Chapter 7

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Governance process entails conduct of board and its committee meetings so as to perform the surveillance function in an effective manner and for this board members are required to invest significant time and attention for - preparing for meetings, their participation, review of relevant materials and discussions with management besides the duty to attend[1]. The board's task is to formulate a policy for the frequency, purpose, conduct and duration of its meetings and those of its formally established board committees. Executive board members' tasks in efficient and timely communication and briefing the board members before they come to meetings so as to facilitate effective participation of all the members in the board meetings.

There are various activities in board that describe the decision making processes of an organization or rather state that how seriously the board's function is taken up by its' members. Right from fixation of agenda for board meetings till the action taken report on decision taken at board meeting play an important role in the governance of corporates. Board meeting processes are governed by the Companies Act and the Articles of the company and it is a device by which board can act by collective decisions through passing the resolution except where the Act permits the resolution to be passed by circulation among the directors. Therefore, this chapter deals with the governing process by enquiring into the activities before, during and after the board meeting alongwith attendance, audit and compliance. Accordingly, the chapter has been divided into five sections. Section one deals with the activities prior to the board meetings and section two enquires into the priority items taken up and decision making process during the meeting. Section three deals with recording

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1 Under section 283 (g) of the Companies Act, 1956, the office of a director have to be vacated if he absents himself from three consecutive meetings of the board, or from all meetings of the board for a consecutive period of three months, whichever is longer, without obtaining leave of absence from the board.

and confirmation of minutes after the meeting. Section four examines attendance record of directors and the last section deals with corporate governance audit and compliance of Cl. 49 of the listing agreement.

7.1 Before the Board Meeting

It's a preparatory stage before the board meeting that ultimately decides the scenario at the board meeting. Greenbury (1995) was of the opinion that board meeting dates be agreed formally at least six months ahead and that board meetings be confined as far as possible to take strategic and policy decisions and that everyone be encouraged to participate and allowed to express his or her views frankly and openly. The preparatory stage of meeting includes following:

7.1.1 Fixation of Agenda Items

Section 286 of the Companies Act, 1956 mandates that the notice of every meeting on the board of directors of a company shall be given in writing to every director for the time being in India, and there is no mention of the notice of business to be transacted at the board meeting[2] therefore any business can be transacted in the board meeting. However, agenda is a practical necessity by which outside directors will be able to deliberate upon the issues if known before hand. Agenda circulated well before the meeting (say a week or 15 days) will make the things easier for the board members to contribute in decision-making process.

Fixation of agenda items by managers (insiders) may defeat the system of checks and balances[3]. It depends on the agenda items that determines the business of the board meeting. A carefully drafted agenda is important for effective board meetings, but it should be flexible enough to accommodate contingency and unexpected developments. Furthermore, the agenda and meeting schedule must permit adequate time for discussion amongst board

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2 Except under section 316 and 386 – appointment of a person as a M.D./ Manager who is already a M.D./ Manager of another company, and under section 372 – decision on investment.

3 Requote from Baliga, Mayer & Rao, 1996.

members and management. Internal accounting and reporting controls, investor communication guidelines, other internal controls system and revenue statements are some items that can make a perfect agenda items for the oversight function of the board.

It is equally important that who sets the items of agenda. "In reality, management is self-perpetuated by appointing the board of directors which exists to rubber-stamp the actions of management who, in fact, dominates the board and ..... that the management sets the agenda and determines who will be heard" (De Marco, 1974). The same seems to be true even today. In the most U.S. corporations, establishing the agenda and distributing materials are the responsibilities of the chairman, who is usually the CEO (Salman, 1993). Therefore, in case of India we first attempted to find out 'Who sets items of agenda for board meetings?' Analysis of 93 responses for the said question is given in table 7.1. The table shows that in 88.2% companies the company secretary was engaged in setting items of agenda either individually or alongwith others. The company secretary is the one who is supposed to be an expert in the board meeting procedures. He is the one who can be directly contacted for any matter before, after or during the board meetings. Board secretariat set items of agenda in case of PSBs[4].

Table 7.1 : Frequency Distribution For Persons Involved in the Process of Setting Items of Agenda For the Board Meeting

Category	Sector			Total Cos.	% of Total
	Joint	Private	Public		
CS with CMD/MD	3	45	8	56	60.2
CS with Chairman	-	11	-	11	11.8
CS	-	7	2	9	9.7
CMD/ MD	-	5	3	8	8.6
CS With Others	-	5	1	6	6.5
Chairman	-	1	2	3	3.2
Total No. of Cos	3	74	16	93	100

* 'Others' means CFO, Director Finance, WTDs, Departmental Heads, Executive Directors, VP –Finance and board's business advisory committee.

That in 15% companies chairman was involved and in 68.8% companies CMD/MDs was involved in setting items of agenda of board meetings. Involvement of executive director

4 Since they do not have a company secretary (not being mandatory under Banking Regulation Act or RBI Act by which they are governed) therefore we have taken them in the category of CS.

(Finance)/ CFO/ VP(Finance) shows that what board should discuss about was decided by the executives (from Finance Department). The table reveals that what is the fact in the U.S. also existed in India and in almost all companies the agenda items were fixed by the CMD/ MD, EDs and chairman of the company and that the independent director's involvement in setting the agenda item could not be traced from any of the response.

7.1.2 Venue of the Board Meeting

Place of board meeting is important from the point of view that the information sought by board members should be available[5] at the place where the activities are going on. Corporate office or registered office is the place where such informations are normally available to the directors for decision-making process. If register of contracts are removed from the registered office without due notice to shareholders it leads to violation of provisions of section 301(5). Therefore, it was tried to find out the venue of board meetings by posing a question 'Where the board meetings are held normally?' Answers of the respondents are tabulated at table 7.2.

Table 7.2 : Sectorwise Frequency Distribution of Venue of Board Meetings

Venue of Board Meeting	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Corporate Office	2	31	3	36	38.7
Registered Office	-	17	3	20	21.5
Corporate/ Registered Office	1	18	5	24	25.8
Other Places	-	8	5	13	14.0
Total No. of Cos.	3	74	16	93	100

* Other Places include Outside plant location, Hotels, Outstation, State's capital, regional office, group headquarters, and head office of parent company.

The above table shows that 86% of companies held their board meetings either at corporate office or registered office (wherein 25.8% companies had the corporate office and registered offices at the same place). While in case of 14% companies' board meetings were held at other places wherein PSUs had more tendency than the private sector to convene their board meetings at other places than the registered or corporate offices. In PSUs many times

5 e.g. Register of contracts which shall be kept at the registered office under section 301 (5).

meetings were either held at state's capital or at New Delhi since the board members were generally bureaucrats and majority of them could be available in the capital without hampering other work. Group headquarters, hotels, head office of parent companies and any place outside the company premises were some other places where the board meetings were held normally.

7.1.3 Frequency of Board Meeting

Quarterly board meetings (or 4 meetings in a year) are mandated under section 285 of the Companies Act, 1956. However, the frequency with which the supervisory body meets varies considerably among companies across the globe. According to available data, on an average, Italian boards were reported to meet most frequently (i.e., 11.8) and German supervisory boards met least frequently (i.e., 4.97). However, more frequency of board meetings is not a guarantee of better quality of deliberations at the meetings. Abnormally high number of board meetings is an alarm for some problems in an organization. Thus, the researcher asked the companies the frequency of board meetings in a year. Responses of 93 respondents were analysed as given in table 7.3.

Table 7.3 : Sectorwise Frequency Distribution of Number of Board Meetings Held in a Year

Frequency	Sector			Total Cos	% of Total
	Joint	Private	Public		
Fortnightly	-	-	1	1	1.1
Monthly	1	6	11	18	19.4
Bimonthly	2	29	1	32	34.4
Quarterly	-	39	3	42	45.2
Total Cos.	3	74	16	93	100
Average Board Meetings	8.0	5.43	10.87	6.45	

The above table reveals that atleast 4 meetings and maximum 24 meetings were convened per annum and an average board meeting per annum was 7 (i.e., 6.45). The sectorwise analysis shows that the maximum board meetings were convened in public sector companies (i.e., 10.87) and minimum in private sector (i.e., 5.43). 45.2% companies held quarterly meetings followed by bimonthly meetings that were held by 34.4% companies. It can be observed from the table that majority (i.e., 68.8%) of public sector undertakings held board meetings monthly whereas in the majority of the private sector companies (i.e., 52.7%) board meetings were held quarterly and that 66.7% joint sector companies held the board meetings bimonthly. There was one PSU where the fortnightly board meetings were held during the FY2000-01.

Table 7.4 shows that the companies falling under performance category I held meetings quarterly, monthly and bimonthly. There were equal number of companies falling under performance category I and III (i.e., 11 companies under each category) that held bimonthly board meetings. And that there were almost equal number of companies falling under each performance category, i.e., I, II and III (i.e., 5, 5 and 6 companies respectively) that held monthly meetings. And that quarterly meeting was held by many companies under each category.

Table 7.4 : Frequency Distribution of Frequency of Board Meetings Held in a Year on the Basis of Performance Category

Frequency	Performance Category			Total Cos.	% of Total
	I	II	III		
Bimonthly	11	6	11	28	33.3
Fortnightly	-	1	-	1	1.1
Monthly	5	5	6	16	19 0
Quarterly	15	11	13	39	46.4
Total No. of Cos.	31	23	30	84	100

The researcher also tried to find out the association between performance of companies and the frequency of board meetings by stating a null hypothesis that 'there does not exist any association between the performance of the company and the frequency of meetings held'. Results of Chi-Square test shows that the observed value of $\chi 2 = 3.50$ (p-value > .05) was not found significant at 5% significance level. Therefore, it can be concluded that no significant relationship exists between the frequency of board meeting and the performance of the company. This finding leads the study to establish that the quarterly meetings of the board were convened to fulfill the mandatory requirements only.

Deciding Board Meeting Process

The board meeting process is the crux of the decision making at the board meeting. A board member cannot absent himself for 3 calendar months or 3 consecutive board meetings with out prior intimation. To find out the process of board meetings and ascertain whether the board meetings are engines of corporate governance system or not, the question was posed with respect to the decision making process with probable answers. Table 7.5 presents the responses for the options.

Table 7.5 : Sectorwise Frequency Distribution Showing Decision Making Process at the Board Meeting

Decision making process at the Board meeting	Sector			Total Cos.	% of Total
	Joint	Private	Public		
The Chairman/CMD's office seeks confirmation for participation of the board members in the meeting	-	23	3	26	28.9
Leave of absence to a director is granted only by a prior intimation	3	46	9	58	64.4
Leave of absence to a director is assumed to be granted without prior intimation	-	8	1	9	10.0
The senior executive meet before the board meetings	2	33	5	40	44.4
The Chairman/CMD interacts with board members before the board meeting	-	24	1	25	27 8
Decision making is usually collective and participative	3	70	15	88	97.8
Total No. of Cos.	3	72	15	90	100

The table reveals that in 28.9% companies the Chairman's/ CMD's office sought confirmation for participation of the board members in the meeting. This reaffirms that the chairman/ CMD was keen for the value addition from the other members and that his directly seeking the confirmation from board members not only for attendance but also for participation makes clear to board members that the chairman is strict about the governance task and board members must be disciplined. In these 28.9% of responses there were many responses stating that it was not the chairman/ CMD but the company secretary sought such confirmation. In as low as 10% companies, 'leave of absence to a director was assumed to be granted without prior intimation' shows the casualness on the part of the company and the concerned directors in their approach towards the board meetings. Such attitude leads to the rubber stamp board where management decides and board confirms. Leave of absence to a director was granted only by a prior intimation in 64.4% respondent companies that shows the firmness on the part of the company to get the participation from the concerned directors.

Senior executives' meeting before the board meeting took place in only 44.4% companies. Senior executives meeting before the board meeting shows the preparation done by the management team for board meetings. It is the preparation of presentation, fact-sheets and other data related to agenda items. Here, what we can see is the real 'governance' when management prepares and gets ready for embarrassing questions. In as many as 27.8% companies the chairman/CMD interacted with board members before the board meeting implying the premeditated conclusions of the agenda items before any presentations made by the management. This practice is prevalent more in private sector than in public and joint sector companies. Not surprisingly, collective and participative decision-making was stated to be done in almost all companies (i.e., in 97.8% companies). However, an answer otherwise would establish that atleast board members differ in their views and deliberations are made before majority view will lead to decision on an issue.

7.2 During the Board Meeting

It is decided at the preparatory stage that how the board meetings will be convened. A well lead board by the chairman and well informed board members certainly make lots of difference in the governance issues. The board members who do not go into the details of day to day management function and rather decide on policy matters or long term decisions, strategy, use of corporate resources and evaluation of management performance can govern at its best with out leaving the same on management. The meeting processes includes following:

7.1.4 Length of Board Meeting

The law has not mandated the length of board meeting. However, the board should ensure that adequate time is provided for full discussion of important corporate items and that management presentations are scheduled in a manner that permits a substantial proportion of board meeting time to be available for open discussions. Board meetings are the vehicles for governance of an organization. Management is grilled for its performance during board meeting. Longer meetings allow more time for thoughtful discussion and reduce frequency of meetings that are often called for unfinished agenda (Salman, 1993). Board members are required to bring in their independent judgment and deliberations in decision-making during board meetings. Therefore, the board meetings must go on for a sufficient time to deliberate upon the direction, decision and controlling function. However, in many organizations board meetings are held as a ritual rather than for the purpose for which they are supposed to be held. The length of board meetings is also sometimes depends upon the agenda for which meeting has been called upon. A question was posed to find out the length of board meetings to understand the time devoted by the board members for their surveillance work. Analysis of 93 responses is presented at table 7.6. The table shows that majority of the companies, i.e., 55.9% had duration of board meeting more than 2 hours and interestingly we observed that there was a company having length of board meetings only for half an hour.

Table 7.6 : Sectorwise Frequency Distribution of Length of Board Meetings

Length of Board meeting	Sector			Total Cos.	% of Total
	Joint	Private	Public		
More than 2 hours*	1	39	12	52	55.9
2 hours	1	20	4	25	26.9
1 hour	-	10	-	10	10.8
1-2 hrs	1	4	-	5	5.4
1/2-1 hour	-	1	-	1	1.1
Total Cos.	3	74	16	93	100

* More than 2 hours means meetings for 3-8 hours

Further, in public sector companies the length of meetings were always 2 or more than 2 hours. However, in the private sector companies it varied from half an hour to more than 2 hours. Time spent on board meetings like 3-8 hours communicates that the board members were well into their governance function and that they were not just the rubber stamp board who sign on the dotted line and collect their cheques at the end of the meeting for signing the mandatory documents only. It should be understood that the board members cannot deliberate upon any issue in half an hour or even in one hour until there is calculated outcome decided by the board chairman.

7.1.5 Issues Getting Priority in the Board Meetings

Members of the board do not exercise any executive authority individually, but are collectively responsible for the superintendence, direction and control of the company management. To fulfill their surveillance task, its' not only the duration and attendance which are important for the board meetings but equally important are the issues that get priority in board meetings. For this the ranking method was used which was measured by weighted score. Responses of 82 respondents are tabulated in table 7.7.

Table 7.7 Issues Get Priority in the Board Meeting

Issues get priority in the board meeting	Weighted Scores	Ranks
Annual & Quarterly Reports	778	1
Corporate Performance	777	2
Strategic Planning	637	3
Strategy Evaluation	529	4
Capital Expenditure	481	5
Mobilisation of Resources	462	6
Investment Planning	399	7
Review of Report of Committees	387	8
Risk Management	358	9
Performance Evaluation of Executives	209	10
Technology Licensing	150	11
Any other*	77	12

* Any other : Annual Operating Plan, Budget Approval, Compliances of all statutory bodies (RBI, SEBI), Donations Tata businees Excellence model, HR/IR, Corporate Governance, Routine matters requiring board's approval, Technology Planning.

The table shows that the issues that got the highest priority at board meetings were annual & quarterly reports and corporate performance followed by strategic planning and strategic evaluation. Some of the companies did not give ranking to the priorities to the issues listed in the questionnaire and reasons expressed were as: Depending upon the exigencies of the work items get priority; all are on priority; all of them as & when need arises and statutory requirements. According to TSE guidelines, the board of directors of every corporation should "explicitly assume responsibility for the stewardship of the corporation and, as part of the overall stewardship responsibility, should assume responsibility for the adoption of a strategic planning process. However, process implementation is expected to come from management". Turnbull Report in the U.K. focused attention on risk management and internal control and the TSE guidelines strongly mentioned about risk management. Lower rank assigned to 'risk management' was seemingly due to overshaltered environment in which Indian corporates operate.

7.1.6 Opinion Sought From Outside Consultants

From time to time, it may be appropriate for boards and board committees to seek advice from outside advisors, independent of management, with respect to matters within their responsibility. For example, there may be technical aspects of the corporation's business — such as risk assessment and risk management — or conflict of interest situations for which the board or a committee determines that additional expert advice would be useful. Outside experts can help a board understand competition, client demographics, trends in government support, and public policy debates. Similarly, a compensation committee may find it useful to engage outside consultants for compensation management. Importance of access to such advise or consultation was also advocated by the Business Roundtable, U.S. (BRT).

One of the important KBC recommendation was that the board members can sought outside consultations at the company's expense. For this, we sought an answer to a question: 'What are the matters on which board of directors usually seek opinion/ advice from outside consultants?' Analysis of 86 responses tabulated in table 7.8 shows that 80.2% companies sought advice from outside consultants on various issues as mentioned in the table and about 19.8% did not seek any outside consultation. Majority of companies (i.e., 62.8%) stated that the board members sought opinion on legal/ corporate laws followed by 29.1% boards that sought consultation on finance/ accounting/ debt restructuring/ internal controls.

Table 7.8 : Frequency Distribution of Issues on Which advise is Sought by the Board Members

Issues on which advise is sought	No. of Cos	% Cos
Legal/ Corporate Laws	54	62.8
Finance/ Accounting/ Debt restructuring/ Internal controls	25	29.1
HR/ IR/ Appointments/ Compensation	24	27 9
Technical Aspects/ Technology/ IT/ Project Mgmt	23	26 7
Taxation	15	17 4
Business Strategic issues/ M & A/ Long term planning/	15	17.4
Marketing/ Risk Management/ other consultation	11	12.8
None	17	19.8

Seeking an advise on risk management was very low. During the discussions with respondents, it was highlighted that it were not the board members who seek consultation directly but the same is done through management team members. Therefore, the philosophy behind the introduction of seeking outside consultation independent of management has failed in this matter.

7.1.7 Decision Making Process in the Board Meetings

Previously, while discussing the board meeting process, we found that in 97.78% (i.e., 88 out of 90) companies decision-making was usually collective and participative. A further answer was sought to a question, 'How decisions at board meetings are reached?' 90 respondents' answers to the said question is tabulated in table 7.9.

Table 7.9: Sectorwise Frequency Distribution on the Basis of Decision Reached in Board Meetings

Responses	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Unanimous	3	58	14	75	83.3
Majority		10		10	11 1
Unanimous & Majority		4	1	5	5.6
Total No. of Cos	3	72	15	90	100

Decisions in board meetings were taken normally unanimously (i.e., 83.3%) and sometimes by majority (i.e., 11.1%). In the joint and public sector companies the decisions were taken unanimously whereas in the private sector the decisions were taken unanimously mostly (i.e., 80.6% companies) and sometimes by majority (i.e. 13.9%). In 5.6% companies (i.e. 5 out of 90) it was sometimes by majority and sometimes unanimously. The above question was supplemented by another question that 'whether a director disagreeing with a particular decision usually appends a note of dissent?' 90 responses to the question are presented in table 7.10.

Table 7.10: Sectorwise Frequency Distribution of 'Whether a Director Disagreeing With a Particular Decision Usually Appends a Note of Dissent'

Response	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Yes	1	27	6	34	37.8
No	2	45	9	56	62 2
Total	3	72	15	90	100

Dissenting directors appended a note of dissent in as many as 37.8% respondent companies of all sectors. The other respondents (i.e., 62.2%) who said that the dissent did not take place and the decision is usually reached unanimously and therefore, there was no issue of appending a dissent note. That in majority of companies the disagreeing director did not append a note of dissent. However, few others said that if dissent occured it was recorded in the minutes and the concerned director was not appending any individual note. And in few cases it was told that the other members convinced the dissenting board member therefore, there is no dissent placed on the record.

7.3 After the Board Meeting

The seriousness of decisions taken at board meeting lies in what is done after the meeting. 'After meeting' process includes the following:

7.3.1 Maintenance of Minutes of Meeting Register

Section 193 of Companies Act, 1956 requires the maintenance of book (register) for minutes of meeting, containing a fair and correct summary of the proceedings thereat. It further requires that the pages be consecutively numbered and that in no case the minutes of proceedings of a meeting shall be attached to any such book by pasting or otherwise[6].

6 Here, the word 'otherwise' may also including 'filing' of loose sheets. Department of Company Affairs, without prejudice to the strict legal position, permitted the loose-leaf minutes book vide letter number 16047/TA/VII dated 16-12-1974. However, minutes of meetings found pasted in the minutes book could

However, change in technology has made the procedure such that the minutes of meetings in the form of loose sheets, with consecutive page numbers, can be maintained by the company, however, they need to be bound within the reasonable time.

Since maintenance of minutes of meetings book was a mandatory requirement it was stated by all the respondents that they had complied with the requirement 100%. However, during the discussion it was understood that as such there was not a register but the typed leaflets were inserted in a file and there was a file instead of a book (register) that was maintained by the companies.

7.3.2 Ratification of Minutes by Board Members

The draft minutes of the meeting should be forwarded to the directors and ratification should be obtained from the directors within a definite time frame. If a director fails to respond within the time specified, it should be presumed that he/ she has no comments to offer. However, the legal position is that under section 193 (1) the minutes be made within thirty days of the conclusion of every board meeting and under section 193 (1A) (a) of the Companies Act, 1956 its' the chairman of the board who signs the minutes of previous meeting on behalf of the whole board. When chairman signs the minute it is taken for granted that the whole board has ratified the minutes. However, to find out that do the other board members ratify the minutes, the question was posed to the respondents that "Do members of board ratify the recorded minutes?"

Table 7.11 : Sectorwise Frequency Distribution of Whether Ratification of Minutes is Done by Board Members

Responses	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Yes	2	66	12	80	88 9
No	1	6	3	10	11.1
Total	3	72	15	90	100

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not be accepted as evidence by the Calcutta High Court in Gluco Series (P.) Ltd., *re* [1987] 61 Comp. Cas. 227 (Cal.).

Analysis of 90 responses at table 7.11 shows that majority of the companies (i.e., 88.9%) had the practice of ratification of minutes by the board members and that few companies (11.1%) did not have such a system of ratification. A question was also asked to the respondents to know how ratification of minutes of meeting is done. 90 respondents gave the responses to the question and their analysis is shown at table 7.12.

Table 7.12 : Sectorwise Frequency Distribution of How the Ratification of Minutes of Meeting is Done

Responses	Sector			Total Cos.	% of Total
	Joint	Private	Public		
In the next meeting	2	43	9	54	60.0
By circulation	-	13		13	14.4
In the next meeting & by circulation	-	10	3	13	14.4
Not Applicable	1	6	3	10	11.1
Total Cos.	3	72	15	90	100

Ratification of the minutes of meeting was done by majority of companies (i.e., 60%) in the next meeting, by circulation in 14.4% companies, both in the next meeting and by circulation in 14.4% companies. The ratification of minutes was done by circulation only in private sector companies and not in joint or public sector companies. In 11.1% companies it was not applicable since the chairman of the board signs the minutes and other members did not get chance to ratify what was written in the minutes. When the minutes are circulated the board members can go through the minutes and suggest changes. When the minutes are placed before the board during the meeting then ratification is done immediately and hence leaves no space for the directors to read through the minutes and raise any objection. And where only the chairman signs the minutes, it leaves no scope for other board members to raise any objection if the contents of minutes were diverted from the actual conclusions during the board meeting.

7.3.3 Action Taken Report at the Board Meeting

The implementation of decision and its status at the ensuing meeting are to be conveyed to the directors for their 'controlling' function therefore, at every board meeting, the board should review the status of the action taken on the points arising from the earlier meetings and until the completion of the work to the satisfaction of the board, any pending item should continue to be put up before the board.

Minutes of the meeting will state that for a particular agenda what decision was reached and what the board wants the management to do. However, the success of any decision lies in its implementation followed by a successful outcome. Therefore, the answer was sought for the question, "Is the compliance of the decision taken in board of directors meetings reported in the ensuing meeting of the board?" Analysis of 90 responses received for the said question has been analysed at table 7.13.

Table 7.13: Sectorwise Frequency Distribution on the Basis of Reporting in the Next Meeting of Compliance of Decision Taken by the Board in Previous Meeting

Responses	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Yes	3	69	15	87	96.7
No	-	3	-	3	3.3
Total Cos.	3	72	15	90	100

Almost all companies (i.e., 96.7%) had a system of reporting of the compliance of the decisions taken in the board of directors meeting in the ensuing meeting. Only in private sector some of the companies (i.e., 4.2%) did not give the said compliance report. However, the companies that had the system of compliance reporting did it under various names. Some companies took it as an agenda item in the next meeting; some included the compliance in the minutes of previous meeting that was presented for ratification (adoption) for the board members. Other names under which the compliance reporting was done by companies were – action taken report, compliance status report, and status report. In one company the management was asked verbally about the compliance of decision taken in the previous meeting.

7.3.4 Rejection of Resolution Taken in Board Meeting by AGM

The board has the powers, on certain matters, that shall be exercised on behalf of the company only by means of resolutions passed at the meetings under section 292 (1) and that those powers should not be specifically restricted under section 293 of the Act. However, shareholders in the AGM have supreme power and they can reject any resolution passed in the board meeting, by their voting power under section 292 (5). Therefore, an inquiry was made in the matter by asking a question that 'Are the resolution of board of directors rejected at AGM?" In response to the said question 90 responses were received, analysis of which is presented at table 7.14.

Table 7.14: Status of 'Rejection of Resolutions of Board of Directors at AGM'

Responses	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Yes	-	3	-	3	3.3
No	3	69	15	87	96.7
Total Cos.	3	72	15	90	100

From the above table it is revealed that normally the resolutions of board of directors were accepted during AGM, however, it was observed that in 3 private sector companies the resolutions of board of directors were rejected at one point of time. The rejection of resolution was very rare because of the scattered shareholders and presence of concentrated shareholding of promoters or controlling group, i.e., blockholders. The resolutions of board of three companies which were rejected at the AGM were as: enabling resolution authorising the board raise funds, hiving off resolution was rejected by shareholders because of doubts by small shareholders, decision of board of directors for donation to charitable institution was over-ruled by the members. In all 3 cases the objection was raised by small shareholders and the contention was upheld.

Apart from the above responses it was observed during the study that despite such cases do occur sometimes, respondents were hesitant to report the same. Following additional examples are quoted from the business dailies: Shareholders of Thomas Cook blocked a resolution for a change in control at the company without an open offer. There was absence of required majority to pass the said resolution[7]; same fate was met by Alfa Laval (India) Ltd. on the similar point and ground[8]; In case of Dunlop India Ltd. in September 2001, financial institutions opposed two resolutions at AGM. First, was the appointment of chairman who was not liable to be retired by rotation and second adoption of accounts for the FY2000-01[9]. Such examples show the shareholder activism and real democracy in corporate governance system.

7.4 Attendance Record of Directors

Holding regular board/ board committee meetings held periodically enhance the governance system. KBC's recommendations of holding up to 10 board committee memberships and 5 Chairmanship of board committees really finds one wondering whether a person with these many memberships will be able to put in substantial deliberations in governance system. Deliberation of board members cannot be sought with out their presence at the board meeting. At the board meeting a director contributes towards the performance of the company and therefore the question of performance does not arise unless they attend the board meeting. The common wisdom prevails that the directors attending the meetings contribute better than the director not attending the meeting. Therefore, an inquiry has been made to analyse the attendance record of directors taking into consideration other independent variables viz., type of directorship and the category of designation of directors.

7.4.1 Last AGM Attended

Attendance of directors at the AGM is very much important for the reason that directors are fiduciaries of the shareholders' interest in the company and therefore they are supposed to be duty bound to answer the queries raised by the beneficiaries. For the same reason KBC

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7 (2001), "Thomas Cook Shareholders Block Resolution For Change In Control, *The Financial Express*, Mumbai, June 22nd, p.5.

8 (2001), "ALIL Shareholders Dissent Parent Company's Attempt To Gain Control", *The Financial Express*, Mumbai, May 26th, p.5.

9 (2001), "Dunlop management, FIs at Loggerheads", *The Economic Times*, Ahmedabad, September 29th, p. 17.

sought the presence of Chairman of audit and remuneration committee. Despite this is a narrower view, the message behind seeking the presence of Chairmen of these two committees was clear that they are answerable to the beneficiaries of the resources of which they are trustees. With this view behind, an analysis of attendance record was carried out to find out attendance of directors at the last AGM

Analysis of available data of 1109 directors out of 1229 directors of surveyed 116 companies for the last AGM attended shows that the average attendance of director at last AGM was 67.2% (almost 2/3rd of total directors). And that the 32.8% directors (i.e. almost 1/3rd) remained absent at the last AGM.

Table 7.15 : Frequency Distribution of Last AGM Attended

A. On the Basis of Type of Directorship

Type of Directorship	Last AGM Attended		No. of Directors	Average Attendance (%)
	Yes	No		
ED	282	39	321	87.9
IND	249	160	409	60 9
NED	214	165	379	56 5
Grand Total	745	364	1109	67 2
% of total	67.2%	32.8%	100%	

$\chi^2_o = 89.30$, p-value < 0.05

B. On the Basis of Designation of Directors

Category of Designation	Last AGM Attended		No of Directors	Average Attendance (%)
	Yes	No		
Chairman	76	16	92	82.6
CMD	42	2	44	95.5
MD/CEO	69	7	76	90.8
MD(Functional)	10	1	11	90 9
WTD	148	28	176	84.1
Ordinary Directors	350	251	601	58.2
Additional Director	5	4	9	55 6
Alternate Director	10	7	17	58.8
Casual Director	2	3	5	40.0
Nominee	33	45	78	42.3
Total	745	364	1109	67.2

The attendance of ED was highest (i.e., 87.9%) followed by IND (60.9%) and NED (56.5%). Chi-square test was conducted (see table 7.16A) to test the null hypothesis that 'there is no association between the type of directorship and AGM attendance'. The observed value of χ^2

was found to be significant (p-value <.05) indicating significant association between type of directorship and AGM attendance.

Designationwise analysis shows that the attendance of CMD (95.5%), MD (Functional) (90.9%) and MD/ CEO (90.8%) were highest at last AGM and the lowest were that of casual directors (40%) and nominee directors (42.3%). The Chi-square test could not be conducted since the assumptions of Chi-square test were not satisfied.

7.4.2 Attendance at Board Meeting

Board meetings are held to deliberate upon the matters that will give strategic direction to the management. At least 4 meetings are mandatory and the law also prescribes that under section 283(g) if the director absents himself from 3 consecutive meetings of board of directors or from all meetings of the board for a continuous period of 3 months, whichever is long, without obtaining leave of absence from the board, the office of a director shall become vacant. The philosophy behind this mandatory requirement is that those who don't have time have no right to be on the board. For finding out the attendance record of directors, we analysed the board meeting attendance records of directors from the annual report of FY2000-01 and the results are given in table 7.16. Analysis of available data of 1191 directors out of 1229 directors of surveyed 116 companies for board meeting attendance shows that an average attendance at the board meeting was 72% and 35.9% directors attended 100% board meetings. That 78 directors (i.e., 6.5%) did not attend a single board meeting.

Table 7.16 : Frequency Distribution of Board Meeting Attendance

A. On the Basis of Type of Directorship

Type of Directorship	Category of board meeting attendance (%)						No. of Directors	Average Attendance (%)
	0	0-25	25-50	50-75	75-100	100		
ED	2	8	11	32	88	209	350	88.7
IND	29	45	61	74	112	114	435	66.9
NED	47	34	53	78	90	104	406	63.3
Total Dirs.	78	87	125	184	290	427	1191	72 0
% of total	6.5	7.3	10.5	15.4	24.3	35 9	100	

$\chi^2_o = 172.09$, p-value < .05

B. On the Basis of Designation of Directors

Category of Designation	Category of board meeting attendance (%)						Total Directors	Average attendance (%)
	0	0-25	25-50	50-75	75-100	100		
Chairman	2	2	3	10	23	56	96	87.3
CMD	-	-	1	1	9	34	45	95.3
MD/CEO	-	1	3	5	15	58	82	91.8
MD(Functional)	-	-	-	4	5	5	14	83.8
WTD	2	7	11	18	56	93	187	84.6
Ordinary Directors	63	64	81	120	157	146	631	63.5
Additional Director	4	2	1	1	2	10	20	65.1
Alternate Director	2	4	3	4	3	7	23	60.7
Casual Director	1	-	2	1	-	2	6	59.4
Nominee	4	7	20	20	20	16	87	63.1
Total Directors	78	87	125	184	290	427	1191	72.0

The average attendance of ED directors at the board meeting was highest (88.7%) which was more than that of IND (66.9%) and NED (63.3%). The majority of ED (59.7%) had 100% attendance at board meeting whereas 50% of NED including IND (421 out of 841) had attendance less than or equal to 50% only. The chi-square test was conducted to test the null hypothesis that 'there is no association between the type of directorships and category of board meeting attendance'. The observed value of χ^2 was found to be significant (p-value < .05) indicating significant association between type of directorships and board meeting attendance.

Designationwise analysis shows that chairmen, CMD, MD/CEO, MD – Functional, WTD had more attendance in the board meetings than ordinary directors, additional directors, alternate directors, casual directors, and nominee directors.

7.4.3 Attendance at Board Committee Meeting

Attendance at AGM is necessary to discharge fiduciary accountability towards shareholders by answering queries raised by them, whereas attendance at board meetings is necessary to deliberate upon strategic issues for establishing the internal controls system. Besides, board committee meetings enables analysis of issues assigned to it by the board. Understanding the nature of surveillance and importance of board committees, an attempt was made to find out the frequency of attendance at the board committee meetings. The related data is presented in table 7.17.

Table 7.17 : Frequency Distribution of BC Meeting Attendance

A. On the Basis of Type of Directorship

Type of Directorship	Category of BC Meeting Attendance (per cent)						No. of Directors	Average Attendance (%)
	0	0-25	25-50	50-75	75-100	100		
ED	38	4	6	11	22	94	175	71.0
IND	28	10	19	40	33	154	284	76.8
NED	34	7	21	26	28	87	203	68 6
No. of Directors	100	21	46	77	83	335	662	72.8
% of total	15 1	3.2	6.9	11 6	12 5	50.6	100	

$\chi^2_o = 27.64$, p-value<.05

B. On the Basis of Designation of Director

Category of Designation	Category of Board Committee Meeting Attendance (per cent)						No of Directors	Average Attendance (%)
	0	0-25	25-50	50-75	75-100	100		
Chairman	8	1	2	9	7	30	57	76.8
CMD	4	-	1	1	2	17	25	78.8
MD/CEO	9	1	2	2	5	26	45	73 0
MD(Functional)	5	-	-	-	1	4	10	47.7
WTD	16	3	4	5	9	51	88	73.6
Ordinary Directors	50	12	31	50	44	184	371	72.7
Additional Director	1	-	1	-	-	5	7	76 1
Alternate Director	-	1	1	1	3	2	8	76.0
Casual Director	-	-	-	-	1	3	4	95.8
Nominee	7	3	4	9	11	13	47	65.9
Total	100	21	46	77	83	335	662	72.8

Analysis of available data of 662 BC members of 393 board committees of 116 companies for board committee meeting attendance shows that an average attendance of director at board committee meeting was 72.8% and that one out of two board committee members (i.e., 50.6%) attended 100% board committee meetings and that 15.1% (i.e.,100 directors) did not attend even a single board committee meeting. The chi-square test was conducted to test the null hypothesis that 'there is no association between the type of directorships and category of board committee meeting attendance'. The observed value of χ^2 was found to be significant (p-value < .05) indicating significant association between type of directorships and board committee meeting attendance. Designationwise analysis shows that the attendance of

MD(functional) and nominee directors seemed to be less than average attendance of total directors (i.e., 72.8%).

7.4.4 Factors Affecting Attendance: Aggregate Analysis

In view to analyse the possible cause for attendance and absenteeism of directors in the meetings we considered 4 factors and attempted to find out the relationship between attendance and independent variables, viz., age, other directorships, total board committee memberships and remuneration of directors.

On the Basis of the Attendance at the Last AGM

As noted earlier, the AGM attendance was influenced by the type of directorships. Therefore, a further analysis was performed to assess the influence of independent variables, viz., age, total number of other directorships, total number of board committee memberships across all companies and total remuneration received, on the attendance at AGM. Accordingly, the null hypothesis 'Age, number of other directorships, number of board committee memberships across all companies and remuneration received did not influence the attendance record at AGM' was tested against an alternate hypothesis that 'Age, number of other directorships, number of board committee memberships across all companies and remuneration received significantly influence the attendance record at AGM.' This hypothesis was tested for each type of directorship, viz., ED, NED and IND. Data for all four independent variables, i.e., age, number of other directorships, number of total board committee membership and remuneration were available only for 638 directors out of 1229 directors of surveyed 116 companies.

Accordingly, multiple linear regression analysis was carried out to examine the influence of either anyone or all of the independent variables together (refer appendix 7.1) on the AGM attendance. The following model was fitted:

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \varepsilon. \qquad \text{.........(7.1)}$$

In the multiple linear regression analysis for ED and IND category, it was found that the linear model was not significant whereas in case of NED the model was significant (p-value $< .05$ and adj. $R^2 = 10.6\%$) implying thereby that the model could explain only 10.6% of the variation in AGM attendance by the NEDs. However, out of four independent variables age was the only significant variable (p-value $< .05$) and it was affecting positively, i.e., higher the age of NEDs', higher was the attendance at AGM.

On the Basis of the Attendance at Board Meetings

In sections 7.4.2 it was found that board meeting attendance was influenced by the type of directorships. Therefore, a further analysis was performed to find the influence of independent variables, viz., age, total number of other directorships, total number of board committee memberships across all companies and total remuneration received, on the attendance at board meetings. Accordingly, the null hypothesis 'Age, number of other directorships, number of board committee memberships across all companies and remuneration received do not influence the attendance record at board meetings' was tested against an alternate hypothesis that 'Age, number of other directorships, number of board committee memberships across all companies and remuneration received significantly influence the attendance record at board meetings.' This hypothesis was tested for each type of directorship, viz., ED, NED and IND. Data for all four independent variables i.e. age, number of other directorships, number of board committee memberships across all companies and remuneration were available only for 676 directors out of 1229 directors of surveyed 116 companies.

Accordingly, multiple linear regression analysis was performed to find out the influence of either anyone or all the independent variables together (refer appendix 7.2) on board meeting attendance. The model described in 7.1 was fitted:

The results obtained showed that the linear model was significant for all the three types of directorships implying existence of relationship between the attendance at board meeting and independent variables with respect to the type of directorship of directors. In case of ED category the model could explain only 4.2% of the variation in board meeting attendance and the only independent variable which was found positively significant was 'total directorships in other companies'. In case of NED category the model could explain only 9.7% of the variations in board meeting attendance and the effect of 'total memberships in board committee across all companies' was found to be positively significant. In case of IND category the model could explain 11.3% of the variation in board meeting attendance. The effect of age and total memberships in board committees across all companies were found to be positively significant.

On the Basis of the Attendance at Board Committee Meetings

In sections 7.4.3 it was found that board committee meeting attendance was influenced by the type of directorships. Therefore, a further analysis was performed to find the influence of independent variables, viz., age, total number of other directorships, total number of board committee memberships across all companies and total remuneration received, on the attendance at board committee meetings. Accordingly, the null hypothesis that 'Age, number of other directorships, number of board committee memberships across all companies and remuneration received do not influence the attendance record at board committee meetings' was tested against an alternate hypothesis that 'Age, number of other directorships, number of board committee memberships across all companies and remuneration received significantly influence the attendance record at board committee meetings.' This hypothesis was tested for each type of directorship, viz., ED, NED and IND. Data for all four independent variables, i.e., age, number of other directorships, number of total board committee memberships across all companies, and remuneration were available only for 393 directors who were board committee members.

Accordingly, multiple linear regression analysis was performed to find out the influence of either anyone or all the independent variables together (refer appendix 7.3) on board committee meeting attendance. The model described in 7.1 was fitted.

The results obtained showed that the linear model was significant only in case of ED category and it could explain only 6.5% of the variation in board committee meeting attendance. The effect of 'total memberships in board committee across all companies' was found positively significant whereas 'total remuneration received' was found negatively significant (*p*-value = .50).

7.5 Corporate Governance Audit and Compliance of Cl. 49

Cl. 49–VIII of the listing agreement requires certification of compliance of requirements of corporate governance. Therefore, this section is further divided into two sub-sections, i.e., corporate governance audit and compliance of Cl. 49.

7.5.1 Corporate Governance Audit

Every organization claims to form strategy to achieve its corporate governance objectives. However, when the strategy is formed for the achievement of corporate governance objectives, the outcome of such strategy must be weighed against the set objectives. To the question, 'Is there a formal system in place for audit of corporate strategy/ governance outcome?' 90 responses were received. An analysis of responses is given in table 7.18.

Table 7.18 : Sectorwise Frequency Distribution of Presence of Formal System For Audit of Corporate Strategy/Governance Outcome

Responses	Sector			Total Cos.	% of Total
	Joint	Private	Public		
Yes	2	47	8	57	63.3
No	1	26	6	33	36.7
Total Cos.	3	73	14	90	100

The above table shows that 63.3% companies had in place system for audit of corporate governance whereas 36.7% companies did not have any such system in place for the audit of corporate governance. With a view to know the impact of presence of system of audit of corporate governance on the performance of the company, the outcome of the analysis are as follows:

Table 7.19 : Frequency Distribution of Presence of Audit System

Presence of audit system	Category of Performance		
	I	II	III
Yes	24 (77.4)	11 (50)	20 (71.4)
No	7 (22.6)	11 (50)	8 (28.6)
Total No. of Cos.	31	22	28

Figures in bracket are in per cent

Table 7.19 shows that there was no impact of the audit of corporate governance system on the financial performance of the company. It can be seen from the table that 71.4% companies of performance category III despite having a system of audit of corporate governance in place performed poorly financially and in contrast to that 22.6% companies of category I performed excellent financially despite they do not have a system of audit of corporate governance in place. Results of Chi-square test shows that observed $\chi^2 = 4.68$ was not found significant at 5% level of significance (p-value > .05), therefore, it can be concluded that there is no significant difference between the financial performances of companies having corporate governance audit and those who did not have the audit. Suggestions were sought from the respondents for the improvement in the present evaluation system for corporate governance outcome.

Improvements Suggested in the Present Evaluation System For Corporate Governance Outcome

In 36.7% companies where the audit of corporate governance did not take place at all, any system of audit introduced in an organization can be regarded as an improvement in the present evaluation system of audit of corporate governance. Further, to improve the corporate governance audit system in a company the respondents' suggestion are summarized in to 4 categories, i.e., legal necessities, self-awareness/ regulations, performance evaluation of board members, procedural changes.

i. Legal Necessities

Some respondents suggested legal compulsion for following:

a. Mandatory audit of the corporate governance practice by the authorized external agencies (other than statutory auditors). ISO accreditation by establishing functional procedures for corporate governance observance. Review of secretarial/ legal compliance by practicing company secretary. The outside agency must be appointed periodically to monitor the performance of the company and the report must be filed with the SEBI and DCA.

b. Governance should not only be limited to a certain set of rules and regulation and should cover up the entire gamut of rules and regulation governing the activities of corporation and the audit part should be held responsible and buck should not be passed to management.

c. SEBI should come out with evaluation system. Cl. 49 is a means and not an end in itself. SEBI/ BSE/ NSE should penalize the companies that do not comply with the corporate governance code. They should also set up a separate department to examine the corporate governance compliance by the companies.

d. The entire requirement of corporate governance should be reviewed to suit Indian environment.

e. There should be incorporated additional responsibility of audit committee.

ii. Self-regulation

a. No amount of codification of corporate governance would help to achieve the desired results unless ethical standards are enhanced and self-regulation is practiced.

b. Companies can take feed back from all the stakeholders about company's corporate governance in a structured manner.

c. Nurturing a corporate culture that ensures corporate governance in the company is most necessary. It's the ethical system and abandoning illegality that will improve the corporate governance and treating people equal and they are not afraid of anything. It's all about make employees feel responsible.

d. Scorecard method can be introduced for the audit purpose.

iii. Performance Evaluation of Board Members

a. Board members should evaluate on yearly basis that whether they have maximized the shareholder value or achieved the objectives of corporate governance

b. Corporate governance implementation and existence should be periodically monitored by the board of directors suggesting the improvements.

iv. Procedural Changes

a. Educate the corporate world on corporate governance evaluation and audit.

b. Rely on outside ranking.

c. The corporate must function in transparent manner. There should be more committees focusing various areas instead of generalizing 3 committees to all companies.

d. The present system consumes too much of time and lots of paper work. Therefore, eventhough it is required, paper work must be reduced.

e. There must be a separate department which will guide on corporate governance and also looks at other companies for benchmark in corporate governance

f. Board committees to monitor the progress of company management evaluation and strategy formation.

7.5.2 Compliance With Cl. 49

Under Cl. 49 of the listing agreement there were certain mandatory and non-mandatory items alongwith schedules of the date of implementations. Mandatory provisions were related to audit committee, board members, shareholders related committee, information about directors' remuneration, information to be given in annual report/ directors' report and information on web-site and non-mandatory requirements were for remuneration committee, half yearly report on financial performance to each household of shareholders and postal ballot, etc. Pursuant to the introduction of Cl. 49 in the listing agreement the scenario was to check whether companies were complying with the listing requirements. For this only those 141 companies whose stocks were listed on BSE 'A' group as on 1st January 2000 were considered for the study since they had to comply with the Cl. 49 requirement by 31st March 2001. Sample comprising of 96 surveyed companies of BSE 'A' group had to comply with Cl. 49 requirements. Checklist approach was adopted for finding compliance. Findings were as under:

Cl. 49 : Disclosure On Mandatory Provisions

Board of Directors – (Sub. Cl. I)

A. Composition of Board

- An optimum combination of executive and non-executive directors[10]: Out of 96 companies, 93 have 50% NED on their board. 3 public sector companies do not comply with the requirement.
- In case of non-executive chairman at least one-third of board should comprise of independent directors and in case of an executive chairman, at least half of board should comprise of independent directors[11]: Out of 96 companies 47 companies had NED chairman and 49 companies had ED chairman. Out of 47 companies having chairman NED, only 30 companies complied with the requirement and out of 49 companies having chairman ED only 24 companies complied with the requirement.

[10] Wherein not less than fifty percent of the board of directors will comprise of non-executive directors.

[11] Clause 49(I)(A) of the listing agreement wherein the expression "independent directors" means directors who apart from receiving director's remuneration , do not have any other material pecuniary relationship or transactions with the company, its promotors, its management or its subsidiaries, which in judgement of the Board may affect independence of judgement of the director.

Table 7.20 : Frequency Distribution of Board Composition Depending on the Type of Chairman

Sector	Chairman NED?						Total of Cos
	Yes			No			
	No. of IND ≥ 1/3rd of Board Size			No. of IND ≥ 1/2 of Board Size			
	Yes	No	Total Cos.	Yes	No	Total Cos.	
Private	29	16	45	22	12	34	79
Public	1	1	2	2	13	15	17
Total Cos.	30	17	47	24	25	49	96

Thus 42 out of 96 companies (i.e., 43.7%) did not meet the requirement of independent directors on the board. 35.4% (i.e., 28 out of 79) private sector companies and 82.3% (i.e., 14 out of 17) public sector companies did not comply with the requirement of the listing agreement.

Audit Committee: (Sub. Cl. II)

Audit committee, which has become mandatory under section 292-A of the Companies (Amendment) Act, 2000 and under sub-clause II of clause 49 of the listing agreement, was in existence in many of the "A" group companies since a decade or even before that. However, as per the listing agreement the pre-requisite for the audit committee was its being qualified and independent. The FY2000-01 annual reports show following facts as against the requirement:

- All audit committee comprising of three NEDs members: 100% compliance with atleast three members NEDs.
- Majority IND members: 25.8% companies (i.e. 24 out of available data of 93) did not comply with this requirement out of which 9 were public sector and 15 were private sector companies.
- Atleast one director having financial & accounting knowledge: 100% compliance
- Chairman be IND: 71.7% companies (i.e., 66 out of 92 companies) complied with this requirement, 28.3% companies did not comply with this requirement (one company had ED chairman and 25 companies had NED chairmen).

- Chairman be present at the last AGM: Out of 83 available data 75.9% chairman attended the last AGM.
- Audit committee to meet at least thrice a year: 20.4% Audit committees (i.e., 19 out of 93 companies) met less than three times in the FY2000-01.

Remuneration of Directors: (Sub. Cl. III)

- Remuneration of NED shall be decided by the board of directors: The remuneration of NEDs was decided by the board of directors in 53.75% companies (i.e., 43 out of 80 companies).
- Disclosure on remuneration of directors: For this, companies had to disclose the remuneration package of all directors[12] and other details of service contract which has been duly complied with by most of the companies except few that have disclosed the remuneration of executive director only and not the sitting fees of non executive directors.

Management Discussion And Analysis: (Sub. Cl. V)

The Annual Reports' analysis reveals that all the contents were either not covered under one heading or written under various headings at various places in the annual report in many cases.

Board Procedures: (Sub. Cl. IV)

- Board meetings to be held atleast 4 times a year: 100% compliance
- Director shall not be a member in more than 10 committees or act as chairman or more than 5 committees across all companies: 15 directors held more than 5 chairmanships of board committees and 6 directors held more than 10 board committee memberships.

[12] Even Institutional Shareholders' Committee (ISC, 1991) in the U.K. and Egginton *et.al.* (1993) were of the opinion that "a summary of the details of any performance linked remuneration schemes and of all types of share option and other incentive and profit sharing and bonus schemes should be included in the Annual Reports".

Shareholders: (Sub. Cl. VI)

In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the brief resume of the director, nature of his expertise in specific functional areas and names of companies in which the person also holds the directorship and the membership of committees of the board: 100% compliance.

Shareholder/ Investors Grievance Committee: (Sub. Cl. VI-C)

- Out of 93 companies 90 companies had shareholder grievance committee that means 3 companies did not comply with this requirement.
- Chairman of the committee be non-executive director - Out of available data of 86 companies there were 6 executive chairmen.

Share Transfer: (Sub.Cl. VI-D)

- Power of share transfer be delegated to an officer of a committee: Out of 93 companies only 20 companies had separate share transfer committee.
- The delegated authority shall attend to share transfer formalities at least once in a fortnight: 8 Out of 20 Share Transfer committees met less frequently than fortnight.

Report on Corporate Governance[13]: (Sub. Cl. VII)

There shall be a separate section on corporate governance in the annual report of company: In some of the annual reports it was observed that the said report was given as an annexure to the directors' report instead of a separate section.

Compliance: (Sub.Cl. VIII)

Compliance certificate from the auditors of the company regarding compliance of conditions of corporate governance: The said certificate of the auditor of the companies had been issued with a statement that the certificate by auditors is not a guarantee of good governance. They

[13] Cl. 49 (VII).

further state, "Compliance with Cl.49 is neither an assurance as to the future viability of the company nor of the efficiency or effectiveness with which the management has conducted the affairs of the company". The certificates issued by the auditors were as per the guidelines issued by AICA.

Attendance Record of Directors

Even though majority of companies had given attendance record of directors, it is not wel-formatted and in most of the cases number of meetings held during tenure of a director and number of meetings attended by a director was not disclosed separately. In two cases, attendance of director was marked due to their presence through tele-conferencing.

General Shareholder Information

Almost all companies complied with this requirement. They gave the general shareholder information in the annual reports as per the direction.

B. Disclosure of Non-mandatory Items Reported in the Annual Report of FY2000-01

Analysis of annual reports of the companies shows that 42.42% (i.e. 28 out of 66) companies did not report any non-mandatory items in the annual report of FY2000-01 and 57.57% (i.e., 38 out of 66) companies reported following items:

Remuneration Committee

Annual reports of the majority of the companies stated, "Since this is a non-mandatory requirement, the company has not set up the remuneration committee". As far as Public Sector Undertakings (PSUs) and Public Sector Banks (PSBs) are concerned, the remuneration of official and non-official directors was fixed by the Government, therefore no need was felt by such PSUs and PSBs to have remuneration committee.

Chairman of remuneration committee be independent and there should be atleast 3 members, all of whom should be NEDs: Out of 53 remuneration committees 58.5% (i.e., 31) committees had independent chairman. Requirement of committee with atleast 3 NEDs was complied by 81.1% companies (i.e., 43 out of 53) and that 18.9% companies (i.e., 10 out of 53) did not have atleast 3 NEDs.

Quorum be 100%: Only 15.1% (i.e., 8 out of 53) remuneration committees required quorum of 3 and rest 45 committees had quorum requirement of 2 members. None of the companies had quorum requirement of 100% committee members for the remuneration committee.

Non-executive chairman's Office at the Company's Expense

In those companies wherein the chairman was non-executive, companies either did not disclose this fact or it is stated that since it is a non-mandatory provision the company did not maintain the non-executive chairman's office[14]. 52.94% (i.e., 18 out of 34 companies) of BSE 'A' group companies maintained NED chairman's office while 47.06% (i.e., 16 out of 34) companies did not do so.

Half-yearly Reports to Each Household of Shareholders

Sending half-yearly reports to each household of shareholders was a rare phenomenon. Companies like Grasim, Indo-gulf and Infosys Technologies sent the half yearly reports to each household of shareholders[15].

Postal Ballot[16]

Even though postal ballot was a non-mandatory requirement of listing agreement it was mandatory under Companies (Amendment) Act, 2000. However, in the Financial Year 2000-2001 none of the companies adopted postal ballot system. The implementation of the system has been started since late 2001.

14 e.g. HINDALCO and other AV Birla group companies
15 Infosys Technologies sends audited quarterly reports to each household of shareholders.
16 Item (d) of Annexure – 3 of Cl. 49.

C. Some More Non-Statutory Items Reported in the Annual Report of FY2000-01

Some more non-statutory items reported in the annual reports of FY2000-01 of the company (which were not the part of Cl.49 of the listing agreement) were divided into 5 groups as follows:

Finance/financial statements; Value added corporate governance non-mandatory requirements; corporate social/ environment responsibility/ liability statement; corporate governance disclosure on the basis of foreign requirements; and others.

Finance/ Financial Statements

10 years' financial performance, consolidation of accounts for the past 3 years, accounts under US GAAP/ IIS, graphical presentation of financial statements, history of dividend paid for 5 years, significant financial ratios and financial highlights, 5 years financial highlights, performance of joint venture, EVA.

Value Added Corporate Governance Non-Mandatory Requirements

5 years' AGM records instead of 3 years mandatory requirement, number of unpaid dividend warrants pending, nomination form for shares and its terms and conditions, chairman's letter for more transparent and complete disclosure, warning against insider trading by management and employees, cautionary statements, compliance with code of corporate governance of London Stock Exchange, reports and reviews of various committees (viz., audit, remuneration and shareholders/ investors' grievance) of the board members signed by the chairman of the respective board committees, review report of an outside expert on corporate governance (apart from the certificate of statutory auditors and company secretary), chairman & MD's posts are made separate, qualification of all directors and their age, etc.. instead of only those directors who seek re-election, remuneration committee and use of postal ballot, half yearly/ quarterly report to each household.

Corporate Social/ Environment Responsibility/ Liability Statement

Report on safety and environment, energy conservation, environment policy, detailed reporting on social welfare/ security and environment development/ environment protection initiatives, welfare of weaker section of society and earthquake relief.

Others

One company had a position of 'Secretary – Corporate Governance' who looked after the matters and compliance related to corporate governance and the company also obtained an ISO accreditation for its corporate governance; IT implementation information, R & D efforts; review of HRD activities; quality of management; brand valuation and HR valuation; ECS mandate form for dividend payment through electronic clearing service; improvements or no-improvements of the company; management responsibility statement; risk management; asset-liability mismatch; shareholding pattern of last 3 years; specified promoter/ non-promoter categories of directors; corporate governance disclosure was not mandatory in FY2000-01 but yet it was done since last 3 years; R&D committee; board committee on environment; role of each committee was discussed at length.

D. Overview of Implementation of Cl. 49 by the Companies

An overall overview of implementation of Cl.49 by companies can be said quite satisfactory since companies tried to bring in structural changes in governance, more disclosures on corporate governance and more information to shareholders. Post listing agreement requirements and DCA's newly prescribed disclosure norms companies' transformed the text and contents of annual corporate reports. Some companies gave an application to SEBI to extend the period for appointment of independent/NEDs for a further period after 31st March, 2001. Though, the changes bought in by the companies in the first year of the mandatory requirements, the implementation seems to be gaining fast momentum and is expected to grow in text and tenor over the period.

Innovations to Improve the Governance Supported by Companies

Innovation is the key for the development of the system that in turn, helps improve the existing system. Developments in corporate governance are new and taking place with a quite fast pace, therefore, the question was posed to the respondents (the company secretaries), who were the executors and administrators of corporate governance norms and guide the board on the corporate governance matters. Apart from responding to the innovations proposed in the questionnaire, respondents creatively proposed some more innovations to improve the corporate governance system. 5 innovations proposed in the questionnaire were responded as under:

Table 7.21 shows that out of 92 responses 68.5% respondents (i.e., 63) agreed with widening the scope and depth of the audit committee to require them to have a more proactive role, especially on matters of internal controls and balancing risk and return. However, a newly inserted section 292-A of the Companies (Amendment) Act, 2000 has already widened the scope of audit committees in this regard.

Table 7.21 : Innovations to Improve the Governance Supported By the Companies

Innovations	Sector			Total Responses	% of Total
	Joint	Private	Public		
Widening the scope and depth of the audit committee to require them to have a more proactive role, especially on matters of internal controls and balancing risk and return	1	50	12	63	68 5
Rotating the audit firm (i.e statutory auditors) that audit the company every 4 years.	-	22	6	28	30.4
Recognizing the non-executive directors who may have dual role as legal director and to provide the checks and balances on the executives.	1	18	4	23	25 0
Required consultation by management with the top twenty shareholders.	-	14	4	18	19.6
Abandoning cross board appointments of non-executive directors (i e where a company's directors sit on colleague's board of director)	-	11	5	16	17 4
Any other, please specify	2	17	4	23	25 0
Total No. of Companies	3	73	16	92	

30.4% respondents (i.e., 28 out of 92) agreed with rotation of the audit firm (i.e., statutory auditors) that audits the company every 4 years. Some even suggested rotation in every alternate year. However, the recent debate (during the year 2003) was on the rotation of partners as against the rotation of the audit firms, moreover in public sector companies rotation of statutory auditors takes place in every 3 years presently. Since 62.8% of boards seek outside consultation on legal matters 25% (i.e., 23 out of 92) respondents agreed to recognize the NEDs who may have dual role as legal director and to provide the checks and balances on the executives.

Though, small shareholders did not have any say in the governance because of their scattered position. However, the required consultation by management with the top twenty shareholders was agreed by 19.6% respondents (i.e., 18 out of 92). Eradicating board interlocking has been an area of concern for the improvement in corporate governance, but, only 17.4% respondents (i.e., 16 out of 92) agreed to abandon cross board appointments of NEDs where a company's directors sit on colleague's company's board. Some other innovations suggested were categorised as under:

Audit, Auditor and Audit Committee

a. Scope of audit committee should be focused so that they do not divert from their existing function.
b. In a year there should be various audits (e.g. by promoters, cost audit, internal and external audit, marketing, strategic, and production audits, etc.) leaving no room for managers to indulge in creative accounting.

NEDs

a. No board member should have more than 4 directorships.
b. Remuneration of non-executive and independent directors must be more attractive to reward the value that the company gets.
c. Performance evaluation and compulsory retirement and PMS (Performance Management System) for the non-executive directors.

Legal

a. Companies must do more disclosures so that investors/ shareholders are more aware and there must be proper monitoring of those disclosures.

b. Following board procedures as per clause 49 in letter and spirit.

c. The existing legal requirements are more than enough but there must be zeal to implement the law in other companies.

d. We can learn through our mistakes. Competence of people should be the key word.

Self-Regulation

a. No external influence is required and the directors must be willing themselves to regulate themselves.

b. People with courage to take unpopular tough decisions, should be manned in the committees to bring in more independence.

c. Organizations must thrust upon management studies, surveys and continuous improvement.

d. Monthly reporting to all directors instead of quarterly reporting is required, whether there is a meeting or no meeting of directors. This will keep the executives on their toes.

e. Nurturing a corporate culture that ensures corporate governance in the company is most necessary. It's the ethical system and abandoning illegality that will improve the corporate governance treating people equal and make them fearless to have say in corporate governance.

Conclusion

Best of the board structures would fail in the absence of proper operating process system. A well laid down process of board and board committee meetings and adhering to the legal requirements are thus essential ingredients of a good corporate governance operating system.

There was no authentic evidence reported to explain why the board meetings get wind up in half an hour and how the board members are not able to get any clue of an alarming situation that leads to the destruction of the corporate value and ultimately the shareholder value. Answers probably lie in the actual board meeting process that takes place, attendance records of directors and legal compliances.

The CMD/ MD along with company secretary fixed agenda items in majority of companies and the board meetings were normally held at corporate office/ registered office. Majority of companies convened quarterly board meetings and were not found to be associated with the performance of the company. The length of board meeting though depends on the items of agenda to be discussed, however, the difference in length of board meetings was noticed with respect to the sector to which companies belonged. In board meetings the most sought after agenda item was adoption of annual and quarterly reports and the maximum consultation was sought on legal/ corporate laws. As far as decisions were concerned they were reached unanimously and the dissenting directors did not append the note of dissent usually.

Register of minutes of meetings, as per law, was claimed to be maintained by all the surveyed companies and chairman was authorized to sign the minutes of board meetings. Action taken report on the decision taken in the previous meeting was in practice in majority of companies. Barring a few exceptions, the resolutions passed in the board meetings were almost never rejected in the AGM indicating the lack of shareholder activism and dominance of majority/ blockholders in Indian corporates where proxy war or a majority wins over the minority scattered shareownership.

The overall attendance of directors at AGM, board meeting and board committee meeting was found moderate in the financial year 2000-01. Executive directors were found to be more regular in attending the AGM and board meetings than the non-executive and independent directors. Few of non-executive and independent directors did not attend even a single board meeting. However, attendance at board committee meeting by independent directors were highest and executive directors were lowest.

Audit of corporate governance takes place only for the certification by the auditor for the purpose of Cl. 49. Though, it was found that companies in India rely on the mandatory requirements as a measurement of good corporate governance, there were many who aspired for innovations in all areas related to corporate governance.

Appendix 7.1

Regression of AGM Attendance vs. Type of Directorship

Independent Variables: Age, Total Directorships in Other Companies, Total Board Committee Memberships Across All Companies and Total Remuneration Received

(a) ED (Executive Directors)

Descriptive Statistics

	Mean	Std Dev.	N
AGM Attendance	.87	.33	236
Age	52.64	9 17	236
Total directorships in other companies	4.41	4.44	236
Total BC memberships across all companies	1.83	2.43	236
Total remuneration received	5013194	9878194 66	236

ANOVA

Model		Sum of Squares	df	Mean Square	F	p - value
1	Regression	.496	4	.124	1.116	.350
	Residual	25.690	231	.111		
	Total	26.186	235			

R Square = .019 Adjusted R Square = .002 Std. Error = .33

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	p-value
		B	Std. Error	Beta		
1	(Constant)	.648	.131		4.957	.000
	Age	3.606E-03	.002	099	1.517	.131
	Total directorships in other companies	3.136E-03	.005	.042	.599	550
	Total BC memberships across all companies	1.063E-02	.010	.077	1.106	.270
	Total remuneration received	2.653E-10	000	.008	.120	905

(b) Non-Executive Directors (NED)

Descriptive Statistics

	Mean	Std. Dev.	N
AGM Attendance	.67	.47	164
Age	59.72	11.66	164
Total directorships in other companies	6.63	5 20	164
Total BC memberships across all companies	2.98	3.42	164
Total remuneration received	136839.79	288403.33	164

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	4.650	4	1.162	5.855	.000
	Residual	31.570	159	.199		
	Total	36.220	163			

R Square = .128   Adjusted R Square = .106   Std. Error = .45

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	p-value
		B	Std Error	Beta		
1	(Constant)	-.121	.186		-.651	.516
	Age	1.36E-02	.003	.336	4.320	.000
	Total directorships in other companies	-7.7E-03	.008	-.085	-.982	.328
	Total BC memberships across all companies	1.41E-02	.012	.102	1.152	.251
	Total remuneration received	-6.8E-08	.000	-.041	-.549	.584

(c) <u>IND (Independent Directors)</u>

Descriptive Statistics

	Mean	Std. Dev	N
AGM Attendance	.63	.48	238
Age	62.78	10.50	238
Total directorships in other companies	6.97	6.44	238
Total BC memberships across all companies	3.93	3.51	238
Total remuneration received	170038.63	366990.32	238

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	1.385	4	.346	1.485	.208
	Residual	54.333	233	.233		
	Total	55.718	237			

R Square = .025   Adjusted R Square = .008   Std. Error = .48

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	p-value
		B	Std. Error	Beta		
1	(Constant)	.416	.196		2.118	.035
	Age	2.135E-03	.003	.046	.704	482
	Total directorships in other companies	-1.67E-04	.005	-.002	- 032	974
	Total BC memberships across all companies	2.032E-02	.010	.147	2.102	037
	Total remuneration received	-1.43E-08	.000	-.011	-.165	869

Appendix 7.2

Regression of Board Meeting Attendance vs. Type of Directorship

(a) ED (Executive Directors)

Descriptive Statistics

	Mean	Std. Dev.	N
Board Meeting Attendance	87.8677	18.7524	257
Age	52.55	9.06	257
Total directorships in other companies	4.31	4.52	257
Total BC memberships across all companies	1.83	2.43	257
Total remuneration received	4727089	9523704.62	257

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	5149 439	4	1287.360	3.822	.005
	Residual	84874.063	252	336.802		
	Total	90023.502	256			

R Square = .057   Adj. R Square = .042   Std. error = 18.3522

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients		
		B	Std. Error	Beta	t	p-value
1	(Constant)	72.843	6.916		10.533	000
	Age	.205	.127	.099	1.616	.107
	Total directorships in other companies	.681	.270	.164	2.520	.012
	Total BC memberships across all companies	.796	.505	.103	1 577	.116
	Total remuneration received	-2.69E-08	.000	- 014	-.222	.824

(b) Non-Executive Directors (NED)

Descriptive Statistics

	Mean	Std. Dev.	N
Board Meeting Attendance	72.0422	27.1383	166
Age	59.58	11.77	166
Total directorships in other companies	6.67	5.20	166
Total BC memberships across all companies	3.00	3 41	166
Total remuneration received	141002.81	293851.42	166

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	14501.678	4	3625.419	5.454	.000
	Residual	107019.027	161	664.714		
	Total	121520.705	165			

R Square = .119   Adj. R Square = .097   Std. error = 25.7821

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	p-value
		B	Std. Error	Beta		
1	(Constant)	47.779	10.558		4 525	000
	Age	.248	177	.108	1.399	.164
	Total directorships in other companies	.639	.455	.122	1 403	163
	Total BC memberships across all companies	1.757	.708	.221	2.480	.014
	Total remuneration received	-3.50E-07	.000	-.004	- 050	960

(c) IND (Independent Directors)

Descriptive Statistics

	Mean	Std. Dev.	N
Board Meeting Attendance	70.8617	27.8576	253
Age	62.27	10.61	253
Total directorships in other companies	6 87	6.36	253
Total BC memberships across all companies	3.82	3 49	253
Total remuneration received	162036.34	357935.25	253

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	24985.752	4	6246.438	9.082	.000
	Residual	170578.406	248	687.816		
	Total	195564.158	252			

R Square = .128   Adj. R Square = .114   Std. error = 26.2262

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients	t	p-value
		B	Std. Error	Beta		
1	(Constant)	35.344	10.117		3.494	.001
	Age	.468	158	.178	2.954	.003
	Total directorships in other companies	-.427	.276	-.097	-1.54	.124
	Total BC memberships across all companies	2.231	.515	.280	4 329	000
	Total remuneration received	4.896E-06	.000	.063	1.045	.297

Appendix 7.3

Regression of Board Committee Meeting Attendance vs. Type of Directorship

(a) ED (Executive Directors)

Descriptive Statistics

	Mean	Std. Dev	N
Board Committee Meeting Attendance	67.7303	42.8936	123
Age	51.18	8.51	123
Total directorships in other companies	4.54	4.55	123
Total BC memberships across all companies	2.98	2 86	123
Total remuneration received	5053803	9971867.28	123

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	21500.763	4	5375.191	3.125	017
	Residual	202962.591	118	1720 022		
	Total	224463.354	122			

R Square = .096   Adj. R Square = .065   Std. Error = 41.4731

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients		
		B	Std. Error	Beta	t	p-value
1	(Constant)	73.850	23.428		3.152	.002
	Age	-.305	.444	-.061	-.688	.493
	Total directorships in other companies	.565	919	.060	.614	540
	Total BC memberships across all companies	3 612	1 465	.241	2.466	015
	Total remuneration received	-7.5E-07	.000	-.175	-1.980	050

(b) Non-Executive Directors (NED)

Descriptive Statistics

	Mean	Std. Dev.	N
Board Committee Meeting Attendance	73.9213	35.1365	89
Age	59.48	11.32	89
Total directorships in other companies	6.87	5.36	89
Total BC memberships across all companies	4.13	3.58	89
Total remuneration received	146181.40	230972.55	89

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	8835.121	4	2208.780	1.859	.125
	Residual	99807.328	84	1188 182		
	Total	108642.449	88			

R Square = .081   Adj. R Square = -.038   Std. Error = 34.4700

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients		
		B	Std. Error	Beta	t	p-value
1	(Constant)	64.424	19.814		3.252	.002
	Age	-2.8E-02	348	-.009	-.081	.936
	Total directorships in other companies	-.344	.974	-.052	-.353	.725
	Total BC memberships across all companies	2.870	1.459	.292	1.968	.052
	Total remuneration received	1.14E-05	.000	.075	.677	500

(c) IND (Independent Directors)

Descriptive Statistics

	Mean	Std. Dev.	N
Board Committee Meeting Attendance	74.5324	35.0522	181
Age	63.28	10.10	181
Total directorships in other companies	6.89	6.04	181
Total BC memberships across all companies	4.75	3 50	181
Total remuneration received	260873.70	1016143.08	181

ANOVA

Model		Sum of Squares	df	Mean Square	F	p-value
1	Regression	5920 970	4	1480.242	1.210	.308
	Residual	215237.574	176	1222.941		
	Total	221158.544	180			

R Square = .027   Adj. R Square = .005   Std. Error = 34.9706

Coefficients

Model		Unstandardized Coefficients		Standardized Coefficients		
		B	Std. Error	Beta	t	p-value
1	(Constant)	45.766	17 346		2.638	.009
	Age	.378	263	.109	1 439	.152
	Total directorships in other companies	-5.4E-02	.470	- 009	-.114	.909
	Total BC memberships across all companies	.988	.808	.099	1.224	.223
	Total remuneration received	2.04E-06	.000	.059	.794	.428