd.
14. Shri Anand Rathi, President of the Stock Exchange, Mumbai
15. Ms D.N. Raval, Executive Director, SEBI
16. Shri Rajesh Shah, Former President of Confederation of Indian Industries.
17. Shri L K Singhvi, Sr. Executive Director, SEBI
18. Shri S. S. Sodhi, Executive Director, Delhi Stock Exchange

Annexure 2

Information to be placed before board of directors

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of audit committee meetings
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand and prosecution notices which are materially important
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.

10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory nature or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

Annexure 3

POST BALLOT SYSTEM

Rationale

Voting at the general meetings of companies is the most valuable and fundamental mechanism by which the shareholders accept or reject the proposals of the board of directors as regards the structure, the strategy, the ownership and the management of the corporation. Voting is the only mechanism available with the shareholders for exercising an external check on the board and the management.

Under the present framework of the Companies Act, 1956, a company is required to obtain the approval of its shareholders for various important decisions such as increase in its authorised capital, shifting of registered office, change in the name, amalgamation and reconstitution, buy-back of shares, further issue of shares, etc. Since the shareholders of any large public listed company are scattered throughout the length and breadth of the country, they are unable to physically attend the general meetings of the company to exercise their right to vote on matters of vital importance. The system of voting by proxy has also not proved very effective.

With a view to strengthening shareholder democracy, it is felt that all the shareholders of a company should be given the right to vote on certain critical matters through a postal ballot system, which has also been envisaged in the Companies Bill, 1997.

Items requiring voting by postal ballot

Some of the critical matters which should be decided by this system are –

1. matters relating to alteration in the memorandum of association of the company like changes in name,

- objects, address of registered office etc;
2. sale of whole or substantially the whole of the undertaking;
 3. sale of investments in the companies, where the shareholding or the voting rights of the company exceeds 25%;
 4. Making a further issue of shares through preferential allotment or private placement basis;
 5. Corporate restructuring;
 6. Entering a new business area not germane to the existing business of the company;
 7. Variation in the rights attached to class of securities.

Procedure for the postal ballot

Where a resolution is to be passed in relation to any of the aforesaid items through postal ballot,

1. The board of directors shall appoint a Designated-Person to conduct, supervise and control the exercise of postal ballot. This person may be the Company Secretary, a retired judge or any person of repute who, in the opinion of the board, can conduct the voting process in a fair & transparent manner.
2. All communications in this regard shall be made by and addressed directly to the said Designated-Person.
3. A notice containing a draft of the resolutions and the necessary explanatory statement shall be sent to all members entitled to vote requesting them to send their assent or dissent within a period of thirty days from the date of posting of the letter.
4. The notice shall be sent under certificate of posting and shall include with the notice, a pre-paid postage envelope for facilitating the communication of the assent or the dissent of the shareholders to the resolutions within the said period.
5. The envelope by post will be received directly by the Post Office through Box No, which will be obtained by the Designated-Person in advance and will be indicated on each pre-paid envelope to be used by the members for sending the resolution.
6. The Designated-Person shall ascertain the will of the shareholders based on the response received and the resolution shall be deemed to have been duly passed if approved by members not less in number, as prescribed by law.
7. The Designated-Person shall thereafter give a report to the Chairman and on the basis of such report the Chairman shall declare the results of the poll.

Annexure 4

Format for section on Corporate Governance

1. A brief statement on company's philosophy on code of governance.
2. Board of Directors:
 - Composition and category of directors for example promoter, executive, non-executive, independent non-executive, nominee director, which institution represented as Lender or as equity investor.
 - Attendance of each director at the BoD meetings and the last AGM.
 - Number of other BoDs or Board Committees he/she is a member or Chairperson of.
 - Details of any financial transaction of directors with the company, its promoters and its management.
 - Number of BoD meetings held, dates on which held.
 - Whether all the information as per statutory requirements or as per suggested list in this code was placed

at BoD meetings.

1. Audit Committee

- Brief description of terms of reference
- Composition, name of members and Chairperson
- Meetings and attendance during the year

1. Remuneration Committee

- Brief description of terms of reference
- Composition, name of members and Chairperson
- Attendance during the year
- Remuneration policy
- Details of remuneration to all the directors, as per format in main report.

1. Shareholders Committee

- Name of non-executive director heading the committee
- Name and designation of compliance officer
- Number of shareholders complaints received so far
- Number not solved to the satisfaction of shareholders
- Number of pending share transfers

1. General Body meetings

- Location and time, where last three AGMs held.
- Whether special resolutions
- Were put through postal ballot last year, details of voting pattern.
 - Person who conducted the postal ballot exercise
- Are proposed to be conducted through postal ballot
 - Procedure for postal ballot

1. Disclosures

- Disclosures on materially significant related party transactions i.e. transactions of the company of material nature, with its promoters, the directors or the management, their subsidiaries or relatives etc. that may have potential conflict with the interests of company at large.
- Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.

1. Means of communication

- Half-yearly report sent to each household of shareholders.
- Quarterly results
- Which newspapers normally published in.
- Any website, where displayed
 - Whether it also displays official news releases; and
 - The presentations made to institutional investors or to the analysts.
- Whether MD&A is a part of annual report or not.

1. Adequacy of internal audit function

- Any materially significant finding that should be brought to shareholders notice.

1. General Shareholder information

- AGM : Date, time and venue
- Financial Calendar
- Date of Book closure
- Dividend Payment Date
- Listing on Stock Exchanges
- Stock Code
- Market Price Data : High., Low during each month in last financial year
- Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
- Registrar and Transfer Agents
- Share Transfer System
- Distribution of shareholding
- Dematerialization of shares and liquidity
- Details of use of public funds obtained in last three years.
- Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
- Plant Locations
- Address for correspondence