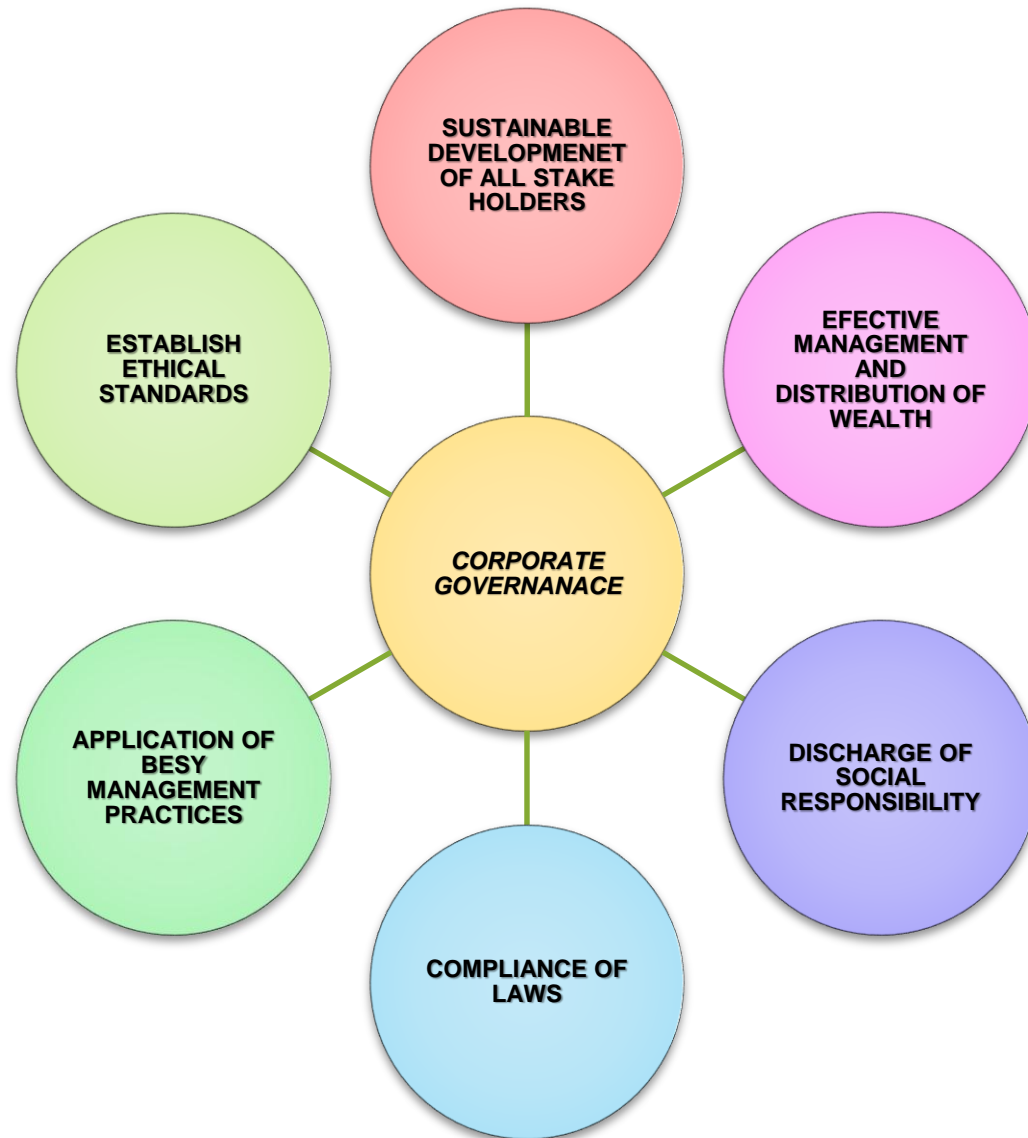




# CORPORATE GOVERNANCE

Dr. Baxi

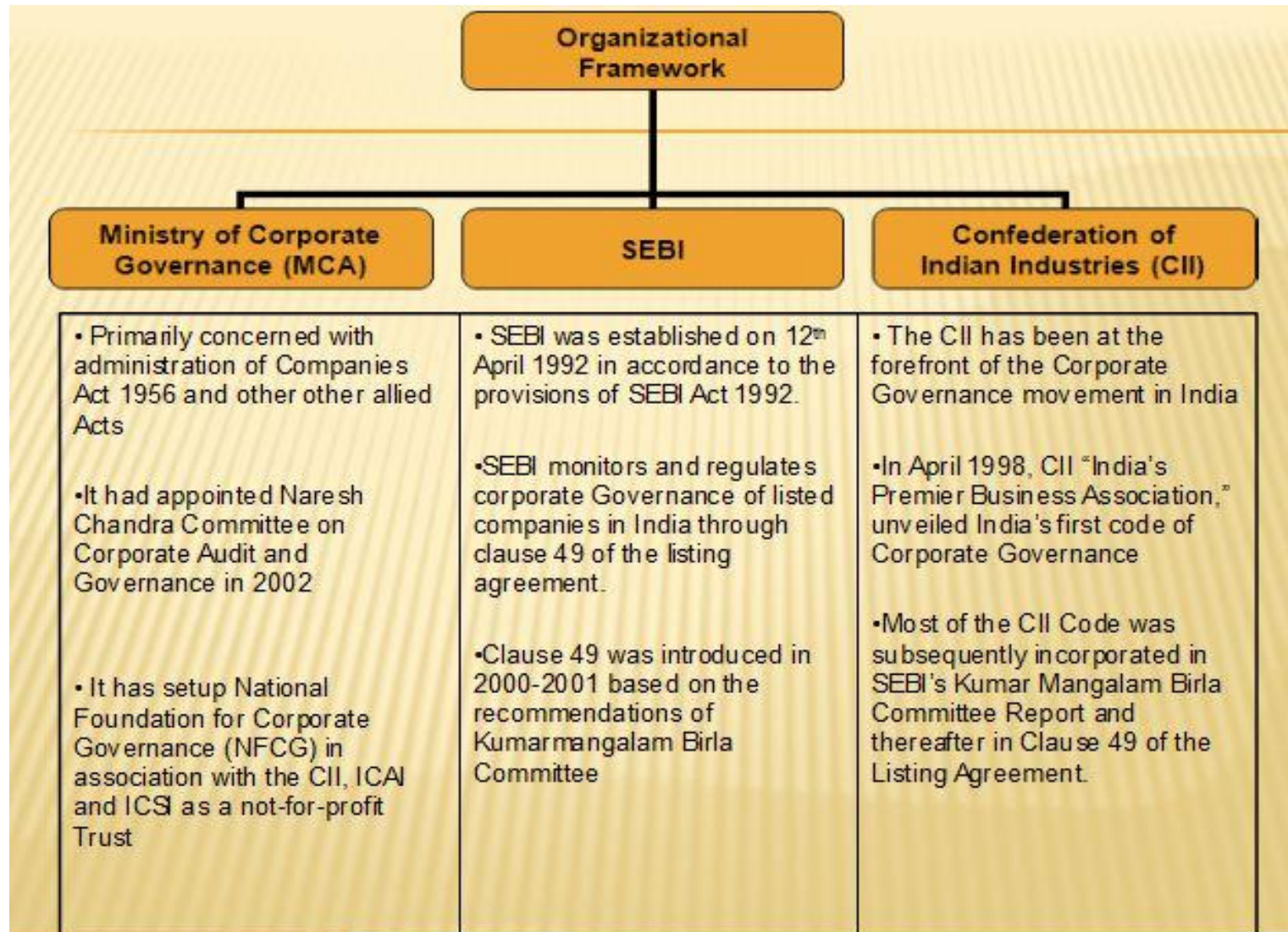
# DIMENSIONS OF CORPORATE GOVERNANCE



# History of CG in India

- **1956 Companies Act: Limited governance and disclosure standards**
- **1992 Formation of SEBI (Securities and Exchange Board of India)**
- **1998 CII (Confederation of Indian Industry), India's largest industry and business association comes up with the first voluntary code of corporate governance**
- **1999 SEBI sets up a committee for good corporate governance under Kumar Mangalam Birla**
- **2000 SEBI ratifies the committee's key recommendation and integrates them in clause 49 of the Listing Agreement**
- **2002 Establishment of the Narash Chandra committee to examine various governance issues**
- **2006 Revision of clause 49**
- **2008 Introduction of the Companies bill**
- **2011 Reintroduction of revised Companies bill after Satyam scandal**

# Present Corporate Governance In India



# Clause 49 of Listing Agreement

- Based on report by Kumarmangalam Birla Committee Able to regulate Corporate Governance to certain extent in the Listed companies in India.
- Listing Agreement is a document which a Company signs when being listed on the Stock Exchange, in which it promises to abide by stock exchange regulations. It is List of Rules and regulations through which the company's governance is to be executed.
- The Listing agreement was first introduced by Bombay Stock Exchange and later followed by other stock exchanges
- SEBI, vide its circular dated February 21, 2000, specified principles of corporate governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges.
- SEBI, Company Law Board and Registrar of the Company are working as observing and compliance authority.

# Clause 49 of Listing Agreement





# COMPOSITION OF BOD

**ONE THIRD OF  
TOTAL  
DIRECTORS  
SHOULD BE  
INDEPENDENT**

**LISTED PUBLIC  
COMPANIES**

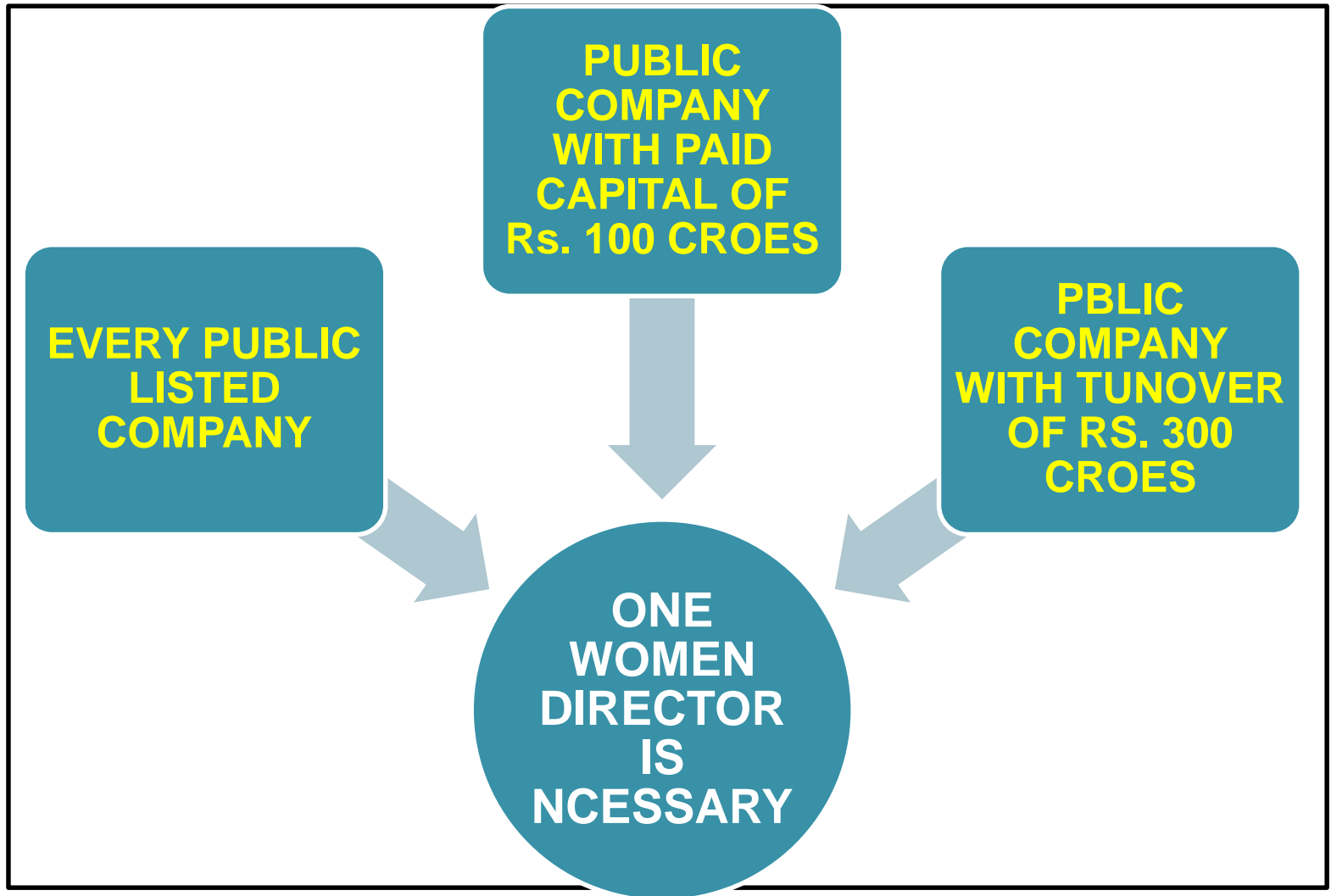
**MINIMUM TWO  
INDEPENDENT  
DIRECTORS**

**PUBLIC  
COMPANY WITH  
PAID UP CAPITAL  
OF RS.10 CROES**

**PUBLIC  
COMPANIES  
WITH TURNOVER  
OF Rs. 100  
CROES**

**PUBLIC  
COMPANY WITH  
O/S OF RS. 50  
CROES**

# WOMEN DIRECTOR





# Composition of Board as per Clause 49

***At least 50% of the board of directors should comprise of non-executive directors.***

**Quantum of Independent Directors (ID) required:**

Non-executive Chairman -  $1/3^{\text{rd}}$  of the board

Non-executive Promoter Chairman –  $1/2$  of the board

Executive Chairman –  $1/2$  of the board

# SIZE OF BOARD

PRIVATE  
COMPANY

• 3

PUBLIC  
COMPANY

• 2

ONE PERSON  
COMPANY

• 2

MAXIMUM NO  
OF DIRECTORS

• 15

# Meaning of Independent Directors:

An ID is a non-executive director who:

- Receives **only director's remuneration**.
- Does not have any **pecuniary** relation with
  - the company,
  - promoters,
  - directors,
  - subsidiaries,
  - associates etc.
- Is **not a relative** of promoters, directors and senior management
- has not been an executive of the company in the immediately preceding three financial years
- is and was not **associated** with the firm of statutory auditor, internal auditor, legal and consulting.
- Is not a material or service **provider or customer**

# Meaning of Independent Directors:

- ***Does not owe*** 2% or more of the voting shares
- Is ***not less than 21 years of age***.
- Is a nominee of a public financial institution or bank which has invested in or lent to the company.
- Has not been an ***executive in company in preceding three years***
- Has ***not been a partner*** or executive in statutory audit firm or internal ***audit firm***
- Has not been a ***partner*** or executive in ***law firm*** or ***consulting firm*** with material association to company

# Clause 49 of the Listing Agreement

## -The pre and post Amendment positions compared-

### Independent director before the amendment

- Pecuniary relationship with company, promoters, management and subsidiaries
- Board to determine whether director independent.
- Could be related to anyone in the company
- Silent about nominee directors

### Independent director after the amendment

- “management” substituted with “directors and senior management”; prohibition extended to cover holding company and associates
- Reference to Board’s judgment in this matter omitted
- Cannot be related to promoters, persons occupying management positions in board or at one level below the board
- Nominees of public financial institutions and corresponding new banks deemed independent

# Clause 49 of the Listing Agreement

-The pre and post Amendment positions compared-

## Independent director before the amendment

- Could have been an executive of the company in the previous years
- Could have been executive of professional firms associated with company
- Other interested parties could have qualified
- Could have been interested as a shareholder

## Independent director after the amendment

- Can not have been an executive in company in the immediately preceding 3 years
- Cannot be (have been) an executive in internal or external auditor firm
- Can't be a "material supplier, service provider or customer or a lessor or a lessee of the company
- Cannot hold 2% or more of the voting shares

# Composition of Board

## **Non executive directors' compensation and disclosures**

- Fees / compensation (except sitting fees) should be fixed by the board with prior approval of shareholders.
- Shareholders should approve the maximum number of stock options that can be granted in a year and in aggregate.

## **Other provisions as to Board and Committees**

- The board shall meet at least four times a year, with a maximum time gap of four months between any two meetings.
- A director shall not be a member in more than 10 committees(Audit Committee and the Shareholders' Grievance Committee) or act as Chairman of more than five committees in Indian public companies
- Directors should annually disclose the committee positions occupied and notify changes as and when they take place



# Composition of Board

- The board shall periodically review compliance reports of all laws applicable to the company.
- An ID who resigns or is removed from the Board of the Company shall be replaced within 180 days if the number of ID fall below the prescribed limits.

## **Code of Conduct**

- The board shall lay down a code of conduct for all Board members and senior management of the company
- All board members and senior management personnel shall affirm compliance with the code on an annual basis
- The Annual Report of the company shall contain a declaration to this effect signed by the CEO.

# Audit Committee

## **A Qualified and Independent Audit Committee**

- The audit committee shall have minimum three directors as members.
- Two-thirds of the members of audit committee shall be Independent Directors (ID).
- All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- The Chairman shall be an Independent Director.
- The Chairman shall be present at Annual General Meeting to answer shareholder queries.
- The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function)
- The Company Secretary shall act as the secretary to the committee.

# Audit Committee

## **B Meeting of Audit Committee**

- The audit committee should meet at least four times in a year and not more than four months shall elapse between two meetings.
- The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

## **C Powers of Audit Committee**

- To investigate any activity within its terms of reference.
- To seek information from any employee.
- To obtain outside legal or other professional advice.
- To secure attendance of outsiders with relevant expertise, if it considers necessary.

# Audit Committee

## **D Role of Audit Committee**

- Oversight of the company's financial reporting process and the disclosure of its financial information
- Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees
- Reviewing the financial statements before submission to the board for approval
- Reviewing the statement of use of funds raised through an issue (public issue, rights issue, preferential issue, etc.)
- Reviewing the performance of statutory and internal auditors, and adequacy of the internal control systems
- Reviewing the adequacy of internal audit function
- To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

# Audit Committee

## **E Review of information by Audit Committee**

- To review the functioning of the Whistle Blower mechanism, in case the same is existing.
- Approval of appointment of CFO
- Management discussion and analysis of financial condition and results of operations
- Statement of significant related party transactions submitted by management;
- Management letters / letters of **internal control** weaknesses issued by the statutory auditors;
- **Internal audit reports** relating to internal control weaknesses
- The appointment, removal and terms of remuneration of the Chief internal auditor

# Audit Committee



# Subsidiary Companies

- At least one ID on the Board of the holding company shall be a director on the Board of a material non listed Indian subsidiary company.
- The Audit Committee of the listed holding company shall also review the financial statements of the unlisted subsidiary company
- The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company
- The term “material non-listed Indian subsidiary” shall mean an unlisted subsidiary, incorporated in India, whose turnover or net worth exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.
- The term “significant transaction or arrangement” shall mean any individual transaction or arrangement that exceeds 10% of the total revenues or expenses or assets or liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.



# Disclosure

- Related party transactions ~ Place before the audit committee:
  - summary of transactions in the ordinary course of business
  - details of transactions not in the ordinary course of business
  - details of transactions, with related parties or others, not on arms length basis
- If financial statements are prepared in a manner other than that prescribed in an accounting standard has been used, the same has to be disclosed in them.
- Disclose in the Annual Report all pecuniary relationship or transactions of the non-executive directors with the company; criteria for making payments to such directors and number of shares and convertible instruments held by them.

# Disclosure

- Disclose in the Annual Report all elements of remuneration package of independent directors; service contracts, notice period, severance fee and stock options details
- Senior Management shall make disclosures to the Board relating to all material financial and commercial transactions, where they have a personal interest that may have a potential to conflict with the interests of the Company
- On appointment of a new director or re-appointment of a director, provide information to the shareholders with respect to his expertise, about his membership/directorship in other companies and his shareholding in case he is a non-executive director.
- Quarterly results and presentations made by the Company to analysts shall be put on company's website.