International Journal of Advanced Research in Management and Social Sciences

ISSN: 2278-6236
Impact Factor: 4.400

A COMPARATIVE STUDY OF CORPORATE GOVERNANCE REGULATORY NORMS IN MALAYSIA AND INDIA

Dr. Ambrish Gupta*

Abstract: *This paper attempts to investigate the chronicle of Malaysian and Indian journey towards corporate governance, make a comparative study and analysis of the corporate governance regulatory norms prevalent in the two countries, examine the role of the Chartered Accountants, internal audit committee and internal audit & control systems framework in ensuring the quality of the corporate financials and investors' interests and to identify what Malaysia and India can learn from each other to further strengthen and set the highest standards of their respective corporate governance frameworks in order to promote better financial discipline among the corporates, protect the interest of the shareholders and thus lead to development of better informed and more efficient capital markets.*

Key Words: *Bursa Malaysia Berhad, Clause 49, Corporate governance, Internal audit committee, MCCG 2012, Sarbanes-Oxley, SEBI.*

*Sr. Professor-Finance & Accounts, FORE School of Management, New Delhi

GENESIS OF CORPORATE GOVERNANCE

Corporate Governance is the buzzword today in the business, the financial markets and among the corporate managements, shareholders, investors, government and regulatory bodies. A number of reports and codes on the subject have been published internationally - notable among them are the Report of the Cadbury Committee, the Report of the Greenbury Committee, the Combined Code of the London Stock Exchange, the OECD Code on Corporate Governance and The Blue Ribbon Committee on Corporate Governance in the U.S (Mallin, Christine A. 2007).

The genesis of the concept of corporate governance is traced back to the Cadbury Committee Report of 1992 in Britain which was necessitated by the changing economic order of public sector to privatization, manifesting among others in accounting scandals (BCCI and Maxwell for example). In this background the title of the committee's report, aptly, was 'The Financial Aspects of Corporate Governance' showing its focus area. The committee stated:

"Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting. Within that overall framework, specifically the financial aspects of corporate governance (the Committee's remit) are the way in which boards set financial policy and oversee its implementation, including the use of financial controls, and the process whereby they report on the activities and progress of the company to the shareholders" (Cadbury Committee.1992).

The subject however gained the real impetus with the unfolding of accounting scandals of WorldCom (year 2000) and Enron (year 2001) in the USA. Both these companies used to resort to inflate their profits artificially. The bubble had to bust and it did, sooner than later. This led to the enactment of The Accounting Industry Reforms Act, 2002, popularly known as Sarbanes-Oxley Act, named after its propounders. Sarbanes-Oxley Act has become a

benchmark the world over and has its imprint on all global efforts towards strengthening the corporate governance of the public corporations (Gupta, Ambrish. 2012).

MOTIVATION FOR THE PAPER

The author had an opportunity to attend a seminar at Kualalampur, Malaysia during October 2013 on the themes of Malaysian new economic model, Corporate governance in Malaysia and Malaysia-India bilateral trade. The presentation and discussions during the session on corporate governance triggered the idea of conducting a comparative research on the 'regulatory norms' prevalent in Malaysia and our country India in this field of corporate management. Though the literature is replete with numerous studies on corporate governance, absence of a comparative study of regulatory norms in India and Malaysia further strengthened the idea and need for this paper. It is hoped that this paper will bridge some of the gap in the literature available on corporate governance.

OBJECTIVES OF THE PAPER

In the above backdrop, this paper seeks to achieve the following objectives:

1. To investigate the chronicle of Malaysian and Indian journey towards corporate governance.
2. To make a comparative study and analysis of the corporate governance regulatory norms prevalent in Malaysia and India.
3. To examine the role of the Chartered Accountants, internal audit committee and internal audit & control systems framework in ensuring the quality of the corporate financials and investors' interests.
4. To identify what Malaysia and India can learn from each other to further strengthen and set the highest standards of their respective corporate governance regulatory norms.

EMPHASIS IN THE PAPER: CORPORATE GOVERNANCE 'REGULATORY NORMS'

It is clear from the earlier discussion that subject of corporate governance is very wide and vivid. It has multi-dimensional implications not only for the corporations but for the whole society. Justice cannot be done to all the issues involved in the subject in just one paper. Therefore the author decided to concentrate on one issue, that is, a comparative study of corporate governance 'Regulatory Norms' in Malaysia and India, as set out in their respective corporate governance codes/listing agreements.

METHODOLOGY AND DATA SOURCE

This is an exploratory study which uses qualitative research methodology. During the Malaysia seminar, Professor Datin Hasnah HJ. Haron, Dean, Graduate School of Business, USM, made a presentation on corporate governance. This research draws from her presentation and extensively uses secondary data and information from discussions with the other university professors in Malaysia, various national and international Committee Reports, Governance Codes, Testimonies, Listing Agreements, Acts, Books and websites of capital market regulatory bodies in Malaysia and India. The paper provides a descriptive analysis of data and information so gathered.

MILESTONES OF THE MALAYSIAN JOURNEY TOWARDS CORPORATE GOVERNANCE

The Malaysian journey towards corporate governance started in March 1998 with the establishment of a High Level Finance Committee (HLFC) on Corporate Governance by the government of Malaysia in the backdrop of the East Asian economic crisis in 1997/98 that generated a substantial amount of analysis and debate largely focused on macro-economic issues, systemic stability as well as issues pertaining to the regulation of international investors, the role and functions of regulators and the need for improved disclosures and good corporate governance (Finance Committee on Corporate Governance, 1999). The milestones in this journey are as follows:

A. Malaysian code on corporate governance

A.1 The HLFC submitted a 'Report on Corporate Governance' in February 1999 and proposed a code of corporate governance for listed companies. The committee defined corporate governance as under:

> "Corporate governance is the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realizing long term shareholder value, whilst taking into account the interests of other stakeholders."

A.2 Approval of the above proposed code by the securities commission, Malaysia and issuance of the first Malaysian Code on Corporate Governance in the year 2000 (MCCG 2000) which laid the foundation of the governance framework in the country.

A.3 As per MCCG 2000 (Clause 1.1 and 1.2):

The aforesaid proposed code was developed by the committee's Working Group on Best Practices in Corporate Governance (JPK1). JPK1 was chaired by Y Bhg Dato' Megat Najmuddin Khas, Chairman, Federation of Public-Listed Companies Bhd. The code was thus principally an initiative of the private sector. The need for a code was inspired in part by a desire for the private sector to initiate and lead a review and to establish reforms of standards of corporate governance at a micro level. This is based on the belief that in some aspects, self-regulation is preferable and the standards developed by those involved may be more acceptable and thus more enduring.

A.4 MCCG 2000 emphasizes the purpose and significance of corporate governance for Malaysia as under:

> "The need for a code results from economic forces and the need to reinvent the corporate enterprise, so as to efficiently meet emerging global competition. In market-oriented economies, companies are less protected by traditional and prescriptive legal rules and regulations. Hence there is the need for companies to be more efficient and well-managed than ever before to meet existing and anticipated world-wide competition".

A.5 Revision of MCCG 2000 in 2007 (MCCG 2007) to further strengthen the roles and responsibilities of the board of directors, audit committee and the internal audit function and the consequent amendment of securities and companies laws, establishment of The Audit Oversight Board to provide independent oversight over external auditors of companies, establishment of The Securities Industry Dispute Resolution Center to facilitate the resolution of small claims by investors and introduction of statutory derivative action to encourage private enforcement action by shareholders.

A.6 Revision of MCCG 2007 in 2012 (MCCG 2012), which focuses on strengthening board structure and composition recognising the role of directors as active and responsible fiduciaries and putting in place corporate disclosure policies that embody principles of good disclosure. According to MCCG 2012 they have a duty to be effective stewards and guardians of the company, not just in setting strategic direction and overseeing the conduct of business, but also in ensuring that the company conducts itself in compliance

with laws and ethical values, and maintains an effective governance structure to ensure the appropriate management of risks and level of internal controls. MCCG 2012, however, retains the definition of corporate governance as contained in HLFC report cited earlier. Listed companies are required to report on their compliance with the principles and recommendations made in MCCG 2012 in their annual reports for year closing December 31, 2012 onwards. MCCG 2012 advocates the adoption of standards that go beyond the minimum prescribed by regulation.

A.7 MCCG 2012 is arranged as under:

- **Principles**: The principles encapsulate broad *concepts* underpinning good corporate governance that companies should apply when implementing its recommendations.
- **Recommendations or Standards**: The recommendations are *standards* that companies are expected to adopt as part of their governance structure and processes. As there is no 'one size fits all' approach to corporate governance, companies are allowed to determine the best approach to adopting the principles. Listed companies should explain in their annual reports how they have complied with the recommendations. Where there is non-observance of a recommendation, companies should explain the reasons.
- **Commentaries:** Each recommendation is followed by a commentary which seeks to *assist companies in understanding* the recommendation. It also provides some guidance to companies in implementing the recommendation.

The principles **(P)** and recommendations **(R)** of MCCG 2012 are presented in Exhibit 1**.**

Exhibit 1					
MCCG 2012 Principles and Recommendations (Standards)-Malaysia					
P1	**The board should establish clear roles and responsibilities:**		**P4**	**The board should foster commitment:**	
	R1.1	Clarify in functions of the board and management.		**R4.1**	Set out expectations on time commitment for directors and protocols for accepting new directorships.
	R1.2	Clarify of roles and responsibilities in discharging board's fiduciary and leadership functions and succession planning.		**R4.2**	Ensure directors have access to appropriate continuing education programmes.
	R1.3	Formalize ethical standards through a code of conduct.	**P5**	**Audit committee should uphold integrity in financial reporting:**	
	R1.4	Ensure that the company's		**R5.1**	Ensure financial statements comply

		strategies promote sustainability.			with financial reporting standards.
	R1.5	Set procedures to allow directors access to information and advice.		**R5.2**	Formulate policies and procedures to assess the suitability and independence of external auditors.
	R1.6	Ensure that the board is supported by a qualified and competent Company secretary.	**P6**	**The board should recognise and manage risks:**	
	R1.7	Formalize, periodically review and make public the board charter.		**R6.1**	Establish a sound framework to manage risks.
P2	**Strengthen composition:**			**R6.2**	Establish an internal audit function reporting directly to the Audit Committee.
	R2.1	Board to establish a Nominating Committee comprising only of Non-executive directors, a majority of whom must be independent.	**P7**	**The board should ensure timely and high quality disclosures:**	
	R2.2	Nominating Committee to develop, maintain and review the criteria to be used in the recruitment process and annual assessment of directors.		**R7.1**	Ensure the company has appropriate corporate disclosure policies and procedures.
	R2.3	Board to establish formal and transparent remuneration policies and procedures to attract and retain directors.		**R7.2**	Encourage the company to leverage on information technology for effective dissemination of information.
P3	**The board should reinforce independence:**		**P8**	**The board should strengthen relationship between company and Shareholders:**	
	R3.1	Undertake an assessment of its independent directors annually.		**R8.1**	Take reasonable steps to encourage shareholder participation at general meetings.
	R3.2	The tenure of an independent director should not exceed a cumulative term of nine years.		**R8.2**	Encourage poll voting.
	R3.3	Justify and seek shareholders' approval in the event it retains as an independent director, a person who has served in that capacity for nine years.		**R8.3**	Promote effective communication and proactive engagements with shareholders.
	R3.4	Chairman and CEO should be two different individuals, and the Chairman a non-executive director.			
	R3.5	Board must comprise a majority of independent directors where the chairman of the board is not an independent director.			

Source: MCCG 2012 (2012).

A.8 An example of a commentary (on Recommendation 1.1):

The respective roles and responsibilities of the board and management should be clearly set out and understood to ensure accountability of both parties. The board together with the CEO should develop the descriptions for their respective functions. In addition, the board should develop and agree with the CEO, the corporate objectives, which include performance targets and long-term goals of the business, to be met by the CEO. Regular review of the division of responsibilities should be conducted to ensure that the needs of the company are consistently met. This allocation of responsibilities should reflect the dynamic nature of the relationship necessary for the company to adapt to changing circumstances.

B. Main market listing agreement of Bursa Malaysia Berhad: Chapter 15 on 'corporate governance'

In addition to the above, chapter 15 'Corporate Governance' of the main market listing agreement of Bursa Malaysia Berhad also sets out the requirements to be complied with by every listed company. These requirements are based on and drawn from MCCG 2012 itself. Clause 15.25 of part E of the chapter also mandates the listed companies to make disclosures on the compliance of MCCG 2012 in their annual reports. The chapter prescribes some more requirements to be complied with as presented in Exhibit 2 (Bursa Malaysia Securities Berhad. 2013).

Exhibit-2		
Some More Corporate Governance Requirements as per Chapter 15 of the Main Market Listing Agreement of Bursa Malaysia Berhad		
Part-B, Clause 15.08	Directors' training	Directors to attend such training programmes as may be prescribed by Bursa Malaysia from time to time.
Part B (A) Clause 15.08 (A)	Nominating Committee	A statement in the annual report about the activities of the nominating committee.
Part-C, Clause 15.09	Composition of the Audit Committee	At least one member to be a professionally qualified accountant.
Part-C, Clause 15.15	Audit Committee Report	A separate audit committee report in addition to overall corporate governance report.
Part-E, Clause 15.26	Additional Statements by the Board of Directors	• A statement explaining the board of directors' responsibility for preparing the annual audited financial statements; and
		• A statement about the state of internal control of the listed issuer as a group.

Part-F, Clause 15.27	Internal Audit	• Establish an internal audit function which is independent of the activities it audits.
		• Ensure that internal audit function reports directly to the audit committee.
Source: Bursa Malaysia Securities Berhad (2013).		

C. Whistleblower protection act, 2010

Malaysia made headway in its journey towards corporate governance when Whistleblower Protection Act, 2010 was passed. The initiative this time came from the government. No such act exists in India. It shows the commitment of the Malaysian government towards setting the highest standards of corporate governance. Legal protection to a whistle blower is an imperative to protect his/her career. It needs to be mentioned that whistle blowing is not a part of MCCG 2012 and therefore is not limited to it. The act thus has wider ramifications and is applicable across all corporates, private or public, listed or unlisted. Unlisted companies not bound by the corporate governance norms are also bound by the act (Whistleblower Protection Act 2010, Malaysia. 2010). Exhibit-3 presents the wrongdoings for which an employee can blow the whistle and the protection available.

Exhibit-3

Whistleblower Protection Act, 2010, Malaysia.
Wrongdoings for which an Employee can Blow the Whistle and the Protection Available to Him /Her

Wrongdoings Related to...	Protection
1. Abuse of authority 2. Violation of laws and ethical standards 3. Danger to public health or safety 4. Gross wastage 5. Illegality, and 6. Mismanagement	Disclosure of his/her identity liable to a fine of up to RM50, 000/Imprisonment up to 10 years/Both.
Source: Whistleblower Protection Act 2010, Malaysia (2010).	

THE INDIAN EFFORTS TOWARDS CORPORATE GOVERNANCE

Indian efforts towards corporate governance pre-date those of Malaysia. Appreciably the first such effort emanated as a result of the private sector awareness and initiative itself, as is the case with Malaysia as well, followed by relentless pro-active role of Securities and Exchange Board of India (SEBI). The details (milestones) follow (Gupta, Ambrish. 2012. Op. cited).

A. The CII initiative

In 1996, Confederation of Indian Industry (CII) took a special initiative on Corporate Governance – the first institutional initiative in Indian industry on the subject. This initiative flowed from public concerns regarding the protection of investor interest, especially the small investor, the promotion of transparency within business and industry, the need to move towards international standards in terms of disclosure of information by the corporate sector and, therefore the need to develop a high level of public confidence in business and industry.

CII set up a National Task Force with Rahul Bajaj, its Past President and CMD, Bajaj Auto Limited, as its chairman with the objective of developing and promoting a Code for Corporate Governance to be adopted and followed by Indian companies. The task force came out with a document in April 1998 known as "Desirable Corporate Governance: A Code" for voluntary compliance by the Indian industry (CII. 1998).

B. Role of the Securities and Exchange Board of India

SEBI has been very proactive in the promotion of corporate governance among listed companies. It has so far appointed two committees on the subject and made it obligatory for the listed companies to comply with a given set of corporate governance norms through the mechanism of listing agreement.

B.1. Kumar Mangalam Birla committee on corporate governance

The Committee was appointed on May 7, 1999 under the Chairmanship of Kumar Mangalam Birla, member SEBI Board and chairman of Aditya Birla Group of Companies, to promote and raise the standards of Corporate Governance. The committee submitted its report in January 2000. This was the first statutory committee and its report the first statutory report on corporate governance which brought the real focus and due attention to the subject in India. The committee set the definition and objectives of corporate governance as under:

> "Corporate governance has several claimants –shareholders and other stakeholders - which include suppliers, customers, creditors, bankers, employees of the company, government and the society at large. The Committee, therefore, agreed that the fundamental objective of corporate governance is the **"**enhancement of shareholder value, keeping in view the interests of other stakeholders". This definition harmonises

the need for a company to strike a balance at all times between the need to enhance shareholders' wealth whilst not in any way being detrimental to the interests of the other stakeholders in the company" (Kumar Mangalam Birla Committee. 2000).

It may be noted that this definition is consistent with the Malaysian definition.

SEBI considered the recommendations of the committee and directed the stock exchanges on February 21, 2000 to incorporate a new clause on corporate governance, namely clause 49, in the listing agreement. Part VI of the agreement mandates listed companies to include a separate section in the annual report of the company with a detailed compliance report on corporate governance norms (BSE. n.d.). This laid the foundation of corporate governance framework, mechanism, infrastructure and practices in India. The clause has been ever newsy since its inception.

B.2 N. R. Narayan Murthy committee on corporate governance

In a constant endeavour to evaluate the adequacy of the existing corporate governance practices in India and to further improve their standards in line with the needs of a dynamic market and based on its experience with the compliance of clause 49, SEBI constituted in the year 2002, just within two years of Kumar Mangalam Birla Committee report, yet another committee on corporate governance under the chairmanship of N. R. Narayan Murthy, the then Chairman and Chief Mentor of Infosys Technologies Ltd. The committee submitted its report on February 8, 2003.

The report made recommendations for: further strengthening the role of audit committee, disclosure of non-standard accounting treatment, justification of the basis for related party transactions, risk management, written code of conduct for board members and executive management, limits on non-executive directors' compensation, definition of independent directors, whistle blower policy, real time disclosures of critical business events, disclosure of contingent liabilities, CEO / CFO certification and corporate governance ratings etc. (Narayan Murthy, N. R. 2003).

SEBI, after consideration of the report directed the stock exchanges to incorporate further changes in clause 49 in October 2004 in the light of the Narayan Murthy recommendations. The listed companies were required to comply with the new clause by December 31, 2005/January 1, 2006.

B.3 Further revision of clause 49

The clause was further revised in April 2008 to prescribe more stringent requirements for board independence with promoters, or persons related to the promoters, as non-executive chairman (Sarkar, Jayati and Subrata Sarkar. 2012). Exhibit 4 presents the requirements of revised clause 49. It may be noted that this clause straightway sets the requirements to be complied with by listed companies without setting any guiding principles.

Exhibit 4

Requirements of Revised Clause 49-India

1. Provisions

A	Board of Directors	B	Audit Committee
	1. Composition of board: Optimum combination of executive and non-executive directors. At least 1/3rd/1/2 of board to comprise independent directors.		1. Qualified and independent audit committee to be set up: Composition of the committee, financial literacy, chairman to be an independent director.
	2. Non executive directors' compensation and disclosures: To be fixed by the board and shareholders' approval.		2. Meetings of audit committee: At least 4 in a year.
	3. Other provisions as to board and committees: board meetings, limit on committee memberships, periodical review of compliance reports of all laws.		3. Powers of audit committee: Investigation, seeking information, obtaining outside legal/professional advice.
	4. Code of conduct to be designed for all directors and senior management.		4. Role of audit committee: Oversight of the company's financial reporting process, review of financial statements, review of adequacy of internal audit system, if any, etc.
			5. Review of information by audit committee: Mandatory review of Management discussion and analysis report, related party transactions, Internal audit reports relating to internal control weaknesses, etc.
C	**Unlisted Subsidiary Companies**	**D**	**Disclosures**
	1. One independent director to be on the board of each one		1. Basis of related party transactions
	2. Review of financial statements of subsidiary companies by the audit committee		2. Disclosure of accounting treatment different from that prescribed in an Accounting Standard
			3. Disclosures to board – Risk management
			4. Proceeds from public issues, rights issues,

			preferential issues etc.
			5. Remuneration of directors
			6. MDA report
			7. Shareholder information
E	**CEO/CFO Certification to the Board**	**F**	**Report on Corporate Governance**
	1. On quality of financial statements, internal controls , fraudulent transactions, etc.		1. Annexure- I C: List of mandatory inclusions
			2. Annexure – I D: List of non-mandatory requirements
G	**Compliance with corporate governance norms**		
	1. Auditors' certification		
2. Annexures			
1A	**List of Information to be placed before the BOD**	**1B**	**Format of Quarterly Compliance Report on Corporate Governance to Stock Exchange**
1C	**List of mandatory Inclusions in the Report on Corporate Governance**	**1D**	**Non-Mandatory Requirements**
	1. A brief statement on company's philosophy on code of governance.		1. Non-executive Chairman's office
	2. Board of directors		2. Remuneration committee
	3. Audit committee		3. Shareholder right to half yearly financial reports
	4. Remuneration committee, if any.		4. Audit qualifications: Move towards unqualified report
	5. Shareholders committee		5. Training of board members
	6. General body meetings		6. Mechanism for evaluating non-executive board members
	7. Disclosures on related party transaction, compliances etc.		7. Whistle blower policy
	8. Means of communication		
	9. General shareholder information		
Source: BSE (n.d.).			

COMPARATIVE DISCUSSION AND QUALITATIVE ANALYSIS

It is heartening to note that the initiative for ensuring corporate governance in both the countries emanated from the private sector and not the government. Though of course the regulatory agencies of the two governments are now playing an active role in promoting highest standards of corporate governance.

As stated earlier, the Indian journey towards corporate governance started in 1996, that is, much earlier than the year 1998 as is the case of Malaysia. The efforts to strengthen the

corporate governance in both the countries have been going on ever since. In the backdrop of regulatory norms prevalent in the two countries as stated in **Exhibit 2 to 5,** this section seeks to attempt a comparative qualitative assessment of these norms. It needs to be understood and appreciated that a word-by-word comparison is neither possible nor needed and therefore the author proposes to bring out only the key issues involved. It may be noted that the requirements in both the countries basically revolve in common around the directors, audit committee and the shareholders. However certain distinction is still visible.

A. Regulatory approach towards corporate governance

A.1 Malaysian code is much more organised and structured than the Indian norms. As noted earlier MCCG 2012 is organised into 'Principles', 'Recommendations/standards' and 'Commentaries'. 'Principles' are the driving force and the 'Recommendations/standards' prescribe a quantitative/qualitative mechanism to achieve the 'Principles' with the help of 'Commentaries'. Companies are required to include in the annual report a narrative statement of how they had applied the broad principles set out in the Code. However, the form and content of the statements are not prescribed. Companies are allowed to determine the best approach to adopting the principles.Listed companies are required to state in their annual reports, the extent to which they have complied with the 'Recommendations/standards' and explain the circumstances justifying departure from them. MCCG 2012 has thus adopted a hybrid approach. On the other hand, clause 49 of the Indian listing agreement straightway makes prescriptive norms without dwelling upon the ideology (principles). The reason is that in India the listing agreement does not refer to the committee report on which it is based. Therefore the principles on which the committee recommendations are based and their compliance does not form part of the listing agreement. In such settings, the compliance often tends towards box ticking and spirit tends to take a backseat. The Malaysian code is thus far more qualitative than the Indian code.

A.2 The Indian code divides the corporate governance requirements between mandatory and non-mandatory unlike Malaysia. Listed companies are required to report compliance of the mandatory norms and status of adoption of non-mandatory requirements. It does not require explanation on departure from non-mandatory requirements. The Malaysian

code is thus far more stringent also than the Indian norms, apart from being more qualitative. All its requirements are mandatory.

A.3 The Indian norms make the following recommendations not made by the Malaysian code:

- Prescribing the format of quarterly compliance report on corporate governance to stock exchange/s.
- Providing a suggested list of mandatory inclusions to be included in the report on corporate governance in the annual reports of companies. MCCG 2012 does not provide any such list. The Malaysian approach is based on the principle that companies must be encouraged to consciously address their governance needs subject to compliance with the code.

B. Accountability and transparency

B.1 The Malaysian code requires the Chairman and CEO to be two different individuals, and the Chairman a non-executive director. In India an executive director can also be chairman. Separation of the positions of the chairman and CEO promotes accountability, facilitates division of responsibilities between them and leads to more transparency.

B.2 The Malaysian code requires the board to undertake an assessment of its independent directors annually. The tenure of an independent director should not exceed a cumulative term of nine years. Board needs to justify and seek shareholders' approval in the event it retains as an independent director, a person who has served in that capacity for nine years. This casts a greater accountability on the independent directors. Indian code is however silent on this crucial issue.

C. Control over the executive management

C.1 Establishment of a nomination committee with the responsibility for proposing new nominees to the board and for assessing directors on an ongoing basis is a must as per MCCG 2012. Not only this, a statement in the annual report about the activities of the nominating committee is also mandated. Nominating Committee needs to develop, maintain and review the criteria to be used in the recruitment process and annual assessment of directors. The Indian code is however silent on this crucial issue. The nomination committee shapes the board and thus directly contributes to the quality of

corporate management and governance. The committee plays an instrumental role in exercising control over the executive management.

C.2 Remuneration committee, whose job it is to recommend to the board the remuneration of the executive directors in all its forms, is a very important committee curbing the powers of the executive management. Still this requirement in India is non-mandatory whereas mandatory in Malaysia.

C.3 Directors' continuous training, particularly of the independent non-executive directors, in the business model of the company as well as the risk profile of its business parameters, their responsibilities as directors, and the best ways to discharge them has assumed greater significance in the context of the corporate governance needs. This requirement in India is even then still non-mandatory whereas mandatory in Malaysia. Bursa Malaysia even prescribes from time-to-time training programmes which a director of a listed company must ensure that he attends on a continuous basis. The non-compliance with reasons needs to be reported in the corporate governance statement.

D. Audit committee and internal audit

D.1 The Malaysian norms require all the members of the audit committee to be financially literate and one of them essentially to be a professionally qualified accountant. The Indian code liberates the requirement of qualified accountant to qualified accountant/person having experience in financial management.

D.2 The Malaysian code requires a separate audit committee report to be provided in the annual report in addition to overall corporate governance report. The Indian code does not.

D.3 The Malaysian code requires the establishment of an independent internal audit framework directly reporting to the audit committee. The Indian code does not. It merely requires the audit committee to review the adequacy of internal audit function, if any.

E. Governance of unlisted subsidiary companies

The Indian code provides for the governance of unlisted subsidiary companies as under:

- At least one independent director on the Board of the listed holding company should be a director on the Board of a material non listed Indian subsidiary company.
- The Audit Committee of the listed holding company should also review the financial statements of the unlisted subsidiary company.

- The minutes of the Board meetings of the unlisted subsidiary company should be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

This arrangement ensures the quality of consolidated financial statements. The Malaysian code is silent on this far reaching issue.

F. Responsibility of the full board towards the shareholders

The CEO/CFO/auditors' certification in India on the quality of the financial statements, internal controls and legality of the transactions etc. has to be given by the entire board of directors in Malaysia. The board is thus responsible towards the shareholders in its entirety and not just the CEO/ managing director signing the certification. Thus it casts a clear responsibility on the independent directors as well.

G. Whistleblower's protection

Whistleblower's protection gets a special emphasis in Malaysia. As noted earlier, the Whistleblower Protection Act, 2010 is applicable across all corporates, private or public, listed or unlisted. Unlisted companies not bound by the corporate governance norms are also bound by the act. No such act exists in India. All that the clause 49 mentions is that a listed company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy and that this mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism. This requirement is again voluntary. A company is just required to report adoption / non-adoption of this requirement in the corporate governance Report.

H. Succession planning

The Malaysian code emphasizes the boards to put in place satisfactory programmes for orderly succession of the senior management. Succession planning helps achieve sustainability in corporate governance. Indian code is silent on this crucial issue.

The next logical step in this research is to identify what the two countries can learn from each other to further strengthen and set the highest standards of their respective corporate governance frameworks. But before that the author considers it necessary to dwell a bit

more on the role of the Chartered Accountants, Internal Audit Committee and Framework of Internal Audit & Control Systems, the three perceived corner-stones of corporate governance.

ROLE OF THE CHARTERED ACCOUNTANTS, INTERNAL AUDIT COMMITTEE AND INTERNAL AUDIT & CONTROL SYSTEMS FRAMEWORK

It is interesting, as noted in the beginning of this paper, that the roots of genesis of corporate governance lie in the accounting scandals. And therefore corporate compliance with the highest standards of financial practices, reporting and disclosures and thus protecting the interest of the investors forms the core of corporate governance. The role of the Chartered Accountants, Internal Audit Committee and Internal Audit & Control Systems Framework as the watchmen of the corporate financial health and investors' interests therefore becomes crucial.

During the Malaysia FDP, Professor Datin Hasnah HJ. Haron presented some data on the perpetrators of financial statement frauds in Malaysia. Exhibit-5 presents this data.

Exhibit 5			
Perpetrators of Financial Statement Frauds in Malaysia			
1	**Internal perpetrators**	**Number of Cases**	**Percentage**
	• Chairman	2	6%
	• MD/CEO/COO	21	68%
	• Directors-Executive/Non-executive	3	9%
	• CFO	3	10%
	• Independent non-executive director	Nil	Nil
	Total.....	**29**	**93%**
2	**External perpetrators**		
	• Auditors	1	3%
	• Shareholders of subsidiaries	1	3%
	Total.....	**2**	**6%**
	Grand total.....	**31**	**99%**
Source: Datin Hasnah HJ. Haron, (2012).			

Data is quite revealing. Clearly most of the frauds have taken place at the top management level in Malaysia. In this respect, that is, frauds at the highest level, the situation is no different in India. Recalling the infamous case of **Satyam Computer Services Ltd.**, the financial fraud continued for years until it turned **Satyam** (denoting truth/truthfulness) in to **Asatyam** (denoting just the opposite of Satyam) all of a sudden. The case casts a clear

question mark on the efficacy of, among others, the audit committee which failed to detect the fraud for years until the company chairman B. Ramalinga Raju himself made the confession before the Satyam board. Raju also clarified in his letter that none of the board members were aware of the fraud (Satyam Fraud: Full Text of Raju's Letter to Board. 2009).

The Malaysian data and the Satyam case clearly highlight that audit committee needs to be pro-active in the discharge of its responsibilities and need to be constituted of Chartered Accountants with considerable financial management experience enabling a positive pro-action on its part. Only a professionally financially qualified audit committee may be expected to effectively discharge a financial, internal audit, internal control framework and statutory audit oversight.

WHAT MALAYSIA AND INDIA CAN LEARN FROM EACH OTHER

Coming back to the issue, the author puts forward the following suggestions on the basis of the discussion and analysis held so far.

1. Like Malaysia, India should also establish core principles of corporate governance, preferably within clause 49 of the listing agreement. The statutory norms and requirements should be set pursuant to those principles. The emphasis should be on the spirit and not just the form.
2. Indian code should do away with the practice of dividing the norms into mandatory and non-mandatory. There should be a single set of common requirements. This will bring more transparency.
3. Like the Malaysian code, the Indian code should also separate the positions of the chairman and CEO to promote accountability. Needless to mention, the chairman has to be a non-executive director.
4. Like the Malaysian code, the Indian code should also seek to assess periodically the performance of independent directors and fix their terms. Otherwise an independent director can also develop self-interest in the company.
5. Indian code should also specifically require creation of a nomination committee with the responsibility for proposing new nominees to the board and for assessing directors on an ongoing basis.
6. Requirement of a Remuneration committee should be mandatory in India as well.

7. Directors' continuous training in India should be mandatory. SEBI and stock exchanges may come out with specific mandatory training programmes for them.
8. To begin with, the Indian code should also mandate at least one member of the audit committee to be a Chartered Accountant with considerable financial management experience.
9. Both the countries would do well to mandate all members of the audit committee to be Chartered Accountants/Professionally Qualified Accountants with considerable financial management experience. And in any case, such a person only should be the chairman of the committee. To further ensure the independence of this crucial committee a separate report of this committee should be mandated.
10. The Indian code should require the establishment of an independent internal audit, control and risk management framework directly reporting to the audit committee.
11. The Indian code provides for the governance of unlisted subsidiary companies to ensure the quality of consolidated financial statements. The Malaysian code is silent on this far reaching issue. It needs to incorporate such a mechanism in its code.
12. The whole board, including the independent directors, should be made accountable to the shareholders in India and not just the CEO/CFO. In this context, the independent directors need to be equally accountable as is the lesson learnt from cases like Satyam.
13. Establishment of whistle blowing mechanism should again be a mandatory corporate governance requirement in India. The corporates should not be in a position to take a leeway on this count. The whistle blowers should also be provided legal protection.
14. The Indian code also needs to provide for putting in place satisfactory programmes for orderly succession of the senior management achieve sustainability in corporate governance.
15. Neither in India nor in Malaysia, have the norms required to provide specific qualitative information in the corporate governance reports. For example, in both the countries statement on Whistle Blower policy and affirmation that no personnel have been denied access to the audit committee has to be made. None of the countries however requires reporting the significant cases of whistle blowing, their financial, legal, social impact and how these cases were resolved. Again in none of

the countries the codes require reporting of significant recommendations of the audit committee not agreed to by the management. Both the countries would do well to require providing such qualitative information in their reports. Such a practice will establish stricter benchmarks of corporate governance and will also act as a deterrent in the occurrence of corporate frauds and malpractices.

CONCLUSION

This paper has provided a descriptive analysis of, among other things, the corporate governance regulatory norms prevalent in Malaysia and India. The contribution of this paper lies in identifying their comparative strengths and weaknesses and in suggesting how the two frameworks could be further strengthened to promote better financial discipline among the corporates, protect the interest of the shareholders and thus lead towards development of better informed and more efficient capital markets. The paper therefore has policy implications for the capital market regulators in both the countries.

REFERENCES

1. BSE (n.d.), Listing Agreement for Equity, Clause 49-Corporate Governance, pp. 50-62. Retrieved from http://www.bseindia.com/Static/about/downloads.aspx ?expandable=2
2. Bursa Malaysia Securities Berhad (2013), Main Market Listing Requirements, Chapter 15: Corporate Governance, Malaysia, pp.1501-1508. Retrieved from http://www.bursamalaysia.com/market/regulation/rules/listing-requirements/main-market/listing-requirements
3. Cadbury Committee (1992), Report on Financial Aspects of Corporate Governance, December 1992, Retrieved from http://business.gov.in/outerwin.php?id= http://www.ecgi.org/codes/documents/cadbury.pdf
4. CII (1998), Report of the National Task Force: Desirable Corporate Governance-A Code, April 1998, Retrieved from http://www.nfcgindia.org/desirable _corporate_governance_cii.pdf
5. Datin Hasnah HJ. Haron, (2013). An Analysis of Financial Statement Fraud in Malaysia: Who, How and Its Outcomes by Suleiman, Haron & Abdul Waheb (2009), Quoted in programme material-FDP, October 29-30, 2013, Kualalampur, Malaysia.

6. Finance Committee on Corporate Governance (1999), High Level Finance Committee Report, 1999, Securities Commission, Malaysia. Retrieved from http://www.ecgi.org/codes/documents/mccg_mar2000.pdf
7. Gupta, Ambrish (2012), *Financial Accounting for Management: An Analytical Perspective (*4th edition, pp.493-496), New Delhi: Pearson Education.
8. Kumar Mangalam Birla Committee (2000), Corporate Governance-The Objective, Cl. 4.1 and 4.2, Report of the Kumar Mangalam Birla Committee on Corporate Governance, 2000. Retrieved from http://www.sebi.gov.in/commreport/corpgov.jsp
9. Mallin, Christine A. (2007), *Corporate Governance* (2nd edition, pp.21-39), New York: Oxford University Press.
10. MCCG 2000 (2000), Retrieved from http://www.ecgi.org/codes/documents/mccg_mar2000.pdf
11. MCCG 2007(2007), Retrieved from http://www.bursamalaysia.com/market/regulation/rules/listing-requirements/main-market/listing-requirements
12. MCCG 2012(2012), Retrieved from http://www.sc.com.my/eng/html/cg/cg2012.pdf
13. Narayan Murthy, N. R. (2003), Report of the SEBI Committee on Corporate Governance, February 8, 2003. Retrieved from http://www.sebi.gov.in/cms/sebi_data/attachdocs/1293094958536.pdf
14. Sarkar, Jayati & Subrata Sarkar (2012), *Corporate Governance in India (*1st edition, p.108), New Delhi: Sage Publications.
15. Satyam Fraud: Full Text of Raju's Letter to Board (2009), Retrieved from http://www.financialexpress.com/news/satyam-fraud-full-text-of-rajus-letter-to-board/407799/5
16. Whistleblower Protection Act 2010, Malaysia (2010), Retrieved from
17. http://www.malaysiafactbook.com/ Whistleblower_Protection_Act_2010