



**COMPANIES ACT, 2013  
IMPROVING CORPORATE GOVERNANCE  
BY INTRODUCING TRANSPARENCY ,  
UNIFORM REPORTING &  
MORE DISCLOSURES.**

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# CORPORATE GOVERNANCE - MEANING

Corporate Governance –

- refers to the way a corporation is governed,
- technique by which companies are directed and managed.
- conducted by the board of Directors and the concerned committees for the company's stakeholder's benefit.
- It is all about balancing individual and societal goals, as well as, economic and social goals.

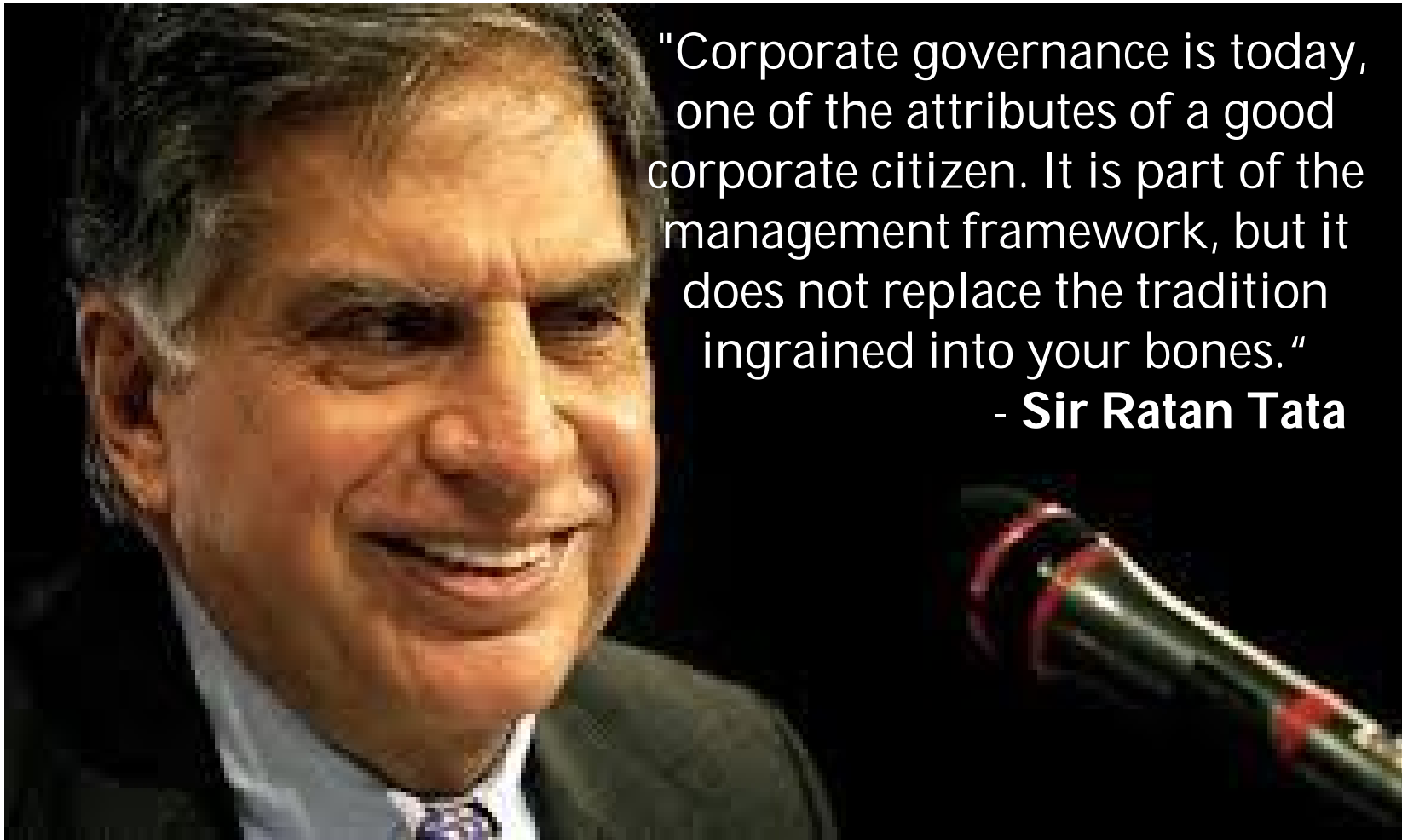
# CORPORATE GOVERNANCE - MEANING

The *raison d'être* of every corporate body is to ensure **predictability**, **sustainability** and **profitability** of revenues year after year.

- N R Narayana Murthy



# CORPORATE GOVERNANCE - MEANING



"Corporate governance is today, one of the attributes of a good corporate citizen. It is part of the management framework, but it does not replace the tradition ingrained into your bones."

- **Sir Ratan Tata**

# Companies Act Viewpoint



# ‘Corp governance vital for investors’

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**NEW DELHI:** The investor community in India has underlined that a robust corporate governance system is needed to draw the support of investors.

A FICCI Grant Thornton report on corporate governance says 84% of the companies felt compliance with Clause 49, a provision in the listing norms which ensures transparency, and the quality of disclosures have improved investor perception about companies.

Under Clause 49 of the Listing Agreement, a listed firm

must have a board with at least 50% independent directors or non-executive directors (in case the chairman is an executive).

If the chairman is non-executive, at least one-third of the board should comprise independent directors.

The report says companies are keen to comply with the non-mandatory provisions of Clause 49 to improve transparency and disclosure.

Interestingly, all respondents have felt that they have benefited by complying with Clause 49, while in the previous study only 68% felt compliance to the rule helps enhance investor interest.

We know that.....

Corporates are expected to use their

Capacity , knowledge & resources  
Towards

Maximization of Stakeholders value,  
well-being & progress of humankind  
Through

**TRANSPARENCY, ACCOUNTABILITY &  
TRUTHFUL DISCLOSURE OF STATE OF  
AFFAIRS**



# ProPer Discl osure, TransParency & rePorTing is possibl e can be done by:-

Board of  
directors



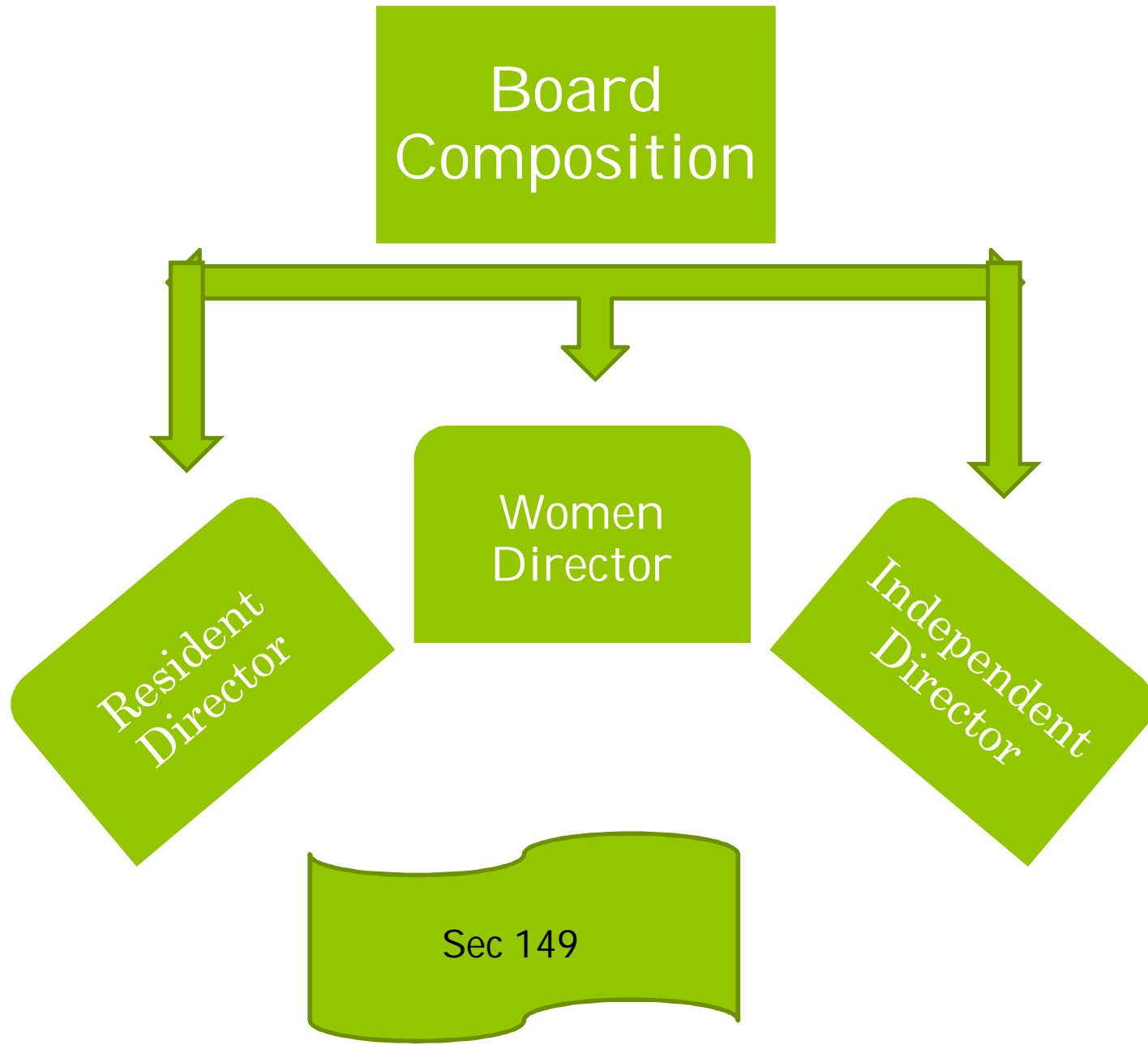
Audit Committee



Auditor







TYPE OF COMPANY	INDEPENDENT DIRECTOR	WOMAN DIRECTOR	SMALL SHAREHOLDER DIRECTOR	RESIDENT DIRECTOR
<b>Private Company</b>	1 Independent Director on Corporate Social Responsibility (CSR) Committee if CSR requirement is triggered	Rule 11.1 Required if paid-up share capital > INR 100 crores (to be appointed within 5 years) from the commencement of the Act	Section 151 Rule 11.5 Not applicable	
<b>Public Unlisted Company</b>	1/3 <sup>rd</sup> of the Board to be Independent if the Company has: <ul style="list-style-type: none"> <li>• Paid-up share capital of INR 100 crores or more; or</li> <li>• Aggregate outstanding loans, borrowings, debentures or deposits exceeding INR 200 crores</li> </ul>	Required if paid-up share capital > INR 100 crores (to be appointed within 5 years) from the commencement of the Act	Not applicable	1 director required to be resident in India for at least 182 days in a calendar year Section 149(3)
<b>Listed Company</b>	<ul style="list-style-type: none"> <li>• All listed companies to have 1/3<sup>rd</sup> of the Board comprised of Independent Director</li> <li>• Requirement increases to half of the Board if there is an executive chairman [Clause 49, Listing Agreement]</li> </ul>	All listed companies to have a woman director (to be appointed within 1 year) from the commencement of the Act	Mandatory? <i>Suo motu</i> option Request of 1/10 <sup>th</sup> the number of small shareholders or 500 small shareholders (whichever is lower)	

# BOARD COMPOSITION

- Board to give transparency as regards the operations of the business through the Board Report.
- The composition should be as prescribed in the Act.
- The directors should fulfill their respective responsibility & help the board & management to discharge their duties with greater transparency.
- Duties of Directors are legislated for the first time.
- Few duties of directors are:-
  - To be Impartial, Independent
  - Act in benefit of stakeholders
  - Act with due care & diligence, etc

# INVESTOR'S REPRESENTATION ON BOARD

- Law requires prescribed companies to have at least one whole time director.
- Listed companies have been given an option to have one small shareholder director to represent interests of minority shareholders on board.

# INDEPENDENT DIRECTOR

- Every listed company requires to have at least 1/3 rd of total directors as independent director
- Independent director to give a declaration that he meets the criteria of independence & abides to Schedule IV(code of conduct).
- The Code provides for the following:
  - Guidelines of professional conduct;
  - Specific roles, functions and duties;
  - Manner of appointment, re-appointment, resignation and removal;
  - Separate meetings of Independent Directors; &
  - Evaluation mechanisms.

Sec 149(6)

# INDEPENDENT DIRECTOR

- Term Restrictions [**Section 149**]:
  - 2 consecutive terms of 5 years each;
  - 3 year cool-off (no association with the company) before becoming eligible again.
- Board's Report [**Section 134**]:
  - To provide statements that the Independent Director possesses the appropriate balance of skills, experience and knowledge



# DISCLOSURE BY THE BOARD

- Board's Report inter alia to include the explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made :
  - By the auditor in his report; and
  - By the company secretary in his secretarial audit report
- Statement required to be annexed to notice concerning each item of special business to be transacted at a general meeting.
- Such statement to contain the material information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

# DIRECTORS' RESPONSIBILITY STATEMENT

- In the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures.
- The directors had selected such accounting policies and applied them consistently and made judgments and estimates that reasonable and prudent so as to give a true and fair view of the state of the affairs of the company at the financial year and of the profit and loss of the company for that period.

Sec 134(5)

# DIRECTORS' RESPONSIBILITY STATEMENT

- The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities.
- The directors had prepared the annual accounts on a going concern basis.
- The directors, in the case of listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

# DIRECTORS' RESPONSIBILITY STATEMENT

- “ Internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to the company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.
- The directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

# AUDIT COMMITTEE

- Recommend appointment of auditor & his remuneration
- Examination of Financial Statements & auditor's report thereon
- Scrutiny of inter-corporate loans & investments
- Call for comments of auditors about Internal control system
- Set-up Vigil mechanism
- Evaluation of Internal financial controls & Risk management system

Sec 177

# AUDIT COMMITTEE

- Audit committee to recommend a auditor for the company, after due consideration, so that BOD can put forward the proposal at AGM.
- The committee has to check FS under the light of Auditors opinion, so that there is proper reporting & cross-check.
- Committee to undertake scrutiny assessment of inter-corporate loans & advances, so that related party transactions can be detected & can be disclosed adequately
- Committee can ask auditors to give special opinion on internal control systems & undertake risk management measures.

# WHISTLE BLOWER POLICY

- Equity Listing Agreement under Annexure 1D of Clause 49 required listed companies to put in place a whistle blower policy and the Audit Committee was to review the working of the same.
- The companies must have a whistle blower policy through which the management or the reporting authority as per the policy comes to know about the fraud practices, if any taking place in the organization.
- The whistle blower should be provided full protection by the management.

# CSR



Sec 135



# VIGIL MECHANISM

- Each listed company and such other class of companies, as may be prescribed, will establish a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism will provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.

Sec 177(9 &10)

# RELATED PARTY TRANSACTION

No company to enter into any contract or arrangement with a related party except with the consent of board resolution & subject to prescribed conditions

A member who is a related party to a contract shall not vote on special resolution to approve such contract

Transaction with related party to be at 'ARM's Length'

Every related party transaction entered into is required to be disclose in the board report along with explanations

Transaction during ordinary course of business , in case held at arm's length basis, are exempted from taking special resolution

Sec 188

# AUDITOR

- Rotation of auditor
- Duties of Auditors regarding internal control & fraud
- Independence of auditor
- Internal audit

# ROTATION OF AUDITORS

- Rotation of Auditors will ensure that no interest personal or otherwise is rising in the auditor
- Moreover rotation of partners of the firm appointed as auditor will ensure that no biasness is present
- Thus, provisions related to rotation of auditor will ensure that the audit procedure are carried out properly & are bias-free & reliable.

# DUTIES OF AUDITOR REGARDING INTERNAL CONTROL & FRAUD

- Auditor shall report that company has adequate internal financial controls system in place and the operating effectiveness of such controls.
- If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the CG within such time and in such manner as may be prescribed
- Whether had auditor has sought the information/explanations which he considered necessary and received
- Auditors duty relating to intimation of possible or actual fraud by or against the Company is new requirement. Appropriate guidance from ICAI on this reporting requirement would be of help to comply with this new requirement

# INDEPENDENCE OF AUDITOR

- A person is not eligible for appointment as auditor if he **has direct or indirect business relationship with** the company, its subsidiary, its holding or associate company or subsidiary of such holding company
- A person is not eligible for appointment if he/she is in full time employment elsewhere.
- A person is not eligible for appointment if he is **relative of a director** or is in the **employment of the company** as a director or KMP
- A person is not eligible for appointment if he has been **convicted** by a court of an **offence involving fraud and a period of ten years has not elapsed** from the date of such conviction
- A person is also not eligible for appointment if **its subsidiary or its associate or any other form of entity** is engaged in consulting and specified services as provided in Clause 144 on the date of appointment
- All these provisions ensure independence of auditors for better reporting on FS of the company.



# INTERNAL AUDIT

- The Act seeks to make internal audit mandatory in case of class of companies which are specified.
- Presently, there was no such requirement except that under CARO, in case of some specified companies, statutory auditors are required to comment upon adequacy and coverage of Internal Audit System

# OTHERS

- Clause 49
- Insider trading
- Investor protection education fund
- NFRA
- SFIO
- Registered valuer



# CLAUSE 49

- Risk management procedures.
- Effective role as an Independent Director .
- Independence of Auditors.
- Compliance of Accounting Standards.
- CEO/CFO certification under clause 49 V.
- Report & Certificate on compliance on the corporate governance of the organization.
- Performance Evaluation of BOD members.
- Whistle Blower Policy

# INSIDER TRADING

- No person including any director or key managerial personnel of a company enter into insider trading
- Insider trading means sharing of price-sensitive information of a company with outsider in order to have a winfall gain by trading in shares/stock of that company

Sec 195

# INSIDER TRADING

Penalty for contravention:-

- Imprisonment up to 5 yrs
  - Or
    - Fine not less than Rs. 5,00,000 up to Rs. 25,00,00,000
      - Or
    - 3 times of profit made from insider trading
    - Whichever is higher
  - Or
- both

# INVESTOR EDUCATION AND PROTECTION FUND

- Sources of fund :
  - Central Government
  - Donations from CG, State government, companies or any other institutions
  - Amount in the unpaid dividend account of the companies
  - Amount lying in IEPF
  - Interest or other income
  - Redemption amt. of pref. shares remaining unpaid
  - Application money recd. By companies for allotment of any securities and due for refund
  - Matured deposits with companies other than banking companies
  - Matured debentures with companies
  - Such other amount as may be prescribed

Sec 125

# INVESTOR EDUCATION AND PROTECTION FUND

- The fund shall be utilized for :
  - The refund in respect of unclaimed dividend, matured deposits, matured debentures, the application money due for refund and interest thereon
  - Promotion of investors' education, awareness and protection
  - Distribution of any disgorged amount among eligible shareholders, debenture-holders.
  - Reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal.

# NFRA

- NACAS will be re-named as NFRA (Attempted to be on-line of PCAOB)
- The Government will notify the accounting standards as recommended by ICAI in consultation with NFRA
- Similarly, the Government will notify the auditing standards as recommended by ICAI in consultation with NFRA. This will mean that the present authority of ICAI to formulate auditing standards will now be taken over by the Government
- NFRA has been given powers to **monitor and ensure compliance** with accounting and auditing standards.

Sec 211 & 212

# NFRA

## ○ Penalty

- ✓ Where any Professional or other misconduct is proved, the body has the power to make order for-
  - Penalty of not Less than 1 Lakh may extend to 5 times of audit fees in case of Individual Auditor
  - Penalty of not Less than 10 Lakh may extend to 10 times of audit fees in case of Audit Firm
    - AND
  - Debar from Professional Practice for 6 months to 10 years

# SERIOUS FRAUD INVESTIGATION OFFICE

## *Object of SFIO under New Co's Act*

- Specific enunciation of good governance practices
- Easier prosecution of Delinquent Directors
- Active involvement of Directors
- Enhancement of objectivity/independence by non-executive & Independent Directors
- Liabilities specified with defined limits

Sec 211 & 212



# SERIOUS FRAUD INVESTIGATION OFFICE

## Constitution

- Status of SFIO established under Act

## Role

- Investigation of Report of SFIO equivalent to Police Report for framing charges
- Power to arrest in case of certain cognizable offences
- Stringent penalty provided for fraud related offences

## Impact/ Issues

- Strengthening of investigation proceedings
- Effective process by inclusion of experts of various fields

# REGISTERED VALUER

## ○ Responsibilities

- Valuer to make fair & impartial valuation
- Not undertake valuation if direct or indirect interest involve
- Exercise due diligence
- Valuation to be done as rules

## ○ **Impact of Change**

- ✓ The concept of a registered valuer is likely to have a big impact on Industry, professionals, shareholders and government.
  - ✓ The increase in requirements for valuation will lead to a substantial increase in professional opportunities for CAs, CSs and CWAs..
  - ✓ Fine for misleading and incorrect information and imprisonment for intention to defraud a company or its members will ensure that valuation reports disclose a true, fair and complete view and that valuation procedures are more objective.
  - ✓ Stakeholder confidence would be boosted with the increased transparency and fairness in the valuation system.
  - ✓ Government revenues may improve as loopholes in valuations may be plugged
- All these provisions will help to improve governance

# INITIATIVES TOWARDS TRANSPARENCY & DISCLOSURE

- Every listed company to prepare a report on AGM, such report to contain confirmation that the meeting was convened, held & conducted as per the provisions of the act
- Board report to disclose managerial remuneration
- Requirement for enhanced disclosures in prospectus has been incorporated.
- Return to be filed with registrar in case stake of a promoter changes
- Disclosure of interest of all directors

# INITIATIVES TOWARDS TRANSPARENCY & DISCLOSURE

- Board to disclose all the Related Party Transactions in its report along with necessary justification
- Contracts with managing & whole-time directors required to be kept at registered office, which shall be open for inspection by member of the company
- DRS in case of listed companies shall mention that, directors had laid down internal financial control and had devise systems to ensure compliance with applicable law.
- Board report made more comprehensive by inserting more transparency requirements.

**“when we are no longer able to  
change a situation,  
we are challenged to change  
ourselves!”**

**Victor Frank**

**FEEL FREE ...  
TO ASK QUESTION ...  
OR DO CLARIFY**

○ THANK YOU.....