The Structure and Role of Corporate Governance as Per Company Act, 2013.

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Abstract: Every business entity requires a good governance because without a system of rules and practices in place there can be no way to properly run a company. Corporate governance exists to ensure that a business can run smoothly and that everyone knows where their place is. It's also something that even many business leaders simply don't understand. Corporate Governance is the soul of an organization hence it should be strictly adhered to while indulging in business to work towards social and economic development. Corporate Governance essentially acts as a guiding principle to direct operations, supervise processes, analyse procedures, penalize mismanagement, impact on the climate etc. Good corporate governance leads to ethical business practices and this doesn't just make a company more financially viable but it makes it more favourable in the eyes of the general public and its stakeholders. Hence, this paper is an attempt to state the importance of corporate governance in general

Keywords: Governance, company, directors, importance, rules, practices.

Introduction

Corporate governance is beyond the realm of law. It seems from the culture and mindset of management, and cannot be regulated by legislation alone. Corporate governance deals with conducting the affairs of a company such that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. Corporate governance has a broad scope. It includes both social and institutional aspects. It is a system by which companies are directed and managed. It influences how the objectives of the company are set and achieved, how risk is monitored & assessed, & how performance is optimized. The effective implementation of good governance practices would ensure investors confidence in the corporate companies which will lead to greater investment in them ensuring their sustained growth. Thus good corporate governance would greatly benefit the companies enabling them to thrive and prosper.

Objectives of the study

- To study the need and importance of Corporate Governance
- To highlight the key features of corporate governance under companies act 2013

Research Methodology

This study has been done on the basis of secondary data only. The secondary data are collected through Research papers, articles, journals, websites, books etc.

I. Need and basic Principles of Corporate Governance

The Economic success of an organization is not only depending on efficiency, innovation and quality management but also on compliance of good corporate governance. Corporate governance can be defined as a set of rules and regulations according to which the behavior of a company is affected. Another aspect of it is that it is also concerned with the relationships which exists among different stakeholders of the company and with the goals which the company has in view. Shareholders, board of directors, employees, customers, creditors, suppliers, and the community at large are the main stakeholders of a business.

Gabrielle O'Donovan defines corporate governance as 'an internal system encompassing policies, processes and people, which serves the needs of shareholders and other stakeholders, by directing and controlling management activities with good business know-how, objectivity, accountability and integrity. Sound corporate governance is reliant on external marketplace commitment and legislation, plus a healthy board culture which safeguards policies and processes.

The most common definition of corporate governance has been provided by the Organization for Economic Cooperation and Development (OCED), as" a system by which business corporations are directed and controlled. Corporate governance structures specify the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company's objectives are set and the means of attaining those objectives and monitoring performance."

Some companies may view corporate governance as an unnecessary and costly process. However, a proper corporate governance system has many advantages. While corporate governance can benefit companies, its importance relies on how companies use it. As mentioned, corporate governance defines the rules, principles, and regulations that companies can use for control and direction. But for these to be effective, companies must use them properly. There are several reasons why corporate governance is important.

- **Compliance and Risk Mitigation**

Governance, risk mitigation, and compliance have a direct relationship with each other. Company is governed on sound principles that will work accurately to assure that compliance is legally implied over the company. Being stuck with the law and policies, company remain well prepared for any kind of trouble, so the company has risk mitigation. If a company is more disciplined in its operations, company can face any risk arising out of economic, political, or technological events.

- **Strengthen shareholder value;**

However, there is no established relationship between corporate governance and the companies value in market, but corporate governance strengthens the shareholder contentment. It plays an vital part in safeguarding the valuations of a company because the ultimate goal of good governance is to maximize the concerns of the company's valued shareholders.

- **Improved organizational efficiency**

Corporate governance is an important determinant of industrial competitiveness. Nowadays there are many questions raised on the way a company is governed. Better governance ensures enhanced corporate performance and better economic results. Corporate governance lays the foundation for the behavior of the company, the utilization of resources, product/service innovation and overall corporate strategies.

- **Crucial during mergers & acquisitions**

Corporate Governance in India plays a critical role during restructuring events such as mergers and acquisitions. Not only does corporate governance of a company helps to differentiate between good deals from bad ones, but M&A activity by a company with good corporate governance is better received by stakeholders in the market. Another aspect of being mentioned is that mergers and acquisitions also have the power to improve the quality of corporate governance of the organization.

- **Promotes Accountability**

A good corporate governance system ensures that companies follow a sound, transparent, and credible financial reporting system. This way, corporate governance helps promote accountability in a company. This accountability can also help in the above aspects, helping attract more investors or protect stakeholders.

- **Ensure Corporate Social Responsibility**

One area that corporate governance introduces is corporate social responsibility. It usually applies to how companies interact with the environment in which they operate. Corporate social responsibility enables companies to consider the impact their operations have on the environment. Similarly, it promotes sustainability and social responsibility.

II. Features of corporate governance under companies act 2013

The Companies Act, 2013 has taken a foot forward from SEBI's Clause 49 of listing agreement by introducing provisions in the company's act 2013 which promotes corporate governorship code in such a manner that it will no longer be restricted to only listed public companies but also unlisted public companies. Companies Act, 2013 lays greater emphasis on corporate governance as it clearly provides the rules and regulations for the same. The following are the key features highlighted in company's act 2013.

A) Board of Directors

Board of directors is the decision making body of any company. It is the duty of the board to comply with all legal rules and regulations. So it is very important that a company constitutes a board of directors as per the provisions of Companies Act, 2013.

Composition of Board

Section 149 of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, 2 directors in the case of a private company, and 1 director in the case of a One Person Company. A company can appoint a maximum of 15 directors. A company may appoint more than fifteen directors after passing a special resolution in general meeting and approval of Central Government is not required.

The maximum number of directorships, including any alternate directorship a person can hold, is 20. -It has come with a rider that the number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to 10. At least 1 director who has stayed in India for a total period of not less than 182 days in the previous calendar year shall be appointed by every company.

B) Woman Director

As per the Companies Act, 2013, it is mandatory to appoint at least one woman director as a board member in certain types of companies. The penalty for non-compliance of provision extends to a fine of Rs.10,000 with a further fine of Rs.1000 per day if the contravention **Resident Director-** Section 149(3) mandates that every company will have one director who has stayed in India for a period of not less than 182 days.

Position of "Independent Director" In Board Composition

As per sub section 4 of Section 149 of the Companies Act 2013, every listed public company is mandatorily required to have at least one-third of the total number of directors as independent directors. Unlisted public companies must appoint at least two independent directors in the following circumstances:

i)if the paid up share capital exceeds Rs.10 crores;

ii. if the turnover exceeds Rs.100 crores;

iii. if the aggregate of all the outstanding loans, debentures and deposits exceeds Rs 50 Crores.

According to section 134 of Companies Act, 2013 the director has to give a detailed financial report which includes the director's responsibility statement. This provision has been enacted to make directors accountable for their actions.

C) CONSTITUTIONS OF A NUMBER OF COMMITTEES

a) Audit Committee

Section 177 of the companies Act, 2013 provides that both public and private company have to constitute and Audit Committee that comprises minimum three independent directors, in the board along with the chairperson who is capable of reading and understanding the financial statement .Further Rule 6 of the Companies Rules(25) prescribed the companies that need to constitute the Audit Committee. All listed companies and all other public companies have at least Rs. 10 Crores paid-up capital or public companies having at least 100 Crores turnover should constitute the audit committee.

b) NOMINATION AND REMUNERATION COMMITTEE

Nomination and remuneration committee The Board of Directors of the following companies shall constitute Nomination and Remuneration Committee.

1. Every Listed Public Company
2. The Following Class of Companies

- All public companies with a paid-up share capital of Rs. 10/- crores or more; or.
- All public companies having turnover of Rs. 100/- crore or more; or
- All public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50/- crore.

Note: The paid up share capital, turnover , outstanding loans, debentures and deposits, as the case may be as existing on the date of last audited financial statements shall be taken into record.

c) Constitution of the committee

The Board of Directors of the Company (Board) constituted the committee to be known as the Nomination and Remuneration Committee consisting of three non-executive directors out of which two shall be the Independent Directors. The Chairman of the Committee shall be an IndependentDirector**.**

d) Stakeholder Relationship Committee

As per section 178(6) of Companies Act, 2013 if a company has more than one thousand shareholders, debenture-holders, deposit-holders or any other security holders in a financial year then it is mandatory to constitute a stakeholder relationship committee. The main of the committee is to resolve the conflicts between the shareholders and the board of directors and address their grievances. The chairperson of the board shall be a non-executive director.

e) Corporate Social Responsibility committee

The concept of CSR rests on the good corporate citizenship where corporate contributions to the societal growth as a part of their corporate responsibility for utilizing the resources of the society for their productive use.

According to section 135 of the Companies Act,2013, CSR is compulsory for all companies whether government or private and applies to:

- every company
- its holding company
- its subsidiary company
- foreigncompany

Provided they meet the following fiscal criteria:

- Net Worth > 500 Crore
- Turnover > 1000 Crore
- Net Profit > 5 Crore

During the immediately preceding financial year shall constitute CSR Committee of the Board and undertake CSR activities.

Constitution of Committee:

Every company to which CSR criteria is applicable and the amount to be spent by a company is more than Rs. 50 lakh shall be required to constitute a CSR committee of the Board. Corporate Social Responsibility Committee of the Board shall consist of three or more directors, out of which at least one director shall be an independent director.

According to Rule 13 of the Companies (Accounts) Rules, 2014, the following classes of companies are mandated to appoint an internal auditor or a firm of internal auditors.

Following are the Conditions for applicability of internal audit

Particulars	Applicability of internal audit to Listed companies	Applicability of internal audit to Unlisted public companies	Applicability of internal audit to private limited companies
Paid-up share capital	Always applicable	Rs. 50 crores or more	NA
Turnover	Always applicable	Rs. 200 crores or more	Rs. 200 crores or more

Outstanding loans or borrowings from banks or financial institutions	Always applicable	Exceeding Rs. 100 crores	Exceeding Rs. 100 crores
Outstanding deposits	Always applicable	Rs. 25 crores or more	NA

g) Serious Fraud Investigation Offence (SFIO)

Section 211 (1) of the Companies Act, 2013 shall establish an office called the Serious Fraud Investigation office to investigate fraud relating to Company. The powers are given to SFIO under the act as mentioned that he can investigate into the affairs of the company or on receipt of report of Registrar or inspector or in the public interest or request from any Department of Central Government or State Government.

h) Compliance report

Section 134 of the Act makes provisions for the compliance of the reports as mandatory duty on the part of directors. The Report should state that directors should make the provision for the establishment of a proper system to ensure compliance with the applicable laws and such system are working effectively. Section 205 of the Act provides that company secretary have to draft s report to the board about the fulfillment of the provision of the Act, and the various rules made there under and other laws which are applicable to the company.

Conclusion

The effective implementation of good governance practices would ensure investors confidence in the corporate companies which will lead to greater investment in them ensuring their sustained growth. The Companies Act, 2013 has taken a great initiative in establishing good corporate governance in India. Various changes have been introduced through the said Act for establishing transparency, accountability and independence in the operations of a company. The Companies Act, 2013 mainly throws light upon the procedures of the board thus opening the gateway for good corporate governance. Thus good corporate governance would greatly benefit the companies enabling them to thrive and prosper.

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