

# RISK REVISITED AGAIN



## SEBI Consultation Paper

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# GRATITUDE: FRONTLINERS



Doctors and other healthcare experts who are working overtime, tirelessly, exposed to extremely vulnerable environment to save lives, keep everyone safe. No words can express our gratitude to such professionals. While the world is indebted to you, we want to simply say: THANK YOU!



Art during the pandemic is keeping all of us positive. A big thank you to all the remarkable artists.



Law and order during the pandemic has been exemplary and remarkable. We are grateful to every police personnel in India.



THANK YOU to all the frontline workers who have helped us stay safe and alive.



Mr. Gerry Hofstetter , Light Artist



# CAVEATS



This webinar is for **general awareness** of the issues of corporate governance in the current challenging times, and does NOT constitute legal advice or opinion. Please seek formal legal opinion before taking any decisions.



The present pandemic is dynamic, uncertain and unpredictable. The risks identified or unidentified at this point in time may drastically vary, even after a short span of time.



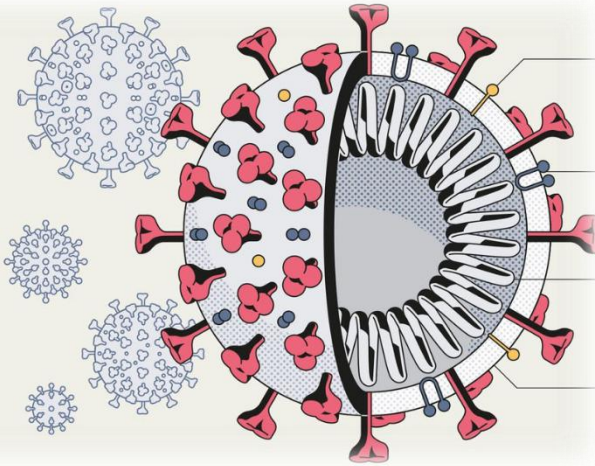
The present pandemic is a major defining moment for global and local economies and we may expect a new set of laws having global and local impact being legislated.



This webinar takes a “Eagle Eye-View Approach” and deals with some of the critical legal issues arising in corporate governance against the backdrop of the pandemic.



# Agenda Today



**Revisiting Risk Again !!**

**Risk Mgt: Science, Art and the Law**

**Eagle's View on Legislations**

**COSO vs ISO in WEF 2020 Context**

**SEBI Consultation Paper**

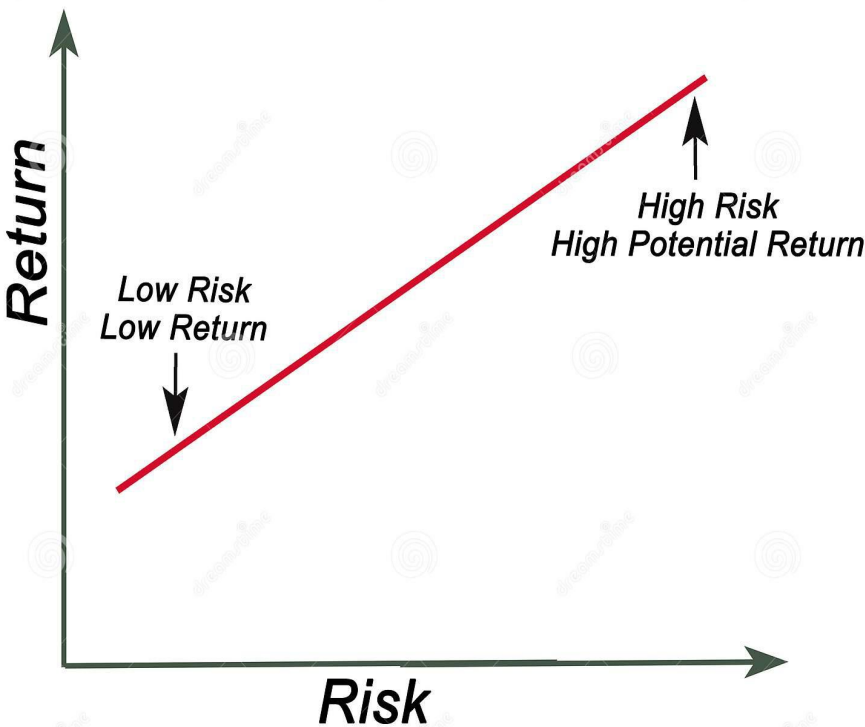
**Role of Risk Committee**

**New Levels of Corp & Personal Liabilities**

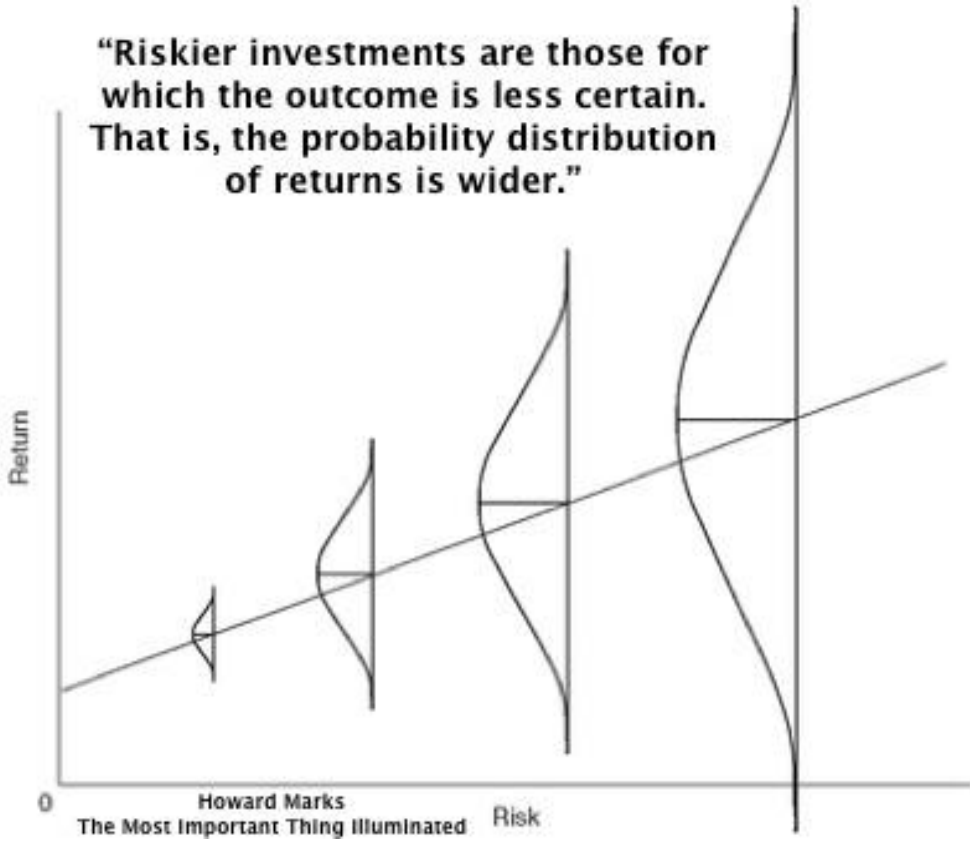
# Revisiting Risk Again!!

[https://www.youtube.com/watch?v=etfXX\\_GloYw](https://www.youtube.com/watch?v=etfXX_GloYw)

## Risk/Return Trade off



“Riskier investments are those for which the outcome is less certain. That is, the probability distribution of returns is wider.”



# Risk: Science, Art, Bullsh@t and the Law!!

## ‘Science’



**First there was science...**



Capital Asset Pricing Model-  
1990 Nobel Award



Mathematical Scientific &  
Economic Models



“...human judgment &  
decision-making under  
uncertainty” 2002 Nobel  
Award--*Daniel Kahneman*



RMs applied latest in  
probability theory and used  
sophisticated tools to help  
businesses make money



**Risk Management became  
an Art**



Lack of reliable data to quantify  
risks ( This is not an excuse any  
longer)



Lack of demand from the  
business. ( There was no  
planning, budgeting & decision  
making)



Lack of qualified risk managers  
( too soft & cuddly RMs)



Corporate Survival

## ‘Bullsh@t!’



**Today its just mess....**



Money Making



Jargon & Buzz Words



Lost touch with Business  
Reality



Detached from decision  
making



RMs are busy chasing  
unicorns..



Juggad & Chalata hai!



5 Delirious Myths

## ‘The Law’

**S.134 Directors Responsibilities**

**SEBI LODR-Reg 4,17/ 21**

**S 149(8) SCH IV: In Di Role**

**S 177(4) Audit Committee: Evaluation of RMS**

**Every  
Business  
Legislation**



# Risks—The Legislations



**S. 134 (3)** : There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, (n) 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**



**S 177(4)**: Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include.... **(vii) evaluation of internal financial controls and risk management systems.**



**S 149(8) Sch IV: Code For In Di**: The independent directors shall: (1) help in bringing an **independent judgment** to bear on the Board's deliberations especially on **issues of strategy**, performance, **risk management**, resources, key appointments and standards of conduct; (4) **satisfy themselves** on the integrity of financial information and **that** financial controls and **the systems of risk management** are robust and defensible.



GLOBAL RISKS 2020:  
A YEAR OF RECKONING

# Risks—The LODR



## **Reg 4: Principles governing disclosures and obligations.**

**(f) Responsibilities of the board of directors:** (The board of directors of the listed entity shall have the following responsibilities (ii) **Key functions** of the board of directors-

(1) Reviewing and guiding corporate strategy, major plans of action, **risk policy**, annual budgets and business plans, setting performance objectives, monitoring implementation and corporate performance, and overseeing major capital expenditures, acquisitions and divestments.

(7) Ensuring the integrity of the listed entity's accounting and financial reporting systems, including the independent audit, and **that appropriate systems of control are in place, in particular, systems for risk management**, financial and operational control, and compliance with the law and relevant standards.

(9) The board of directors shall ensure that, while rightly encouraging positive thinking, these do not result in **over-optimism that either leads to significant risks not being recognised or exposes the listed entity to excessive risk.**

(10) The board of directors shall have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), **risk appetite, exposures and the key areas of the listed entity's focus**



# Risks—The LODR



## TOP GLOBAL RISKS

From economic to environmental. Climate now tops the risks agenda, while the economy has disappeared from the top five.



### Economic

Asset bubble  
Critical infrastructure failure  
Deflation  
Energy price shock  
Financial failure  
Fiscal crises  
Illicit trade  
Unemployment  
Unmanageable inflation

### Environmental

Biodiversity loss  
Climate action failure  
Extreme weather  
Human-made environmental disaster  
Natural disasters

### Geopolitical

Global governance failure  
Interstate conflict  
National governance failure  
State collapse  
Terrorist attacks  
Weapons of mass destruction

### Societal

Failure of urban planning  
Food crises  
Infectious diseases  
Involuntary migration  
Social instability  
Water crises

### Technological

Adverse technological advances  
Cyberattacks  
Data fraud or theft  
Information infrastructure breakdown



## Reg 17 ( 9) Role of Board of Directors



9. (a) The listed entity shall lay down procedures to inform members of board of directors about risk assessment and minimization procedures.



9. (b) The board of directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.



## Reg 21 : Risk Management Committee.



(1)The board of directors shall constitute a Risk Management Committee.



(2) The majority of members of Risk Management Committee shall consist of members of the board of directors and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Risk Management Committee shall comprise of independent directors



(3) The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.



(3A) The risk management committee shall meet at least once in a year.



(4) The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security.



(5) The provisions of this regulation shall be applicable to top 500 listed entities, determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

1. 29/7/ 2019

2. 01/04/2019

# Global Risks—2020

The World Economic Forum's Global Risks Report: 2020

## Top 10 risks in terms of Likelihood

- 1 Extreme weather
- 2 Climate action failure
- 3 Natural disasters
- 4 Biodiversity loss
- 5 Human-made environmental disasters
- 6 Data fraud or theft
- 7 Cyberattacks
- 8 Water crises
- 9 Global governance failure
- 10 Asset bubbles

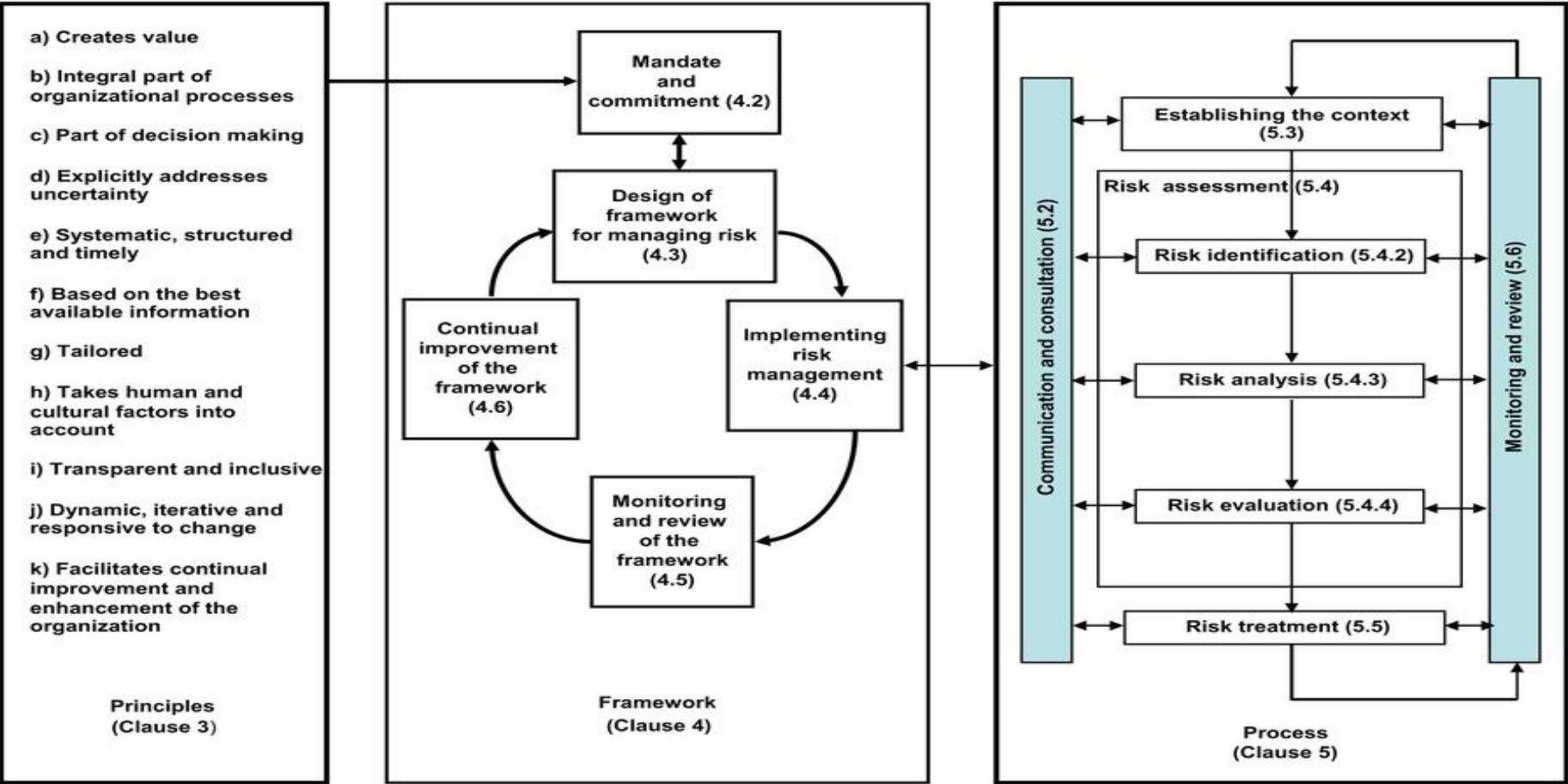
## Top 10 risks in terms of Impact

- 1 Climate action failure
- 2 Weapons of mass destruction
- 3 Biodiversity loss
- 4 Extreme weather
- 5 Water crises
- 6 Information infrastructure breakdown
- 7 Natural disasters
- 8 Cyberattacks
- 9 Human-made environmental disasters
- 10 Infectious diseases

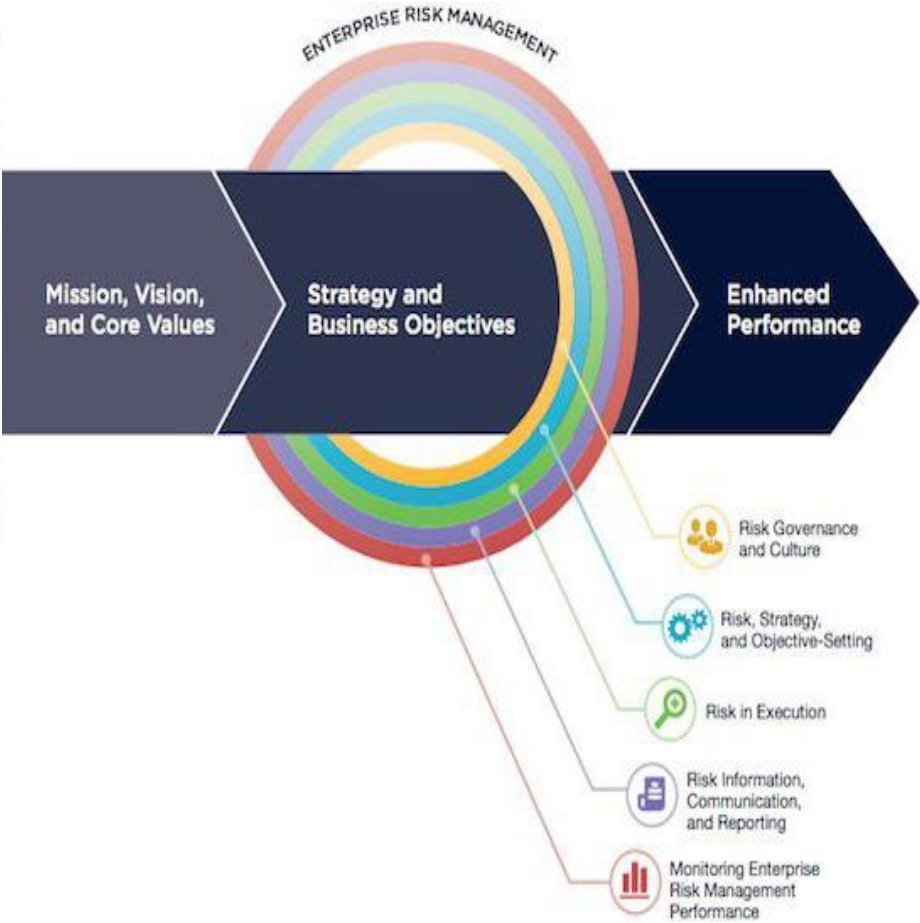
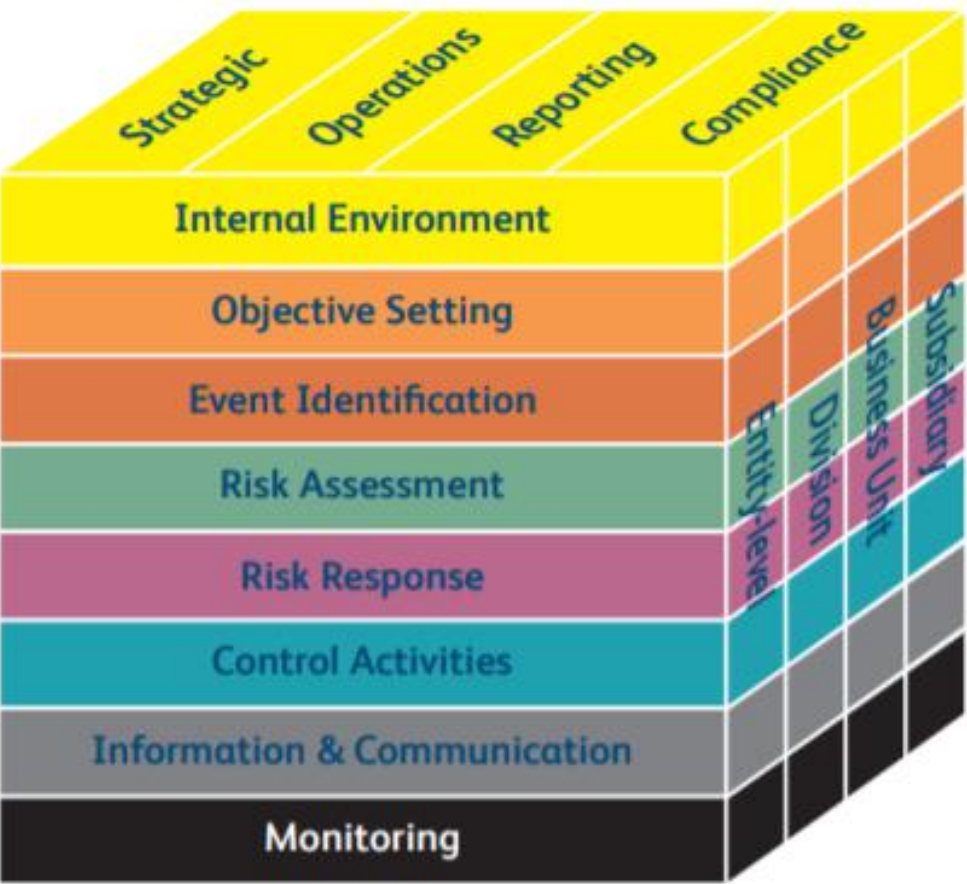
## Categories

- Economic
- Environmental
- Geopolitical
- Societal
- Technological

# PRINCIPLES FRAMEWORK & PROCESS



ISO 31000: 2009



# Indiscriminate use of Risk Terminology



## Risk & Resilience



Development & implementation of “**risk management policy**”



Evaluation of “**risk management systems**”



Independent judgement on issues of “**risk management**”



The systems of risk management are robust and defensible



Reviewing & Guiding Corporate “**risk policy**”



appropriate systems of control, in particular systems for risk management



**Recognition of significant risk** & exposure to **excessive risk**



**"I think we need to take another look at your risk management strategy..."**



Risk Appetite



Risk Exposure



Key Areas of Risks



Risk Assessment Process



Risk Minimization Process



Framing Implementing and Monitoring **Risk Management Plan**



Risk Management Committee



Delegate monitoring and reviewing of the **Risk Management Plan**



**Cyber Security Risk**



# SEBI Consultation Paper

Sub-regulation/Clause/schedule	Current Provisions	Provisions
<b>21(3A) Committee meeting-</b>	At least once in a year.	At least twice in a year.
<b>Insertion of new sub-regulation 21 (3B) - quorum for a meeting of Risk Management Committee</b>	No specific provision	The quorum for a meeting of the Risk Management Committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one member of the board of directors in attendance.
<b>New Proviso to regulation 21(4)</b>	No specific provision	Role & responsibilities of the Risk management committee (RMC) shall mandatorily include the functions specified in Part D of Schedule II.
<b>21(5) Applicability</b>	To top 500 listed entities -basis - market capitalization, as at the end of the immediate previous financial year.	To top 1000 Listed entities, on the basis of market capitalization, as at the end of the immediate previous financial year.
<b>21(6) RMC's powers to seek information</b>	No specific provision	From both, internal & external sources
<b>Schedule II PART D -</b>	ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE)  [See Regulation 19(4) and 20(4)]	ROLE OF COMMITTEES (OTHER THAN AUDIT COMMITTEE) [See Regulation 19(4), 20(4) and 21(4)]
<b>Schedule II PART –D</b>	No specific provision	Insertion of new clause (C) – RMC's role.

# Role of RMC

## RISK IN FOCUS 2021

Hot topics for internal auditors



### Schedule II Part D (new para) C



The role and responsibility of the Risk Management Committee may inter-alia include the following:



To **formulate a detailed risk management policy** which shall include:



A **framework** for identification of **internal and external risks** specifically faced by the listed entity, in particular **including financial, operational, sectoral, sustainability** (specifically, **Environmental, Social and Governance related risks and impact**), **information** and **cyber security risks**



Measures for **risk mitigation**



Systems for **internal controls**



**Business contingency plan**



To **monitor and oversee implementation of the risk management policy**, including **evaluating the adequacy of risk management and internal control systems**;



Ensure that appropriate **methodology, processes and systems** are in place to **monitor and evaluate risks** associated with the business of the listed entity;



To **review the risk management policy on annual basis**, including by considering the changing industry dynamics and evolving complexity;



To keep the board informed about the nature and content of its discussions, recommendations and actions to be taken;



The appointment, removal and terms of remuneration of the Chief Risk Officer (if any) shall be subject to review by the Risk Management Committee, jointly with the Nomination and Remuneration Committee.



Further, the Risk Management Committee shall coordinate its activities with the Audit Committee in instances where there is any overlap with audit activities.

# ESG ;Sustainability; BRR: Journey So Far.....

Evolution of Business Responsibility Reporting in India:

2009: Corporate Voluntary Guidelines;

2011: Endorsement of United Nations Guiding Principles on Business & Human Rights ;

2011" MCA issued 'National Voluntary Guidelines on **Social, Environmental and Economical Responsibilities of Business**' which encourages reporting on environment, social and governance issues ;

2012: SEBI mandates 100 listed companies to file BRR based on NVGs—Regulation 34 (2) (f)

2015: SEBI extends BRR to top 500 companies ( effective April 2016)

2019: National Guidelines on Responsible Business Conduct (NGRBC) released.

2019: SEBI extends BRR to top 1000 companies ( Dec 2019)

**The BRR framework** is divided into five sections:

Section A: General Information– Industry Sector, Products & Services, Markets etc

Section B: Financial Details– Paid up capital, Turnover, Profits, CSR Spend

Section C: Other Details – BR initiatives at Subsidiaries and Supply-chain Partners

Section D: BR Information – Structure, Governance & Policies for Business Responsibility

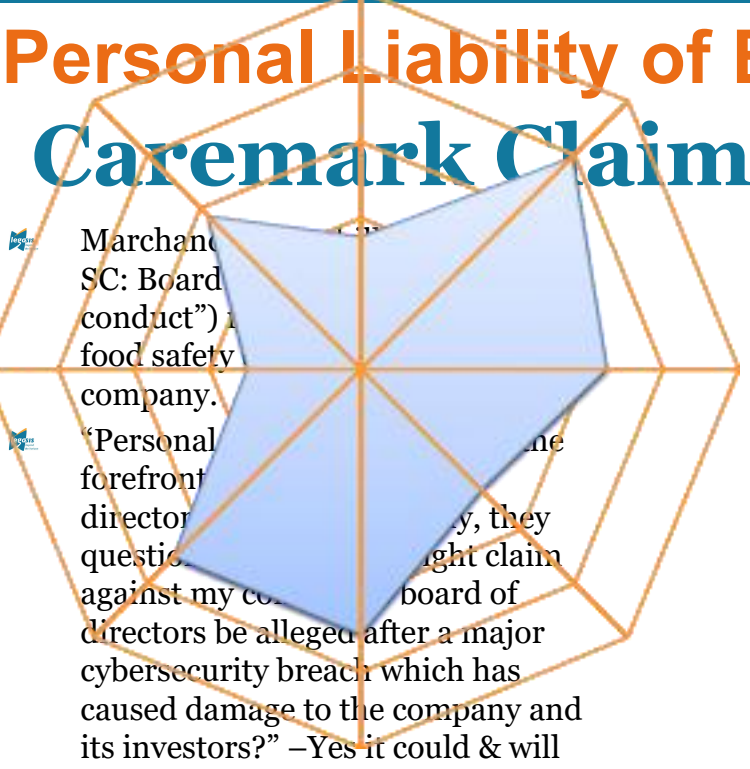
Section E: Principle-wise Performance – Indicators to assess performance on the 9 BR principles as envisaged by the NVGs / NGRBC

**“As with the NVGs, the NGRBC has been designed to assist businesses to perform above and beyond the requirements of regulatory compliance”.**



# Personal Liability of BoD

## Caremark Claims





Marchand  
SC: Board  
conduct”) a  
food safety  
company.  
“Personal  
forefront  
director  
question  
against my co  
board of  
Directors be alleged after a major  
cybersecurity breach which has  
caused damage to the company and  
its investors?” –Yes it could & will  
The “Absence” of Board oversight  
Inadequate oversight.

- legasis No board committee that addressed food safety.
- legasis No regular process or protocols that required management to keep the board apprised of food safety compliance practices, or reports existed.
- legasis No schedule for the board to consider on a regular basis, such as quarterly or biannually, any key food safety risks existed.
- legasis During a key period leading up to the deaths of three customers, management received reports that contained what could be considered red, or at least yellow, flags, and the board minutes of the relevant period revealed no evidence that these were disclosed to the board.
- legasis The board was given certain favorable information about food safety by management, but was not given important reports that presented a much different picture; and
- legasis The board meetings are devoid of any suggestion that there were any regular discussions of food safety issues.





# Personal Liability of BoD on 'Oversight' failure


 **Kandi Technologies** “.....the Company’s Audit Committee met sporadically, devoted inadequate time to its work, had clear notice of irregularities, and consciously turned a blind eye to their continuation. The Audit Committee continued to **meet only when prompted by the requirements of the federal securities laws**. When it did meet, its meetings were short and regularly overlooked important issues”.

 **AmerisourceBergen Corporation** “directors and certain of its officers breached their fiduciary duties by failing to implement compliance policies and systems and failing to exercise their oversight responsibilities”—August 2020— “the court held that the director defendants were aware of three “red flags” but failed to take appropriate action”



 **GoPro** “..... “Taking a self-guided tour through an ERP system to check inventory levels for a product that would comprise only 10% of the Company’s revenue is not the sort of ‘oversight’ Caremark contemplates.”

 **True Car....** Drone Company whose performance depended on regulator. Board presentations identified “USAA underperformance” as a top risk; and board presentations projected a declining USAA growth rate.

 **Esperion Therapeutics....** “explanation of why any of the Directors, let alone the Outside Directors, would intentionally lie to the market”



# Risk Agenda -2021

**First Thing First.....Understand “Risk” correctly**  
**Risk Management Committee –Composition**  
**Risk Awareness Sessions of Board & RMC.**

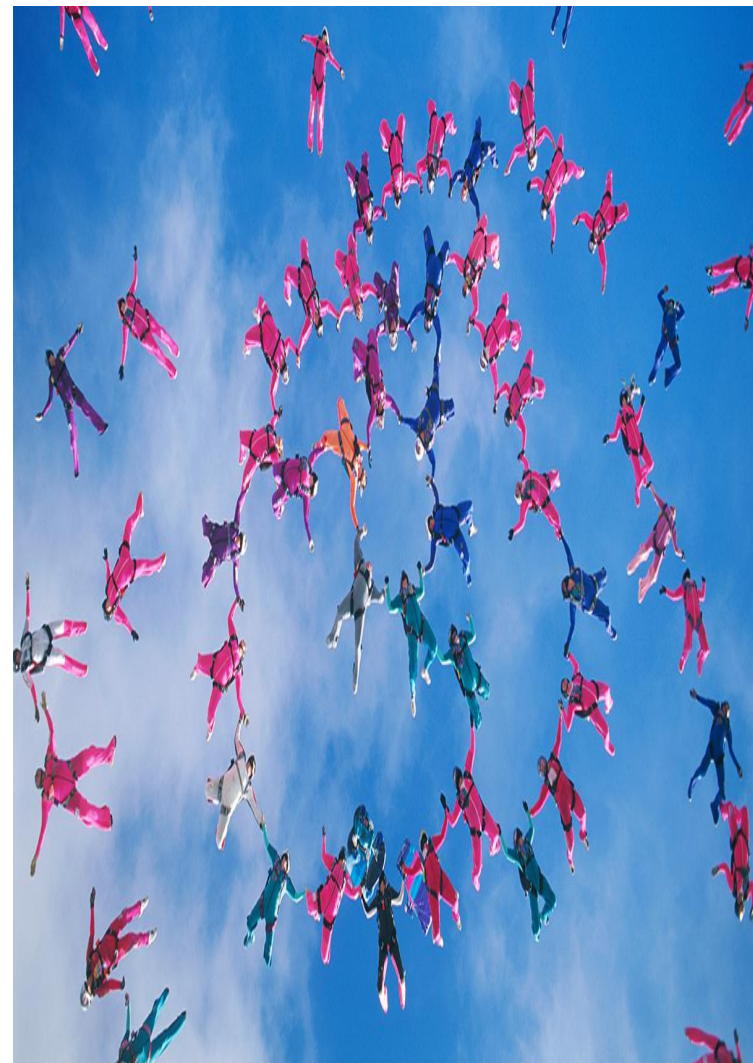
**Risk Management Issues– Short Term:**

Continue to discuss with management plans to mitigate business risks arising from the COVID-19 pandemic and the health and safety, financial, operational, and compliance issues it presents.

Review the functioning of internal controls during the COVID-19 pandemic, and consider its impact on the audit.

Assess whether an up-to-date crisis management plan is in place to assist the company in reacting appropriately, without either under- or over-reacting.

Reach a well-informed business judgment about what compliance risks are “mission critical.”



# Risk Agenda -2021

Understand and oversee the existing compliance culture, policies, controls, and procedures to identify, prioritize, manage, and mitigate risks, and regularly re-evaluate their alignment with key compliance risks facing the company.

Ensure that the company's information and reporting system is reasonably designed to provide the board with timely, accurate information sufficient to allow the board to reach informed judgments concerning the company's compliance with laws and oversight of risk.

Ensure that board and committee agendas, minutes, and meeting materials reflect discussions on compliance issues with respect to ongoing oversight, periodic reviews, and deeper dives and special situations that arise.

Review and confirm the accuracy of the company's public disclosures about risks facing the company, and reassess the adequacy of the company's disclosure controls and procedures in light of the COVID-19 pandemic.

Discuss with management and review any significant changes to corporate disclosures (for example, updating risk factors, withdrawing or modifying earnings guidance, revising the management discussion and analysis (MD&A) and financial statements).

Consider whether, due to the COVID-19 pandemic, additional efforts are necessary to protect against selective disclosure and insider trading, including any changes to insider trading or other policies.



"It is an interesting proposal. The upside is huge profits but the downside appears to be court ordered community service."

# Thank You

