Paper-13: CORPORATE LAWS AND COMPLIANCE

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Full Marks: 100 **Time Allowed: 3 Hours**

Sec – A:
Answer Question No. 1 which is compulsory carries 20 marks and answer any 5 Question from Q. No 2 to Q. No. 8

Question 1: Answer any 4 from the below **[4×5=20]**

a) Director Identification Number (DIN) is a Unique Identification Number given by the Ministry of Corporate Affairs. It is required to be obtained by every person who is intending to become a director of any company. DIN is a pre-requisite for filing various forms with the Registrar of Companies. The electronic system of the Ministry of Corporate Affairs will not allow filing / submitting the forms if DIN of the signatory director is not mentioned in the form being filed / submitted.

Under section 153 of the Companies Act, 2013 every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner prescribed.

In the event of any changes in DIN Particulars, the individual must intimate such changes on 30 days to the central government within 30 days in form no DIR-6. The applicant shall fill DIR-6 and attach a copy of the proof of change in particulars and a verification form DIR-7, all shall be submitted electronically. The form shall be signed digitally by a Chartered Accountant or a Cost Accountant or a Company Secretary in Practice. The applicant shall submit form DIR-6 to the Central Govt.

b) According to Section 396 (1) of the Companies Act, 1956 where the Central Government is satisfied that it is essential in public interest that the two or more public limited companies should amalgamate, the said Government may by order notified in the Official Gazette, provide for the amalgamation of the said two companies into a single company with such constitution; with such property, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order. This power of Central Government is notwithstanding anything contained in sections 394 and 395 of the Act that deal with amalgamation and reconstruction of companies. The Central Government has also the power to pass and provide for any consequential incidental and supplementary provisions in connection with the amalgamation including the confirmation by or against the transferee company of any legal proceedings pending by or against any transferor company. Any member or creditor who is aggrieved by the order of the amalgamation resulting in any financial loss is entitled to compensation which will be assessed by such authority as may be prescribed. Any person aggrieved by the order of compensation can file an appeal to the Company Law Board within 30 days of the publication of the order for compensation. Any order passed by the Central Government under this section can be made only where the draft copy thereof is sent to both the companies who have right to make an appeal and the same has been either disposed of or no appeal has been filed within the time provided thereof. The Central Government has duty to make such modifications in the light of any suggestions and objections received. All copies of the orders made under this section shall be laid before both the House of Parliament as soon as the same has been made.

c) While routine governance regulations becomes applicable for public sector companies formed under the Companies Act, 2013 and come under the purview of SEBI regulations the moment they mobilize funds from the public, the typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:-
   (i) The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU in addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.
   (ii) The Chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
   (iii) Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent component on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.
   (iv) Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out of their counterparts from the private sector.

d) Corporate Governance measure - In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethics and/or social responsibility committees on their boards to review strategic plans assess progress and offer guidance on social responsibilities of their business. In addition to having committees and boards, some companies have adopted guidelines governing their own policies and practices around such issues like board diversity, independence and compensation. Indian companies are required to comply with clause 49 of the listing agreement primarily focusing on following areas:
   (i) Board composition and procedure.
   (ii) Audit committee responsibilities.
   (iii) Subsidiary companies
   (iv) Risk management
   (v) CEO/CFO certification of financial statements and internal controls
   (vi) Legal compliance
   (vii) Other disclosures

(e) Under section 152(6) (a) unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement of directors by rotation.

In the given case, it is assumed that the 6 directors appointed at the first general meeting of the company constitute at least two thirds of the total number of directors.

Section 152(6)(c) further states that at every annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

Therefore, in the given case 2 directors will be liable to retire by rotation at the next AGM of the Company.

Section 152(6)(d) further states that the directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

In the given case, all the 6 directors were appointed on the same dat. Hence, the choice of the 2 directors who would retire at the next AGM of the company will be made either mutually by these 6 directors failing which; it will be decided by lots.

It will not make any difference under the Companies Act, 2013 if the company is a nonprofit organization.

Question 2:

(a) (i) The first proviso to 123(1) of the Companies Act, 2013 provides that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Therefore, under the Companies Act, 2013 the amount transferred to reserves out of profits for a financial year has been left at the discretion of the company acting vide its Board of Directors. Therefore, the company is free to transfer any part of its profits to reserves as it deems fit.

(ii) The second proviso to section 123 (1) of the Companies Act, 2013 permits a company to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves subject to the rules prescribed in this behalf. The Companies (Declaration and Payment of Dividend) Rules, 2014 provide for the rules for declaring dividends out of the reserves as under:

a) The rate of dividend declared does not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year.
However, this rule will not apply if a company has not declared any dividend in each of the three preceding financial year.
b) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves does not exceed an amount equal to 1/10th of the sum of its paid-up capital and free reserves as appearing in the latest audited financial statement.
c) The amount so drawn must first be utilized to set off losses incurred in the financial year before any dividend in respect of equity shares is declared.
d) The balance of reserves after such drawal shall not fall below 15% of its paid-up capital as appearing in the latest audited financial statement.

(b) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:
The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(c) The Companies Act, 2013 vide section 128(1) now requires every company to prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.
The second part of the section clearly states that the books of accounts must be maintained on accrual basis and according to the double entry system of accounting.
No exception has been given by the Act to any class or classes of companies from the above requirement. Hence, it is clear that XYZ Ltd. cannot maintain its books of accounts on cash basis.

Question 3:

(a) Under section 162(1) of the Companies Act, 2013, at a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
From the above provision of law, it is mandatory for the company to first get a unanimous approval of the company on the appointment of more than one director by a single resolution. In the given case, no such motion was put to vote at the meeting and passed unanimously. Merely not raising any objection is not the same as active unanimous approval.
Further, according to section 162(2), a resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved. Hence, in the given case the appointment of all the directors made by a single resolution at the AGM is void.
It would make no difference if XYZ was a private company as section 162(1) is applicable to all companies.

(b) In the given case, Dr. Hamilton has been appointed as a director. He has to be paid a fee for surgeries performed by him; it shall be fully possible under section 197(4) which states that the remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:
(i) the services rendered are of a professional nature; and
(ii) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

The company can therefore, pay a remuneration to Dr. Hamilton a fee for surgeries performed by him as a professional fee which shall not be construed as a Managerial Remuneration under the Act.

(c) (1) The Companies Act, 2013 permits a decision of the Board of Directors to be taken by means of a resolution by circulation. Board approvals can be taken in one of the two ways, one by a resolution passed at a Board Meeting and the other, by means of a resolution passed by circulation.
In terms of section 175(1) of the Companies Act, 2013 no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the following have been complied with:

(a) The resolution has been circulated in draft, together with the necessary papers, if any,
(b) The draft resolution has been circulated to all the directors, or members of the committee, as the case may be;
(c) The Draft resolution has been sent at their addresses registered with the company in India:
(d) Such delivery has been made by hand or by post or by courier, or through prescribed electronic means;
The Companies (Meetings of Board and its Powers) Rules, 2014 provides that a resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.
(e) Such resolution has been approved by a majority of the directors or members, who are entitled to vote on the resolution;

2. However, if at least 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board (instead of being decided by circulation).

3. A resolution that has been passed by circulation shall have to be necessarily be noted in the next meeting of board or the committee, as the case may be, and made part of the minutes of such meeting.

Question 4:

(a) Section 223 of the Companies Act, 2013 deals with Inspector's report. The following provisions are applicable in respect of the Inspector's report on investigation:
(1) Submission of interim report and final report [Sub section (1)]: An inspector appointed under this Chapter (Chapter XIV – Inspection, Inquiry and Investigation) may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
(2) Report to be writing or printed [Sub-section (2)]: Every report made under sub section (1) above, shall be in writing or printed as the Central Government may direct.
(3) Obtaining copy or report [Sub section (3)]: A copy of the above report may be obtained by making an application in this regard to the Central Government.
(4) Authentication of report [Sub section (4)]: The report of any inspector under this Chapter shall be authenticated either –
(a) By the seal of the company whose affairs have been investigated; or
(b) By a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

Exceptions: Nothing in this section shall apply to the report referred to in section 212 of the Companies Act, 2013

(b) **Compromise or Arrangement:** The scheme must be approved by a resolution passed with the special majority stipulated in section 391(2) of the Companies Act, 1956, namely a majority in number representing three-fourths in value of the creditors, or members, or class of members, as the case may be, present and voting either in person or, by proxy.

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be

computed with reference to paid-up capital held by members present and voting at the meeting.

In this case out 700 members, 400 members attended the meeting, but only 310 members voted at the meeting. As 160 members voted in favour of the scheme the requirement relating to majority in number (i.e., 156) is satisfied 310 members who participated in the meeting held 12,40,000, three-fourth of which works out to 9,30,000 while 160 members who voted for the scheme held 10,00,000 shares. As both the requirements are fulfilled, the scheme is approved by the requisite majority. (it is presumed that all the shares are fully paid-up).

(c) Section 2(42) of the Companies Act, 2013 defines a "foreign company" as any company or body corporate incorporated outside India which:

- Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- Conducts any business activity in India in any other manner.

Accordingly, to qualify as 'foreign company' a company must have both the following features:

- It must be incorporated outside India; and
- It should have a place of business in India.
- That place of business may be either in its own name or through an agent or may even be through the electronic mode;
- It must conduct a business activity of any nature in India.

(i) Therefore, a company incorporated outside India having a share registered office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.

(ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore will not fall within the definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.

Question 5:

(a) The conditions which are required to be satisfied before filing a petition under Section 397 of the Companies Act, 1956 can be enumerated as follows:

(i) An application under the said section 397 can be made only by the members. In the case of a company having share capital of minimum one hundred members or one-tenth of total number of member of the company, whichever is less; or a member or members holding not less than 10% of the paid up capital of the company can file such petition. In case of company not having share capital, minimum one-fifth of the total number of members of the company is required for the purpose. However, Central Government may authorize any lesser number of members to file such petition.

(ii) It must be established that the affairs of the company are being conducted in a manner (a) oppressive to any member/members of the company or (b) prejudicial to the public interest.

(iii) The oppression complained of must affect a person in his capacity as a member of the company. Rights and interests as a member of a company can only be agitated and not in relation to any commercial relation to any commercial relation that a member has with the company as was decided by the Company Law Board in the case of Anil Gupta vs. Mirai Auto Industores Ltd. [(2003)113 COMP. CAS.63].

(iv) The acts complained of must be continuing acts of oppression. The acts constituting oppression must continue till the date of making the application.

(v) The applicant must make out a prima facie case that the degree of oppression is so severe that there is just and equitable ground for winding up of the company. But at the same time, it must also be established that the winding up of the company would unfairly prejudice the applicant.

(vi) It may be noted that expression 'issued share capital' in section 399(1) includes both the preference and equity share capital.

(b) According to section 448 of the Companies Act, 2013, if any person makes a statement which is false in any material particulars, knowing it to be false or omits any material facts, knowing it to be material, such person shall be liable under section 447. As per Section 447, any person who is found to be guilty under this section shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud. Provided that, where the fraud involves public interest, the term of imprisonment shall not be less than 3 years.

Hence, Mr. Atharva, a director of Northway highway Tolls Private Limited shall be punishable with imprisonment and fine prescribed as aforesaid.

(c) 'Agreement' includes any arrangement or understanding or action in concert:

(i) Whether or not, such arrangement, understanding or action is formal or in writing or

(ii) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings. [Section 2(b)].

In view of the above definition of 'agreement', an understanding reached by the cement manufacturers to control the price of cement will be an 'agreement' within the meaning of section 2(b) of the Competition Act, 2002 even though the understanding is not in writing and it is not intended to be enforceable by legal proceedings.

Question 6:

(a) (Section 17)–Every Banking Company incorporated in India must create a Reserve Fund and transfer a sum equal to not less than 20% of its net profits every year before any dividend is declared. However, Central Govt. is empowered to exempt from this requirement on the recommendation of the RBI. Such exemption will be allowed only:-

- when the amounts in the reserve fund and the share premium account are equal to the paid-up capital of the banking company
- when the Central Govt. feel that its paid – up capital and reserves are adequate to safe guard the interest of the depositors

If a banking company appropriates any sum from the Reserve fund or the share premium account, it must be reported to RBI within 21 days explaining the circumstances leading to such appropriation

(b) Nomination by Life Insurance Policy Holder: As per section 39 of the Insurance Act, 1938, the holder of a policy of life insurance on his own life may nominate a person or person to whom the money secured by the life insurance policy shall be paid in the event of his death. Such nomination can be made either at the time of taking the policy or at any time before the maturity of the policy. Such nomination is either incorporated in the text of the policy or is stated as an endorsement on the policy document. The nomination can be cancelled or altered by the policyholder at any time before the maturity of the policy. The insurer is required to communicate to the policyholder that it has recorded the nomination, its cancellation or alteration as the case may be. In case the policyholder survives the full term of policy, the insurer shall pay the maturity amount to him only and the nomination becomes redundant. In a case where the nominee dies before the maturity of the policy and if no new nomination is made, the maturity

proceeds of the policy shall be paid to the policy holder and if dies before the maturity, to the legal heirs of the policy holders.

Minor as a nominee: A minor can be nominated as a nominee in life insurance policy by its holder. The only other requirement as per Proviso to Section 39 (1) of the said Act is that the policyholder is to appoint, in the prescribed manner, an adult person to receive the money secured by the policy on behalf of the minor in the event of death of the policyholder during the minority of the nominee.

(c) Financial Asset [Section 2(l)]

"Financial Asset" means debt or receivables and includes-

(i) A claim to any debt or receivables or part thereof, whether secured or unsecured; or
(ii) Any debt or receivables secured by, mortgage of, or charge on, immovable property; or
(iii) A mortgage, charge, hypothecation or pledge of movable property; or
(iv) Any right or interest in the security, whether full or part underlying such debt or receivables; or
(v) Any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
(vi) Any financial assistance.

The use of the word 'future' in clause (v) of section 2(l) means that the term financial asset includes a future debt also. In case of a future debt, what exists today is an agreement to transfer and it will be possible to transfer the future debt when in actually arises, for example sales that will occur in future. In case of conditional receivable, the receivable is transformed into financial asset after the fulfillment of the relevant conditions.

Question 7:

(a) The originally defined concept of Corporate Social Responsibility (CSR) needs to be interpreted and dimenstionalised in the broader conceptual framework of how the corporate embed their corporate values as a new strategic asset, to built a basis for trust and cooperation within the wide stakeholder community.

Though there have been evidences that record a paradigm shift from charity to a long-term strategy, yet the concept still is believed to be strongly linked to philanthropy. There is a need to bring about an attitudinal change in people about the concept.

By having more coherent and ethically driven discourses on CSR, it has to be understood that CSR is about how corporates place their business ethics and behaviours to balance business growth and commercial success with a positive change in the stakeholder community.

Several corporate today have specific department to operationalise CSR. There are either foundations or trust or a separate department within an organization that looks into implementation of practices. Being treated as a separate entity, there is always a flexibility and independence to carry out the tasks.

But often these entities work in isolation without creating a synergy with the other departments of the corporate. There is a need to understand that CSR is not only a pure management directive but it is something that is central to the company and has to be embedded in the core values and principles of the corporate.

Whatever corporate do within the purview of CSR has to be related to core business. It has to utilize thins at which corporate are good. It has to be something that takes advantage of the core skills and competencies of the companies. It has to be a mandate of the entire organization and its scope does not simply begin and end with one department in the organization.

Charity means the act of donating money, goods, time or effort to support a charitable cause in regard to a defined objective. Charity can be equated with benevolence and charity for the poor and needy. It can be any selfless giving towards any kind of social need that is not served, underserved or perceived as unserved or undeserved. Charity can be by any individual or by a corporate.

Corporate Social Responsibility is about how a company aligns their values to social causes by including and collaborating with their investors, suppliers, employees, regulators and the socially as a whole. The investment in CSR may be on people centric issues and/or planet issues. A CSR initiative of a corporate is not a selfless act of giving; companies derive longterm benefits from the CSR initiatives and it is this enlightened self interest which is driving the CSR initiatives in companies.

(b) Qualifications of appointment of Chairperson and Members of State Commission [Section 84 of the Indian Electricity Act, 2003]

(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is or has been, a Judge of a High Court. Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court. Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

(3) The Chairperson or any other Member of the State Commission shall not hold any other office.

(4) The Chairperson shall be the Chief Executive of the State Commission.

(c) Corporate Governance deals with promoting corporate fairness, transparency and accountability. It is concerned with structures and processes for decision-making, accountability, control and behavior at the top level of the organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized. It is truly beneficial and it has the following benefits:

(1) Improved Financial Performance: Socially responsible business practices are linked to positive financial performance.

(2) Operating Cost Reduction: CSR initiatives can help to reduce operating costs.

(3) Brand Image and Reputation: CSR helps a company to increase its brand image and reputation among the public, which in turn increase its ability to attract investors and trading partners. Proactive CSR Practices would lead to a favourable public image resulting in various positive outcomes like consumer and retailer loyalty, easier acceptance of new products and services, market access and preferential allocation of investment funds.

(4) Increased Sales & Customer Loyalty: Businesses must first satisfy customer's key buying criteria, i.e., price, quality, safety and convenience.

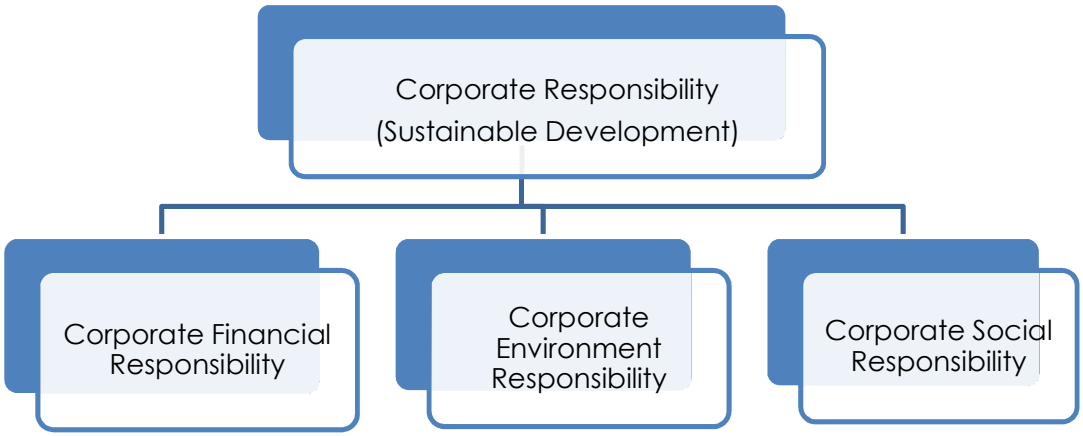
(5) Productivity and Quality: Improved working conditions, reduced environmental impacts or increased employee involvement in decision-making, leads to (a) increased productivity, and (b) reduced errors.

(6) Ability to attract and retain employees: Companies perceived to have strong CSR commitments find it easier to recruit and retain employees, resulting in reduction in turnover and associated recruitment and training costs.

Question 8:

(a) Relation between CSR & Sustainable Development

CSR is an integral part of sustainable development. Exactly where it fits in is vigorously debated, mainly because the concept of sustainable development also has many different interpretations. This diagram, illuminates CSR„s relationship with sustainable development.



The basic idea to incorporate the sustainability aspect into business management should be grounded in the ethical belief of give and take to maintain a successful company in the long term. As the company is embedded in a complex system of interdependences in- and outside the firm, this maintaining character should be fulfilled due to the company's commitment in protecting the environment or reducing its ecological footprint and due to the general acceptance of its corporate behaviour by society in- and outside of the firm.

It is recommended that CSR is to be used as social strand of the SD-concept which is mainly built on a sound stakeholder approach. CSR focus especially on the corporate engagement realizing its responsibilities as a member of society and meeting the expectations of all stakeholders.

The concept of SD on a corporate level is stated as Corporate Sustainability which is based on the three pillars economic, ecological and social issues, therefore, the social dimension is named CSR. The corporate orientation on sustainability is specially affected by external influences due to the specific sustainability orientation on a macro-level:

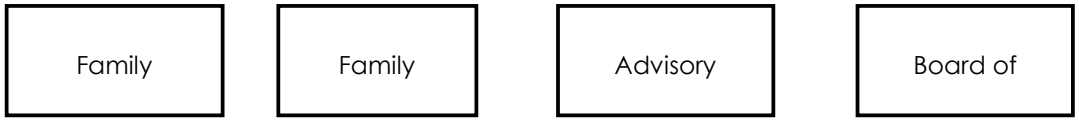
Legal/Institutional: laws, human rights, etc.
Technological: new technologies
Market: suppliers, competitors, customers, trends
Societal: NGO's, society
Cultural: attitudes, behavior
Environmental: nature, availability of resources

(b) Possible stages in a family firm's governance

When a family business is still relatively small, there may be tensions and divisions within the family as different members may wish to take different courses of action that will affect the day-to-day way the business operates and its longer term development. In the same way as different generations of a family will have diverse views on various aspects of life, so they will in the business context as well. Similarly, as siblings may argue about various things, so they will most probably differ in their views of who should hold power within the business and how the business should develop. Even in the early stages of a family firm, it is wise to have some sort of forum where the views of family members regarding the business and its development can be expressed. One such mechanism is the family meeting or assembly, where family members can meet, often on a formal pre-arranged basis, to express their views. As time goes by and the family expands with family by marriage and new generations, then the establishment of a family council may be advisable. Neubauer and Lank (1998) suggest that a family council may be advisable once there are more than 30-40 family members.

When a business is at the stage where family relationships are impeding its efficient operation and development, or even if family members just realize that they are no longer managing the business as effectively as they might, then it is definitely time to develop a more formal governance structure. There may be an intermediate stage where the family is advised by an advisory board, although this would not provide the same benefits to the family firm as a defined board structure with independent non-executive directors. Figure below illustrates the possible stages in a family firm's governance development.

Possible stages in a family firm's governance



(c) Corporate governance

Corporate governance is...

- The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders (Parkinson, 1994). - Strongly agree
- The governance role is not concerned with the running of the business of the company per se, but with giving overall direction to the enterprise, with overseeing and controlling the executive actions of management and with satisfying legitimate expectations of accountability and regulation by interests beyond the corporate boundaries (Tricker, 1984).-Agree
- The governance of an enterprise is the sum of those activities that make up the internal regulation of the business in compliance with the obligations placed on the firm by legislation, ownership trusteeship of assets, their management and their deployment (cannon, 1994). – Agree
- The relationship between shareholders and their companies and the way in which shareholders act to encourage best practice (e.g., by voting at AMs and by regular meetings with companies senior management). Increasingly, this includes shareholder activism which involves a campaign by a shareholder or a group of shareholders to achieve change in companies (the Corporate Governance Handbook, 1996). - Some agreement
- The structures, process, cultures and systems that engender the successful operation of the Organization (Keasey and Wright, 1993). -Some agreement
- The system by which companies are directed and controlled (The Cadbury Report, 1992) - slight agreement.