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Edited by

Ketaki Sheth, Rupal N. Patel and Sanjay K. Radadiya

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A Study of Different Corporate Governance Codes—An International Perspective

Samir M. Vohra[1] and Sanjay R. Ajmeri[2]

INTRODUCTION

In the modern financial and business world, good corporate governance is not an optional extra. Good corporate governance is fundamental to raising capital, satisfying investors and running successful businesses in increasingly global markets.

Good corporate governance is essential to all stakeholders in the firm—employees, suppliers, customers, and bankers as well as to the local and national society for the provision of employment, the creation of wealth and the building of a modern state. Good corporate governance also encourages the levels of transparency, accountability and corporate social responsibility that is increasingly necessary for a modern nation.

Good corporate governance is a desideratum to the growth and development of enterprises worldwide. To attain sustainable economic growth, the economy should boast of a growing enterprise sector which is, inter alia responsible, accountable, and transparent and fair not only to its shareholders, but also to the entire groups of stakeholders. These characteristics of good corporate governance are now recognized by both international and domestic investors.

Corporate governance and effective regulations contribute to the attractiveness of a country in terms of inward investment and business development. It also ensures the efficiency of capital markets and their effectiveness in the service of the real economy.

Corporate Governance is the system by which business corporations are directed and controlled. It is the relationship among various participants in determining the direction and performance of corporations. Although the different definitions of corporate governance are compatible and

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purpose of developing corporate governance code is also more or less uniform, but the way in which corporate governance has developed and is applied in different jurisdictions, varies considerably.

Any company in the world want to be globally competitive in the new millennium, the then good corporate governance is an utmost necessity. The first requirement of corporate governance is professional management and corporate governance codes.

Table 1: Time Line for Development of Corporate Governance Codes around the World

Year	*Countries*
1992	UK (Cadbury Report leading to Combined Code)
1994	Canada, South Africa (King Report)
1995	Australia, France
1997	Japan, US
1998	Germany, India, Thailand
1999	Brazil, Hong Kong, South Korea, OECD, ICGN
2001	China, Singapore (Singapore Code)
2002	US (Sarbanes-Oxley Act)

Table 1 indicates the timeline for the development of codes around the world. Many codes have since been updated.

Reasons of seeking uniform international corporate governance code.

Corporate governance codes on a national basis is appropriate when investing and financing by companies are on a national basis. But a set of minimum global requirements should be applicable, to entities listing or obtaining finance across borders in order to provide greater protection to global investors. This approach was also considered when the development of International Financial Reporting Standards (IFRS erstwhile IAS i.e. International Accounting Standards) commenced in the mid-1970s.

Key reasons why uniform international corporate governance code is not viable.

Due to following probable limitations, a corporate governance codes is not optimal solution:

To be acceptable to the majority of countries, the code will need to take the lowest common denominator. Thus it may be fairly tame and bland.

Global differences in legal structures, financial systems, corporate ownership, culture and economies will make it hard to strengthen any of the principles.

As the code will need to be based on best practice of a number of jurisdictions, development will always lag changes in the most advanced countries.

The codes will have no legislative power and may not even be supported by national stock exchanges or governments.

Model corporate governance codes in absence of uniform international code.

Organisation for Economic Co-operation and Development (OECD) and the International Corporate Governance Network (ICGN) have issued separate sets of corporate governance principles with the aim that they can be used to form the core elements of a good corporate governance regime, which can be adapted to the specific circumstances of individual countries and regions.

Table 2: Corporate Governance Codes Referred

Corporate Governance Code in India	UK Corporate Governance Code (A Principle Base Code)	Sarbanes-Oxley Act (2002) of United States (A Rules-Based Regulation)	OECD (Organisation for Economic Co-operation and Development) Guidelines)
			ICGN (International Corporate Governance Network) Guidelines

Table 2 indicates the corporate governance codes referred in this paper.

CORPORATE GOVERNANCE CODE IN INDIA

In India, Companies Act provides the basic framework for regulation of the companies, it also contains provisions to highlight checks over powers of board and empower shareholders to appeal in case of oppression or mismanagement.

In light of globalisation and liberalisation reforms in India, initiative of good corporate governance came from Confederation of Indian Industry (CII) which drafted the country's first Code for Desirable Corporate Governance in 1998.[3] Large corporations of India responded positively and adopted the recommendations of the CII code. Later in 2000, capital market regulator, Securities and Exchange Board of India (SEBI) formulated the country's first code of best practices in corporate governance by inserting a new clause 'Clause 49'[4] in the listing agreement post recommendation from Kumar Mangalam Birla committee.[5]

The CII and SEBI codes have emphasized the independence of board, specified the structure of audit and remuneration committees, and outlined the accounting standards for financial reporting.

Following the corporate scandals of the US, the Department of Corporate Affairs (DCA), government of India set up the Naresh Chandra Committee[6] in 2002 to examine corporate governance issues focusing on role of auditors and audit committee.

Later in 2003, Narayan Murthy committee[7] was constituted by SEBI to review the performance of corporate governance in the country and control over price sensitive information circulating in the market in order to enhance the transparency and integrity of the market.

Based on the recommendations of these committees, the amendments were made in Clause 49 which came into effect in 2005. Major revision was defining independent director and requiring board independence. In addition, recommendations about the code of conduct and formation of audit committee were mandated through this Clause.

In conformance to the Companies Act 2013, the listing agreement is also replaced by the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Resultantly clause 49 became erstwhile.

Table 3: Chronology of Corporate Governance Regulations in India

Year	*Authority*	*Outcome*
1997	SEBI	Substantial Acquisitions of Shares and Takeovers (SAST)
1998	CII	Desirable Corporate Governance: A Code
2000	SEBI	Clause 49 of Listing Agreement—Mandatory disclosure along with Annual Report.
2002	Department of Company Affairs(DCA)	Naresh Chandra Committee Report—Recommendations about Audit Committee functions and responsibilities
2004	SEBI	Revision of Clause 49
2004	Ministry of Corporate Affairs(MCA)	New companies bill draft
2011	SEBI	Revised—Substantial Acquisitions of Shares and Takeovers
2013	MCA	Companies Act 2013
2014	SEBI	Revised Clause 49 conforming the New Companies Act 2013
2015	SEBI	Listing Obligations and Disclosure Requirements 2015—Clause 49 becomes erstwhile

Table 3 above summarizes the evolution of corporate governance regulations over two decades.

UK CORPORATE GOVERNANCE CODE (A PRINCIPLE BASE CODE)

UK Corporate Governance Code is prime example of a principles-based code. Many other jurisdictions (e.g. South Africa, Singapore, Hong Kong) operate similar codes primarily because of their historical links to the UK.

Development of the UK code was driven by various financial scandals of the 1980s and early 1990s (e.g. Barlow Clowes, Polly Peck, BCCI and in particular, Maxwell).

Table 4: Chronology of Corporate Governance Related Codes in UK

Cadbury Report (1992), Greenbury Report (1995) and Hampel Report (1998)
Combined Code (1998) comprising the above three reports
Turnbull Report (1999) issued to assist companies in applying the Combined Code
Higgs Report and Smith Review (2003)
Revised Combined Code (2004)incorporating Higgs and Smith Recommendations
Combined Code (2006, 2008)—minor working adjustments
UK Corporate Governance Code (2010)—minor working adjustments and renamed
UK Corporate Governance Code (2012)—small number of additional requirements

Table 4 indicates chronology of corporate governance related codes in UK. It is clear from the above table that the UK Corporate Governance Code is a combination of a number of original codes.

Cadbury report 1992: Following the many governance failures, Sir Adrian Cadbury was asked to investigate the British corporate governance system and to suggest improvements to restore investor confidence.

Rather than taking a statutory route, the report recommended a principles-based approach supported by "comply or explain".

The main recommendations were:

- Appointment of Non-Executive Directors (NEDs)
- Audit committee—oversee greater control of financial reporting
- Separation of the role of chairperson and chief executive.

Greenbury report, 1995: Following public concern about executive remuneration, a working party was established under the chairmanship of Sir Richard Greenbury.

The report recommended:

- Remuneration committee to determine directors' remuneration
- Nominations committee to oversee new appointments to the board
- Detailed reporting to shareholders on the workings of both committees.

Hampel report, 1998: Established to review the performance of 'Cadbury' and 'Greenbury' Report.

Major recommendations were; Combination of both reports into combined code, Communication with shareholders

Balance between implementing controls and customised ways of applying corporate governance principles.

Turnbull report, 1999: A working party led by Nigel Turnbull was established to provide assistance for companies in reporting & how they had applied the Combined Code and its principles.

Major recommendations were: Annual statement on the effectiveness of internal controls by board; and Board is responsible for risk management (Not the executive/managers) and Internal controls (Not external auditor).

Higgs report and smith review, 2003: Following the Enron scandal in the US and the implementation of (Sarbanes Oxley) SOX, an extensive review of UK corporate governance was carried out to establish whether there were any lessons to be learnt for UK companies. The review resulted in two reports, the Higgs Report and the Smith Review. The Higgs Report dealt mainly with the role of NEDs. The Smith Review concentrated on the role of the audit committee.

Sarbanes-Oxley Act (2002): For historical reasons, a rules based approach to regulation is firmly embedded in the US approach to dealing with most issues (e.g. corporate governance, US GAAP). Following the high-profile collapses of Enron and World-Com, the US Congress passed the Sarbanes–Oxley Act in 2002 ("SOX" – named after Senator Paul Sarbanes and Representative Michael Oxley, who were its main architects).

The establishment of a new regulator, the Public Company Accounting Oversight Board (PCAOB) with powers to set auditing, quality control, independence and ethical standards, plus inspection and disciplinary powers) & CEO/CFO certification to financial statements are major among the SOX compliances.

One of the (many) major criticisms of SOX was that it assumes a "one size fits all" approach to corporate governance provisions (rules-based disadvantage).

OECD (Organisation for Economic Co-operation and Development)

Since inception (September 1961), the OECD is most reliable source of comparable statistics of economic and social data. Apart from collecting data, the OECD provides a platform where governments compare policy experiences, seek answers to common problems, identify good practice and coordinate domestic and international policies.

OECDS' CORPORATE GOVERNANCE PRINCIPLES

Originally published in May 1999 (updated in 2002 and revised in 2004), the OECD Principles of Corporate Governance responded to growing awareness of the importance of good corporate governance for investor confidence and national economic performance.

The principles are in form good practices and also consists guidance on implementation of such practices; these are non-binding in nature & can be adapted to the specific circumstances of individual countries and regions.

The principles cover five areas:

- Rights of shareholders
- Equitable treatment of shareholders
- Role of stakeholders
- Disclosure and transparency
- Responsibilities of the board.

ICGN (INTERNATIONAL CORPORATE GOVERNANCE NETWORK)

The International Corporate Governance Network was founded in 1995 at the instigation of major institutional investors. Purposes of establishing ICGN is to provide an investor-led platform for the exchange of views and information about corporate governance issues at International level.

ICGNS' CORPORATE GOVERNANCE PRINCIPLES

Originally issued in 1999, the principles were revised and reissued in 2005 following the update of the OECD Principles in 2004. A further extensive review and revision was carried out in 2009. The Principles are drafted to be compatible with other recognized codes of corporate governance, although in some circumstances, the ICGN Principles are more rigorous.

GUIDELINES/PRINCIPLES AT INTERNATIONAL LEVEL

Over the years, a high level attention is received by corporate governance. There are several reports and recommendations of the International Committees/Associations, etc. on the development of appropriate framework for promoting good corporate governance standards, codes and practices to be followed globally. These are:

Cadbury Committee Report: The Financial Aspects of Corporate Governance (1992) (The most controversial of the Cadbury's recommendations was the one that required that the "directors should report on the effectiveness of a company's system of internal control").

- Greenbury Committee Report on Directors Remuneration (1995)
- Hampel Committee Report on Corporate Governance (1998)
- The Combined Code, Principles of Good Governance and Code of Best Practice, London Stock Exchange (1998)
- CalPERS Global Principles of Accountable Corporate Governance (1999)
- Blue Ribbon Report (1999)
- King Committee on Corporate Governance (2002)
- Sarbanes Oxley Act (2002)
- Higgs Report: Review of the role and effectiveness of non-executive directors (2003)
- The Combined Code on Corporate Governance (2003)
- ASX Corporate Governance Council Report (2003)
- OECD Principles of Corporate Governance (2004)
- The Combined Code on Corporate Governance (2006)
- UNCTAD Guidance on Good Practices in Corporate Governance Disclosure (2006)
- The Combined Code on Corporate Governance (2008).

These recommendations and principles have been mainly focused on structure of the company, financial and non-financial disclosures, compliance with codes of corporate governance, competitive remuneration policy, shareholders rights and responsibilities, financial reporting and internal controls etc.

All this efforts at international level, in turn, helps to bring favourable changes in operating systems of Board of Directors, Company's management and administration; as well as improve face of relationship between supervisory and executive bodies.

CONCLUSION

Corporate governance has no unique structure or design and considered ambiguous. Quality of corporate governance primarily depends on following factors, namely: the management; ability of the Board; adequacy of the processes; commitment of individual Board members; quality of corporate reporting etc. Hence, in the years to come, corporate governance will become more relevant and acceptable practice worldwide.

Different legal systems, institutional frameworks, traditions results in range of different approaches to corporate governance; developed around the world. However, common to all good corporate governance regimes is to safeguard the interests of shareholders. The best-run companies also recognise that business ethics and corporate awareness of the environmental and societal interest of the communities (triple bottom line – a complete stakeholder perspective) in which they operate can have an impact on the reputation and long term performance of companies.

RECOMMENDATIONS

To promote or to increase awareness among entrepreneurs adoption of good corporate governance practices, which are the integral element for doing and managing business.

At most attention is required in the area of Quality and effectiveness of the legal, administrative and regulatory framework.

Auditor must be accountable for the disclosure of financial information and the certificate from the auditors on compliance of conditions of corporate governance should be annexed with the Directors' Report forming part of Annual Report and must be sent to all the shareholders of the company.

To implement more robust Bankruptcy Laws which are a key component of any corporate governance system.

To make a statutory compliance for the listed companies to compulsorily obtain a report on Corporate Governance Rating (CGR) from a Credit Rating Agency.

To eliminate "Regulatory Arbitrage" i.e. to establish a clear mandate for each Regulatory Authority for the enforcement of Clause 49 of the Listing Agreement, thereby improving India's corporate governance enforcement mechanism.

The Board of a company should have an optimum combination or mixture of executive and non-executive directors.

The Chairman of the Audit Committee should be present at Annual General Meetings to answer shareholder-queries.

Government should encourage to the corporate to open up their information to its shareholder by imposing rules, law or ordinance in the time of registration.

These recommendations can change the scenario of good corporate governance situation Worldwide.

REFERENCES

[1] Cadbury Committee (1992). 'Financial aspects of Corporate Governance', London, Gee.
[2] Chandra Committee (2002). https://www.finmin.nic.in/sites/default/files/chandra.pdf
[3] Circular by SEBI for introduction of clause 49 https://www.sebi.gov.in/legal/circulars/feb-2000/corporategovernance_17930.html
[4] Desirable Corporate Governance—A Code by CII http://www.nfcg.in/UserFiles/ciicode.pdf
[5] Fernando, A.C., Corporate Governance—principles, policies and practices (Pearson Education) Blair.
[6] Greenbury Committee (1995). 'Directors' Remuneration—Report of a Study Group'.
[7] Hampel Committee (1998). Final Report, London, Gee.
[8] Higgs (2003). 'Review of the Role and Effectiveness of Non-executive Directors'.
[9] Margaret M. (1995). Ownership and Control: Re-thinking Corporate Governance for the Twenty-First Century. Washington: Brookings Institution.
[10] Narayana Murthy Committee (2003). http://www.nfcg.in/UserFiles/narayanamurthy2003.pdf
[11] OECD website http://www.oecd.org/ & OECD India Website http://www.oecd.org/india/
[12] Sarbanes-Oxley Compliance http://www.soxlaw.com/compliance.htm
[13] Turnbull Committees' Reports (1998 & 1999).

About the Book

This book is a compendium of papers presented in the International Conference on **Emerging Global Economic Situation: Impact on Trade and Agribusiness in India**. The book covers thirty four papers covering the emerging trends in global management and information technology. This book will be very useful for all those are interested in issues related to global management and information technology.

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