

# Roles and Responsibilities of Directors

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# Emerging Role of Independent Directors



# Rear View Mirror

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## ❖ **Companies Act 1956**

- ❖ 658 Sections (Effectively 881 Sections)
- ❖ 16 Schedules
- ❖ 66 Definitions
- ❖ 34 set of Rules & Regulations
- ❖ Not Yet Repealed

# Intent to Replace

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- ❖ Companies Bill, 1993
- ❖ Companies Bill, 1997
- ❖ Concept Paper in 2003
- ❖ Companies Bill 2008/2009
  - ❖ 426 Sections
  - ❖ No Schedules
  - ❖ 93 Definitions
  - ❖ Phrase “as may be prescribed” appeared “235 times” in the Bill

# Companies Act 2013



## Present Statute

### ❖ Companies Act 2013

- ❖ 470 Sections
- ❖ 7 Schedules
- ❖ 95 Definitions
- ❖ Phrase “as may be prescribed” appears “346 times” in the Act
- ❖ 46 sections of Part IX A of Companies Act, 1956 relating to Producer Companies will continue to apply

# Understanding Layout

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- ❖ Divided in to 29 chapters
- ❖ Chapter I - Applicability & Definitions - Section 1& 2
- ❖ Chapter II - Incorporation, MoA, AoA - Sections 3 to 22
- ❖ Chapter III - Prospectus - Sections 23 to 42
- ❖ Chapter IV - Share Capital - Sections 43 to 72
- ❖ Chapter V - Public Deposits - Sections 73 to 76
- ❖ Chapter VI - Registration of Charges - Sections 77 to 87

# Understanding Layout

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- ❖ Chapter VII – Management & Administration – Sections 88 to 122
- ❖ Chapter VIII – Dividend – Sections 123 to 127
- ❖ Chapter IX – Accounts – Sections 128 to 138
- ❖ Chapter X – Audit & Auditors – Sections 139 to 148
- ❖ Chapters XI, XII, XIII – Directors, Board & Remuneration – Sections 149 to 205
- ❖ Chapter XIV – Inspection, Investigation – Sections 206 to 229
- ❖ Chapter XV – Mergers – Sections 230 to 240

# Understanding Layout

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- ❖ Chapter XVI – Oppression and Mismanagement – Sections 241 to 246
- ❖ Chapter XVII – Registered Valuers – Section 247
- ❖ Chapter XVIII – Removal of Names of Companies – Sections 248 to 252
- ❖ Chapter XIX – Revival – Sections 253 to 269
- ❖ Chapter XX – Winding -up – Sections 270 to 378
- ❖ Chapter XXI – Companies Authorized to Register Under the Act – Sections 366 to 374
- ❖ Chapter XXII – Foreign Companies – Sections 379 to 393



# Understanding Layout

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- ❖ Chapter XXIII - Government Companies - Sections 394 & 395
- ❖ Chapter XXIV - Registration Offices & Fees - Sections 396 to 404
- ❖ Chapter XXV - Companies to furnish Information - Section 405
- ❖ Chapter XXVI - Nidhis - Section 406
- ❖ Chapter XXVII - NCLT - Sections 407 to 434
- ❖ Chapter XXVIII - Special Courts - Sections 435 to 446
- ❖ Chapter XXIX - Miscellaneous - Sections 447 to 470

# Understanding Layout - Schedules

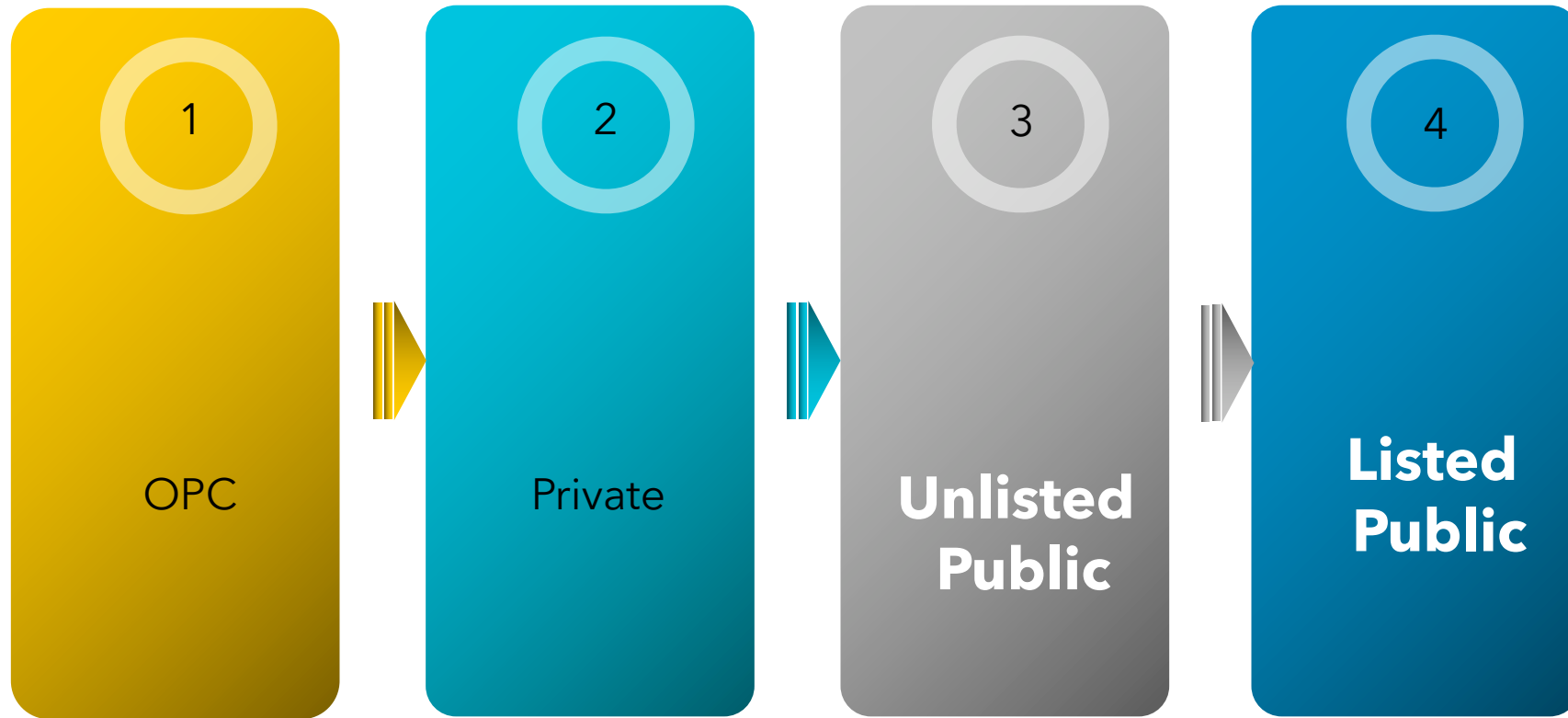
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- ❖ Schedule I - Tables A to I
- ❖ Schedule II - Depreciation
- ❖ Schedule III - Balance Sheet
- ❖ Schedule IV - Code for Independent Directors
- ❖ Schedule V - Managerial Personnel
- ❖ Schedule VI - Infrastructural Projects
- ❖ Schedule VII - Activities for CSR Policy

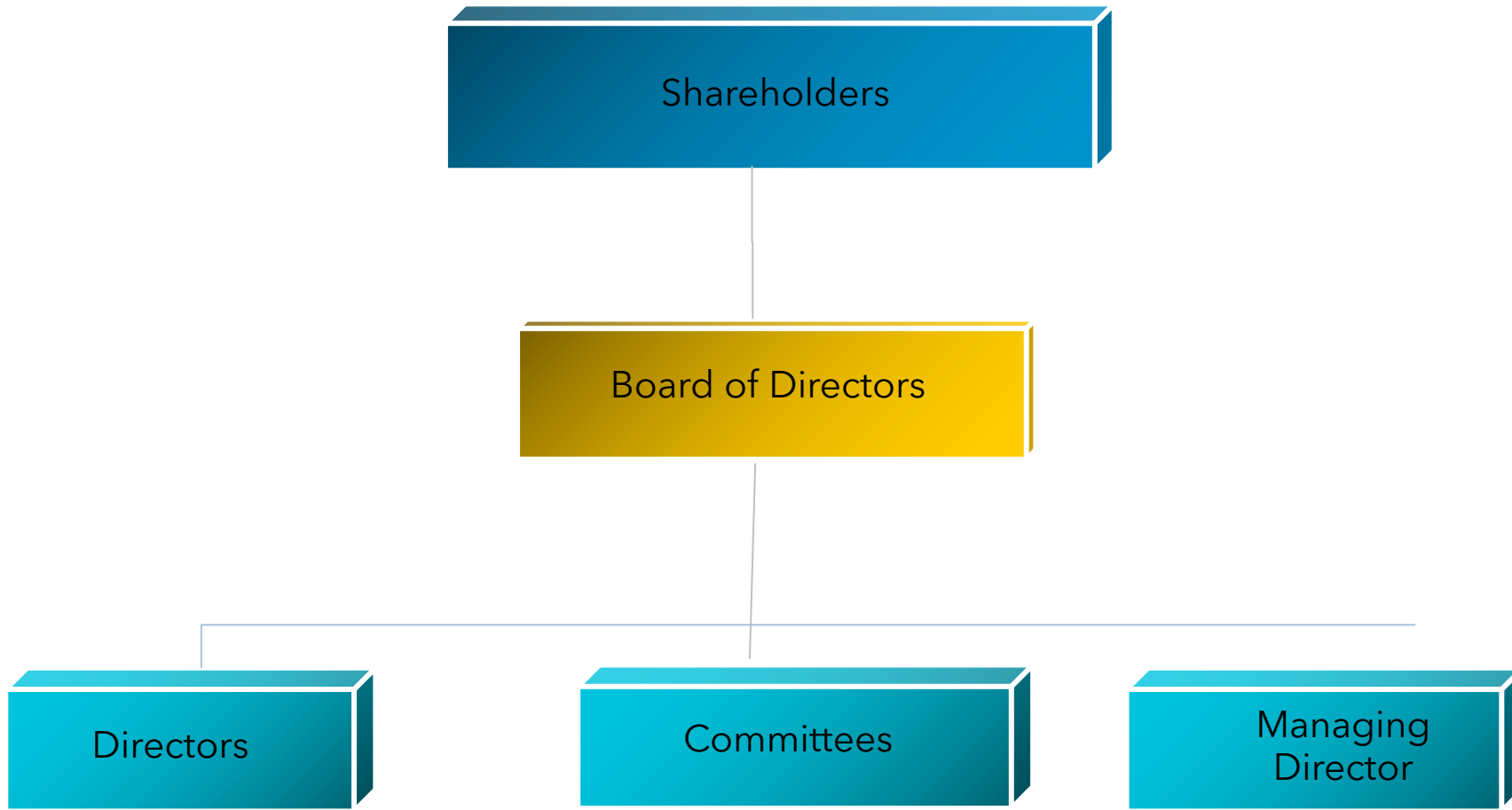
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- ❖ Voluminous piece of legislation
- ❖ Contains provisions from ‘birth’ to ‘death’ of a company
  - ❖ Birth Incorporation
  - ❖ Life & Times Management/Governance
  - ❖ Marriage Merger/Acquisition
  - ❖ Divorce Demerger
  - ❖ Children Subsidiaries/Associates/JVs
  - ❖ Illness Sickness
  - ❖ Recovery Revival/Rehabilitation
  - ❖ Death Dissolution/Winding-up

# Types of Companies



## Corporate Hierarchy



# Director

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## ❖ Definition

- ❖ Director includes any person occupying the position of a director by whatever name called [CA 1956]
- ❖ Director means the director appointed to the Board of Directors of the Company [CA 2013]

# Position of Directors

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## ❖ Agent

- ❖ Company acts through directors.
- ❖ Principles of Agency apply
- ❖ Contract is entered by a director in the name of a company

## ❖ Trustee

- ❖ All powers of directors are the powers in trust
- ❖ To be exercised in good faith for the benefit of the company as a whole

## ❖ Employees

- ❖ May work as an employee

# Director

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- Woman Director
  - Every Listed Company
  - Public companies with paid up share capital of Rs.100 crore or more;
  - Public companies with Rs.300 crore or more
- Any intermittent vacancy to be filled up by the Board not later than immediate next Board Meeting or 3 months, whichever is later



# Director

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- Nominee Director
  - Not defined in Companies Act, 1956
  - Companies Act 2013
  - A director nominated by any financial institution pursuant to law, agreement or appointed by Govt. or any other person to represent its interests

# Director

- Independent Directors
- Minimum 1/3rd directors to be independent
  - Listed Companies
- Minimum 2 Directors to be independent
- Public Companies
  - PUC - Rs. 10 Crores or more; or
  - Turnover -Rs. 100 Crores or more;
  - Aggregate of loans, borrowings, debentures, deposits - Exceeding Rs. 50 Crores

# Codified Duties of Directors

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- ❖ To act in accordance with the company's articles.
- ❖ To act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interest of the company.
- ❖ To exercise his duties with due and reasonable care, skill and diligence
- ❖ Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

# Codified Duties of Directors

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- ❖ Not to have any undue gain or advantage either to himself or to his relatives, partners, or associates.
- ❖ Not to assign his office and any assignment so made shall be void.
- ❖ Contravention - punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees:
- ❖ If found guilty of making any undue gain either to himself or to his relatives, partners or associates he shall also be liable to pay an amount equal to that gain to the company

# Governance vis-à-vis Management

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## GOVERNANCE

Strategy Oriented  
Framing of Policy  
External Focus

## MANAGEMENT

Task Oriented  
Execution of Tasks  
Internal Focus

“Better Governance leads to Better Management”

# Governance Gap

Governance Functions	Governance Gap	Management Functions
Strategic Management		Policy Implementation
Stakeholder's Interest		Administration
Management Oversight		Operations
Disclosure & Transparency		Communication
Risk Analysis		Compliances
Policy Management		Performance

## **Governance Gap - Components**

Perception Gap



Communication Gap



Strategy Gap



Performance Gap



Compliance Gap

# Corporate Governance

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- ❖ Synonym for *sound management, transparency and disclosure*
- ❖ In the words of J. Wolfensohn, former President of the World Bank,  
“Corporate Governance is about promoting corporate fairness, transparency and accountability”



# Code of Corporate Governance

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- ❖ Independence
- ❖ Disclosure
- ❖ Transparency
- ❖ Ethics
- ❖ Risk Assessment
- ❖ Risk Containment/Management

**“Entire model of Corporate Governance is based on JUDGMENT, PRUDENCE & WISDOM”**

## Ethics

*“Ethics is knowing the difference between what you have a right to do and what is right to do.”*

**.....Potter Stewart**

## Ethics

*“Integrity without knowledge is weak and useless, and knowledge without integrity is dangerous and dreadful.”*

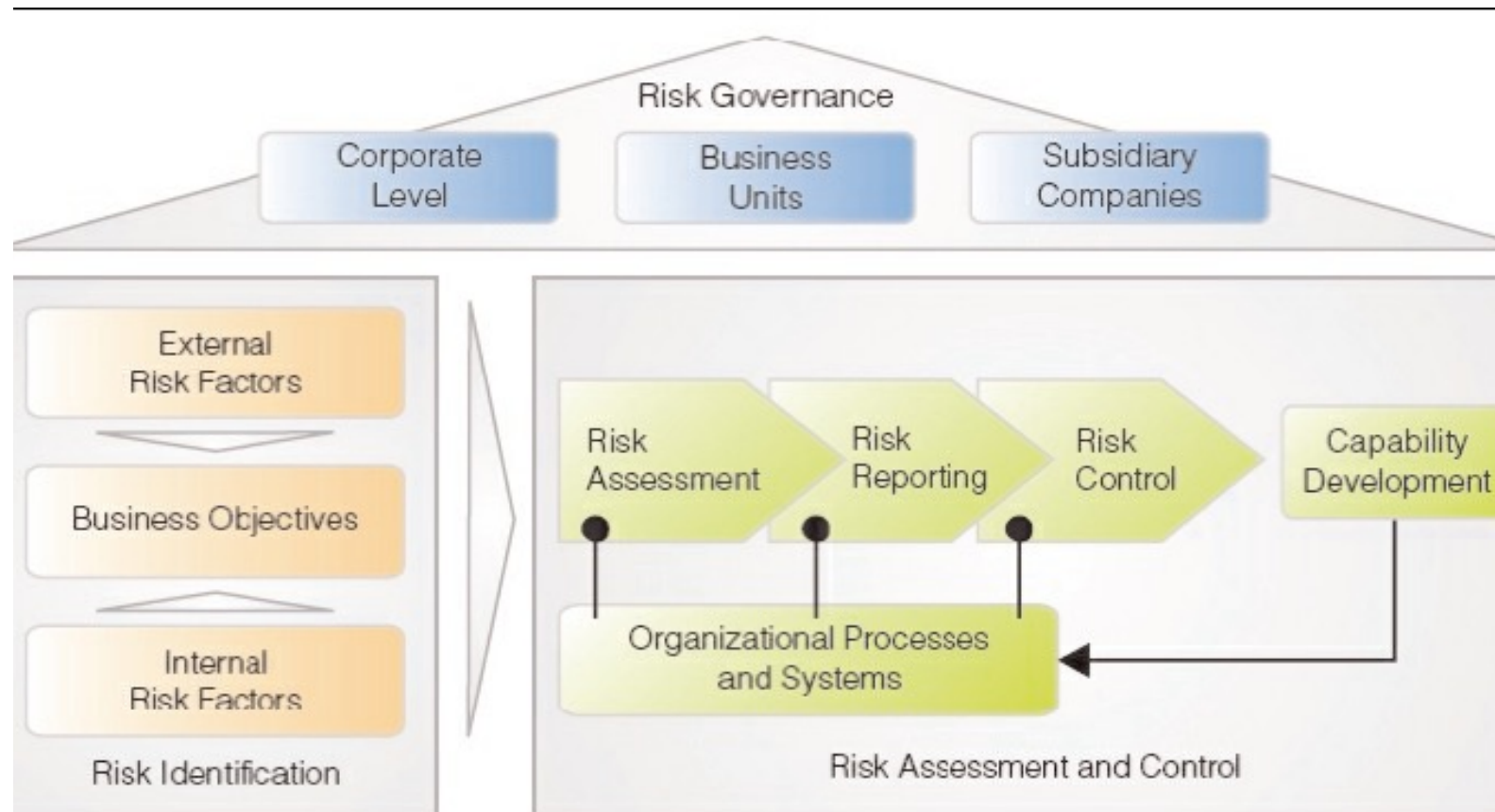
**.....Samuel Johnson**



## Ethics

*“Integrity is doing the right thing, even if nobody is watching”*

## Risk Assessment & Management



## Risk Assessment & Management

Business objectives	External risk factors	Internal risk factors
<b>Financial performance</b> <ul style="list-style-type: none"><li>Achieve revenue growth</li><li>Sustain profitability</li><li>Increase revenue productivity</li></ul>	Macro economic factors	Financial reporting risks
<b>Client and market focus</b> <ul style="list-style-type: none"><li>Grow client relationships</li><li>Differentiate client offerings</li><li>Broaden geographical footprint</li></ul>	Exchange rate fluctuations	Liquidity and leverage
<b>Execution excellence</b> <ul style="list-style-type: none"><li>Leverage Global Delivery Model</li><li>Control operational costs</li><li>Improve quality &amp; productivity</li></ul>	Political environment	Contractual compliance
<b>Organizational development</b> <ul style="list-style-type: none"><li>Develop and retain competencies</li><li>Develop global workforce</li><li>Develop three tiers of leadership</li></ul>	Competitive environment	Compliance with local laws
	Concentration of revenues	Intellectual property management
	Inflation and cost structure	Engagement execution
	Immigration regulations	Integration of subsidiaries
	Security and business continuity	Human resource management
	Technology obsolescence	Culture, values and leadership



# Risk Assessment & Management

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## 8. Concentration of revenues

High concentration in any single business segment exposes us to the risks inherent in that segment. We have adopted prudent norms based on which we monitor and prevent undesirable concentration in a geography, industry, service, or client.

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### Client concentration

We rely on repeat business based on the strength of our client relationships and a major portion of our revenues come from existing key clients. As the size of a client increases, it limits our pricing flexibility, strengthens the clients' negotiation capability, and reduces the ability to govern the relationship for mutual advantage. Also, the business growth of these large clients, their own profitability and changes in IT strategy have the potential to adversely impact our revenues and profitability and increase credit risk. However, large clients and high repeat business lead to predictable revenue growth and lower marketing costs. Therefore, to strike a balance, we have chosen to limit the revenue from any single client to a maximum of 10% of total revenue.

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# Risk Assessment & Management

	2005	2004	2003
Total clients	438	393	345
Clients added during the year	136	119	92
Clients accounting for more than 5% of revenue	1	1	2
Top client contribution to revenues	5.5%	5.0%	5.8%
Top 5 clients contribution to revenues	21.0%	22.6%	23.4%
Top 10 clients contribution to revenues	33.6%	36.0%	37.3%
No. of clients with revenues			
1 million \$+	166	131	115
5 million \$+	71	51	41
10 million \$+	42	25	16
20 million \$+	19	12	9
30 million \$+	11	6	3
40 million \$+	8	4	2
50 million \$+	5	3	—
60 million \$+	3	—	—
70 million \$+	1	—	—
80 million \$+	1	—	—



# Independent Directors

- ❖ Meaning of Independence
- ❖ Who appoints IDs?
- ❖ Are they policemen in civil clothes?
- ❖ Degree of Independence
- ❖ Should independent directors possess business intellect?

# Independent Directors

- ❖ Freedoms
- ❖ Are freedoms unfettered?
- ❖ Remuneration
- ❖ Skill Enhancement
- ❖ Tenure of IDs

# Need for Independent Directors



# Five Top Reasons Why Independent Directors Are Needed?

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- ❖ Impartiality
- ❖ Focus & Perspective About Industry
- ❖ Expertise
- ❖ Resolving Conflict of Interest
- ❖ Networking Ability

# Role of Independent Directors

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❖Hampel Committee on Corporate Governance stated that Independent directors should be –

- ❖ Cooperative
- ❖ Demonstrating objectivity; and
- ❖ Robust independence of judgment when necessary

(Report of Hampel Committee on Corporate Governance, January 1998)

# Significant Aspects Governing Independent Directors

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- ❖ Should there be a Lead Independent Director?
- ❖ Separate Meeting of Independent Directors
- ❖ Code of Conduct
- ❖ Criteria, Maximum Directorships, and remuneration for Independent Directors

# Significant Aspects Governing Independent Directors

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- ❖ Performance Evaluation of Directors, Board and Committees.
- ❖ Due diligence and considerations in accepting a directorship.
- ❖ Challenges faced by Independent Directors

# Control by Directors

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- ❖ Annual operating plans and budgets
- ❖ Capital Budgets
- ❖ Results of Company and its divisions and segments
- ❖ Minutes of committees of Board
- ❖ Information on Senior Level Appointments
- ❖ Show cause, demand, prosecution and penalty notices
- ❖ Accidents, Dangerous Occurrences, Pollution problems



# Control by Directors

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- ❖ Default in financial obligation
- ❖ Details of Joint Venture or Collaboration Agreements
- ❖ Significant investment in Assets, Trademarks, Goodwill etc.
- ❖ Related Party Transactions
- ❖ Significant Labour Problems
- ❖ Foreign Exchange Exposures
- ❖ Non-compliance of regulatory and statutory requirements

**Thank You for  
Your Patience**

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