

Corporate Policies – Must Haves



Corporate policies lay down the guiding principles and procedures according to which the company operates. The Companies Act, 2013 and the amendment of Clause 49 of Equity Listing Agreement have introduced various provisions which have required significant changes in the corporate policies. Some provisions have mandated specified policies, while various sections talk about important matters on which it is advisable to have policy documents. This article identifies and discusses corporate policies that are directly driven by the regulatory framework and also list down various other best practice policies which should also be documented in order to ensure improved corporate governance. Read on...

Background

Introduction of the Companies Act, 2013 followed by the amendment of Clause 49 of Equity Listing Agreement issued by the SEBI has resulted into a paradigm shift in the regulatory framework with emphasis on much needed corporate governance. These regulatory changes have far reaching implications that are set to significantly change the manner in which companies operate in India.

Significant changes are introduced in the provisions related to auditors, governance, e-management, compliance and enforcement, disclosure norms and mergers and acquisitions.



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Also, new concepts such as one-person company, small company, dormant company, class action suits, registered valuers and corporate social responsibility have been included.

Due to such changes, there are direct and resulting changes on the corporate policies that a company must have to ensure smooth flow of business operations and regulatory compliance.

Select Key Changes in the Provisions of the Companies Act

- I. Appointment of a Woman Director
- II. Performance Evaluation of Independent Directors
- III. Separate Meeting of Independent Directors and Training of Independent Directors
- IV. Succession Plan For Board/Senior Management
- V. Compulsory Whistleblower Mechanism
- VI. Constitution of Nomination and Remuneration Committee

VII. Disclosure in Annual Report about Remuneration Policy and Evaluation Criteria
VIII. Related Party Transactions.

A goal of an economic legislation like the Companies Act, 2013 is to induce the economic growth with more desirable multifaceted robust governance and it will never aim to create a bottleneck in the economic growth of any nation. A bare reading of the Companies Act, 2013 suggests reader friendliness, whereas a detailed study leaves ample room for interpretation and ambiguity. In order to bring stability and uniformity within the company, management needs to pen down the corporate policies that act as guidelines for their employees and associates.

An Understanding

As per Oxford Dictionary, a policy is defined as “a course or principle of action adopted or proposed by an organisation or individual.” Having the corporate policy documents in place is critical to the business, when properly managed, they induce an oversight from the enterprise level to business units and departments, and then to individuals.

Correct and succinct articulation of these documents is of utmost importance as it translates the corporate vision, mission and goals in writing and set parameters that govern the conduct of business. It can be used as a tool to introduce the best practices followed globally. A policy should be as precise as possible to reduce any room for misinterpretation, as one of the prime objectives of a policy is to streamline and bring uniformity across the organisation.

In this document, a total of 31 policies are identified out of which there are 7 mandatory policies, 9 essential policies and 15 best practice policies. Mandatory and essential policies are discussed in detail whereas best practice policies are listed out.

I. Mandatory Policies

On a close perusal of the Companies Act, 2013

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along with the Equity Listing Agreement, there are various Sections that are specific enough to mandate having the policy on a matter; for example, according to Section 134(n) of the Act “a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company”.

Following is the list of mandatory policies with reference of their relevant provisions:

Sr. No.	Policy	Relevant Provision
1	Risk Management Policy	Section 134 of the Companies Act, 2013 and Clause 49 of Equity Listing Agreement (Board Disclosures)*
2	Corporate Social Responsibility Policy	Section 135 of Companies Act, 2013
3	Nomination and Remuneration Policy	Section 178 of the Companies Act, 2013 and Clause 49(IV) (A) of Equity Listing Agreement *
4	Code for Independent Director	Schedule IV to the Companies Act, 2013
5	Material Subsidiary Policy	Clause 49 of Equity Listing Agreement *
6	Board Diversity Policy	Section 149 of the Companies Act, 2013 and Clause 49 of Equity Listing Agreement *
7	Code of Conduct for Board Members and Senior Management Personnel	Clause 49 (II) (E) of Equity Listing Agreement *

* The policies having relevant provision as Clause 49 indicated by “*” are applicable only to listed companies.

1. Risk Management Policy: Effective management of business risks is extremely critical to achieve positive results and enhance corporate reputation. It has been seen that although significant risks are often known to the personnel of company, it may not get enough attention of top management, and thus may result in significant losses to the company. Risk management oversees and ensures the integrity of the process with which risks are taken.

The purpose of this policy is to:

- i. Embed risk management across all the business units and critical support functions.
- ii. Make risk management everyone's responsibility.
- iii. Link risk management to business performance of the company.

2. Corporate Social Responsibility Policy:

Needless to point out the inevitable fact that a company operates in a society and it is dependent on society for its continuity and thriving. Considering this rationale, various corporate social responsibility (CSR) initiatives were taken in the past decade and introducing mandatory CSR activities for companies based on certain specified monetary threshold is one of the major steps to make companies socially responsible.

The purpose of corporate social responsibility policy is to indicate the activities to be undertaken by the company as specified in Schedule VII to the Act and to lay down the monitoring mechanism for the same.

3. Nomination and Remuneration Policy:

The need to develop the nomination and remuneration policy is to ensure that remuneration arrangements support the strategic aims of the business and enables the recruitment, motivation and retention of senior executives, satisfying the expectations of shareholders and remaining consistent with the expectations of the wider employee population. The purpose of this policy is:

- i. To lay down criteria for appointment, removal of directors and key managerial personnel and evaluation of their performance.
- ii. To determine remuneration based on the company's financial position, trends and practices on remuneration prevailing in peer companies in the industry.

4. Code for Independent Director: Schedule IV to the Companies Act, 2013 is a code that contains guidelines for professional conduct of independent directors aiming to foster the confidence of investment community and various other stakeholders. Section 149 (8) of the Companies Act, 2013 makes it mandatory for the company and the independent directors to follow the stated provisions in this code.

With a view of having improved governance and transparency, Clause 49 of the Equity Listing Agreement ("Listing Agreement") with the stock exchanges makes it mandatory to determine the material subsidiaries. The purpose of this policy is to lay down the criteria towards ascertaining material subsidiaries of the company and to provide the governance framework for such subsidiaries.

5. Material Subsidiary Policy: With a view of having improved governance and transparency, Clause 49 of the Equity Listing Agreement ("Listing Agreement") with the stock exchanges makes it mandatory to determine the material subsidiaries. The purpose of this policy is to lay down the criteria towards ascertaining material subsidiaries of the company and to provide the governance framework for such subsidiaries.

It is applicable to all listed companies having share capital of more than ₹10 crore and net worth exceeding ₹25 crore.

6. Board Diversity: Diversity of background, skills and perspectives are considered essential ingredients of an effective Board. Multiple perspectives are necessary to bring in creativity to challenge stereotype thought process and establish wider range of considerations into the business decision making process. Diversity leads to more innovation, more out of the box thinking, better governance and decisions that are holistic, comprehensive and inclusive thereby leading to board effectiveness. Recent amendment introduced through Section 149 and Clause 49 of Listing Agreement based on certain threshold limit makes it mandatory to have at least one woman director on the Board.

This policy aims to set out the approach to achieve diversity on the Board. Building a Board of diverse and inclusive culture is integral to the success of the company.

7. Code of Conduct for Board Members and Senior Management Personnel: Since the Board of a company hold a fiduciary position, it becomes necessary for them to have a transparent conduct in order to upkeep the confidence of various stakeholders. To achieve this, Clause 49 of Equity Listing Agreement makes it mandatory for a Board to lay down

a code of conduct for all Board members and senior management of the company.

Further, this code of conduct needs to suitably incorporate the duties of independent directors as laid down in the Companies Act 2013 and it shall be posted on website of the company as per the requirements of Clause 49.

II. Essential Policies

Various sections talk about important matters that call for the concern of management without mandatorily having a policy on the same, but at the same time it is advisable to have a document addressing various issues related to that matter. Each of the essential policy deals with a topic that has a mention in the relevant framework and lays down certain conditions that need to be fulfilled in that regard.

Following is the list of identified essential policies with reference to their relevant provisions:

Sr. No.	Policy	Relevant Provision
1	Investment Policy	Section 68 of the Companies Act, 2013
2	Loan Policy	Section 67 and Section 185 of the Companies Act, 2013
3	Related Party Transaction Policy	Section 188 of the Companies Act, 2013 and Clause 49 of Equity Listing Agreement
4	Non Disclosure Agreement policy	Section 457 of the Companies Act, 2013
5	Policy on Recruitment and Selection	Section 139 of the Companies Act, 2013
6	Code for Prohibition of Insider Trading	Section 195 of the Companies Act, 2013
7	Policy on Compensation and Benefits	Section 325 of the Companies Act, 2013 and Clause 49 of Equity Listing Agreement *
8	Succession Planning Policy	Clause 49 of Equity Listing Agreement *
9	Whistle Blower Policy	Clause 49 of Equity Listing Agreement *

* The policies having relevant provision as Clause 49 indicated by “*” are applicable only to listed companies.

- Investment Policy:** Companies conducting business are bound to deal with cash and cash equivalents. The endeavour to ensure protection and optimisation of the value of these cash funds that may be both short term and (or) long term in nature and to comply with the various regulations governing the company, a policy formalising the process of additional cash management, investment assets along with the various options of parking the idle funds needs to be articulated in a document.

The purpose of this policy is:

- To identify investment objectives.
- Establish a basis for evaluating investment results.
- Establish a clear understanding for all involved parties of the investment goals and objectives including various asset classes, investment management styles, asset allocations, acceptable risk and total long term investment return.
- To outline responsibilities associated with investment management.
- To establish guidelines for investment activities.
- To set out a clear process on hedging foreign risk exposure.

- Loan Policy:** Based on the risk appetite, risk tolerance and risk profile, companies not involved in the business of lending in the ordinary course of business set out the guiding principles, general approach and fundamental considerations for lending activities through a loan policy. This policy document aims to help the credit dispensing functions, thereby creating a desired loan portfolio.

Following are the objectives of this policy:

- Establishes authority, rules and framework to operate and administer the loan portfolio effectively,
- Controls lending risk,
- Helps to define the extent of funding, eligibility criteria, loan tenure,

The purpose of the related party transaction policy is to ensure due and timely identification, approval, disclosure, reporting and transparency of specified transactions between company and any of its related party in compliance with the applicable laws and regulations.

disbursement procedure, *etc.* in compliance with the applicable regulations,

- iv. Ensures the institution's stability and soundness,
- v. To ensure adequate underwriting practices and loan documentation/records.

3. **Related Party Transaction Policy:** Certain relationships can present potential or actual conflicts of interest which may raise questions like: "Whether transactions associated with such relationships are consistent with company's and its stakeholders' best interests?" The company must ensure that certain specified related party transactions are managed and disclosed in accordance with the strict legal and accounting requirements to which the company is subject to.

The purpose of the related party transaction policy is to ensure due and timely identification, approval, disclosure, reporting and transparency of specified transactions between company and any of its related party in compliance with the applicable laws and regulations.

4. **Non-Disclosure Agreement Policy:** During conduct of the business, many a times different classes of data varying from confidential to sensitive are disclosed to other parties and to prevent misuse of such data, having a non-disclosure agreement with them is necessary. A non-disclosure agreement (NDA) is a signed formal agreement in which one party agrees to give other party confidential information and data about its business or products and the other party agrees not to share this information with anyone else based on the terms and conditions as stated in the agreement.

The purpose of non-disclosure agreement policy is:

- i. To set out the classes of data and level of security to be assigned to each class of data.
- ii. To state the clear terms and conditions as to what information is private and confidential.
- iii. List out possible parties those need to execute non-disclosure agreement.
- iv. Format of non-disclosure agreement.

5. **Policy on Recruitment and Selection:** The talent pool of a company is one of the most crucial resources steering the company

towards its goal. The talent acquisition team needs to understand the mission, vision and goals of the company to find the best suited match for recruitment and selection.

A recruitment and selection policy is designed to ensure that company selects the best possible candidate for the job, on the basis of their relevant merits and abilities as measured against the requirements of the job.

The purpose of recruitment and selection policy is to ensure:

- i. a professional and consistent approach to recruitment and selection;
- ii. that talent is recruited on the basis of merit, capability and potential;
- iii. that appropriate skills, both technical and personal are taken care of in order to meet operational and strategic requirements.

6. **Code for Prohibition of Insider Trading:**

Unlike other outsider parties, internal members of company possess more critical information about the company. With an intention to curb malpractices by the insiders i.e. the employees/directors with direct contact to the company's critical and sensitive information and to protect the interest of the investors against such practices, it is advised for a company to have the code for prohibition of insider trading.

The need for this policy is to:

- i. To ensure confidentiality of price sensitive information and prevention of misuse of such information.
- ii. Fairness and transparency in dealings with stakeholders.
- iii. Compliance with laws and regulations.
- iv. Protection of interest of the investors.

7. **Policy on Compensation and Benefits:**

The policy on compensation and benefits is an essential part of the policies register of a company. It strengthens the relationship between the stakeholders and the company. This policy includes the policies relating to salary administration, compensation, perks and benefits. Compensation includes all the direct and indirect benefits the employees (including directors) are awarded with. A well set policy will support a company to remain competitive in today's world and ensure sustainability in the future.

This policy aims to achieve the following objectives:

- i. To ensure that all the workers' and employees' dues are paid on timely basis and promptly since often the prompt and consistent payment helps in lowering employee turnover.
 - ii. To facilitate smooth functioning of the processes of the company by establishing positive environment and contented workforce.
 - iii. To ensure no over payment or excess payment is made to the employees and vice versa.
 - iv. To ensure that the benefits (long term, short term, terminal) are in line with the statutory requirements including accounting standards.
- 8. Succession Planning Policy:** The changing dynamics may impact progress, development and continuity of a company thereby creating a need to develop and nurture its human capital to ensure that the key posts will be filled with people able to carry on and excel when the current key people retire or move on, thereby enabling smooth, transparent and bona fide transition of role and related hand-over as a part of succession.

To achieve this, the company should have a formal succession planning policy that includes a systematic succession planning activity with well defined roles, responsibilities and timelines.

Succession planning is a company-wide, continuous and pro-active programme which is developed and implemented in coherence with the company's vision, designed to establish the practice of identifying, evaluating and developing candidates, for key positions giving an assurance to various stakeholders on company's continuity and growth prospects.

III. Best Practice Policies

Apart from the mandatory policies and essential policies that are directly driven by the regulatory framework, there are also other matters that demand for having a document in place considering the best practices in the global market. Following

policies listed out in this section are neither mandatory nor essential but as a matter of best practice and to have an improved governance, it is advisable to have these documents penned down.

List of Best Practice Policies:

Sr. No.	Policy
1	Board Evaluation
2	Policy on Anti-Corruption and Bribery
3	Intellectual Property Rights Policy
4	Prevention of Sexual Harassment at Work Place
5	Media and External Communications Policy
6	Health and Safety Policy
7	Protection of Company's Asset Policy
8	Blogging and Usage of Social Media Policy
9	The Computer and Internet Usage Policy
10	Information Security Policy
11	Delegation of Authority Policy
12	Policy on Training and Development
13	Policy on Performance Appraisal
14	Policy on Exit and Termination
15	Code of Corporate Disclosure Practices for Prevention of Insider Trading

Note: The policies classified to be mandatory and essential are based on the Companies Act, 2013, various notifications issued by MCA and Clause 49 of Equity Listing Agreement.

Considering industry specific laws, a company may have other mandatory policies to be drafted and followed.

Conclusion

Companies need to take additional measures considering the new requirements related to compliance of having corporate policies introduced by the applicable relevant regulatory framework. Many companies would need to pool in additional resources across certain functions to upkeep with these changes. Thus, early change management is the key to adaption in the current scenario. A perfect bespoke articulation of the policy document will clearly show up on the key performance indicators of a company, thereby, steering it towards the achievement of its strategic goals and providing it a competitive edge. ■