KPMG

Corporate governance in India and the U.K.: A regulatory contrast

Board Leadership Center (India)

Evolution of corporate governance mechanisms in India and the U.K.

Corporate governance requirements in India accelerated with the introduction of The Companies Act, 2013, combined with key steps taken by Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA)

On the other hand, the U.K. has a long-standing history of governance practices since the 1800s which are viewed as global benchmark. The U.K. Corporate Governance Code, which is issued by the Financial Reporting Council (FRC) dictates the governance principles for companies and has been subject to numerous revisions over the years.

This paper articulates high-level analysis, rather compare and contrast, of corporate governance standards in India and the U.K..

A comparative analysis of the evolution of corporate governance in India and the U.K.[1]

India		The United Kingdom	
Before 1947	Colonial era – lack of governance guidelines in place	**1844**	The Joint Stock Companies Act - foundation for corporate governance
1956	Establishment of the first enactment – The Companies Act, 1956 that introduced some form of corporate governance	**1992**	Establishment of the Cadbury Committee in response to corporate scandals & introduction of principles like separation of leadership roles
1988	Pivotal moment leading to establishment of the SEBI	**1995**	The Greenbury Report encouraged greater visibility of remuneration structures and the time horizons over which pay is released.
1991	Economic liberalisation opening doors of Indian economy to foreign investment leading to greater transparency	**2003**	The Higgs Report, focused on non- executive directors (NEDs) and introduced the concept of the 'Senior Independent Director'
2013	The Companies Act, 2013 introduced a comprehensive legal framework, emphasizing on core principles of governance; MCA guidelines aimed towards better governance	**2010**	Introduction of the U.K. Corporate Governance Code consolidating earlier guidance and emphasising shareholder engagement, executive remuneration and risk management
2018	SEBI introduced more rigorous norms for independent directors and disclosure requirements for related party transactions (RPT).	**2018**	Comprehensive Code Review gives centre stage to corporate culture and purpose, and emphasises the importance of positive relationships with stakeholders.

[1]Sources: The Companies Act, 1956, Ministry of Corporate Affairs; The UK Corporate Governance Code, Financial Reporting Council, June 2010; The Companies Act, 2013, Ministry of Corporate Affairs; KPMG analysis

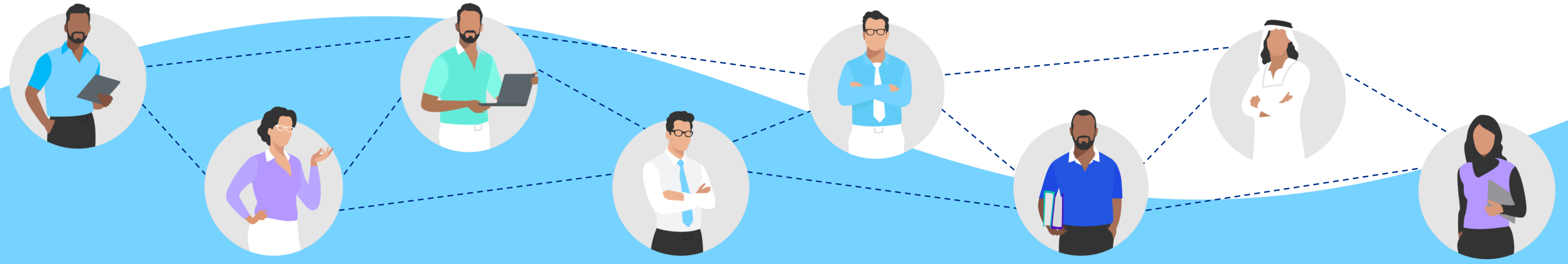
Fundamental elements of regulatory framework in both the jurisdictions

The corporate governance landscapes in India and the U.K. represent the distinct needs and characteristics of their economies and business cultures. While India has made significant strides in enhancing governance standards, the U.K., with its principles-based approach and a long history of governance practices, sets a benchmark. In a globalised business world, both countries can learn from each other's experiences and incorporate best practices to further strengthen their governance systems.

[2] OECD Corporate Governance Factbook 2023, OECD Publishing, Paris

A comparative analysis of the regulatory framework in India and the U.K.[2]

	India	The United Kingdom
Regulators	**Main regulators** - SEBI and MCA **Emerging regulators** - NFRA, The Institute of Chartered Accountants of India (ICAI), Institute of Company Secretaries of India (ICSI)	**Main regulators** – FRC and Financial Conduct Authority (FCA) **Emerging regulators** – Audit, Reporting and Governance Authority (ARGA) which will replace the FRC.
Share of IDs/ NEDs	At least one-third of the total number of directors	At least half the board (recommended)
Term of service of IDs/NEDs	5 years up to two consecutive terms	Loss of independence is presumed after 9 years
Diversity	• At least one woman on board • The MCA recommends boards to have a mix of directors with respect to age, experience, gender and expertise.	• At least 40% women on board • At least one of the senior board positions to be held by a woman. • At least one member from a minority ethnic background.
Board-level committees	All committees including audit, nomination and remuneration are requirement by law or regulations	Audit, nomination and remuneration committees are recommended by the Code
Executive remuneration	Remuneration of all directors taken together should not exceed 11per cent of net profits of the company	General criteria recommended by the Code including long-term incentive mechanisms for variable remuneration

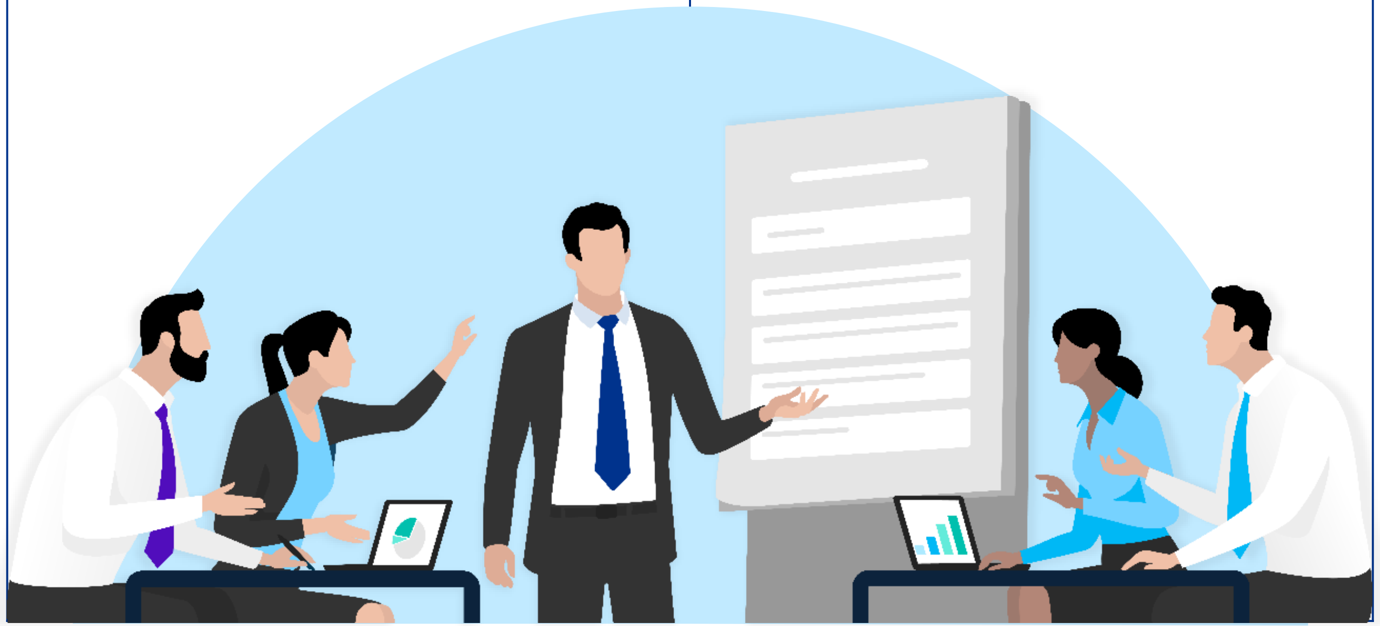


The current picture and latest reforms in both the jurisdictions

India has made substantial progress in the recent years with consistent upgradation of the governance laws and regulations in the country. For example, The Business Responsibility and Sustainability Reporting (BRSR) framework, introduced by SEBI, focuses on Environmental, Social, and Governance (ESG) factors, launch of National Financial Reporting Authority (NFRA) Act, 2018 as an independent regulator, and implementation of stringent norms for independent directors and RPT. While these reforms have contributed largely to strengthen the foundation of governance, challenges pertaining to insider trading and market manipulation, shareholder activism, and state-owned enterprise governance persist.

On the other hand, the U.K.'s corporate governance framework has been influential worldwide. The most recent reforms have been centered around measures that will improve accountability, build investor confidence and support decision making. For instance, establishment of the Audit Reporting and Governance Authority (ARGA) to enhance auditing quality, a stronger framework for reporting on internal controls, and new Listing Rules to promote diversity.

India	The United Kingdom
• **The Companies (Audit and Auditors) Amendment Rules, 2021**[3] by MCA prescribes the qualifications of auditors and auditing standards • **NFRA Act, 2018**[4] - an independent audit regulator with power to prosecute audit firms that violate the laws • **SEBI amendments to RPT**[5] **-** increased compliance for listed companies and subsidiaries • Introduction of the **BRSR framework**[6] by SEBI to focus on ESG issues and replace the Business Responsibility Report (BRR).	• **Proposed legislative changes**[7] to introduce a new regulator, ARGA, in place of the FRC as a lead body for audit market regulation • **Audit Committees and the External Audit: Minimum standard**[8] introducing a new standard for audit committees in relation to the external audit • Proposed revisions to the U.K. Corporate Governance Code to strengthen board accountability and reporting in relation to internal controls.



[3] Audit Auditors Amendment Rules, Ministry of Corporate Affairs, March 2021

[4] National Financial Reporting Authority, Government of India

[5] SEBI notified amendments to related party transactions, KPMG in India, December 2021

[6] SEBI framework on BRSR Core and value chain, KPMG in India, July 2023

[7] FRC sets out next steps in transition to new regulator, Financial Reporting Council, July 2022

[8] Audit Committees and the External Audit: Minimum Standard, Financial Reporting Council, May 2023

Boardroom questions for board of directors to consider

1. Is the organisation compliant with Foreign Exchange Management Act (FEMA) regulations concerning foreign exchange transactions and investments? How do FEMA regulations affect the company's cross-border transactions, including remittances, foreign investments, and trade operations between India and the U.K.?

2. Does the company have a defined sustainability strategy in motion? Is the company taking steps to manage its ESG risks and opportunities? Are these steps in compliance with the minimum requirements issued?

3. Both India and the U.K. have strengthened the transparency and disclosure requirements for companies in their respective jurisdictions. Is the board ensuring that their companies comply with all applicable transparency and disclosure requirements?

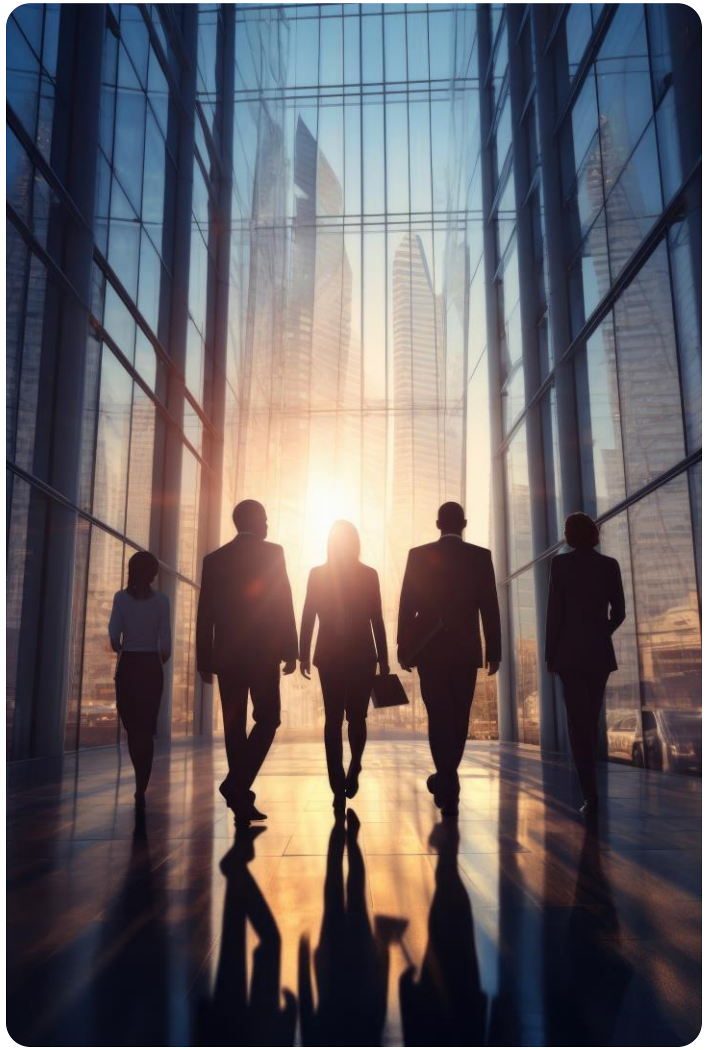
4. Are the organisations compliant of the key principles and guidelines of the General Data Protection Regulation (GDPR)? How do these guidelines apply to the company's data processing activities?

5. While the regulatory bodies in both the nations are committed to improving audit and corporate governance with more remedial reforms on the way, are the organisations adhering to the recommended labor laws and defined good practices in their respective landscapes?

6. Are the organisations considering the relevance of Double Taxation Avoidance Agreements (DTAA) that affect their tax liability? How is the senior management managing the tax implications between the countries?

7. What are the bribery and corruption risks associated with the organisation's operations? Are the organisations aware of the specific anti-bribery laws and regulations such as the U.K. Bribery Act, 2010 and The Prevention of Corruption Act, 2018 in both nations?

8. How is the board maintaining pay-parity between two countries of operations? Is the remuneration of Key Managerial Personnel (KMPs) and staff benchmarked against the U.K. and global standards?



KPMG contacts:

Ritesh Tiwari
Partner, Board Leadership Centre
KPMG in India
E: riteshtiwari@kpmg.com

Timothy Copnell
Chair, Board Leadership Centre
KPMG LLP (UK)
E: tim.copnell@kpmg.co.uk

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