

CLAUSE 49: A BOOST IN CORPORATE GOVERNANCE

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Abstract

Corporate governance plays a vital role in shaping the overall performance and sustainability of organizations. In this context, Clause 49 has emerged as a significant milestone in bolstering corporate governance practices. This paper aims to provide an overview of Clause 49, will also highlight the key provisions and requirements outlined in Clause 49. These include the composition and responsibilities of the board of directors, the establishment of various committees, financial reporting and disclosure obligations, risk management practices, and the role of internal and external auditors. By addressing these critical aspects, Clause 49 aims to create a robust framework for corporate governance and mitigate potential conflicts of interest. Furthermore, this paper discusses how the implementation of this clause has led to improved board diversity, increased focus on ethics and sustainability, and strengthened risk management systems. Moreover, it examines the role of enhanced disclosures and reporting requirements in facilitating better decision-making, minimizing fraud, and promoting shareholder activism. In conclusion, Clause 49 represents a crucial step towards fostering effective corporate governance practices. By emphasizing transparency, accountability, and ethical conduct, it aims to enhance the overall performance and sustainability of listed companies. While there are challenges to overcome, Clause 49 serves as a cornerstone for promoting responsible and ethical business practices in the corporate world, ultimately benefiting stakeholders, investors, and the broader economy.

Keywords: *Clause 49, Corporate governance, risk management, board diversity, sustainability*

1.Introduction

Business governance pertains to the interdependent interaction between business managers, board members, equity contributors, and the people and organisations that put their money to work in order to make a profit. Its principal goal is to guarantee that the company's board of managers stays accountable for pursuing its corporate objectives and that the company complies with the regulations and laws that apply. (Maheshwari and Meena, 2014).

In essence, governance entails the process of discussing, establishing, overseeing, and adapting strategies. It involves the clear communication of the rules through which these strategies are implemented and also involves the selection, monitoring, and evaluation of the senior executive team. Ultimately, the responsibility for governance lies with the board of directors, encompassing both their domain and fiduciary duty (Sharma, 2014).

The concept of corporate governance gained significant prominence following the Sarbanes-Oxley Act was passed in 2002 in the United States. This Act was introduced to restore public trust in Indian companies. Subsequently, in India, SEBI (“Securities and Exchange Board of India”) incorporated the issue of corporate governance in Clause 49 of the Listing Agreements, setting forth the regulations that companies must adhere to.

With the advent of the Companies Act in 2013, SEBI made amendments to Clause 49 was included in the Posting Memorandum to conform to the new law. These amendments by SEBI focused on corporate governance and mandated, among other requirements, that an equal number of directors with executive positions and without, and additionally at least one woman director of operations, must be present on the governing body of trustees of publicly traded firms.

The present paper aims the following objectives:

1. To examine corporate governance practices in India with clause 49.

2. Material Methods

This research is supported by secondary information that was and a comprehensive review of academic papers, government reports, and industry publications will be conducted to understand the existing literature on corporate governance and the impact of clause 49 in India.

3. Result and Discussion

3.1 Corporate Governance with Clause 49

The following clause 49 provisions are undertaken through practices in corporate governance India.

- a. Composition of board of directors** - Clause 49 mandates that the board of directors should consist of a minimum of 50% Furthermore, there must be at least one-woman director among the non-executives. Depending depending on the chairman's function, the separate chairman roster changes:
 - A minimum of a third of the executives on the board are required to be independent directors if the president of any firm is a non-executive.
 - Non-executives should make up no fewer than sixty percent of the committee's membership if the person in charge is an employer.
- b. Independent Director**-As per clause 49 the company must offer appropriate independent shareholders, with information on this training's specifics being included as part of the yearly filing.
 - Independent shareholders must get an official letter of designation from the firm.
 - Independent boards of directors are required to have a minimum of one session each year.
 - A single person is limited to seven listed firms where they can participate as a director who is self-appointed.
- c. Subsidiary Companies**-In compliance with clause 49 there must on the boards of significant non-listed Indian branch firms, there must be a minimum of one director who is autonomous from the parent firm.
 - The financial accounts of unlisted operations should be examined by the auditors headed by the listed controlling organisation.
 - The management team of the mentioned holding entity should be shown the records of the hidden subsidiary's company of directors.
- d. Other provisions as to board and Committees**-As per clause 49 the board is required to convene a minimum 4 sessions each year, with no more than 120 days without conferences.
 - An executive is not permitted to serve as chairman of any more than five organisations across all firms.

- A director's participation on numerous boards ought to not exceed ten boards.

e. Code of Conduct- The executive team is in charge of creating a code for behaviour that is applicable to all of its members and upper executives. This code guidelines must be made available on the firm's website. Additionally, all board members and the top staff must confirm their compliance with the code.

- **Whistle Blower policy and Vigil Mechanism-**In accordance Clause 49 requires a corporation to set up a vigil system, commonly known as a whistle-blower policy. This mechanism serves the purpose of identifying incidents of breaking an organization's ethical policy or code of behaviour, as well as disclosing any cases of unethical behaviour or suspected fraud. The company is required to disclose the specifics of this vigil mechanism on its website and in the Board's Report.

f. Audit Committee-According to clause 49, companies are required to establish a competent and impartial audit committee with the following provisions:

- Minimum of three board members ought to participate on the oversight committee. Two-thirds of them need to be directors who are self-governing.
- The committee's membership should include more than one person with knowledge of accounting and handling money, and all colleagues must have a solid grasp of finances.
- The audit committee's chairperson is chosen from among independent directors.
- The auditing group is required to convene at least of four conferences annually;
- The chairperson of the auditing board must be present at the aforementioned meeting.
- The majority required for the session shall be one-third of the total membership of the committee in attendance or two of their peers, whosoever is larger. Additionally, there must also be at least two autonomous directors involved.

g. Nomination and Remuneration Committee-As per clause 49, the Nomination and Remuneration Committee must adhere to the following guidelines:

A requisite number three officers, all of those should be members who are not executives, shall serve on the advisory board. In addition, the selection panel should include at least 50% of autonomous directors. A director who is unbiased must serve as a committee leader.

h. Stakeholders' relationship committee-A Stakeholders' Relationship Committee should be established by companies, which is headed by a director who is not an executive.

i. Related party transactions -As per clause 49, Related Party Transactions should follow these requirements:

- The policy regulating interactions with related parties should be declared on the firm's website in addition to its most recent annual reporting;
- The company is required to submit quarterly openness, including details of all important activities with affiliated entities.

j. Management-As per clause 49, Management should adhere to the following:

- A Board Talk and Examination Report is required from the firm.

- All substantial business and financial relationships with an individual's benefit that may possibly compete with the purposes of the firm must be disclosed by the most senior members of the executive board.

k. Shareholders-As per clause 49, Shareholders have the following rights and information:

- Shareholders must receive details about the director's appointment or reappointment.
- Disclosures about relationships between directors must be made.
- The company should display quarterly results on its website.
- The board has the authority to speed up this share transfer procedure, provide a chairman or appointed board the authority to transfer shares.

4. Conclusion

In conclusion, clause 49 of corporate governance in India encompasses several vital provisions to ensure transparency, accountability, and fair practices within listed companies. It outlines the roles and responsibilities of various stakeholders, such as the board, management, shareholders, and independent directors. The clause emphasizes the significance of disclosure, reporting, and adherence to ethical standards.

Key points from clause 49 include the establishment of audit committees, nomination and remuneration committees, and stakeholders' relationship committees, all led by non-executive directors with a substantial presence of independent directors. The clause also emphasizes the importance of providing regular disclosures, including related party transactions, financial results, and the management discussion and analysis report.

The rights and interests of shareholders are safeguarded through the provision of information about directors' appointments, disclosures of director relationships, and accessibility to quarterly results on the company's website. Moreover, the delegation of share transfer powers expedites the process and enhances shareholder convenience.

Overall, clause 49 plays a pivotal role in fostering better corporate governance practices, thereby promoting investor confidence and fostering long-term sustainable growth for listed companies in India.

5. References

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