



*Commercial's*

# Corporate Governance

Board of Directors,  
Duties and Functions

D.P. Mittal

**Commercial Law Publishers (India) Pvt. Ltd.**

**WITH THE BLESSING OF MATA VAISHNO DEVI**

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*In the loving memory of*  
*my wife*

**PREM LATA MITTAL**



# Preface

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The focus of the book, as its title “Corporate Governance- Board of Directors, Duty and Functions” indicates, is on the proper governance of the company and on the pivotal role performed by the board of directors in directing and controlling the management of the company and its accountability to the stakeholders who appoint them. The general provisions of the Companies Act, 2013 with regard to corporate management and administration of the companies such as registered office, registers of members and debenture-holders, annual returns, meetings and proceedings, accounts, audit, investigation, etc. fall outside the scope of the book.. The focus is on the provisions relating to management and corporate governance by which businesses are directed and controlled.

The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation and other stakeholders and spells out rules and procedures for making decisions on corporate affairs. By doing this, it also provides a structure through which the company objectives are set and the means of attaining those objectives and monitoring performance. The three key constituents of corporate governance are: the board of directors, the shareholders, and the management. The pivotal role is performed by the board of directors. It is accountable to the stakeholders and directs and controls the management. It is the working organ of the company.

Corporate Governance has been compared with State Functioning based on Constitution, describing the “members in general meeting” and the directorate as the two primary organs of a company and comparing them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of Government.

Although a company is a legal entity, it cannot act by itself but acts through its directors. All powers and the management of the affairs of the company are vested in the board of directors, exercisable by them only collectively ; an individual director having no power to act on behalf of the company unless such powers have been delegated to him by the board. The board, thus becomes the working organ of the company. It has all the freedom to exercise its powers subject to articles of association. Even court cannot restrict its powers or interfere with day-to-day functions, management and administration of the company or dictate how the

board should function unless it is established that the decision taken by the board is *ultra vires* the Act or articles

Directors of companies have been variously described as agents, trustees or representatives. They owe a duty to the shareholders and exercise care, skill and diligence in the discharge of their functions. All these and also the appointment, qualification, disqualification, of directors (including of the additional directors, alternate directors, nominee directors, independent directors) and of the managerial personnel, are discussed in 19 chapters.

Chapter 1 is an introductory chapter, dealing with the concept of corporate governance. Chapter 2 deals with constitution of the board. Chapters 3 to 8 deal with matters relating to directors their position vis-à-vis the company, their appointment, retirement by rotation, reappointment, qualification, disqualification, resignation, removal, vacation of office, their functions, duties and obligations, etc. Chapters 9 to 13 deal with matters relating to board of directors, their powers and restrictions, meeting and resolutions and minutes of meeting, disclosure of interests. Chapter 14 deals with the power of company to grant loans to director and chapter 15 deals with power to make investment. Chapter 16 deals with related party transactions. Chapters 17 to 19 deal with matters relating to managerial personnel, key personnel, managing director, whole time director and manager, their appointment and terms and conditions of appointment, remuneration, etc.

The provisions relating to the above as contained in the Companies Act and the Rules are critically examined and analysed with the aid of the decisions of the Indian and foreign courts. Enough reference material has been provided in the end as annexures. To facilitate reference to the text, subject index has been provided.

It is hoped that chartered accounts, company secretaries, advocates, Tribunals and administrative authorities and students would find the book useful

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# Corporate Governance

## Board of Directors, Duties and Functions

### ABOUT THE BOOK

The book "Corporate Governance—Board of Directors, Duties & Functions" is a veritable commentary containing Chapters dealing with Appointments and Qualifications of Directors, Meetings of Board and its Powers and Appointment and Remuneration of Managerial Personnel of the Companies explaining their provisions with the aid of decisions from the Indian and foreign courts. It contains 19 Chapters.

- Chapter 1 is an introductory chapter.
- Chapter 2 deals with constitution of board of directors.
- Chapter 3 deals with position of directors in relation to company, as an agent and trustee, acting on behalf of the company in fiduciary capacity.
- Chapter 4 deals with appointment of independent directors, the manner of their selection, their role, functions and duties.
- Chapter 5 deals with appointment, retirement, reappointment and disqualification of a director, and also deals with appointment of additional director, alternate director and nominee director
- Chapter 6 deals with directors' identification number.
- Chapter 7 deals with duties of directors.
- Chapter 8 deals with directors' resignation, removal, vacation of office.
- Chapter 9 deals with meeting and resolutions of board of directors.
- Chapter 10 deals with minutes of the proceedings of meeting.
- Chapter 11 deals with powers of board of directors.
- Chapter 12 deals with restrictions on the powers of the board of directors.
- Chapter 13 deals with disclosure of interest by directors in a company.
- Chapter 14 deals with loan to directors.
- Chapter 15 deals with loan and investment by a company.
- Chapter 16 deals with related party transactions.
- Chapter 17 deals with appointment and terms and conditions of appointment of managing director, whole time director and manager.
- Chapter 18 deals with managerial remuneration.
- Chapter 19 deals with appointment of key personnel.

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