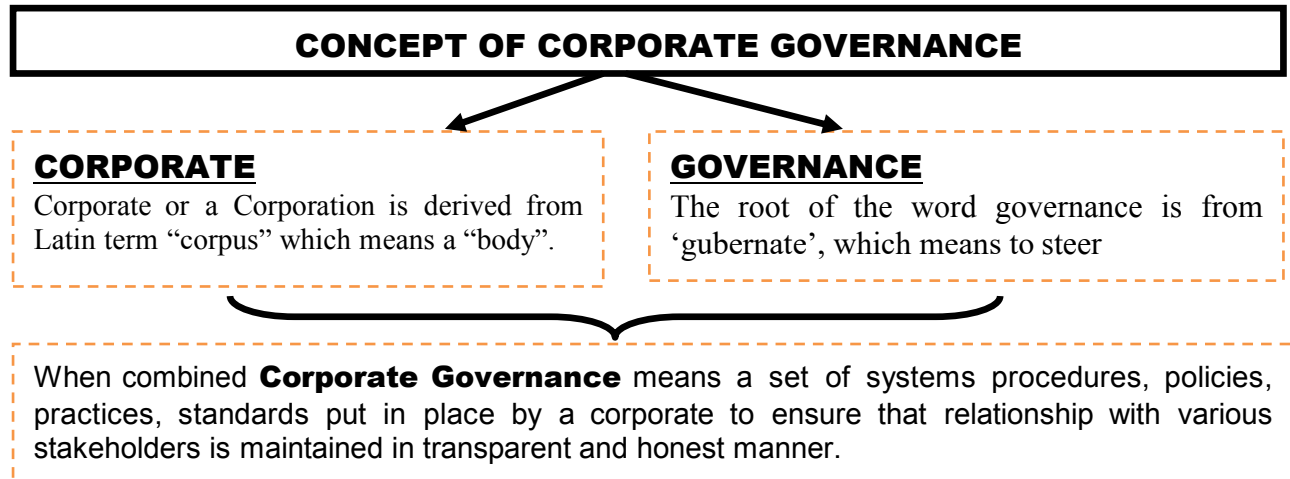


# **CHAPTER- 1**

## **CONCEPTUAL FRAMEWORK OF CORPORATE GOVERNANCE**

### **INTRODUCTION**



#### **SPECIAL NOTE:**

- It is to be borne in mind that mere legislation does **not** ensure good governance.
- Good governance flows from **ethical business practices** even when there is **no legislation**.



#### **NEED FOR CORPORATE GOVERNANCE**

Corporate Governance is needed to create a corporate culture of Transparency, accountability and disclosure. It refers to compliance with all the moral & ethical values, legal framework and voluntarily adopted practices.

#### **BENEFITS OF CORPORATE GOVERNANCE**

1. Reduced Risk of Corporate Crisis and Scandals
2. Corporate Performance
3. Better Access to Global Market
4. Enhanced Investor Trust:
5. Combating Corruption
6. Easy Finance from Institutions



## VARIOUS DEFINITIONS OF CORPORATE GOVERNANCE

Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”(ICSI)

Corporate Governance is concerned with the way corporate entities are governed, as distinct from the way business within those companies is managed. Corporate governance addresses the issues facing Board of Directors, such as the interaction with top management and relationships with the owners and others interested in the affairs of the company” **Robert Ian (Bob) Tricker** (who introduced the words corporate governance for the first time in his book in 1984) (**James D. Wolfensohn (Ninth President World Bank)**)

Corporate governance deals with laws, procedures, practices and implicit rules that determine a company’s ability to take informed managerial decisions *vis-à-vis* its claimants - in particular, its shareholders, creditors, customers, the State and employees. (**Confederation of Indian Industry (CII)**)

Good corporate governance is about 'intellectual honesty' and not just sticking to rules and regulations, capital flowed towards companies that practiced this type of good governance.”  
**Mervyn King (Chairman: King Report)**

The exercise of ethical and effective leadership by the governing body towards the achievement of following governance outcomes:

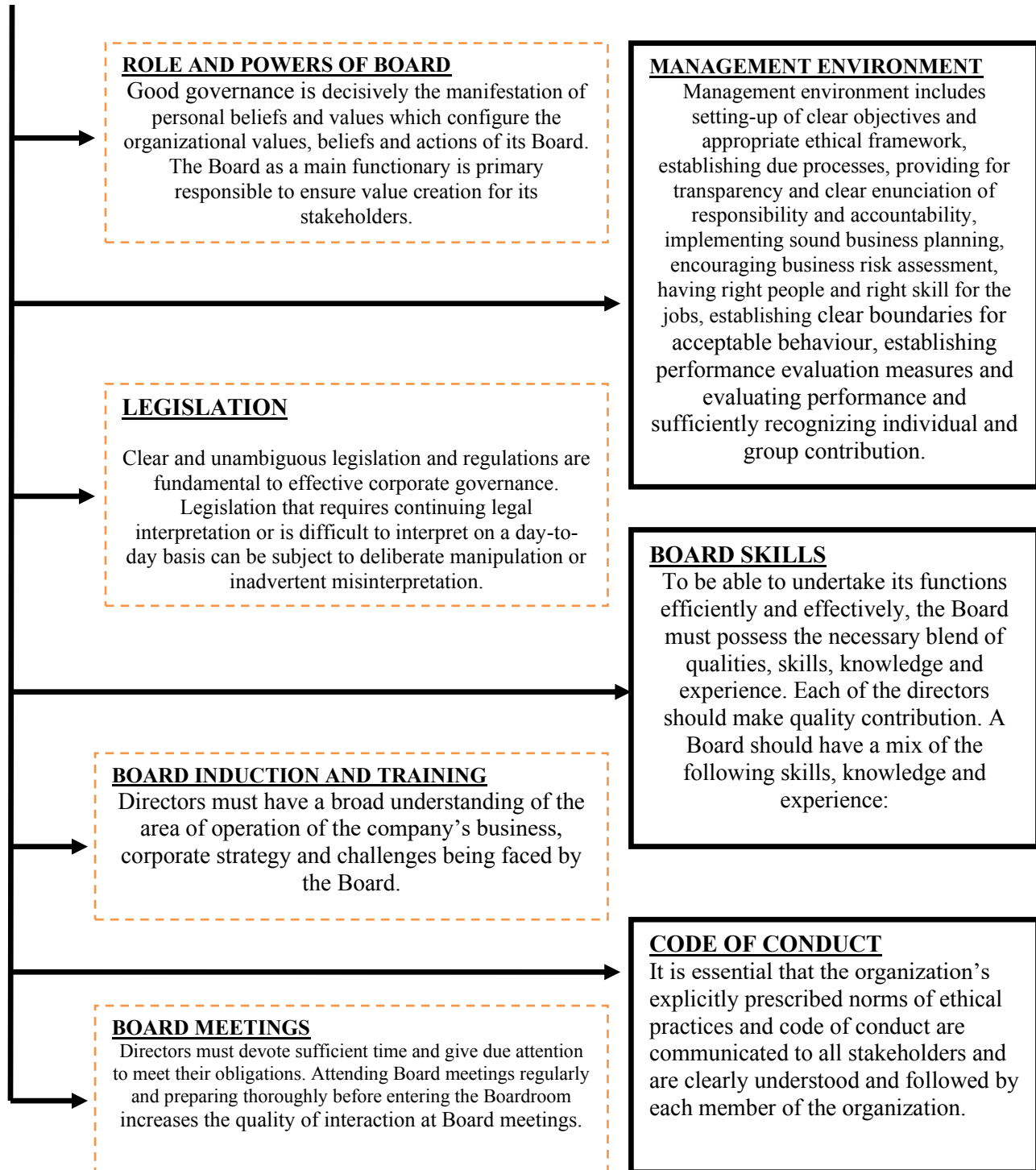
- Ethical culture
- Good performance
- Effective control
- Legitimacy (**King Report on Corporate Governance for South Africa 2017**)

Corporate Governance is a system of structuring, operating and controlling a company with the following specific aims

- Fulfilling long-term strategic goals of owners;
- Taking care of the interests of employees;
- A consideration for the environment and local community;
- Maintaining excellent relations with customers and suppliers;
- Proper compliance with all the applicable legal and regulatory requirements. (**Cadbury Committee, U.K**)



## ELEMENTS OF GOOD CORPORATE GOVERNANCE



## **GOVERNANCE FROM INDIAN SCRIPTURES**

source in the development of principles of National as well as Corporate Governance in India.

Some of the relevant principles of Ramayana which have a bearing in the modern day society can be summed up in these 5 points:

- a) Governance has no inequality, no ups and downs, no differences between rich and poor.
- b) The structure of governance should be such that the environment of mutual trust and love is promoted and this means that there is no jealousy or malice amongst the subjects.
- c) Governance should promote commitment to duty and doing the duty properly gives ultimate happiness.
- d) Governance systems should promote education of one and all, whether man or woman. Education is everyone's right.
- e) Governance should promote the good health of all the persons in the society.

### **Vidur Niti**

The meaning of the word “Vidur” in Sanskrit is “skilled, intelligent and wise”. Vidura-niti, or Vidura's Statecraft, which are narrated in the form of a dialogue between Vidura and King Dhritrashtra were stated to have taken place before the commencement of the Kurukshetra war. While most of the qualities and principles seem to be grounded in politics, these required qualities and principles can equally be well applied to daily life as well as to governance.

### **Shantiparva**

Shantiparva, meaning the book of peace, comprises of 18 parvas (books). It is believed to be the set of instructions given by Shri Bhishma (eldest among the Kuru Family, also called “Pitamah”) to King Yudhishthira. The book comprises of 365 chapters and 13,716 Shlokas, which is further divided into three sub-parvas namely:

- a) Raja Dharma Parva (Chapters 1 to 130 & 4716 Shlokas): Duties of king and his governance.
- b) Apad Dharma Parva (Chapters 131 to 173 & 1649 Shlokas): Rules of conduct when one faces adversity.
- c) Moksha Dharma Parva (Chapters 174 to 365 & 7351 Shlokas): Behaviour and rules to achieve moksha (emancipation, release, freedom).

## Bhagavad Gita

The emphasis of Bhagavad Gita is “Dharma”. Dharma means righteousness; accountability of self, family, organisation and society for order and progress. It is the right path, which will uphold the family, organisational and the social fabric. Hence, it helps in the long-term upliftment of all living beings and ensures welfare of society. Some of the important aspects of governance touched upon in this epic of Mahabharata based on the above ethical principles:-

- a) Public Interest should be given priority over private or personal interest.
- b) Uphold Dharma regardless of conflict of interest, following the principle of “Sva-Dharma” (meaning own dharma), which is unique to that person.
- c) Transparency should be maintained in demonstrating the path of Dharma.

## Arthashastra

### EVIDENCE OF CORPORATE GOVERNANCE FROM THE ARTHASHASTRA

Kautilya’s Arthashastra maintains that for good governance, **all administrators, including the king** were considered servants of the people. Good governance and stability were completely linked. There is stability if leaders are responsive, accountable and removable.

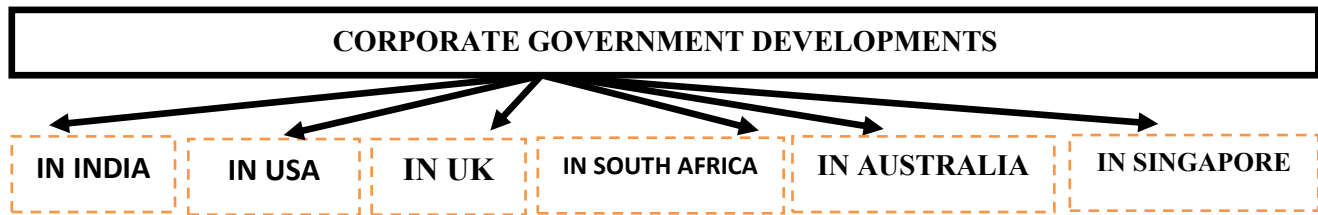
<b>KAUTILYA’S FOURFOLD DUTY OF A KING</b>			
<b>RAKSHA</b>	<b>VRIDDHI</b>	<b>PALANA</b>	<b>YOGAKSHEMA</b>
literally <b>means</b> protection, in the corporate scenario it can be equated with the risk management aspect.	literally <b>means</b> growth, in the present day context can be equated to stakeholder value enhancement	literally <b>means</b> maintenance/compliance, in the present day context it can be equated to compliance to the law in letter and spirit.	literally <b>means</b> well being and in Kautilya’s Arthashastra it is used in context of a social security system. In the present day context it can be equated to corporate social responsibility.

### CORPORATE GOVERNANCE THEORIES

<b>THE FOLLOWING THEORIES ELUCIDATE THE BASIS OF CORPORATE GOVERNANCE</b>	
<b>Agency Theory</b>	<b>According to this theory</b> , managers act as ‘Agents’ of the corporation. The owners set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to-day work of the company.

	<p><b>Corporate Governance</b> is control of management through designing the structures and processes.</p> <p>In <b>agency theory</b>, the owners are the principals. But principals may not have knowledge or skill for getting the objectives executed. Thus, principal authorises the managers to act as ‘Agents’ and a contract between principal and agent is made. Under the contract of agency, the agent should act in good faith. He should protect the interest of the principal and should remain faithful to the goals.</p>
<b>Shareholder Theory</b>	<p><b>According to this theory</b>, it is the corporation which is considered as the property of shareholders/ stockholders.</p> <p>They can dispose off this property, as they like. They want to get maximum return from this property.</p> <p>The owners seek a return on their investment and that is why they invest in a corporation. But this narrow role has been expanded into overseeing the operations of the corporations and its managers to ensure that the corporation is in compliance with ethical and legal standards set by the government.</p>
<b>Stake Holder Theory</b>	<p><b>According to this theory</b>, the company is seen as an input-output model and all the interest groups which include creditors, employees, customers, suppliers, local-community and the government are to be considered.</p> <p>From their point of view, a corporation exists for them and not the shareholders alone.</p>
<b>Stewardship Theory</b>	<p>The word ‘<b>steward</b>’ means a person who manages another’s property or estate. Here, the word is used in the sense of guardian in relation to a corporation, this theory is value based. The managers and employees are to safeguard the resources of corporation and its property and interest when the owner is absent. They are like a caretaker. They have to take utmost care of the corporation. They should not use the property for their selfish ends. This theory thus makes use of the social approach to human nature.</p>



**CORPORATE GOVERNMENT DEVELOPMENTS IN****USA**

YEAR	PROVISIONS	DEVELOPMETS
1977	<b>The Foreign Corrupt Practices Act</b>	Provides for specific provisions regarding establishment, maintenance and review of systems of internal control.
1979	<b>US Securities Exchange Commission</b>	Prescribed mandatory reporting on internal financial controls
1985	<b>Tread way commission</b>	Emphasized the need of putting in place a proper control environment, desirability of constituting independent boards and its committees and objective internal audit function.
1992	<b>(COSO) issued Internal Control Integrated Framework</b>	It is a framework to help businesses and other entities assess and enhance their internal control systems
2002	<b>Sarbanes – Oxley Act</b>	The Act made fundamental changes in virtually every aspect of corporate governance in general and auditor independence, conflict of interests, corporate responsibility, enhanced financial disclosures and severe penalties for wilful default by managers and auditors, in particular.
2010	<b>The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010</b>	<p>This gives shareholders a powerful opportunity to hold accountable executives of the companies they own, and a chance to disapprove where they see the kind of misguided incentive schemes that threatened individual companies and in turn the broader economy.</p> <p><b><u>Some of the main provisions found in the Dodd-Frank Act include:</u></b></p> <ol style="list-style-type: none"> <li>1. Banks are required to come up with plans for a quick shutdown if they approach bankruptcy or run out of money.</li> <li>2. Financial institutions must increase the amount of money they hold in reserve to account for potential future slumps.</li> <li>3. Every bank with more than \$50 billion of assets must take an annual “stress test,” given by the Federal Reserve, which can help determine if the institution could survive a financial crisis.</li> <li>4. The Financial Stability Oversight Council (FSOC) identifies risks that affect the financial industry and keeps large banks in check.</li> <li>5. The Consumer Financial Protection Bureau (CFPB) protects consumers from the corrupt business practices of banks. This</li> </ol>



		<p>agency works with bank regulators to stop risky lending and other practices that could hurt American consumers. It also oversees credit and debit agencies as well as certain payday and consumer loans.</p> <p>6. The Office of Credit Ratings ensures that agencies provide reliable credit ratings to those they evaluate.</p>
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## **SARBANES-OXLEY ACT OF 2002**

In 2002, the United States Congress passed the Sarbanes-Oxley Act (SOX) to protect shareholders and the general public from accounting errors and fraudulent practices in enterprises, and to improve the accuracy of corporate disclosures. Congressmen Paul Sarbanes and Michael Oxley drafted the act with the goal of improving corporate governance and accountability, in light of the financial scandals that occurred at Enron, WorldCom, and Tyco, among others.

The act sets deadlines for compliance and publishes rules on requirements. The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and also created the “Public Company Accounting Oversight Board,” also known as the PCAOB, to oversee the activities of the auditing profession. The Act became effective since 2006 for all publicly-traded companies which are required to implement and report to the SEC for compliance. In addition, certain provisions of Sarbanes-Oxley also apply to privately-held companies.

**The summary highlights of the most important Sarbanes-Oxley sections for compliance are listed below.**

### **SOX Section 302 – Corporate Responsibility for Financial Reports**

- CEO and CFO must review all financial reports.
- Financial report does not contain any misrepresentations.
- Information in the financial report is “fairly presented”.
- CEO and CFO are responsible for the internal accounting controls.
- CEO and CFO must report any deficiencies in internal accounting controls, or any fraud involving the management of the audit committee.
- CEO and CFO must indicate any material changes in internal accounting controls.

### **SOX Section 401: Disclosures in Periodic Reports**

All financial statements and their requirement to be accurate and presented in a manner that does not contain incorrect statements or admit to state material information. Such financial statements should also include all material off-balance sheet liabilities, obligations, and transactions.

### **SOX Section 404: Management Assessment of Internal Controls**

All annual financial reports must include an Internal Control Report stating that management is responsible for an “adequate” internal control structure, and an assessment by management of the effectiveness of the control structure. Any shortcomings in these controls must also be reported. In addition, registered external auditors must attest to the accuracy of the company management’s assertion that internal accounting controls are in place, operational and effective.

### **SOX Section 409: Real Time Issuer Disclosures**

Companies are required to disclose on a almost real-time basis information concerning material changes in its financial condition or operations.

### **SOX Section 802: Criminal Penalties for Altering Documents**

This section specifies the penalties for knowingly altering documents in an ongoing legal investigation, audit, or bankruptcy proceeding.

### **SOX Section 902: Attempts & Conspiracies to Commit Fraud Offenses**

It is a crime for any person to corruptly alter, destroy, mutilate, or conceal any document with the intent to impair the object's integrity or availability for use in an official proceeding.

## **CORPORATE GOVERNMENT DEVELOPMENTS IN UK**

Historical developments in the UK for the improvement in corporate governance since the setting of Cadbury Committee are as under:

### **THE CADBURY REPORT, 1992**

Due to several scandals and financial collapses in the UK in the late 1980s and early 1990s, London Stock Exchange setup the Cadbury Committee in May 1991 to raise the standard of corporate governance or collapse in future. This committee in its report known as Cadbury Report, recommended mainly:



- Separating the role of CEO and Chairman of the Board
- Balanced composition of Board of Directors with executive and non-executive directors
- Selection process for non-executive directors.

### **THE GREENBURY REPORT, 1995**

The Confederation of British Industry set up a group under the Chairmanship of Sir Richard Greenbury to examine the remuneration of the directors. It recommended the formation of Remuneration committee composed of non-executive directors. Its recommendations were incorporated in the Listing Rules of The London Stock Exchange.

### **THE HAMPEL REPORT, 1998**

The Hampel Committee was set up to review the implementation of Cadbury and Greenbury Reports and to see their purposes were being achieved. The Recommendations of committee coupled with further consultations by the London Stock Exchange resulted in a combined code on Corporate Governance, original combined code 1998.



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### **THE TURNBULL REPORT**

A working group under the Chairmanship of Nigier Turnbull recommended the internal Control Guidance for Directors which were included in the combined code.

### **HIGGS REPORT**

The combined code was reviewed in July 2007 by Derek Higgs about the role and effectiveness of non-executive directors.

### **SMITH REPORT**

A group under The Chairmanship of Sir Robert Smith was set up to develop guidance for Audit Committee in the combined code.

### **THE TYSON REPORT**

The Tyson Report was recommended on the recruitment and development of non-executive directors.

### **2018 New edition of the UK Corporate Governance Code-**

The Financial Reporting Council (FRC) **released the 2018 UK Corporate Governance Code**. An updated edition of the FRC's Guidance on Board Effectiveness has also been published.

The Code is applicable to all companies with a premium listing, whether incorporated in the UK or elsewhere. The new Code applies to accounting periods beginning on or after 1 **January 2019**.

This Code puts the relationships between companies and stakeholders at the heart of long-term sustainable growth in the **UK economy**. The new, shorter and sharper Code is the product of extensive consultation.

This Code places emphasis on businesses building trust by forging strong relationships with key stakeholders and providing meaningful reporting to the stakeholders. It recommends the companies to establish a corporate culture that is aligned with the company's purpose, business strategy, promotes integrity and values diversity.

### **The UK Stewardship Code 2020**

Stewardship is the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society. The UK Stewardship Code 2020 is a substantial and ambitious revision to the 2012 edition of the Code which took effect from 1 January 2020. The UK Stewardship Code 2020 (the Code) sets high stewardship standards for asset owners and asset managers, and for service providers that support them. The Code comprises a set of 'apply and explain' Principles for asset managers and asset owners, and a separate set of Principles for service providers. The Code does not prescribe a

single approach to effective stewardship. Instead, it allows organisations to meet the expectations in a manner that is aligned with their own business model and strategy

### **Principle 1**

Signatories' purpose, investment beliefs, strategy, and culture enable stewardship that creates long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.

### **Principle 2**

Signatories' governance, resources and incentives support stewardship.

### **Principle 3**

Signatories manage conflicts of interest to put the best interests of clients and beneficiaries first.

### **Principle 4**

Signatories identify and respond to market-wide and systemic risks to promote a well-functioning financial system.

### **Principle 5**

Signatories review their policies, assure their processes and assess the effectiveness of their activities.  
Investment Approach:

### **Principle 6**

Signatories take account of client and beneficiary needs and communicate the activities and outcomes of their stewardship and investment to them.

### **Principle 7**

Signatories systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities.

### **Principle 8**

Signatories monitor and hold to account managers and/or service providers. Engagement:

### **Principle 9**

Signatories engage with issuers to maintain or enhance the value of assets.

### **Principle 10**

Signatories, where necessary, participate in collaborative engagement to influence issuers.

### **Principle 11**

Signatories, where necessary, escalate stewardship activities to influence issuers. Exercising Rights and Responsibilities:

### **Principle 12**

Signatories actively exercise their rights and responsibilities.

## **PRINCIPLES FOR SERVICE PROVIDERS**

### **Principle 1**

Signatories' purpose, strategy and culture enable them to promote effective stewardship.

### **Principle 2**

Signatories' governance, workforce, resources and incentives enable them to promote effective stewardship.

### **Principle 3**

Signatories identify and manage conflicts of interest and put the best interests of clients first.

### **Principle 4**

Signatories identify and respond to market-wide and systemic risks to promote a well-functioning financial system.

### **Principle 5**

Signatories support clients' integration of stewardship and investment, taking into account, material environmental, social and governance issues, and communicating what activities they have undertaken.

### **Principle 6**

Signatories review their policies and assure their processes.

## **CORPORATE GOVERNMENT DEVELOPMENTS IN SOUTH AFRICA**

In 1992, former South African Supreme Court judge, Mervyn King was asked to chair a private - sector body to draft corporate governance guidelines. The body became known as the King Committee, and its first report, issued in 1994, was regarded by many as ahead of its time in adopting an integrated and inclusive approach to the business life of companies, embracing stakeholders other than shareholders. Three reports were issued in 1994 (King I), 2002 (King II), and 2009 (King III). King's principles of corporate governance are based on apply or explain.



### **KING I REPORT ON CORPORATE GOVERNANCE (1994)**

In 1992, the King Committee on corporate governance was formed in South Africa, and, in line with international thinking, considered corporate governance from a South African perspective. The result was the King Report 1994, which marked the institutionalization of corporate governance in South Africa. It aimed to promote corporate governance in South Africa and established recommended standards of conduct for Boards and directors of listed companies, banks, and certain state-owned enterprises, with an emphasis on the need for companies to become a responsible part of the societies in which they operate.

### **KING II REPORT ON CORPORATE GOVERNANCE (2002)**

In 2002, the second King report on corporate governance was published. It contains a code of corporate practices and conduct. It refers to seven characteristics for good corporate governance:

<b>Discipline</b> - a commitment to behaviour that is universally recognised and accepted as correct and proper.
<b>Transparency</b> - the ease with which an outsider is able to analyse a company's actions.
<b>Independence</b> - the mechanisms to avoid or manage conflict.
<b>Accountability</b> - the existence of mechanisms to ensure accountability.
<b>Responsibility</b> - processes that allow for corrective action and acting responsibly towards all stakeholders.
<b>Fairness</b> - balancing competing interests.
<b>Social Responsibility</b> - being aware of and responding to social issues.

### **KING III REPORT ON CORPORATE GOVERNANCE (2009)**

King III became necessary because of the anticipated new Companies Act, 2008 and changing trends in international governance. As with King I and King II, the King Committee endeavoured to be at the forefront of governance internationally and focused on the importance of reporting annually on how a company has both positively and negatively affected the economic life of the community in which it operated during the year under review. In addition, emphasis has been placed on the requirement to report on how the company intends to enhance those positive aspects and eradicate or

ameliorate any possible negative impacts on the economic life of the community in which it will operate in the year ahead.

### **KING IV REPORT ON CORPORATE GOVERNANCE**

King IV was released on 1 November 2016. It was effective for financial years commencing from 1 April 2017.

King IV builds on King III. It has been revised to bring it up to date with international governance codes and best practice; to align it to shifts in the approach to capitalism (towards inclusive, integrated thinking across the six capitals) and to take account of specific corporate governance developments in relation to effective governing bodies, increased compliance requirements, new governance structures (e.g. Social and Ethics Committee), emerging risks and opportunities from new technologies and new reporting and disclosure requirements e.g. Integrated Reporting.

King IV is structured as a Report that includes a Code, with additional, separate sector supplements for SME's, NPO's, State-Owned Entities, Municipalities and Retirement Funds. The King Code contains both principles and recommended practices aimed at achieving governance outcomes.

King IV requires an "Apply AND Explain" approach to disclosure, as opposed to King III which was 'Apply Or Explain'. This means that application of the principles is assumed and that an explanation is disclosed on the practices that have been implemented and how these support achieving the associated governance principle.

Whilst King IV is voluntary (unless prescribed by law or a stock exchange Listings Requirement) it is envisaged that it will be applicable to all organisations irrespective of their form or manner of incorporation.

#### **The objectives of King IV are to:**

- Promote corporate governance as integral to running an organisation and delivering governance outcomes such as ethical culture, good performance, effective control and legitimacy.
- Broaden the acceptance of the King IV by making it accessible and fit for implementation across a variety of sectors and organisational types.
- Reinforce corporate governance as a holistic and interrelated set of arrangements to be understood and implemented in an integrated manner.
- Encourage transparent and meaningful reporting to stakeholders.
- Present corporate governance as concerned with not only structure and process, but also with an ethical and consciousness and conduct.

### **CORPORATE GOVERNMENT DEVELOPMENTS IN**

### **INDIA**

The initiatives taken by Government in 1991, aimed at economic liberalization and globalisation of the domestic economy, led India to initiate reform process in order suitably respond to the developments taking place world over. On account of the interest generated by Cadbury Committee Report, Confederation of Indian Industry (CII), the Associated Chambers of Commerce and Industry (ASSOCHAM) and, the Securities and Exchange Board of India (SEBI) constituted Committees to recommend initiatives in Corporate Governance.





### **Confederation of Indian Industry (CII) - Desirable Corporate Governance**

CII took a special initiative on Corporate Governance, the first institution initiative in Indian Industry. The objective was to develop and promote a code for Corporate Governance to be adopted and followed by Indian companies, whether in the Private Sector, the Public Sector, Banks or Financial Institutions, all of which are corporate entities. The final draft of the said Code was widely circulated in 1997. **In April 1998, the Code was released. It was called Desirable Corporate Governance.**

### **1999 Kumar Mangalam Birla Committee**

The Securities and Exchange Board of India (SEBI) had set up a Committee on May 7, 1999 under the Chairmanship of Kumar Mangalam Birla to promote and raise standards of corporate governance. The Report of the committee was the first formal and comprehensive attempt to evolve a Code of Corporate Governance, in the context of prevailing conditions of governance in Indian companies, as well as the state of capital markets at that time. The recommendations of the Report, led to inclusion of Clause 49 in the Listing Agreement in the year 2000.

### **2000 Task Force on Corporate Excellence through Governance In May 2000**

The Department of Company Affairs [now Ministry of Corporate Affairs (MCA)] formed a broad-based study group under the chairmanship of Dr. P.L. Sanjeev Reddy, Secretary, DCA. The group was given the ambitious task of examining ways to “operationalise the concept of corporate excellence on a sustained basis”, so as to “sharpen India’s global competitive edge and to further develop corporate culture in the country”. In November 2000, a Task Force on Corporate Excellence set up by the group produced a report containing a range of recommendations for raising governance standards among all companies in India. It also suggested the setting up of a Centre for Corporate Excellence.

### **2002 Naresh Chandra Committee**

The Enron debacle of 2001 involving the hand-in-glove relationship between the auditor and the corporate client, the scams involving the fall of the corporate giants in the U.S. like the WorldCom, Qwest, Global Crossing, Xerox and the consequent enactment of the stringent Sarbanes Oxley Act in the U.S. were some important factors which led the Indian Government to wake up and in the year 2002, Naresh Chandra Committee was appointed to examine and recommend inter alia amendments to the law involving the auditor-client relationships and the role of independent directors.

### **2003 N. R. Narayana Murthy Committee In the year 2002**

SEBI analyzed the statistics of compliance with the clause 49 by listed companies and felt that there was a need to look beyond the mere systems and procedures if corporate governance was to be made effective in protecting the interest of investors. SEBI therefore constituted a Committee under the Chairmanship of Shri N. R. Narayana Murthy, for reviewing implementation of the corporate governance code by listed companies and for issue of revised clause 49 based on its recommendations.

### **2004 Dr. J. J. Irani Committee on Company Law**

The Government constituted a committee under the Chairmanship of Dr. J. J. Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that would be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever- changing business models. The Committee recommended that effective measures be initiated for protecting the interests of stakeholders and investors, including small investors, through legal basis for sound corporate governance practices. With a view to protect the interest of various stakeholders, the Committee also recommended the constitution of a “Stakeholders’ Relationship Committee” and provision of duties of directors in the Act with civil consequences for non-performance.

### **2009 CII’s Task Force on Corporate Governance**

In 2009, CII’s Task Force on Corporate Governance gave its report and suggested certain voluntary recommendations for industry to adopt.

2009 Corporate Governance Voluntary Guidelines Inspired by the industry recommendations, the MCA, in late 2009, released a set of voluntary guidelines on corporate governance. The Guidelines were derived out of the unique challenges of the Indian economy, and took cognizance of the fact that all agencies need to collaborate together, to ensure that businesses flourish, even as they contribute to the wholesome and inclusive development of the country. The Guidelines emphasized that responsible businesses alone will be able to help India meet its ambitious goal of inclusive and sustainable all round development. It urged businesses to embrace the “triple bottom-line” approach whereby their financial performance could be harmonized with the expectations of society, the environment and the many stakeholders in a sustainable manner.

**2010 NASSCOM Recommendations** Corporate Governance and Ethics Committee of the National Association of Software and Services Companies (NASSCOM) issued recommendations in mid-2010, focusing on the stakeholders of the company.

**2012 Policy Document on Corporate Governance** The Ministry of Corporate Affairs constituted a Committee to formulate a Policy Document on Corporate Governance under the chairmanship of Mr. Adi Godrej with the President ICSI as Member Secretary/ Convenor. The Policy Document sought to synthesize the disparate elements in the diverse guidelines, draw on innovative best practices adopted by specific companies, incorporate current international trends and anticipate emerging demands on corporate governance in enterprises in various classes and scale of operations. The Adi Godrej Committee submitted its report which was articulated in the form of 17 Guiding Principles of Corporate Governance.

**2013 Companies Act The Companies Act, 2013** brought with it radical changes in the sphere of Corporate Governance in India. It provided a major overhaul in Corporate Governance norms and

sought to have far-reaching implications on the manner in which corporate operates in India. The Act has since been amended thrice – in 2015, 2017 and 2019. The Amendments impacts different aspects of business management in India, including key structuring, disclosure, and compliance requirements.

**2015 SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015** With a view to consolidate and streamline the provisions of the erstwhile listing agreements for different segments of the capital market and the provisions pertaining to listed entities with the Companies Act, 2013, the SEBI notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the listed entities having listed designated securities on recognized stock exchanges. The provisions of Corporate Governance in SEBI (LODR) Regulations, 2015

**2017 Uday Kotak Committee** The SEBI Committee on corporate governance was formed in June 2017 under the Chairmanship of Mr.Uday Kotak with the aim of improving standards of corporate governance of listed companies in India. With the aim of improving standards of Corporate Governance of listed companies in India, the Committee was requested to make recommendations to SEBI on the following issues:

• Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;
• Improving safeguards and disclosures pertaining to Related Party Transactions;
• Issues in accounting and auditing practices by listed companies;
• Improving effectiveness of Board Evaluation practices;
• Addressing issues faced by investors on voting and participation in general meetings; • Disclosure and transparency related issues, if any;

The Committee submitted its report to SEBI in October 2017. The recommendations of the Committee were given in 11 Chapters as follows: In its board meeting on March 27, 2018, SEBI, after detailed consideration and due deliberation, accepted several recommendations of the Kotak Committee without any modifications and accepted a few other recommendations with certain modifications.

### **JAPAN CORPORATE GOVERNANCE CODE 2018**

Tokyo Stock Exchange, Inc. (TSE) has partially revised the Securities Listing Regulations pertaining to the revision of Japan’s Corporate Governance Code (the Code) with effect from June 1, 2018.

This revision is based on the proposals made by the Council of Experts Concerning the Follow-up of Japan’s Stewardship Code and Japan’s Corporate Governance Code (hereinafter the “Council”). Jointly operated by the Financial Services Agency and TSE, the Council made proposals to revise the Code in order to advance governance reform not just in form but also in substance through dialogue between companies and investors.

## **General Principles:**

### **1. Securing the Rights and Equal Treatment of Shareholders**

Companies should take appropriate measures to fully secure shareholder rights and develop an environment in which shareholders can exercise their rights appropriately and effectively. In addition, companies should secure effective equal treatment of shareholders. Given their particular sensitivities, adequate consideration should be given to the issues and concerns of minority shareholders and foreign shareholders for the effective exercise of shareholder rights and effective equal treatment of shareholders.

### **2. Appropriate Cooperation with Stakeholders Other Than Shareholders**

Companies should fully recognize that their sustainable growth and the creation of mid- to long-term corporate value are brought as a result of the provision of resources and contributions made by a range of stakeholders, including employees, customers, business partners, creditors and local communities. As such, companies should endeavor to appropriately cooperate with these stakeholders. The board and the management should exercise their leadership in establishing a corporate culture where the rights and positions of stakeholders are respected and sound business ethics are ensured.

### **3. Ensuring Appropriate Information Disclosure and Transparency**

Companies should appropriately make information disclosure in compliance with the relevant laws and regulations, but should also strive to actively provide information beyond that required by law. This includes both financial information, such as financial standing and operating results, and non-financial information, such as business strategies and business issues, risk, and governance. The board should recognize that disclosed information will serve as the basis for constructive dialogue with shareholders, and therefore ensure that such information, particularly non-financial information, is accurate, clear and useful.

### **4. Responsibilities of the Board**

Given its fiduciary responsibility and accountability to shareholders, in order to promote sustainable corporate growth and the increase of corporate value over the mid- to long-term and enhance earnings power and capital efficiency, the board should appropriately fulfill its roles and responsibilities, including: (1) Setting the broad direction of corporate strategy; (2) Establishing an environment where appropriate risk-taking by the senior management is supported; and (3) Carrying out effective oversight of directors and the management (including shikkoyaku and so-called shikkoyakuin) from an independent and objective standpoint. Such roles and responsibilities should be equally and appropriately fulfilled regardless of the form of corporate organization – i.e., Company with Kansayaku Board (where a part of these roles and responsibilities are performed by kansayaku and the kansayaku board), Company with Three Committees (Nomination, Audit and Remuneration), or Company with Supervisory Committee.

## 5. Dialogue with Shareholders

In order to contribute to sustainable growth and the increase of corporate value over the mid- to long-term, companies should engage in constructive dialogue with shareholders even outside the general shareholder meeting. During such dialogue, senior management and directors, including outside directors, should listen to the views of shareholders and pay due attention to their interests and concerns, clearly explain business policies to shareholders in an understandable manner so as to gain their support, and work for developing a balanced understanding of the positions of shareholders and other stakeholders and acting accordingly.

### **JAPAN STEWARDSHIP CODE 2020**

#### **Introduction**

Japan's stewardship code is a set of regulatory guidelines to establish fiduciary duty by institutional investors on behalf of their clients. The code was proposed in 2012, following fallout from the 2008 financial crisis, and ratified in 2013. The Code defines principles for institutional investors to behave as responsible financial stewards with due regard both to their clients and beneficiaries and to investee companies. The Code primarily targets institutional investors investing in Japanese listed shares.

Since its initial release, the Code has continued to embrace the following approach:

- i. **Soft Law Approach** – although the Code is not legally binding, the FSA encourages institutional investors to voluntarily adopt the principles of the Code by disclosing a list of institutional investors who have become signatories.
- ii. **Principles-Based Approach** – the Code adopts a principles-based approach (instead of a rules-based approach) so that the way in which the Code's principles are applied in practice, can differ depending on factors such as the investor's size and investment policies, as long as the purpose and spirit of these principles are followed.
- iii. **“Comply or Explain” Approach** – the Code adopts a “comply or explain” approach under which an institutional investor can either disclose its intention to comply with a principle or provide sufficient explanation as to why it is not suitable to adopt such principle.

#### **Important points of amended Japan Stewardship Code 2020:**

- (1) **Stress on Sustainability including ESG Factors:** The main purposes of the Revision Code are to address issues of sustainability including ESG factors. The Revision Code redefines “stewardship responsibilities” and clearly instructs institutional investors to consider sustainability (medium- to long-term sustainability including ESG factors) according to their investment management strategies in the course of their constructive engagement with investee companies.

The Revision Code also requests that institutional investors clearly explain, in their stewardship policies, how they consider sustainability issues according to their investment management strategies.

- (2) **Disclosure of reasons for votes on agenda items-** The previous version of the Code stated that institutional investors should, in principle, disclose voting records for each investee company on an individual agenda item basis, noting that it would contribute to the enhancement of visibility for institutional investors, explicitly to explain why they voted for or against an agenda item.

The Revision Code has taken this position further and specifically instructs institutional investors to disclose their voting rationale, whether they voted for or against agenda items, that are considered important from the standpoint of constructive dialogue with investee companies (including those perceived to give rise to a conflict of interest or those that need explanation in light of their voting policy).

- (3) **Application of the Code to Asset Classes other than Listed Shares-** The previous version of the Code stated that the Code mainly targets institutional investors investing in Japanese listed shares.

While that remains unchanged, the Revision Code explicitly adds that it may also apply to other asset classes, as far as it contributes to fulfilling stewardship responsibilities as defined in the Code.

- (4) **Stewardship activities of Asset Owners such as Corporate Pension Funds-** To help corporate pension funds understand stewardship activities set forth in the Code, the Revision Code clarifies stewardship responsibilities of asset owners.

The Revision Code instructs asset owners to encourage asset managers to engage in effective stewardship activities accordingly to their size and capabilities, in order to secure the interests of the beneficial owners. When asset owners manage funds and exercise their voting rights by themselves, they should engage in stewardship activities such as holding dialogues with investee companies accordingly to their size and capabilities.

For proxy advisors, the Revision Code expects them to develop appropriate and sufficient human and operational resources, including setting up a business establishment in Japan, in order to provide asset managers with proxy recommendations based on accurate information on each company. Proxy advisors should also disclose the voting recommendation process such as their primary information source or whether (and how) they conduct dialogue with investee companies to ensure transparency.

Additionally, the Revision Code recommends that proxy advisors actively exchange views with companies as necessary. This may contribute to assurance of transparency, as proxy advisors provide investee companies with opportunities to confirm accuracy of information, on which their proxy recommendations are premised (if requested by investee companies), and provide the opinions submitted by such companies to their clients together with their own recommendations.



## **ITALIAN CORPORATE GOVERNANCE CODE, 2020**

In January 2020, the Italian Corporate Governance Committee released the new edition of the Corporate Governance Code. The Corporate Governance Code ("Code") applies to all companies with shares listed on the Italian main market.

The companies adopting the Code are required to apply it starting from the first financial year that begins after 31 December 2020, while the disclosure shall be provided in the corporate governance report to be published during 2022.

### **The Italian Corporate Governance Code, 2020 focuses on the following:**

- i. Article 1- Role of the board of directors
- ii. Article 2- Composition of the corporate bodies
- iii. Article 3- Functioning of the board of directors and the role of the chair.
- iv. Article 4- Appointment of directors and board evaluation.
- v. Article 5- Remuneration
- vi. Article 6- Internal control and risk management system.

Sustainability and proportionality are at the heart of the new Corporate Governance Code for listed companies recently approved by the Italian Corporate Governance Committee (the “New CG Code”).

The New CG Code - which replaces the current Corporate Governance Code (the “2018 CG Code”) and will be applicable on a “comply or explain” basis, starting from the first financial year beginning after 31 December 2020 – has a renewed structure, divided into “Principles” and “Recommendations”

## **CORPORATE GOVERNANCE IN AUSTRALIA**

### **Corporate Governance Principles and Recommendations, Australia -2019**

The ASX Corporate Governance Council (“Council”), convened in August 2002 is the organisation which brings together various business, shareholder and industry groups, each offering valuable insights and expertise on governance issues from the perspective of their particular stakeholders. Its primary work has been the development of the Principles and Recommendations.

The Corporate Governance Principles and Recommendations (“Principles and Recommendations”) were first introduced in 2003. A second edition was published in 2007 and a third in 2014. In 2017, the Council agreed that it was an appropriate time to commence work on a fourth edition of the Principles and Recommendations to address emerging issues around culture, values and trust, fuelled by recent examples of conduct by some listed entities falling short of community standards and expectations.

The fourth edition comes into force for financial years commencing on or after 1 January 2020.





These Principles and Recommendations set out recommended corporate governance practices for entities admitted to the ASX official list as an ASX listing, regardless of the legal form they take, whether they are established in Australia or elsewhere, and whether they are internally or externally managed. The Principles and Recommendations are not mandatory and do not seek to prescribe the corporate governance practices that a listed entity must adopt.

The “if not, why not” approach is fundamental to the operation of the Principles and Recommendations. This approach ensures that the market receives an appropriate level of information about the entity’s governance arrangements so that investors and other stakeholders can have a meaningful dialogue with the board and management on governance matters and can factor the information provided into their decision on whether or not to invest in the entity and how to vote on particular resolutions.

The Principles and Recommendations are structured around, and seek to promote, 8 central principles. There are 35 specific recommendations of general application intended to give effect to these principles, as well as 3 additional recommendations that only apply in certain limited cases.

## **8 CENTRAL PRINCIPLES**

1. Lay solid foundations for management and oversight: A listed entity should clearly delineate the respective roles and responsibilities of its board and management and regularly review their performance.
2. Structure the board to be effective and add value: The board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and the industry in which it operates, to enable it to discharge its duties effectively and to add value.
3. Instil a culture of acting lawfully, ethically and responsibly: A listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.
4. Safeguard the integrity of corporate reports: A listed entity should have appropriate processes to verify the integrity of its corporate reports.
5. Make timely and balanced disclosure: A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.
6. Respect the rights of security holders: A listed entity should provide its security holders with appropriate information and facilities to allow them to exercise their rights as security holders effectively.
7. Recognise and manage risk: A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.
8. Remunerate fairly and responsibly: A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders and with the entity’s values and risk appetite.

## **CORPORATE GOVERNANCE IN SINGAPORE**

### **Code of Corporate Governance, Singapore - 2018**

The Code of Corporate Governance (the “Code”), which is applicable to listed companies in Singapore on a comply-or-explain basis, first came into effect on 1 January 2003.

On August 6, the Monetary Authority of Singapore (“MAS”) announced the adoption of a new Code of Corporate Governance (the “Code”) along with the new Practice Guidance. The new Code comes after MAS conducted a public consultation on changes to Singaporean corporate governance practices.



The Code will initially take effect for companies with a financial year beginning January 1, 2019, concurrent with changes to Singapore Exchange Limited (“SGX”) Listing Rules, however some of the changes will not be phased in until 2022.

The Code aims to promote high levels of corporate governance in Singapore by putting forth Principles of good corporate governance and Provisions with which companies are expected to comply. The Practice Guidance complements the Code by providing guidance on the application of the Principles and Provisions and setting out best practices for companies. Adoption of the Practice Guidance is voluntary.

This version of the Code has at its core broad Principles of corporate governance. Compliance with, and observation of, these Principles is mandatory. These Principles set out broadly accepted characteristics of good corporate governance. Companies are required to describe their corporate governance practices with reference to both the Principles and Provisions, and how the company’s practices conform to the Principles.

The emphasis of the Code is for companies to provide thoughtful and meaningful explanations around their practices, and for investors to carefully consider these discussions as part of their engagements with companies. Frank and informed dialogue between companies and their shareholders is a central tenet of good corporate governance, and encourages more active stewardship. Better engagement between these parties will benefit the company and investors.

### **PRINCIPLES**

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|--|
| • The company is headed by an effective Board which is collectively responsible and works with Management for the long-term success of the company.                                  |
| • The Board has an appropriate level of independence and diversity of thought and background in its composition to enable it to make decisions in the best interests of the company. |
| • There is a clear division of responsibilities between the leadership of the Board and Management, and no one individual has unfettered powers of decision-making.                  |
| • The Board has a formal and transparent process for the appointment and reappointment of directors, taking into account the need for progressive renewal of the Board.              |
| • The Board undertakes a formal annual assessment of its effectiveness as a whole, and that of each of its board committees and individual directors.                                |

<ul style="list-style-type: none"> <li>• The Board has a formal and transparent procedure for developing policies on director and executive remuneration, and for fixing the remuneration packages of individual directors and key management personnel. No director is involved in deciding his or her own remuneration.</li> </ul>
<ul style="list-style-type: none"> <li>• The level and structure of remuneration of the Board and key management personnel are appropriate and proportionate to the sustained performance and value creation of the company, taking into account the strategic objectives of the company.</li> </ul>
<ul style="list-style-type: none"> <li>• The company is transparent on its remuneration policies, level and mix of remuneration, the procedure for setting remuneration, and the relationships between remuneration, performance and value creation.</li> </ul>
<ul style="list-style-type: none"> <li>• The Board is responsible for the governance of risk and ensures that Management maintains a sound system of risk management and internal controls, to safeguard the interests of the company and its shareholders.</li> </ul>
<ul style="list-style-type: none"> <li>• The Board has an Audit Committee (“AC”) which discharges its duties objectively.</li> </ul>
<ul style="list-style-type: none"> <li>• The company treats all shareholders fairly and equitably in order to enable them to exercise shareholders’ rights and have the opportunity to communicate their views on matters affecting the company. The company gives shareholders a balanced and understandable assessment of its performance, position and prospects.</li> </ul>
<ul style="list-style-type: none"> <li>• The company communicates regularly with its shareholders and facilitates the participation of shareholders during general meetings and other dialogues to allow shareholders to communicate their views on various matters affecting the company.</li> </ul>
<ul style="list-style-type: none"> <li>• The Board adopts an inclusive approach by considering and balancing the needs and interests of material stakeholders, as part of its overall responsibility to ensure that the best interests of the company are served.</li> </ul>

### **THE FINNISH CORPORATE GOVERNANCE CODE, 2020**

The new Corporate Governance Code for Finnish listed companies (“2020 CG Code”) entered into force from 01 January 2020 replacing the previous CG Code applied since 2016 (“2015 CG Code”). The purpose of the Corporate Governance Code is to harmonise the procedures of listed companies and to promote openness with regard to corporate governance and remuneration.

From the perspective of a shareholder and an investor, the Corporate Governance Code increases the transparency of corporate governance and the ability of shareholders and investors to evaluate the practices applied by individual companies.

The Corporate Governance Code also provides investors with an overview of the kinds of corporate governance practices that are acceptable for Finnish listed companies. While the number of recommendations in the 2020 CG Code has decreased, the 2020 CG Code introduces additional requirements on listed companies, in particular in relation to remuneration and related party transactions as required by the Shareholders’ Rights Directive and the national rules implementing the Directive.

The 2020 CG Code also introduces changes to the recommendation concerning the audit committee and clarifications to the recommendation concerning the assessment and disclosure of independence of board members. For example, the company’s remuneration statement has been replaced by the remuneration policy for governing bodies (“remuneration policy”) and remuneration report for

governing bodies (“remuneration report”), which are supplemented by information provided on the company’s website. The remuneration policy and report concern the company’s board of directors, supervisory board, if any, and the managing director and deputy managing director. Information on the remuneration of the rest of the management team will in future be provided on the company’s website.

The remuneration reporting section also includes a checklist to clarify the reporting obligations. Similarly, the board must in future report which of the board members are independent of the company and which are independent of the company’s significant shareholders. In addition, the reasoning for determining that a board member is not independent must also be reported. The criteria to be taken into account in the overall assessment of independence have also been supplemented so that under the interpretation of the criteria, the benefits paid and offered to a member of the board by a shareholder otherwise than on the basis of an employment or service relationship may require assessment.

### **GLOBAL DEVELOPMENTS**

<b>Years</b>	<b>Global Developments</b>	<b>Brief on Global Developments Initiatives</b>
1972	Stockholm Conference	The 1972 United Nations Conference on the Human Environment in Stockholm was the first world conference to make the environment a major issue. The participants adopted a series of principles for sound management of the environment including the Stockholm Declaration and Action Plan for the Human Environment and several resolutions.
1987	OUR COMMON FUTURE	<p>A global agenda for change" - this was what the World Commission on Environment and Development was asked to formulate. It was an urgent call by the General Assembly of the United Nations:</p> <p>a) to propose long-term environmental strategies for achieving sustainable development by the year 2000 and beyond;</p> <p>b) to recommend ways concern for the environment may be translated into greater co-operation among developing countries and between countries at different stages of economical and social development and lead to the achievement of common and mutually supportive objectives that take account of the interrelationships between people, resources, environment, and development;</p> <p>c) to consider ways and means by which the international community can deal more effectively with environment concerns; and</p> <p>d) to help define shared perceptions of long-term environmental issues and the appropriate efforts needed to deal successfully</p>

		with the problems of protecting and enhancing the environment, a long term agenda for action during the coming decades, and aspirational goals for the world community.
1988	IPCC	<p>The Intergovernmental Panel on Climate Change (IPCC) was established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988.</p> <p>The establishment of the IPCC was endorsed by UN General Assembly in 1988. Its initial task, as outlined in UN General Assembly Resolution 43/53 of 6 December 1988, was to prepare a comprehensive review and recommendations with respect to the state of knowledge of the science of climate change; the social and economic impact of climate change, and potential response strategies and elements for inclusion in a possible future international convention on climate.</p>
1992	Rio Earth Summit	<p>The United Nations Conference on Environment and Development (UNCED), also known as the 'Earth Summit', was held in Rio de Janeiro, Brazil, from 3-14 June 1992.</p> <p>The Rio de Janeiro conference highlighted how different social, economic and environmental factors are interdependent and evolve together, and how success in one sector requires action in other sectors to be sustained over time.</p> <p>The primary objective of the Rio 'Earth Summit' was to produce a broad agenda and a new blueprint for international action on environmental and development issues that would help guide international cooperation and development policy in the twenty-first century.</p>
1997	UNFCCC	<p>The United Nations Framework Convention on Climate Change (UNFCCC) was operationalized through Kyoto Protocol by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets.</p> <p>The supreme decision making body of the Convention is COP. All States that are Parties to the Convention are represented at the COP, at which they review the implementation of the Convention and any other legal instruments that the COP adopts and take decisions necessary to promote the effective implementation of the Convention, including institutional and administrative arrangements. The last COP, i.e. COP 27 was held at Sharm el-Sheikh, Egypt.</p>
	GRI	GRI was founded in Boston (USA) in 1997 following on from the public outcry over the environmental damage of the Exxon Valdez oil spill, eight years previously.

		<p>The first version of what was then the GRI Guidelines (G1) published in 2000 – providing the first global framework for sustainability reporting. The following year, GRI was established as an independent, non-profit institution.</p> <p>In 2002, the GRI's Secretariat relocated to Amsterdam (The Netherlands), and the first update to the Guidelines (G2) launched. As demand for GRI reporting and uptake from organizations steadily grew, the Guidelines were expanded and improved, leading to G3 (2006) and G4 (2013).</p>
1998	AccountAbility (AA)(Institute of Social and Ethical Accountability)	AA 1000 Accountability Principles. The principles were updated in 2018. The AA 1000 AP (2018) is an internationally accepted, principles-based framework that guides organisations through the process of identifying, prioritizing, and responding to sustainability challenges, with the goal of improving long-term performance.
	OECD	<p>The OECD Council, meeting at Ministerial level on 27-28 April 1998, called upon the OECD to develop, in conjunction with national governments, other relevant international organisations and the private sector, a set of corporate governance standards and guidelines. In order to fulfil this objective, the OECD established the Ad-Hoc Task Force on Corporate Governance to develop nonbinding principles that embody the views of Member countries on this issue.</p> <p>The Principles developed are as under:</p> <ol style="list-style-type: none"> <li>1. The Rights of Shareholders.</li> <li>2. The Equitable Treatment of Shareholders</li> <li>3. The Role of Stakeholders in Corporate Governance.</li> <li>4. Disclosure and Transparency.</li> <li>5. The Responsibilities of the Board.</li> </ol>
2000	Earth Charter	<p>In 1987 The World Commission on Environment and Development (known as “the Brundtland Commission”) launched Our Common Future Report with a call for a “new charter” to set “new norms” to guide the transition to sustainable development.</p> <p>Following that, discussion about an Earth Charter took place in the process leading to the Earth Summit in Rio de Janeiro in 1992, but the time for such a declaration was not right. The Rio Declaration became the statement of the achievable consensus at that time.</p>



		<p>In 1994, Maurice Strong (Secretary-General of the Rio Earth Summit) and Mikhail Gorbachev, working through organizations they each founded (Earth Council and Green Cross International respectively), launched an initiative (with the support from the Dutch Government) to develop an Earth Charter as a civil society initiative. The initial drafting and consultation process drew on hundreds of international documents.</p> <p>An independent Earth Charter Commission was formed in 1997 to oversee the development of the text, analyze the outcomes of a worldwide consultation process and to come to an agreement on a global consensus document.</p>
2003	Equator Principles	<p>The Equator Principles are a risk management framework for financial institutions to determine, assess and manage environmental and social risk in projects. They are primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making.</p>
2004	A4S: Accountability for Sustainability	<p>The Accounting for Sustainability Project (A4S) was established by HRH The Prince of Wales with the aim to “make sustainable business decisionmaking business as usual”. It laid the foundation for the development of other initiatives such as IIRC.</p> <p>A4S aims to inspire action by finance leaders to drive a fundamental shift towards resilient business models and a sustainable economy. To do this, A4S has three core aims:</p> <ul style="list-style-type: none"> <li>i) Inspire finance leaders to adopt sustainable and resilient business models.</li> <li>ii) Transform financial decision making to enable an integrated approach, reflective of the opportunities and risks posed by environmental and social issues.</li> <li>iii) Scale up action across the global finance and accounting community</li> </ul>
2005	Kyoto Protocol	<p>The Kyoto Protocol is based on the principles and provisions of the Convention and follows its annex-based structure.</p> <p>It only binds developed countries, and places a heavier burden on them under the principle of “common but differentiated responsibility and respective capabilities”, because it recognizes that they are largely responsible for the current high levels of GHG emissions in the atmosphere.</p> <p>One important element of the Kyoto Protocol was the establishment of flexible market mechanisms, which are based on the trade of emissions permits. Under the Protocol, countries must meet their targets primarily through national measures.</p>



		<p>However, the Protocol also offers them an additional means to meet their targets by way of three market-based mechanisms:</p> <ul style="list-style-type: none"> <li>i) International Emissions Trading.</li> <li>ii) Clean Development Mechanism (CDM).</li> <li>iii) Joint implementation (JI)</li> </ul>
2007	CDSB	The Climate Disclosure Standards Board (CDSB) is an international consortium of business and environmental NGOs
2008	IFC'S Corporate Governance Methodology	IFC's Corporate Governance Methodology is an approach to evaluate and improve the corporate governance of a company to identify, reduce and manage risk.
2009	Sustainable Stock Exchanges (SSE)	United Nations Sustainable Stock Exchanges Initiative (UNSSSE) has a mission to provide a global platform for exploring how exchanges, in collaboration with investors, companies (issuers), regulators, policymakers and relevant international organisations, can enhance performance on ESG issues and encourage sustainable investment, including the financing of the UN Sustainable Development Goals.
2010	ISO	<p>ISO 26000 Standard is intended to assist organisations in contributing to sustainable development.</p> <p>ISO 26000 provides guidance to all types of organizations, regardless of their size or location, on:</p> <ul style="list-style-type: none"> <li>a) concepts, terms and definitions related to social responsibility;</li> <li>b) the background, trends and characteristics of social responsibility;</li> <li>c) principles and practices relating to social responsibility;</li> <li>d) the core subjects and issues of social responsibility;</li> <li>e) integrating, implementing and promoting socially responsible behaviour throughout the organization and, through its policies and practices, within its sphere of influence;</li> <li>f) identifying and engaging with stakeholders; and</li> <li>g) communicating commitments, performance and other information related to social responsibility.</li> </ul>
2011	OECD's Guidelines for Multinational Enterprises	The OECD's Guidelines for Multinational Enterprises are recommendations from governments to multinational enterprises on responsible business conduct.

	CGDF (Corporate Governance Development Framework )	IFC and 28 other Development Financial Institutions (DFIs) signed the Corporate Governance Development Framework, a common methodology for assessing corporate governance in the DFIs investment work, which is based on IFC's corporate governance methodology.
2012	RIO+20	The United Nations Conference on Sustainable Development - or Rio+20 - took place in Rio de Janeiro, Brazil on 20-22 June 2012. It resulted in a focused political outcome document which contains clear and practical measures for implementing sustainable development.
2013	IR (Integrated Reporting)	International Integrated Reporting Framework published by International Integrated Reporting Committee has a framework that provides a tool for all companies to report on their efforts to embed ESG and non-financial management into their core business, and report on ESG and financial performance together, in a single, streamlined report.
2014	Corporate Reporting Dialogue	The Corporate Reporting Dialogue is a platform that aims to strengthen cooperation and alignment between key standards setters and framework developers. Its participants are CDP, CDSB, FASB, GRI, IASB, IIRC, ISO, SASB.
2015	PARIS 2015: COP 21: CMP11	The twenty-first session of the Conference of the Parties (COP) and the eleventh session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) took place from 30 November to 11 December 2015, in Paris, France
	OECD (G20/ OECD Principles of Corporate Governance)	In 2015, the updated Principles (G20/OECD Principles of Corporate Governance) were endorsed by the OECD Council and the G20 Leaders Summit
	TCFD (Task Force Climate Related Disclosures)	The Financial Stability Board established the TCFD to develop recommendations for more effective climate-related disclosures that could promote more informed investment, credit, and insurance underwriting decisions and, in turn, enable stakeholders to better understand the concentrations of carbon-related assets in the financial sector and the financial system's exposures to climate-related risks.
2016	Green Finance Study Group	In 2016, the G20 launched a Green Finance Study Group to investigate possibilities to encourage private investors to increase green initiatives.
2017	NGFS	At the Paris "One Planet Summit" in December 2017, eight central banks and supervisors established the Network of Central Banks and Supervisors for Greening the Financial System (NGFS). Since then, the membership of the Network has grown dramatically, across the five continents.  The Network's purpose is to help strengthening the global response required to meet the goals of the Paris agreement and to enhance the role of the financial system to manage risks and

		<p>to mobilize capital for green and low-carbon investments in the broader context of environmentally sustainable development.</p> <p>To this end, the Network defines and promotes best practices to be implemented within and outside of the Membership of the NGFS and conducts or commissions analytical work on green finance.</p>
2018	ACMF	<p>ASEAN Sustainability Bond Standards apply to bonds where the proceeds will be exclusively applied to finance or re-finance a combination of both Green and Social Projects that respectively offer environmental and social benefits.</p>
2019	Business Roundtable	<p>Business Roundtable is an association of more than 200 chief executive officers (CEOs) of America's leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four American jobs and almost a quarter of U.S. GDP.</p> <p>Through CEO-led policy committees, Business Roundtable members develop and advocate directly for policies to promote a thriving U.S. economy and expanded opportunity for all Americans.</p>
2020	OICU-IOSCO	<p>The International Organization of Securities Commissions (IOSCO) is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. It works intensively with the G20 and the Financial Stability Board (FSB) on the global regulatory reform agenda.</p> <p>IOSCO was established in 1983. Its membership regulates more than 95% of the world's securities markets in more than 130 jurisdictions: securities regulators in emerging markets account for 75% of its ordinary membership</p> <p>The IOSCO Objectives and Principles of Securities Regulation have been endorsed by both the G20 and the FSB as the relevant standards in this area.</p> <p>They are the overarching core principles that guide IOSCO in the development and implementation of internationally recognized and consistent standards of regulation, oversight and enforcement.</p>

		They form the basis for the evaluation of the securities sector for the Financial Sector Assessment Programs (FSAPs) of the International Monetary Fund (IMF) and the World Bank.
2021	Sustainable Banking and Finance Network	<p>In 2021, the Sustainable Finance Study Group was replaced by Sustainable Finance Working Group.</p> <p>The Group is tasked to identify institutional and market barriers to sustainable finance and to develop options to overcome such barriers, and to contribute to a better alignment of the international financial system to the objectives of the 2030 Agenda and the Paris Agreement.</p>

### **GUIDELINES ON RESPONSIBLE BUSINESS CONDUCT (NGRBC)**

2019 National Guidelines on Responsible Business Conduct (NGRBC)	<p>Ministry of Corporate Affairs propounded the National Guidelines on Responsible Business Conduct (NGRBC).</p> <p>The NGRBC are designed to be used by all businesses, irrespective of their ownership, size, sector, structure or location.</p> <p>It is expected that all businesses investing or operating in India, including foreign multinational corporations (MNCs) will follow these guidelines. Correspondingly, the NGRBC also provide a useful framework for guiding Indian MNCs in their overseas operations, in addition to aligning with applicable local national standards and norms governing responsible business conduct</p> <p>The principles of NGRBC are:</p> <ol style="list-style-type: none"> <li>1. Businesses should conduct and govern themselves with integrity in a manner that is Ethical, Transparent and Accountable.</li> <li>2. Businesses should provide goods and services in a manner that is sustainable and safe</li> <li>3. Businesses should respect and promote the well-being of all employees, including those in their value chains.</li> <li>4. Businesses should respect the interests of and be responsive to all their stakeholders.</li> <li>5. Businesses should respect and promote human rights.</li> <li>6. Businesses should respect and make efforts to protect and restore the environment.</li> <li>7. Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.</li> <li>8. Businesses should promote inclusive growth and equitable development.</li> <li>9. Businesses should engage with and provide value to their consumers in a responsible manner.</li> </ol>
2020 Guidelines on Integrity and Transparency	Keeping in mind the leadership position that Indian industry is aiming and in view of the fact that companies have to continue to work towards ensuring that business priorities are complemented with responsible governance initiatives and ethical actions, CII brought out the mentioned guidelines. The

<p>in Governance and Responsible Code of Conduct, The CII Code 2020</p>	<p>recommendations made under the Guidelines on Integrity and Transparency in Governance and Responsible Code of Conduct are as under:</p> <ol style="list-style-type: none"> <li>1. Integrity, Ethics and Governance.</li> <li>2. Responsible Governance and Citizenship.</li> <li>3. Role of High performing Board.</li> <li>4. Balance Interests of Stakeholders.</li> <li>5. Independent Directors and Women Directors.</li> <li>6. Safe Harbours for Independent Directors: Easier settlement norms and amnesty provisions.</li> <li>7. Risk Management.</li> <li>8. Succession Planning.</li> <li>9. Role of the Audit Committee.</li> <li>10. Improving audit quality, and enhancing accountability of third parties who play a fiduciary role.</li> <li>11. Disclosure and transparency related issues.</li> <li>12. Vigil Mechanism.</li> <li>13. Stakeholder, Vendor and Customer Governance.</li> <li>14. Investor Activism.</li> <li>15. Start-ups and MSMEs.</li> </ol>
<p>2020 Report of the Committee on Business Responsibility Reporting</p>	<p>In 2018, while the NVGs were being updated, it was decided that the SEBI-BRR framework should also be revised to reflect the changes made in the base document. The Secretary, Corporate Affairs, constituted a Committee under the chairmanship of Joint Secretary, MCA, to prepare the Business Responsibility Reporting (BRR) formats for both, listed and unlisted companies.</p> <p>The Committee followed certain principles for developing the proposed formats:</p> <ol style="list-style-type: none"> <li>1. The base document was the Business Responsibility Reporting Framework in Chapter 5 of NGRBCs.</li> <li>2. The NGRBC-BRR framework was examined in the context of the current SEBI-BRR filings, SDGs, UNGPs, and the prevalent non-financial reporting frameworks to formulate a holistic, all-encompassing format containing the essential elements of non-financial sustainability reporting.</li> <li>3. The formats were developed to serve as a single comprehensive source of non-financial, sustainability information relevant to all business stakeholders - investors, shareholders, regulators, and public at large.</li> <li>4. The formats were developed to be simple, and mindful of the burden and cost of compliance by businesses so as not be onerous or repetitive.</li> <li>5. The information sought in the formats is a mix of quantitative and qualitative data. Quantitative data allows for easy measurement and comparability across companies, sectors, and in time. Qualitative data helps capture the unique ways in which organisations have implemented and</li> </ol>

	<p>embedded responsible business conduct. These may be adopted and adapted by other businesses to their contexts.</p> <p>6. The formats were developed for all companies - listed as well as unlisted. However, different reporting requirements have been considered for different classes of companies, especially smaller companies.</p> <p>7. The formats were developed as questionnaires which allow businesses to disclose aspects material to them, are amenable to measurement, comparable, reliable, and, machine readable.</p> <p>8. The formats were developed with a view to be filled electronically and integrated with the MCA21 database.</p>
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## **OECD PRINCIPLES OF CORPORATE GOVERNANCE**

1. Ensuring the basis for an effective corporate governance framework: The corporate governance framework should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement:
  - A. The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and well-functioning markets.
  - B. The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable.
  - C. The division of responsibilities among different authorities should be clearly articulated and designed to serve the public interest
  - D. Stock market regulation should support effective corporate governance.
2. The rights and equitable treatment of shareholders and key ownership functions: The corporate governance framework should protect and facilitate the exercise of shareholders' rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights
3. Institutional investors, stock markets, and other intermediaries: The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance
4. The role of stakeholders in corporate governance: The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises
5. Disclosure and transparency: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company
6. The responsibilities of the board: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

## **PAST EXAMINATION QUESTIONS WITH ANSWERS**

**Write short note on Rules vs Principles.**

### **RULE VS. PRINCIPLES:**

Rules are written prescriptions for conduct or action and are absolute. Principles, on the other hand, provides a guidance of acceptable action that are fair and equitable.

Under rules-based governance, companies must comply with a specific set of procedural requirements a check list of what to do and what not to do. Under a principles based regime, however, corporate behaviour is guided by a focus on end results. This approach emphasize “doing the right thing” by whatever means the company’s leadership feels most appropriate.

Rules are typically thought to be simpler to follow than principles, demarcating a clear line between acceptable and unacceptable behaviour. Rules also reduces discretion on the part of the individual manager or auditors.

Hon’ble Supreme Court of India in a case of Bajaj Auto Limited defined the discretion as proper adoption of the rules.

In practice rules can be more complex than principles. They may be ill equipped to deal with new types of transactions not covered by the code.

Moreover, where clear rules are followed one can still find a way to circumvent their underlying purpose. This is harder to achieve if one is bound by broader principles.

Principles are a form of self-regulation. They allow the respective sector to determine what standards are acceptable or unacceptable. It also pre-empts overzealous legislations that might not be practical.

**Write short note on Parties to corporate governance.**

### **Parties to Corporate Governance:**

The Board of Directors play a central role in ensuring good governance in a corporate. In a business context, Those who have a “stake” or claim in some aspect of a company’s products, operations, markets, industry and outcomes are known as stakeholders. The various stakeholders of a corporate are all parties to corporate governance. The stakeholders of a corporate include its employees, shareholders, suppliers, vendors, customers, creditors, regulators, governments and the community at large. These groups are influenced by business, and they also have the ability to affect the business.



**On 8<sup>th</sup> February, 2009, The Hindustan Times published a news caption “Crisis of unimaginable proportions – Fraud @ Satyam. Company running out of cash to pay salaries – faces lawsuits.” It further remarked: “The country is rocked by possibly the biggest corporate fraud. The company’s profits and cash reserves had been doctored for several years with possible connivance of auditors.” Obviously, the company had committed breach of good governance practices and legal bulwarks.**

**If you have to investigate into this case, which aspects of Corporate Governance would you look into?**

ANSWER: REFER topic (elements of corporate governance)

**“Corporate governance extends beyond corporate law. Its fundamental objective is not mere fulfilment of the requirements of law, but in ensuring commitment of the Board of directors in managing the company in a transparent manner for maximising stakeholders’ value”. In the light of this statement, discuss the various factors which add greater value through good governance.**

ANSWER: REFER CHAPTER-1

**Discuss “Evidence of Corporate Governance from Arthashastra.”**

ANSWER: REFER CHAPTER-1

**“Good corporate are not born, but are made by the combined efforts of all stakeholders, board of directors, government and the society at large.” In the light of this statement, bring out the elements of good Corporate Governance in India.**

ANSWER: REFER (elements of corporate governance)

**What is understood by the term ‘stakeholder’? Enumerate the different stakeholders of any corporate entity.**

**Stakeholder:** Stakeholders provide resources that are more or less critical to a firm’s long-term success. These resources may be both tangible and intangible. Shareholder, for example supply capital, supplier offers material resources or intangible knowledge, employees and managers grant expertise, leadership, and commitment, customers generate revenue and provide infrastructure and the society builds its positive corporate images. The classic definition of a stakeholder is ‘any group or individual who can affect is affected by the achievement of the organization’s objectives’.