

J.K. SHAH[®]

**TEST
SERIES**



SUGGESTED SOLUTION

CS PROFESSIONAL

**Subject - Corporate Governance, Risk
Management, Internal Control, Reporting and
Compliances**

Topic - Part A - Corporate Governance Chapter 1 to 11

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

Answer to Q1.A.

Disclosure of Material Events Regulation 30(1) and (2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 specifies that every listed entity shall make disclosures upon occurrence of following events or information which are deemed to be material events as per Part 'A' of Schedule III of the said regulations.

These events or information should be disclosed as soon as reasonably possible and not later than 24 hours from the occurrence of the event or information. In case the disclosure is made after 24 hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay.

These include:

- (i) Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring.
- (ii) Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.
- (iii) Revision in Rating(s).
- (iv) Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof.
- (iv) Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter.
- (v) Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor and Compliance Officer.
- (vi) Appointment or discontinuation of share transfer agent.
- (vii) Corporate debt restructuring.
- (ix) One time settlement with a bank.
- (x) Reference to BIFR and winding-up petition filed by any party / creditors.
- (xi) Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity.
- (xii) Proceedings of Annual and extraordinary general meetings of the listed entity.

- (xiii) Amendments to memorandum and articles of association of listed entity, in brief.
- (xiv) Schedule of Analyst or institutional investor meet and presentations on financial results made by the listed entity to analysts or institutional investors.

The listed entity shall disclose to the Exchange(s), outcome of Meetings of the board of directors within 30 minutes of the closure of the meeting, held to consider the following:

- (i) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched.
- (ii) any cancellation of dividend with reasons thereof.
- (iii) the decision on buyback of securities.
- (iv) the decision with respect to fund raising proposed to be undertaken.
- (v) increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched.
- (vi) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to.
- (vii) short particulars of any other alterations of capital, including calls.
- (viii) financial results.
- (ix) decision on voluntary delisting by the listed entity from stock exchange(s).

(5 marks)

Answer to Q1.B.

Committees are usually formed as a means of improving board effectiveness and efficiency, in areas where more focused, specialized and technical discussions are required. These committees prepare the groundwork for decision-making and report at the subsequent board meeting. Committees enable better management of full board's time and allow in-depth scrutiny and focused attention. Board committees are pillars of corporate governance. Board committees with formally established terms of reference, criteria for appointment, life span, role and function constitute an important element of the governance process and should be established with clearly agreed reporting procedures and a written scope of authority. A Board can either delegate some of its powers to the committee, enabling it to act directly, or can require the recommendations of the committee to be approved by the Board. Committees thus enable better management of the board's time and allow in-depth scrutiny and focused attention.

Thus Committees have the following important roles :

- to strengthen the governance arrangements of the company and support the Board in the achievement of the strategic objectives of the company ;
- to strengthen the role of the Board in strategic decision making and supports the role of non-executive directors in challenging executive management actions;
- to maximise the value of the input from non-executive directors, given their limited time commitment;
- to support the Board in fulfilling its role, given the nature and magnitude of the agenda. Committees should have clear goals, objectives, and terms of reference in order to function efficiently, and Boards should ensure that these are developed before

establishing the committee. Many committees have been known to work outside their intended purpose due to a lack of precise objectives.

Significance of Board Committees

- (i) To improve Board effectiveness and efficiency.
- (ii) Minor details needs to be evaluated/ analysed to arrive at a logical conclusion This requires body having expertise in subject matter, a Board Committee shall in such cases assist the Board and give well considered recommendations to the Board.
- (iii) Insulate Board from potential undue influence of controlling shareholders and managers.
- (iv) Committees prepare groundwork for decision making and submit their recommendations to the Board for decision making.
- (v) Enables better management of Board's time and allows in-depth scrutiny of proposals.
- (vi) Establishing committees is one way of managing the work of the Board and strengthening the Board's governance role.

(5 marks)

Answer to Q1.C.

The Code for Responsible Investing in South Africa (CRISA) gives guidance on how the institutional investor should execute investment analysis and investment activities and exercise rights so as to promote sound governance. CRISA provide a framework that relates to the function of all role players in the overall governance system, including boards of companies, institutional shareholders, their service providers and the ultimate beneficiaries. The objective of providing such a framework is to ensure that sound governance is practised which results in better performing companies that deliver both economic value as well as value within its broader meaning. Institutional investors and service providers should adopt the principles and practice recommendations in CRISA on an "apply or explain" basis. Where there is conflict between CRISA and applicable legislation, the legislation will prevail.

Five Principles :

Principle 1 : An institutional investor should incorporate sustainability considerations, including ESG, into its investment analysis and investment activities as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries.

Principle 2 : An institutional investor should demonstrate its acceptance of ownership responsibilities in its investment arrangements and investment activities.

Principle 3 : Where appropriate, institutional investors should consider a collaborative approach to promote acceptance and implementation of the principles of CRISA and other codes and standards applicable to institutional investors.

Principle 4 : An institutional investor should recognise the circumstances and relationships that hold a potential for conflicts of interest and should pro-actively manage these when they occur.

Principle 5 : Institutional investors should be transparent about the content of their policies, how the policies are implemented and how CRISA is applied to enable stakeholders to make informed assessments.

(5 marks)

Answer to Q2.A.

Regulation 34 and Schedule V of SEBI (LODR) Regulations, 2015 provides that annual report shall make disclosures in compliance with the Accounting Standard on “Related Party Disclosures”.

It is also provided under other disclosures in Corporate Governance Report, that the Listed Entity shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report.

Regulation 27(2)(a) of SEBI (LODR) Regulations, 2015 provides that details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.

(3 marks)

Answer to Q2.B.

The International Corporate Governance Network (“ICGN”) is a not-for-profit company limited by guarantee and not having share capital under the laws of England and Wales founded in 1995.

ICGN’s mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies worldwide.

It has four primary objectives: (i) to provide an investor-led network for the exchange of views and information about corporate governance issues internationally (ii) to examine corporate governance principles and practices and (iii) to develop and encourage adherence to corporate governance standards and guidelines (iv) to generally promote good corporate governance.

(3 marks)

Answer to Q2.C.

Provisions of Vigil mechanism under Regulation 22, 46 and Schedule V of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

- The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.
- The listed entity shall disseminate the details of establishment of vigil mechanism/ Whistle Blower policy.

- The disclosure regarding the details of establishment of vigil mechanism, whistle blower policy, and affirmation that no personnel has been denied access to the audit committee shall be made in the section on the corporate governance of the annual report.

(3 marks)

Answer to Q2.D.

The Caux Round Table (CRT) is an international network of business leaders working to promote a morally and sustainable way of doing business.

The Caux Round Table was founded in 1986 by Frits Philips Sr, former President of Philips Electronics, and Olivier Giscard d'Estaing, former Vice-Chairman of INSEAD, as a means of reducing escalating international trade tensions between Europe, Japan and the USA. At the urging of Ryuzaburo Kaku, then Chairman of Canon Inc, the CRT began to focus attention on the importance of global corporate responsibility in reducing social and economic threats to world peace and stability.

This led to the development of the 1994 Caux Round Table Principles for Business around three ethical foundations, namely: • responsible stewardship; • the Japanese concept of Kyosei - living and working for mutual advantage; and • respecting and protecting human dignity. These principles recognize that while laws and market forces are necessary, they are insufficient guides for responsible business conduct.

The Caux Round Table believes that the world business community should play an important role in improving economic and social conditions. Through an extensive and collaborative process in 1994, business leaders developed the CRT Principles for Business to embody the aspiration of principled business leadership. The CRT believes that its Principles for Responsible Business provide necessary foundations for a fair, free and transparent global society.

(3 marks)

Answer to Q2.E.

Minutes are the written record of a board or committee meeting. Preparation of minutes of general, Board and committee meetings is a legal requirement under section 118 of Companies Act, 2013. The Company Secretary should ensure compliance of the same. Sub-section (2) of section 118 provides that the minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

Atleast the minutes must contain the following: • Meeting location and date • Names of attendees and absentees • Principal points arising during discussion • Board decisions • In the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution. [Section 118(4)(b) of the Companies Act, 2013] • All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting [Section 118(3) of the Companies Act, 2013]

Minutes record what actually happens at a meeting, in the order in which it took place, regardless of whether the meeting followed the written agenda or not. The minutes are

important legal documents and, by law, must be kept by the company. They also serve as important reminders of action to be taken between meetings.

(3 marks)

Answer to Q3.A.

Agriculture Associations fear of the bargaining power of Novelties because the company is engaged in creating value addition to the agriculture produce and also involved in mass procurement of the same.

Also in a market structure which is of scattered land holdings, subsistence level and high price lending, risk of crop failures with the uncertainty of resale price maintenance and procurement farmers fear in the long run the company may acquire significant dominance in every sphere of agriculture activities.

Therefore it is advisable for the company to get involved in stakeholder engagement leading increased transparency, responsiveness, compliance, organizational learning, quality management, accountability and sustainability.

Stakeholder engagement is a central feature of sustainability performance.

Stakeholder engagement is undertaken for numerous reasons which include: • Improved corporate responsibility and financial performance across the globe. • To avoid conflict through negotiation, mediation and collaborative learning. • Development of a shared vision to direct future business decisions and operations. • To innovate through collaboration.

Stakeholder engagement involves following steps:

1. Identify stakeholder
2. Establish the goals and objectives of the company for engagement.
3. Identify stakeholder needs and interests.
4. Determine the stakeholder engagement strategy.
5. Evaluate outcome and internalize learnings.

(5 marks)

Answer to Q3.B.

With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, has set up National Foundation for Corporate Governance (NFCG) along with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI). In the year 2010, stakeholders in NFCG have been expanded with the inclusion of Institute of Cost Accountants of India and the National Stock Exchange of India Ltd.

The Vision of NFCG is “Be the Key Facilitator and Reference Point for highest standards of Corporate Governance in India.”

The internal governance structure of NFCG consists of Governing Council, Board of Trustees and Executive Directorate.

Board of Trustees

Board of Trustees deal with the implementation of policies and programmes and lay down the procedure for the smooth functioning. It is chaired by Secretary, Ministry of Corporate Affairs, Government of India.

The members of the Board of Trustees are:

- Director General, Confederation of Indian Industry (CII)
- Secretary, Institute of Chartered Accountants of India (ICAI)
- Secretary, Institute of Company Secretaries of India (ICSI) and
- Secretary, The Institute of Cost Accountants of India (ICAI-CMA)
- Representative, National Stock Exchange (NSE)
- Director General & CEO, Indian Institute of Corporate Affairs (IICA)

(5 marks)

Answer to Q3.C.

Directors must have a broad understanding of the area of operation of the company's business, corporate strategy and challenges being faced by the Board. For this purpose the induction procedures should be in place to allow new directors to participate fully and actively in board decision-making at the earliest.

In order to discharge their professional obligations efficiently, new directors need to have a good deal of knowledge about the company and the industry within which it operates. It involves introducing the new directors to the people with whom they will be working and explaining how the board operates. It involves building up rapport, trust, and credibility with the other directors so that the new director is accepted by and can work with fellow directors.

Common methods of induction include: • Briefing papers • Internal visits • Introductions An induction programme should be available to enable new directors to gain an understanding of: • the company's financial, strategic, operational and risk management position • the rights, duties and responsibilities of the directors • the roles and responsibilities of senior executives • the role of board committees. An induction kit should be given to new directors which should contain the following: • Memorandum and Articles of Association with a summary of most important provisions • Brief history of the company • Company's Vision and Mission Statements • Current business plan, market analysis and budgets • All relevant policies and procedures, such as a policy for obtaining independent professional advice for directors; • Protocol, procedures and dress code for Board meetings, general meetings, staff social events, site visits etc including the involvement of partners; • Press releases in the last one year • Copies of recent press cuttings and articles concerning the company • Annual report for last three years • Notes on agenda and Minutes of last six Board meetings • Board's meeting schedule and Board committee meeting schedule • Description of Board procedures.

(5 marks)

Answer to Q4.A.

Policy of XYZ Insurance Co. Ltd. based on the Principles of Stewardship Code for Insurers IRDAI has issued the guidelines on Stewardship Code for Insurers in India in the form of a set of

principles to be adopted by them. It requires the insurers to draft a policy as regards their conduct at general meetings of their investee companies to improve their governance. The Policy shall be duly approved by the Board of Directors.

As an insurance company, XYZ Insurance Co. Ltd. shall approve a policy in this regard. The Policy of XYZ Insurance Co. Ltd. shall incorporate the following

- (i) The company discharges its stewardship responsibilities and publicly disclose it. The company's stewardship responsibilities are monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration.
- (ii) The company manages conflicts of interest in fulfilling its stewardship responsibilities and publicly disclose it. The company identifies and manages conflicts of interest with the aim of taking all reasonable steps to put the interests of their client or beneficiary first.
- (iii) The Company monitors its investee companies. The company regularly monitors its investee companies in respect of its performance, leadership effectiveness, succession planning, corporate governance, reporting and other parameters. The company nominates directors on the board of its investee company for active involvement.
- (iv) The company intervenes in its investee companies. The company intervenes when it has concerns about the investee company's strategy, performance, governance, remuneration or approach to risks, including those that may arise from social and environmental matters. In case of non-resolution of company's concerns, the company escalates the matter.
- (iv) The company collaborates with other institutional investors, where required, to preserve the interests of the policyholders (ultimate investors) and discloses the collaboration.
- (v) The voting decisions of the company aims to promote the overall growth of the investee companies and, in turn, enhance the value of their investors. The voting policy of the company, voting decisions and the rationale is disclosed on its website.
- (vi) The company reports periodically on its stewardship activities.

The company also provides a periodic report to its policyholders of how the company has discharged its responsibilities, in a easily understandable format. But the company do not intend to manage the affairs of the investee company. The company may also at any time decide to sell its holding in the investee company, if it is in the best interest of clients or beneficiaries.

(5 marks)

Answer to Q.4.B.

The Companies Act, 2013 envisages radical changes in the sphere of Corporate Governance in India. It is set to provide a major overhaul in Corporate Governance norms and have far-reaching implications on the manner in which corporate operates in India.

Some of the Provisions of Companies Act, 2013 related to Corporate Governance are as under:

1. Appointment and maximum tenure of Independent Directors. 2. Appointment of Woman Director. 3. Appointment of Whole time Key Managerial Personnel. 4. Performance Evaluation of the Directors and Board as a whole. 5. Enhanced disclosures and assertions in Board Report, Annual Return and Directors' Report with regard to Managerial Remuneration, risk management, internal control for financial reporting, legal compliance, Related Party Transactions, Corporate Social Responsibility, shareholding pattern, public money lying unutilised, etc. 6. Stricter yet forward-looking procedural requirements for Secretarial compliances and ICSI Secretarial Standards made mandatory. 7. Enhanced compliances of Related Party Transactions and introduction of concept of arm's length pricing. 8. Enhanced restrictions on appointment of Auditors and mandatory rotation of Auditors. 9. Separation of role of Chairperson and Chief Executive Officer. 10. Mandatory provisions regarding vigil mechanism. 11. Constitution of Nomination and Remuneration Committee. 12. Constitution of CSR Committee with minimum one Independent Director and formulation of CSR policy to spend 2% of average Net Profits during the three immediately preceding financial years in pursuance of CSR policy. 13. Secretarial Audit for the bigger companies.

Stakeholder Relationship Committee as per Regulation 20 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 :

(1) The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

(2) The chairperson of this committee shall be a non-executive director.

(2A) At least three directors, with at least one being an independent director, shall be members of the Committee.

(3) The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.

(3A) The stakeholders' relationship committee shall meet at least once in a year.

(5 marks)

Answer to Q.4.C.

Regulation 25(3) of the SEBI (LODR) Regulations, 2015 requires that the independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.

Further Regulation 25(4) of the SEBI (LODR) Regulation, 2015 states that independent directors in the meeting referred in sub-regulation (3) shall, inter alia-

(a) review the performance of non-independent directors and the board of directors as a whole.

(b) review the performance of the chairperson of the listed entity, taking into account the views of executive directors and non-executive directors.

(c) assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors that is necessary for the board of directors to effectively and reasonably perform their duties.

Section 149(8) read with Schedule IV of the Companies Act, 2013 also mandates the requirement of holding separate meetings of the independent directors.

Hence in the instant case, the Board of the Directors can hold the separate meetings of the independent director under the chairmanship of Xavier.

(5 marks)