Board of Directors in PSUs

There are mainly three type of boards in PSUs in India-

1. Functional Board (Directors taken from inside)

2. Policy making board (Directors are mainly from outside)

3. Mixed board

Ministry of Corporate Affairs, Govt. of India has given a detail note on these boards as given below-

Management And Board Governance

1. The Board of Directors has to exercise strategic oversight over business operations while directly measuring and rewarding management's performance. Simultaneously the Board has to ensure compliance with the legal framework, integrity of financial accounting and reporting systems and credibility in the eyes of the stakeholders through proper and timely disclosures.

2. Board's responsibilities inherently demand the exercise of judgment. Therefore the Board necessarily has to be vested with a reasonable level of discretion. While corporate governance may comprise of both legal and behavioral norms, no written set of rules or laws can contemplate every situation that a director or the board collectively may find itself in. Besides, existence of written norms in itself cannot prevent a director from abusing his position while going through the motions of proper deliberation prescribed by written norms. Therefore behavioural norms that include informed and deliberative decision making, division of authority, monitoring of management and even handed performance of duties owed to the company as well as the shareholders are equally important.

3. However in a situation where companies have grown in size and have large public interest potential, it is important to prescribe an appropriate basic framework that needs to be complied with by all companies without sacrificing the basic requirement of allowing exercise of discretion and business judgment in the interest of the company and the stakeholders. The liability of compliance has to be seen in context of the common law framework prevalent in the country along with a wide variety of ownership structures including family run or controlled or otherwise closely held companies.

Board of Directors

4. Obligation to constitute a Board of Directors :-

4.1 The Board of Directors of a company is central to its decision making and governance process. Its liability to ensure compliance with the law underpins the corporate governance structure in a company, the aspirations of the promoters and the rights of stakeholders, all of which get articulated through the actions of the Board. There should be an obligation on the part of a Company to constitute and maintain a Board of Directors as per the provisions of the law and to disclose particulars of the Directors so appointed in the public domain through statutory filing of information.

4.2 Such obligation should extend to the accuracy of the information and it's being updated regularly as well as on occurrence of specific events such as appointment, resignation, removal or any change in prescribed particulars of Directors.

Minimum and Maximum Number of Directors

5.1 Law should provide for minimum number of directors necessary for various classes of companies. The present prescribed requirement is considered adequate. However new kinds of companies will evolve to keep pace with emerging business requirements. Law should therefore include an enabling provision to prescribe specific categories of companies for which a different minimum number may be laid down

5.2 The obligation of maintaining the required minimum number of directors on the Board should be that of the Company

5.3 There need not be any limit to the maximum numbers of directors that a Company may have. Limit to maximum number of directors should be decided by the company by/in the Articles of Association.

5.4 Every Company should have at least one director resident in India to ensure availability in case any issue arises with regard to the accountability of the Board.

Manner of appointment, removal and resignation of Directors

6.1 The ultimate responsibility to appoint/remove directors should be that of the Company (Shareholders). If the Directors themselves are legally disqualified to hold directorships, they should have an equal responsibility for disclosing the fact and reasons for their disqualification.

6.2 Government should not intervene in the process of appointment and removal of Directors in non-Government companies. It is important that role and powers of Government, under the present provisions to intervene in appointment of Directors be reviewed and revised, vesting the responsibility on the shareholders of the company.

6.3 Presently, as per the provisions of Schedule XIII to the Companies Act, it is necessary to obtain the approval of the Central Government for appointing a person who is not resident in India, i.e. a person who has not been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person.

6.4 In today's competitive environment, it may be necessary for a company to appoint a person as Managing Director or Whole-time Director or Manager who is "best suited for the job". The Company should, therefore, have an option to choose such person not only from within India, but from other countries as well. In the light of the above, it is recommended that requirement of obtaining the Central Government's approval under the Companies Act for such non-resident managerial person should be done away with. Such person would continue to be subject to passport/visa, RBI and other Government requirements.

6.5 Duty to inform ROC of particulars regarding directors including their appointment and removal/ resignation/ death, or otherwise ceasing to be Directors should be with the company. Every Director, in turn, should be required to disclose his residence and other particulars, as may be prescribed, to the Company.

6.6 Resignation should be recognized as a right to be exercised by the director and should be considered in light of the recommendations indicated at para 21.1-21.8 below).

Age limit for Directors

7.1 No age limit need be prescribed as per law. There should be adequate disclosure of age in the company's documents. It should be the duty of the Director to disclose his age correctly.

7.2 In case of a public company, appointment of directors beyond a prescribed age say 70 years, should be subject to a special resolution by the shareholders which

should also prescribe his term. Continuation of a director above the age of 70 years, beyond such term, should be subject to a fresh resolution.

Independent Directors

The Concept and Numbers of Independent Directors

8.1 The Committee is of the view that given the responsibility of the Board to balance various interests, the presence of Independent directors on the Board of a Company would improve corporate governance. This is particularly important for public companies or companies with a significant public interest. While directors representing specific interests would be confined to the perspective dictated by such interests, independent directors would be able to bring an element of objectivity to Board process in the general interests of the company and thereby to the benefit of minority interests and smaller shareholders. Independence, therefore, is not to be viewed merely as independence from Promoter Interests but from the point of view of vulnerable stakeholders who cannot otherwise get their voice heard. Law should, therefore, recognize the principle of independent directors and spell out their role, qualifications and liability. However requirement of presence of Independent directors may vary depending on the size and type of company. There cannot be a single prescription to suit all companies. Therefore number of Independent directors may be prescribed through rules for different categories of companies. However a definition of independent director should be incorporated in the Company law.

8.2 In general, in view of the Committee a minimum of one third of the total number of directors as independent directors should be adequate for a company having significant public interest, irrespective of whether the Chairman is executive or non-executive, independent or not. In the first instance this requirement should be extended to public listed companies and companies accepting public deposits. The requirements for other types of companies may be considered in due course.

8.3 In certain cases Regulators may specify requirement of Independent Directors for companies falling within their regulatory domain. Such Regulators may specify the number where provision for appointment of Independent Directors has been extended to a particular class of companies under the Companies Act.

8.4 Nominee directors appointed by any institution or in pursuance of any agreement or Government appointees representing Government shareholding should not be deemed to be independent directors. A view point was expressed that nominees of Banks/Financial Institutions (FIs) on the Boards of companies may be treated as

"Independent". After detailed deliberation, the Committee took the view that such nominees represented specific interests and could not, therefore, be correctly termed as independent.

8.5 There should be no requirement for a subsidiary company to necessarily co-opt an independent director of the holding company as an independent director on its board. Definition of Independent

Director/ Attributes of Independent Directors

9.1 The Committee was of the view that definition of an Independent Director should be provided in law.

9.2 The expression 'independent director' should mean a non-executive director of the company who :- a) Apart from receiving director's remuneration, does not have, and none of his relatives or firms/companies controlled by him have, any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associate companies which may affect independence of the director. For this purpose "control" should be defined in law. b) is not, and none of his relatives is, related to promoters or persons occupying management positions at the board level or at one level below the board; c) is not affiliated to any non-profit organization that receives significant funding from the company, its promoters, its directors, its senior management or its holding or subsidiary company; d) has not been, and none of his relatives has been, employee of the company in the immediately preceding year; e) is not, and none of his relatives is, a partner or part of senior management (or has not been a partner or part of senior management) during the preceding one year, of any of the following:- i] the statutory audit firm or the internal audit firm that is associated with the company, its holding and subsidiary companies; ii) the legal firm(s) and consulting firm(s) that have a material association with the company, its holding and subsidiary companies; f) is not, and none of his relatives is, a material supplier, service provider or customer or a lessor or lessee of the company, which may affect independence of the director; g) is not, and none of his relatives is, a substantial shareholder of the company i.e. owning two percent or more of voting power.

9.3 Explanation :- For the above purposes :- (i) "Affiliate" should mean a promoter, director or employee of the non-profit organization. (ii) "Relative" should mean the husband, the wife, brother or sister or one immediate lineal ascendant and all lineal descendents of that individual whether by blood, marriage or adoption. (iii) "Senior management" should mean personnel of the 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 executive directors, including all functional heads. (iv) "Significant Funding" – Should mean 25% or more of funding of the Non Profit Organization. (v) "Associate Company" – Associate shall mean 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.

Mode of Appointment of Independent Directors

10. The appointment of independent directors should be made by the company from amongst persons, who in the opinion of the company, are persons with integrity, possessing relevant expertise and experience and who satisfy the above criteria for independence.

'Material' Transactions

11.1 The term material pecuniary relationship should also be clearly defined for the purpose of determining whether the director is independent or not. The concept of "Materiality' is relevant from the recipient's point of view and not from that of the company.

11.2 The term 'material' needs to be defined in terms of percentage. In view of the Committee, 10% or more of recipient's consolidated gross revenue / receipts for the preceding year should form a material condition affecting independence.

11.3 For determining materiality of pecuniary relationship, transactions with an entity in which the director or his relatives hold more than 2% shareholding, should also be considered.

11.4 An independent director should make a self-declaration in format prescribed to the Board that he satisfies the legal conditions for being an independent director. Such declaration should be given at the time of appointment of the independent director and at the time of change in status. 11.5 Board should disclose in the Director's Report that independent directors have given self-declaration and that also in the judgment of the Board they are independent. The Board should also disclose the basis for determination that a particular relationship is not material.

Number Of Directorships and Alternate Directors

12.1 The total number of Directorships any one individual may hold should be limited to a maximum of 15.

12.2 The number of alternate directorships a person holds should fall within the overall limit of directorships (Total 15). This is necessitated so that the same person is not an alternate director in a large number of companies which may result in deficiency in discharge of duties.

12.3 An individual should not be appointed as an alternate director for more than one director in the same company.

12.4 An alternate director may be allowed to be appointed for an independent director. However, such alternate director should also be an independent director.

12.5 Same liability structure as would be applicable to Independent Directors should also apply to Alternate Directors to Independent Directors.

Directors' Remuneration

13. There is a need for comprehensive revision of provisions of the Companies Act 1956 relating to payment of managerial remuneration.

13.1 Companies need to adopt remuneration policies that attract and maintain talented and motivated directors and employees so as to encourage enhanced performance of the company. Decision on how to remunerate directors should be left to the Company. However this should be transparent and based on principles that ensure fairness, reasonableness and accountability.

13.2 It is important that there should be a clear relationship between responsibility and performance vis-à-vis remuneration, and that the policy underlying Directors' remuneration be articulated, disclosed and understood by investors/ stakeholders.

13.3 Presently managerial remuneration is subject to Government approvals, both in terms of total remuneration permissible and through specified sub-limits. In view of the Committee, emphasis should be more on disclosures (both on quantity and quality) rather than providing limits/ceilings.

13.4 The Committee examined the relevance of Government approvals on managerial remuneration and its application to any class or classes of companies. It was noted that in the current competitive environment, where Indian companies would be competing for specialized man-power globally, it may not be feasible or appropriate for the Government to intervene in such decisions. The Committee acknowledged the outstanding quality of Indian professionals and the high esteem

and remuneration commanded by them internationally. The international practice does not impose limits on managerial remuneration. A restrictive regime based on Government approvals, apart from introducing delays may also result in best and the brightest moving away across borders in search of higher compensation.

13.5 The Committee felt that the issue of remuneration had to be decided by the shareholders in context of the circumstances of the company. To enable proper decision making in this regard, it was important to subject this aspect to proper corporate governance processes on the basis of correct disclosures. Therefore, the Committee felt that this decision need not be taken by the Government on behalf of the company but should be left to its shareholders whose approval should necessarily be taken. Such approval should take into account the recommendations of Remuneration Committee, where prescribed or in existence, through the Board.

13.6 However, what comprises remuneration should be provided for under the Rules to the Act. No quantified limits need be prescribed. Remuneration received by the directors of the holding company from subsidiary companies need not be barred but should be disclosed in the Annual Report of the holding company.

13.7 In case of inadequacy of profits (or no profits), the company should be allowed to pay remuneration as recommended by Remuneration Committee, where such Committee is prescribed or exists, through the Board and approved by shareholders.

13.8 Though the Committee has separately recommended that the issue of managerial remuneration should be determined by the shareholders only, the Committee also felt that the existing method of computation of net profits for the purpose of managerial remuneration, in the manner laid down in Sections 349 and 350 of the Act, should be done away with since the current provisions of the Companies Act adequately ensure that a true and fair picture of the company's profit is presented.

Sitting Fees to Non-Executive Directors

14. There need not be any limit prescribed to sitting fees payable to non-executive directors. The company, with the approval of shareholders may decide the sitting fees payable to such category of directors and should disclose it in its Directors' Remuneration Report forming part of the Annual Report of the company.

Disclosure of Remuneration

15.1 All type of companies should be required to disclose the Directors'/Managerial remuneration in the Directors' Remuneration Report as a part of the Directors' Report.

15.2 The information in the Directors' Remuneration Report may contain all elements of remuneration package of directors, including severance package and other details like company's policy on directors' remuneration for the following year, performance graph etc.

Remuneration of Non-Executive Directors

16. A company should also be able to decide on remuneration to non-executive directors including independent directors. This may be in the form of Sitting fees for Board and committee meetings attended physically or participated in electronically and / or Profit related commissions

Board Committees

17. While recognizing the need for discretion of the Board to manage and govern the company through collective responsibility, the Committee recognizes the need for focus on certain core areas relevant to investor / stakeholder interests. In such areas, law may mandate the requirement of constitution of specific Committees of the Board whose recommendations would be available to the Board while taking the final decisions. These Committees are as follows :-

Audit Committee for Accounting and Financial matters

17.1 The Committee recommends that :- (a) Majority of the Directors to be independent directors if the Company is required to appoint Independent Directors; (b) Chairman of the Committee also to be independent; (c) At least one member of Audit Committee to have knowledge of financial management or audit or accounts; (d) The Chairman of the Audit Committee should be required to attend the Annual General Meeting of the company to provide any clarification on matters relating to audit. If he is unable to attend due to circumstances beyond his control, any other member of the Audit Committee may be authorized by him to attend the Annual General Meeting on his behalf; (e) The recommendation of the Audit Committee if overruled by the Board, should be disclosed in the Directors' Report along with the reasons for overruling. Stakeholders' Relationship Committee

17.2 Companies having a combined shareholder/deposit holder/ debenture holder base of a thousand or more should be required to constitute a Stake Holders Relationship Committee to monitor redressal of their grievances

17.3 The Committee should be chaired by a Non-Executive director. Remuneration Committee

17.4 There should be an obligation on the Board of a public listed company, or any company accepting deposits, provided as a part of substantive law, to constitute a Remuneration Committee, comprising non-executive directors including at least one Independent Director in the case of a company where Independent directors have been prescribed. In such cases, Chairman of the Committee should be an independent director. Small companies may be exempted from such a requirement.

17.5 The Remuneration Committee will determine the company's policy as well as specific remuneration packages for its managing/executive directors/senior management. The Chairman or in his absence at least one member of the Remuneration Committee should be present in the General Meeting to answer shareholders' queries.

Duties And Responsibilities Of Directors

18.1 International practice (particularly in U.K.) recognizes a very wide spectrum of duties to be discharged by directors of a company. There is an obligation of obedience to the constitution and decisions of the company lawfully taken under it, or under rules of law permitting such decisions to be taken, the duty of loyalty towards the company and, in good faith, to promote its success to the benefit of members as a whole, to exercise independence of judgment along with care, skill and diligence in exercise of duties, to disclose transactions involving conflict of interest and seek shareholders approval as relevant, not to exploit company assets or benefits from third parties for personal purposes, the duty of special care if a company is unable to pay its debts or is facing a likely prospect of an insolvent situation. The question is whether all such duties, and more, can be recognized in law.

18.2 The Committee is of the view that this aspect should be exposed to a thorough debate. The law may include certain duties for directors, with civil consequences to follow for non-performance. However, the law should provide only an inclusive, and not exhaustive list in view of the fact that no rule of universal application can be formulated as to the duties of the directors.

18.3 Certain basic duties should be spelt out in the Act itself such as (a) duty of care and diligence; (b) exercise of powers in good faith, i.e., discharge of duties in the best interest of the company, no improper use of position and information to gain an advantage for themselves or someone else; (c) duty to have regard to the interest of the employees, etc.

Disqualification of Directors

19.1 The conditions for disqualification of a director should be prescribed in the Act itself as they relate to the substantive law and may not require much change once the law is framed.

19.2 Director proposed to be appointed should be required to give a declaration to the Board that he is not disqualified to be appointed as a director under provisions of the Act.

19.3 Provision of Section 274 (1) (g) of the present Companies Act, prescribing the dis-qualifications of directors, inter alia, provides that a person is disqualified for being appointed as a director in other companies for a period of five years, if such person is a director of a public company which has failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more. This disqualification should be retained.

19.4 In case of sick companies which have defaulted on payment of deposits/debentures etc., it is necessary to re-constitute its Board of Directors for the purpose of rehabilitation of such companies. The new directors who join boards of such companies are likely to attract the disqualification under the present Section 274 (1) (g) of the Companies Act. In order to encourage qualified professionals to join Boards of such companies, it is necessary to amend Section 274 (1) (g) of the Companies Act to provide that such disqualification would not be applicable for new directors joining the boards of such sick companies which have failed to repay their deposits, debentures etc.

Vacation of office by the Directors

20. Failure to attend Board Meetings for a continuous period of one year should be made a ground for vacation of office by the concerned director regardless of leave of absence being given by the Board for the meetings held during the year.

Resignation Of Directors

21.1 Resignation should be treated as a choice to be exercised by a director. In case of resignation, it should be sufficient for the director to establish proof of delivery of such information with the company to discharge him of any liability in this regard, or of events taking place subsequent to his having intimated his decision to resign. A copy of the resignation letter should also be forwarded to the ROC within a prescribed period by the Director along with proof of delivery to the company. This is necessary to avoid misuse of this choice through retroactive communications.

21.2 There should not be any requirement on the part of the company to formally accept such resignation for it to be effective. Should become effective from the date of resignation, provided the filing with the ROC is within the prescribed period.

21.3 There should be a specific duty on the part of the company to file information with ROC of a director's resignation within a prescribed period of time of its being received.

21.4 Provision should be made that if the number of directors and the additional directors fall below the minimum strength fixed for the Board under the law, due to the resignation of director(s), the remaining directors can co-opt one or more persons as additional directors.

21.5 If there is a resignation by all directors, then the promoters or persons having controlling interest should either nominate the minimum required number of directors or if they do not, they should be deemed as directors in the intervening period, till the general body of the company appoints new directors. "Controlling Interest" should be defined in law. However, in case of companies without any identifiable promoters, the law will need to specify the manner of selection of directors.

21.6 The promoters of a company should be identified by each company at the time of incorporation and in its Annual Return.

21.7 In the event of all directors vacating office, the promoters should hold office as directors till the next AGM wherein new directors should be appointed.

21.8 To prevent directors from diverting funds of companies, it is necessary to lay down some responsibility on directors who are appointed on the Boards of companies which come out with public issues. Sometimes, due to presence of celebrity directors, the general public gets attracted to invest without heed to the merits of the issue. This is particularly so when such personalities are given a 'larger-than-life' image by the media. The Indian public, newly exposed to capital market may easily be misled. Companies may also raise funds behind such a veneer and later on not use them for the avowed purpose. Therefore, to lay down more responsibilities on companies seeking public subscription, they should be required to preserve the composition of the Board of Directors for two years or till the procured funds are utilized in accordance with the objectives stated in the prospectus, whichever is earlier. In case the director resigns from such a company, his liability under the prospectus including utilization of funds should continue till the above period.

Liabilities Of Independent And Non-Executive Directors

22. A non-executive/independent director should be held liable only in respect of any contravention of any provisions of the Act which had taken place with his knowledge (attributable through Board processes) and where he has not acted diligently, or with his consent or connivance. Knowledge Test 22.1 If the independent director does not initiate any action upon knowledge of any wrong, such director should be held liable. 22.2 Knowledge should flow from the processes of the Board. Additionally, upon knowledge of any wrong, follow up action / dissent of such independent directors from the commission of the wrong should be recorded in the minutes of the board meeting.

Directors and Officers (D&O) Insurance

23. Insurance for key-man and for key directors and officers of companies by means of general insurance policies may be taken by companies. Directors and Officers (D&O) insurance is a means by which companies and their directors/ officers may seek to mitigate potential personal liability. Insurance aids independence as the directors are not dependent on the company. Accordingly, S. 201 of the Companies Act should be modified to have the enabling provision for providing insurance / indemnification in case no wrongful act is established. The insurance premium paid by the company for such a policy need not be treated as a perquisite or income in the hands of director. However, if the wrongful act of the director is established, then

the proportionate amount of premium attributable to such director should be considered as perquisite/income for the purpose of remuneration.

Rights of Independent/Non-Executive Directors

24. Independent / Non-Executive directors should be able to :- - Call upon the Board for due diligence or obtaining of record for seeking professional opinion by the Board; - have the right to inspect records of the company; - review legal compliance reports prepared by the company; and - in cases of disagreement, record their dissent in the minutes.

Meetings Of Directors- Related Matters

25.1 The requirement of the Companies Act, 1956, to hold a meeting every three months and at-least 4 meetings in a year should continue. The gap between two Board Meetings should not exceed four months.

25.2 The Committee is of the view that law should facilitate use of technology to carry out statutory processes efficiently. Meetings of the Board of Directors by electronic means (Teleconferencing and video conferencing included) to be allowed and directors who participate through electronic means should be counted for attendance and form part of Quorum. Minutes should be approved/ accepted by such directors who attended by way of teleconferencing/ videoconferencing (Signature may be accepted by use of digital signature certification. If any director has some reservation about the contents of the Minutes, he may raise the issue in succeeding meeting and the dissent, if any, may be recorded in the minutes of that meeting.

Quorum for emergency meetings

26. In the case of companies where Independent Directors are prescribed :- - Notice of every meeting of the Board of Directors should be given well in advance to ensure participation by maximum number of directors. In view of the Committee, a period of 7 days is sufficient for the purpose. - The presence of one independent director should be made mandatory for board meetings called at short notice. - Meetings at shorter notices should be held only to transact emergency business. In such meetings the mandatory presence of at least one Independent Director should be required since this would ensure that only well considered decisions are taken. - If even one Independent Director is not present in the emergency meeting, then decisions taken at such meetings should be subject to ratification by at least one Independent Director.

Matters to be discussed at a Board Meeting

27. There is a need to ensure that the meetings of Board of Directors provide sufficient time for consideration of important matters. The Committee was of the view that there should be a clear recognition of vital issues for which Board discussion in the meeting of the Board should be mandatory. These matters should not be left to Resolution by circulation since this practice is open to abuse. The suggestions made in the Companies (Amendment) Bill, 2003 may be taken as the basis.

Restrictions on Board's Powers

28. Under Section 293 of the present Act certain restrictions have been placed on the Board of Directors of a public company or of a private company, which is a subsidiary of a public company from deciding on certain matters except with the consent of the shareholders of such company in a general meeting. This provision should be reviewed and it should be provided that the consent of the shareholders should be through a special resolution for certain items such as those presently mentioned in 293 (1) (a), (c) and (d) of the present Act. Shareholders' approval should be required for sale of whole or substantially whole of the undertaking in that financial year. "whole or substantially whole" should mean 20% of the total assets of the company. Further, certain additional items that should require shareholders approval may include sale/transfer of investment in equity shares of other bodies corporate which constitute 20% or more of the total assets of the investing company.

Meetings Of Members

29.1 Every company should be permitted to transact any item of business as it deems fit through postal ballot apart from items for which mandatory postal ballot is prescribed. However, the government should prescribe a negative list of items which should be transacted only at the AGM and not through postal ballot. These negative items could be the following items of Ordinary Business :- (i) consideration of annual accounts and reports of Directors and Auditors; (ii) declaration of dividends; (iii) appointment of directors; and (iv) appointment of and fixing the remuneration of the auditors.

29.2 Similarly, items of business in respect of which Directors/Auditors have a right to be heard at the meeting (e.g. when there is a notice for their removal), should not be transacted through voting by postal ballot.

29.3 Electronic Voting – Law should provide for an enabling clause for voting through electronic mode.

29.4 Place of Meeting - AGM may also be held at a place other than the place of its Registered Office, provided at least 10% members in number reside at such place (In India only).

AGM in Small Companies

30.1 Small Companies may be given an option to dispense with the requirement of holding an AGM. Such companies may be permitted to pass Resolutions by circulation.

30.2 (d) The items of negative lists as identified above, may also be transacted by Small Companies through postal ballot.

Demand For Poll

31.1 The demand for poll can be made by shareholder(s) holding 1/10th of the total voting power or shares of paid up value of Rs.5 lakhs, whichever is less.

31.2 The Committee considered a view that the Chairman of the meeting should have the discretion to overrule a demand for poll, if it can be established that a resolution with the requisite majority can be passed on the basis of representations or proxies at hand. This view has to be balanced with an appreciation of minority interests. In some cases, the powers to demand poll have been misused. The Committee is of the view that the threshold limit needs to be reviewed to enable conduct of business in an orderly yet democratic manner and the same may be prescribed by way of Rules. Alternatively, possibility of vesting the Chairman of the meeting with the power to overrule a demand for poll in certain circumstances may be provided.

Other Recommendations

Higher deposit amount for notice regarding nominating/appointing a director.

32. Presently, any person can give nomination for appointment as a director with a deposit of Rs. 500/- Such nomination should be allowed to be made only by

shareholders constituting 1% of paid up capital and with a deposit of Rs. 10000/- which should be forfeited if the Director does not get elected.

Option of buy-back for shareholders of de-listed companies

33. To protect the shareholders of a listed company that opts to de-list, one buy-back offer by the company should be mandated within a period of 3 years of its de-listing from all the stock exchanges in India. Appropriate valuation Rules for this purpose should be prescribed.

Corporate Structure

34.1 Stakeholders / Board look towards certain Key Managerial Personnel for formulation and execution of policies and to outside independent professionals for independent assurances on various compliances. The Committee feels it desirable to dwell on such managerial personnel who have a significant role to play in the conduct of affairs of the company and determine the quality of its Governance. The Committee is of the view that such key Managerial Personnel may be recognized by the law, along with their liability in appropriate aspects of company operation.

Key Managerial Personnel

34.2 The Committee identifies the following key Managerial Personnel for all companies:- Chief Executive Officer (CEO)/Managing Director Company Secretary (CS) Chief Finance Officer (CFO] RECOMMENDATIONS – Ø The appointment and removal of the key managerial personnel should be by the Board of Directors. Ø The key managerial personnel including managing / (whole time) Executive Directors should be in the whole-time employment of only one company at any given time. Ø Both the managing director as also the whole time directors should not be appointed for more than 5 years at a time. Ø As provided currently, the option to a company to appoint director by proportional representation may be retained. Ø The present requirement of having managing director/whole time director in a pubic company with a paid up capital of Rs.5 crores may be revised to Rs.10 crores by appropriate amendment of the Rules. The said limit could be reviewed from time to time. Ø Special exemptions may be provided for small companies from appointing such personnel on whole-time basis. Such companies may obtain services that may be considered mandatory under law from qualified professionals in practice.

Interested Shareholders

35. The Committee considered the concept of exclusion of interested shareholders from participation in the General Meeting in events of conflict of interest. The Committee felt that this was an aspect of good Corporate Governance which may be adopted by companies on voluntary basis by making a provision in the Article of Association of the company. In view of the issues related with enforcing compliance of such requirements, there need not be any specific legal provision for the purpose.

General

36.1 Sometimes, board appointees include persons who clearly lack the experience or the capacity to function as directors. Low-level employees or un-experienced relatives of shareholders also sometimes find their way into the boards, with 'shadow' directors pulling strings and acting as real decision makers. The law should provide for a framework that allows attribution by recognizing the presence of any person in accordance with whose directions or instructions, the directors of the company are accustomed to act. There should also be a requirement of disclosure of directors background, education, training and qualifications, as well as relationships with managers and shareholders.

36.2 The Committee recognizes that to enable all companies to access good quality managerial talent, efforts by various institutions, organizations and associations to train directors should be encouraged. An important role can be played in this respect by professional bodies, chambers of commerce, trade associations, business and law schools. Such efforts, while upgrading the skills of directors would also expand the pool of candidates from which such candidates may be selected. Such efforts should aim at better discharge of fiduciary duties and value enhancing board activities. There should be specific executive development programmes aimed at developing the awareness levels of Board level appointees. Such persons should also be provided an insight into corporate law compliance requirements.

36.3 It is to recognize that law cannot specify corporate governance in its entirety. There are several behavioural norms that cannot be addressed through a legal framework. There is, therefore, space for Corporate Governance Codes to supplement and strengthen the legal provisions. There should be an interactive dialogue between professional bodies and corporate sector to enable evolution of such Codes.

36.4 Voluntary or Comply-and-Explain codes of conduct for directors should be developed and disseminated by private sector and professional organizations. Such codes should detail the minimum procedures and care that make up due diligence and care. The presence of such codes would serve to educate both directors and investing public.

36.5 The corporates should be encouraged to seek independent assessment/audit of the conduct of polls during general meetings of the company.

36.6 Punishments for violation of fiduciary duties should be sufficiently severe so as to deter wrongdoing.

Source-
http://www.mca.gov.in/MinistryV2/management+and+board+governance.html