

Part II Law of Corporate Governance in India: Note

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NOTES

- ¹ Paul J N Halpern, “Systematic Perspectives on Corporate Governance Systems”, in Stephen S. Cohen and Gavin Boyd (ed.) *Corporate Governance and Globalization – Long Range Planning Issues* (Elgar, USA, 2000).
- ² Kenneth Scott, “The Role of Corporate Governance in South Korea Economic Reform” in Joel M. Stern and Donald H. Chew (ed.), *The Revolution in Corporate Finance* (Blackwell publishes, 4th ed. 2003).
- ³ Discussed in detail by Kenneth Scott, *ibid*.
- ⁴ Raghuram G Rajan and Luigi Zingales, “Which Capitalism? Lessons from East Asian Crisis”, in Joel M. Stern and Donald H.Chew (ed.) *The Revolution in Corporate Finance*, (Blackwell Publishers, 2003).
- ⁵ Jonathan R. Macey, “Measuring the Effectiveness of Different Corporate Governance Systems: Towards a More Scientific approach”, in Joel M.Stern and Donald H.Chew (ed.) *ibid*.
- ⁶ “Corporate Governance and corporate Performance”, in Stephen S. Cohen and Gavin Boyd (ed.), *Corporate Governance and Globalization* (2000).
- ⁷ *Supra* note 1.
- ⁸ James P. Hawley and Andrew T. Williams, *The Rise of Fiduciary Capitalism*, (University of Pennsylvania Press, 2000).
- ⁹ Confederation of Indian Industry (CII), *Desirable Corporate Governance: A Code* (1998).
- ¹⁰ Unit Trust of India (UTI), *Code of Governance* (1999).
- ¹¹ SEBI is a regulatory body established for listed companies on a basis similar to Security and Exchange Commission (SEC) of the United States.
- ¹² Clause 49 was revised and circulated but has been put on hold for the time being.

¹³ Details are available in Company Law Journal cited as (2000) 2 Comp LJ; see also the report of the Group, submitted on March 24, 2001, at <http://www.rbi.org.in>

¹⁴ The clause 49 has been amended by SEBI vide Notification No. SEBI/MRD/SE/2003/26/08, dated August 26, 2003. According to this, the schedule of implementation of corporate governance norms provided under Clause 49 is as follows:-

- (i) by all entities seeking listing for the first time, at the time of listing,
- (ii) by all listed entities having a paid-up share capital of Rs. 3 crores and above or net worth of Rs. 25 crores or more at any time in the history of entity on or before March 31, 2004.

The non-mandatory requirement may be implemented as per the discretion of the adoption or non-adoption of the non-mandatory requirements is required to be made in the section on Corporate Governance of the Annual Report.

The Report shall provide details of compliance with every mandatory item of corporate governance guidelines. The non-compliance of any mandatory requirement with reasons must be stated in the Annual Report. Similarly, the extent to which the non-mandatory requirements have been adopted should also be specifically highlighted.

¹⁵ D.K.Prahlada Rao, “Emerging Trends in Corporate Governance”, 33 Chartered Secretary, A-263-8 (Aug. 2003).

¹⁶ Amit K. Vyas, Status of Corporate Governance in India, Company Law Journal 45, 2002(1). See also the Report of the Standing Committee on International Financial Standards and Codes, <http://www.rbi.org.in>

¹⁷ The requirement to file a “Report on Corporate Governance” in its Annual Report is compulsory for every company. Under the Listing Agreement, the company shall obtain a compliance certificate with corporate governance guidelines either from the company secretaries or auditors and attached with the Director’s report. On the other hand, the Companies (Amendment) Act, 2000 provides that every company having paid-up capital of Rs. 10 lakh or more and not required to employ a whole-time secretary is required to file with the Registrar of Companies a compliance certificate from a secretary in whole-time practice and also to attach a copy of that certificate with Board’s report. (proviso to section 383 A).

¹⁸ Companies (Disqualification of Directors Under Section 274 (1) (g) of the Companies Act, 1956) Rules, 2003.

¹⁹ Muthukumar (K/ETIG), “Sole Curry at Corner Rooms but it can be Scandalous.” The Economic Times, 10 November 2003

²⁰ Companies (Amendment) Act, 1999.

²¹ Department of Company Affairs, Government of India, set-up Prof. Verma Committee to suggest reforms in Sweat Equity and Employee Stock Option Scheme in August 2002. The Committee submitted Report on March 2003. See also SEBI amendments to ESOP and Stock Purchase Guidelines, June 30, 2003.

²² Muthukumar K & Joseph Pereira, “India Inc Boards have Little Room for Women”, The Economic Times, 19 January 2003.

²³ SEBI amended clause 49 in August 2003, vide Notification No. SEBI/MRD/SE/2003/26/08, but has now deferred its implementation till further notice, as per SEBI Press Release 14 December 2003.