

***Corporate governance is the most vital thread of the profession. Corporate governance is not just a law, circular or regulation, it is mostly a stand point. What is the stand point we take. Today's world we are not in the era of determining "What is right and what is wrong" We are in the era of determining "What is right and what is more right"***

***This is CORPORATE GOVERNANCE.***

- COMPANIES ACT-*Origin, History, Legislature*
- MCA-*ministry Of Corporate Affairs*
- QUICK FACTS
- GROWTH IN CORPORATE SECTOR
- *CORPORATE GOVERNANCE- Introduction, Importance, Developments*
- FUTURE PROSPECTS OF CORPORATE GOVERNANCE
- LIGH HOUSE- "*STAND POINT*"

**NEWSLETTER**

**DECEMBER 2011**

**Batgach**



After the Independence, it was found that the existing companies act should be amended to suit to the changed conditions in the country. In line with Cohen Committee of England, the central government appointed a 12 member company law committee in October, 1950 under the chairmanship of Mr. C. H. Bhabha (known as bhabha committee) and submitted their report in April 1952.

The Central government brought a bill in parliament on 2nd September, 1953. The parliament appointed a joint parliamentary committee in May, 1954 to go in to the recommendations of the Bhabha committee and to suggest any modifications or changes.

On the basis of the recommendations of the joint parliamentary committee, the parliament passed the new act in November, 1955 which received the president's assent on 18th January, 1956, this act came into force with effect from April, 1956.

The history of Indian Company Law began with the company's act of 1850, modeled on British Companies act of 1844. The principle of limited liability was applied in the new joint stock companies act, 1857. Between 1850 and 1882, the companies act was amended many times and the act of 1882 repealed all the previous laws and remained in force till 1912, though amended many times. The Indian companies act of 1913 was the result of concerted effort for a consolidate and comprehensive law and was based on the British Companies act of 1908. Subsequent amendments were made in 1914, 1915, 1920, 1926, 1930, 1932 and 1936. The amendment in 1936 was based on the lines of the British company's act of 1929 and became operative from 15th January, 1937. After independence it was found that the company law should again be amended. Therefore the company's act 1956 was passed and it came into force on 1st April 1956.

## LEGISLATURE

On the basis of recommendation of the Joint Parliamentary committee, the Parliament passed the new act in November, 1955 which received the President's assent on 18th January, 1956 and this act came into force from 1st April, 1956. It is one of the largest acts of the world.

In India, the Companies Act, 1956, is the most important piece of legislation that empowers the Central Government to regulate the formation, financing, functioning and winding up of companies.

The Companies Act is administered by the Central Government through the Ministry of Corporate Affairs and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Company Law Board, Director of Inspection, etc.

It has following:

It has 658 Sections.

It has XV Schedules.

It has XIII Parts.

It has 50 rules.





# Ministry of Corporate Affairs

Government of India

## MINISTRY OF COMPANY AFFAIRS (Renamed Ministry of Corporate Affairs)

The Ministry of Company Affairs (MCA) is primarily concerned with administration of the Companies Act 1956, other allied Acts and rules & regulations framed mainly for regulating the functioning of the corporate sector in accordance with law. In addition to performing duties under the Companies Act and acting as a regulator, the ministry is also responsible for administering the Competition Act, 2002, which is eventually expected to replace the Monopolies and Restrictive Trade Practices Act, 1969 under which the Monopolies and Restrictive Trade Practices Commission (MRTPC) is functioning. Besides it exercises supervision over the three professional bodies namely, Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI) and the Institute of Cost and Works Accountants of India (ICWAI).

The ministry has a three tier organizational set up, comprising of headquarters at New Delhi, network of 4 offices of Regional Directors (RD) located at Noida, Kolkata, Mumbai and Chennai, 20 offices of Registrars of Companies (ROC) and 16 offices of the Official Liquidators (OL). The official liquidators are attached to various high courts in India, but under the overall administrative control of the MCA. In addition, the following offices function as attached offices of the ministry.

Company Law Board (CLB)

The Monopolies and Restrictive Trade Practices Commission (MRTPC)

Director General of Investigation and Registration

Competition Commission of India

National Company Law Tribunal (NCLT)/National Company Law

Appellate Tribunal (NCLAT)

Serious Frauds Investigation Office (SFIO)



*Few helpful links are as follows:*

COMPANY LIMITED BY SHARES:

[http://www.mca.gov.in/Ministry/pdf/MCA\\_AR1011\\_English.pdf](http://www.mca.gov.in/Ministry/pdf/MCA_AR1011_English.pdf)  
NBFC

[http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Nbfc\\_Companies.pdf](http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Nbfc_Companies.pdf)

VANISHING COMPANY:

[http://mca.gov.in/Ministry/pdf/Updated\\_status\\_vanishing\\_companies\\_20jan2010.pdf](http://mca.gov.in/Ministry/pdf/Updated_status_vanishing_companies_20jan2010.pdf)

PLANTATION COMPANY:

[http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Plantation\\_Companies.pdf](http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Plantation_Companies.pdf)

CHIT FUND COMPANIES:

[http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Chit\\_Fund\\_Companies.pdf](http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Chit_Fund_Companies.pdf)

SECTION 25 COMPANIES:

[http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Section25\\_Companies.pdf](http://mca.gov.in/MCA21/dca/RegulatoryRep/pdf/Section25_Companies.pdf)

## VITAL NOTE:

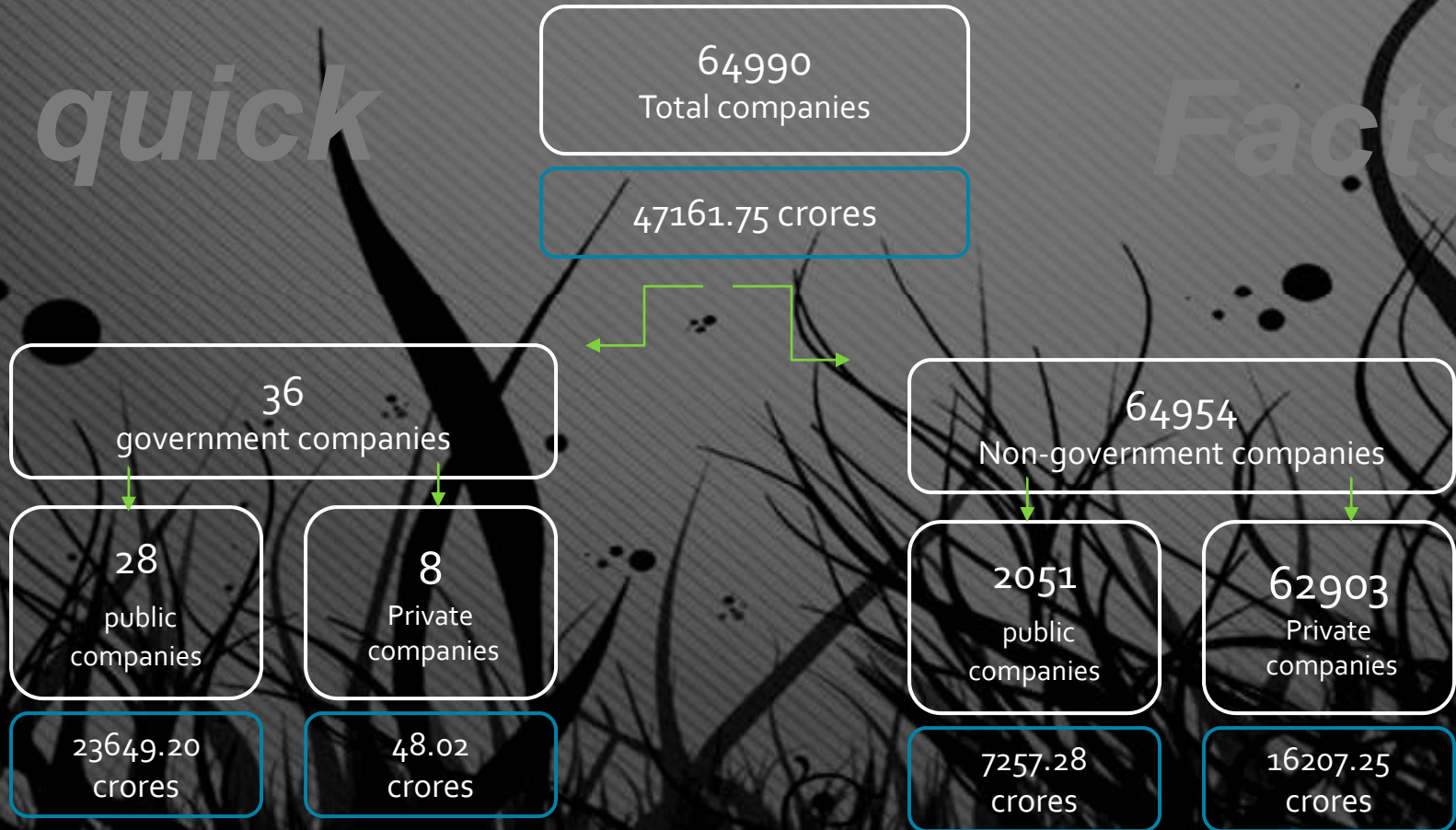
Guru & Jana has updated its website.

Please visit [www.gurujana.com](http://www.gurujana.com) and browse the resources. The resources up gradation is a starting point for setting up a large data library which is/are self generated, home grown information.

64,990 companies limited by shares with authorized capital of Rs. 47,161.75 Crore were registered under the Companies Act, 1956 during the period from 1ST APRIL, 2010 TO 31ST DECEMBER, 2010

*quick*

*Facts*



key:

Number of companies



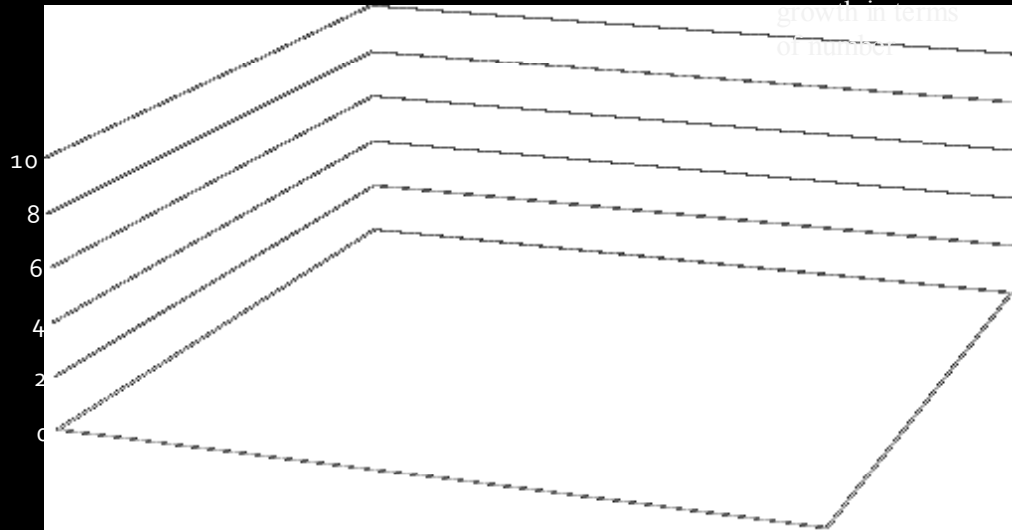
Total Authorized Capital



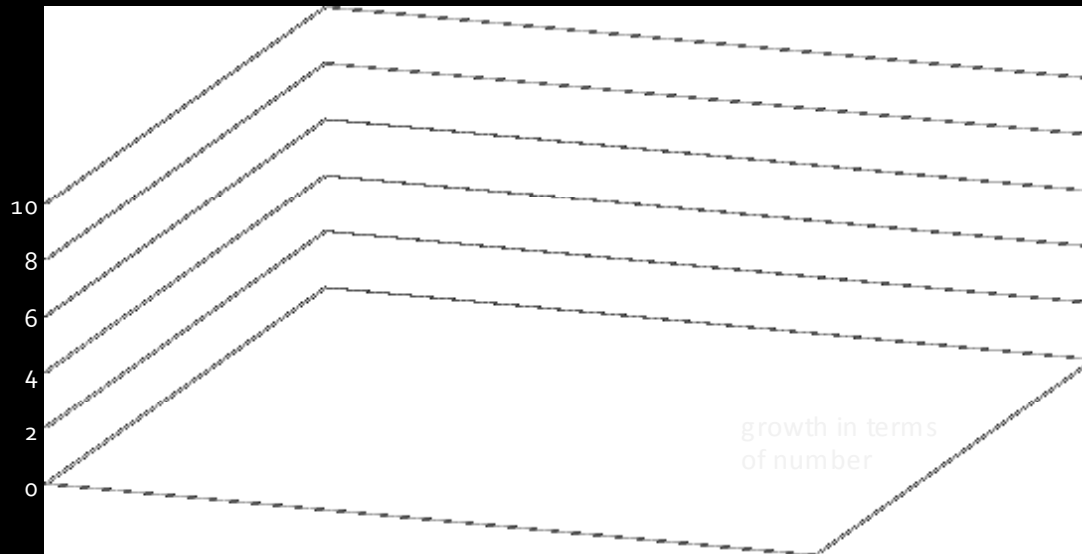
NEWSLETTER DECEMBER 2011



## growth in government companies



## Growth in non-government companies



# GROWTH



## GROWTH IN COMPANIES OVER THE YEARS:

"India has always been a nation of entrepreneurs. Today it is a nation of world class professionals as well. Indian companies are strategically increasing their presence overseas and their presence is being felt all over the world. Indeed we are witnessing the emergence of the Indian multi-national on the global corporate stage. The private sector now contributes significantly to all sectors of our economy, including infrastructure development, which until recently was an exclusive preserve of the public sector until a few years ago. In recent years, the private sector is also successfully engaged with the government in PPP projects. India's corporate sector is poised to become the main engine of growth for the Indian economy. The responsibility it carries is, therefore, truly enormous."



## Introduction

Corporate governance issues have attracted considerable attention, debate and research world wide in recent decades. Almost invariably, such efforts gain momentum in the wake of some major financial scam or corporate failure, as these tend to highlight the need for tighter surveillance over corporate behavior. In India also, corporate governance has been under scrutiny and is an issue that has gained widespread importance.

A key element of good governance is transparency projection through a code of good which incorporates a system of checks and balances between key players – board, management, auditors and shareholders.

## Need and Importance

The need and importance of Corporate Governance can best be conveyed with the following quotation of Benjamin Franklin: “A little neglect may breed great mischief – for the want of a nail, the shoe was lost; for the want of a shoe, the horse was lost; for the want of a horse, the rider was lost; and for want of a rider, the battle was lost.”

The absence of good corporate governance, even in a company that is performing well financially, may imply vulnerability for the shareholders because the company is not optimally positioned to deal with financial or management challenges that may arise.

## Developments in India

SEBI initiated several steps for strengthening corporate governance through the amendment of the listing agreement like:

- ▲ Strengthening of disclosure norms for Initial Public Offering (IPO) following the recommendations of the Malegam Committee;
- ▲ Providing information in directors’ report for utilization and end use of funds and variation between projected and actual use of funds;
- ▲ Declaration of un audited quarterly results;
- ▲ Mandatory appointment of compliance officer for monitoring the share transfer process and ensuring compliance with various rules, regulations;
- ▲ Dispatch of one copy of complete balance sheet to every household and abridged balance sheet to all shareholders.

# Future prospects Of CORPORATE GOVERNANCE



India has become one of the fastest emerging nations to have aligned itself with the international trends in Corporate Governance. As a result, Indian companies have increasingly been able to access to newer and larger markets around the world; as well as able to acquire more businesses. The response of the Government and regulators have also been admirably quick to meet the challenges of corporate delinquency. But, as the global environment changing continuously, there is a greater need of adopting and sustaining good corporate governance practices for value creation and building corporations of the future.

It is true that the 'corporate governance' has no unique structure or design and is largely considered ambiguous. There is still lack of awareness about its various issues, like, quality and frequency of financial and managerial disclosure, compliance with the code of best practice, roles and responsibilities of Board of Directories, shareholders rights, etc. There have been many instances of failure and scams in the corporate sector, like collusion between companies and their accounting firms, presence of weak or ineffective internal audits, lack of required skills by managers, lack of proper disclosures, non-compliance with standards, etc. As a result, both management and auditors have come under greater scrutiny.

Hence, in the years to come, corporate governance will become more relevant and a more acceptable practice worldwide. This is easily evident from the various activities undertaken by many companies in framing and enforcing codes of conduct and honest business practices; following more stringent norms for financial and non-financial disclosures, as mandated by law; accepting higher and appropriate accounting standards; enforcing tax reforms coupled with deregulation and competition; etc.

# ***STAND POINT***

The boarding pass read “Guru Makam – Flight No SW114, Delhi to Bangalore, and seat number allocated was 25C” Next to Guru [G] was Prasad [P] in seat 25B. G had just come out of a board meeting where in he had to fight alone.

G was a short man, with good features; he wore a dark grey suit, with a long flowery red tie, and had distinct features of a person who would stick by values. He was not very handsome, but there was something which made him very attractive, and stands out in the crowd. He had a very pleasant smile and a clear face.

P was tall, dark, and handsome. He wore a well tailor made suite, a black suite, with a pink shirt, one of the best ties, and was dressed to kill. In spite of his looks he did not seem attractive, neither did he stand out in the crowd. He had a smile, but definitely not a pleasant one and had a clear face, but something was not clear about it.

G and P seemed to know each other for a very long time, and this is a transcript of their conversation in the flight. They both represented an auditing firm, and seemed to be engrossed in their profession.

G: “I think the meeting went on well, I was quite satisfied with the proceedings”

P: “What makes you say that, you were mauled by the board and the finance team. It was quite a blood shed there, if I were you, I would actually gone with the flow of water. I am not sure what were you trying to prove by disagreeing with the entire company and finance team”

G: “Come on I thought you were with me, and I felt you understood and agreed with my view point, rather I would say my stand point”

P: “Nonsense, what stand point, you did not have any point in continuing the argument. The entire company and their finance team wanted to do that adjustment in their accounts, they had made up their mind to do the window dressing. They wanted to show profits [which were not there]”

G: “That is where I am coming from, I did not want to allow them to do the adjustment, the company had performed badly, and the loss had to be shown”

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P "Come on, give me a break. They were 8, and you were alone, [I am not with you, read between the lines pal] they would have stream rolled you. Come out of your dream world Standpoint, what are you trying to prove You should have just agreed to what ever they said, nobody would have noticed, nobody would have known, we could have got a cool increase in our fee.

P: "Be practical, they were our biggest clients, they were accounting for over 15% of profits, do you know what is the impact of your conviction. It was a simple Yes from you and we would have been richer by a Million bucks today. I told you nobody would notice your "yes" or "no".

G: I agree with you no body would have notice my "yes" or "no", but I would have noticed it. I would have known it, the person who I would see in the mirror would have seen it.

P: I also agree with you, only you would have known. For a single individual the entire firm has to suffer for the money it would have earned. It was a simple, it was not complicated, you just had to close your eyes and mind, to the fact [read as window dressing]. I heard from the Head Finance they could have paid us 1 Million Rupees as an increase in our fee.

This conversation went on and on, there never seemed to be an end. The Air hostess served my dinner, and I had no interest on the diet food. He just slipped and slept.

Time and again in our lives we find these people. One of them fighting for a right cause, and in the process loosing every friend. The other one closing his eyes on the right cause, and in the process making a lot of friends, and also earning a lot of money. In this instant case G was an auditor by profession and he was standing by his stand point, while P was his colleague, seemed to have a different view. G had made no friends and neither earned money, but P could have made all the friends and walked with a cool 1 Million Rupees. In the end G stood his ground and did not budge, he refused to listen to his colleague P. G might not have earned extra bucks or extra friends, he did not need them as much, what mattered to him was his stand point.

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The flight landing announcement was made, and G woke up. He saw to his dismay, the seat 25B was vacant. No body was there. G realized that there is a G and a P present in all of us. All of us have two personalities, it depends on which of the personality in his wins, is it G or P, is it Brutus or Ceaser, Is it Arjuna or Duryodhana, is it black or white, is it the clean or dirty. It is only upto us to determine who would win. The personality who would bend to value systems would gain to win in the eyes of the world [only for a short time], but would stand to loose in his own eyes.

All of us come across these two personalities in us every day, everymoment, and walk of our life.

Should we stop in the traffic light or not, I tell that lie or not, I flirt with that girl or not, I watch that adult movie or not, I do an adjustment or not, Nobody is watching, only YOU are. Would you like to be blind or see. Choice is yours. See the mirror on the wall, can you see it. I choose to see it, I choose to live.

The course of Chartered Accountancy gives birth to the G, gives birth to the Ceasar, to the Arjuna in each one of us. This profession would not make your friends and family proud of you, it is a profession which will make you proud in your own eyes.

Every walk of life would test you, and the Chartered Accountancy course equips you to win all these tests, with pride, with dignity and with economic prosperity. The profession would nurture you to become a Ceasar and Arjuna, as you would need to be one such great human being, after all you are the

economy of the country. The ethical standards would enable a Chartered Accountant to stand tall, with pride, with knowledge against every devious accounting, every wrong tax planning. The profession would create a personality out of a person.

This is to note – you are going to be a Chartered Accountant, a Arjuna who would lead an army with ethics, and tact.

Go see the mirror, and you could see the smile of India with gratitude.