

GOVERNANCE FRAMEWORK FOR PRE-IPO COMPANIES IN INDIA

As Indian companies prepare for an Initial Public Offering (IPO), establishing a robust governance framework is essential to ensure regulatory compliance, enhance investor confidence, and support sustainable growth. This framework must align with requirements set by regulatory authorities such as SEBI (Securities and Exchange Board of India), MCA (Ministry of Corporate Affairs), and other applicable laws.

<u>Board Composition and Structure</u>	<i>Pre-IPO companies must appoint a balanced board with Independent Directors, as per SEBI's Listing Obligations and Disclosure Requirements (LODR). SEBI mandates that at least one-third of the board must be independent, and companies must ensure the inclusion of a Woman Director under the Companies Act, 2013. Establishing key committees, such as the Audit, Nomination, and Remuneration Committees, ensures appropriate oversight.</i>
<u>Financial Reporting and Internal Controls</u>	<i>Financial reporting must comply with Indian Accounting Standards (Ind AS) and adhere to SEBI's disclosure norms. Companies should implement internal control systems that meet the requirements of the Companies Act, 2013, and the Sarbanes-Oxley Act (for applicable foreign listings). Regular audits and assessments ensure compliance with SEBI's requirements for public disclosures and financial transparency.</i>
<u>Corporate Governance Policies</u>	<i>Developing a Code of Conduct that outlines ethical practices is crucial. Pre-IPO companies must implement a whistleblower policy as mandated by the Companies Act, ensuring transparency and encouraging the reporting of unethical practices without retaliation.</i>
<u>Risk Management</u>	<i>A formal risk management framework is essential to identify and mitigate operational, financial, and regulatory risks. SEBI requires listed companies to have a risk management committee, and pre-IPO firms should establish this in advance. Attention to cybersecurity and data protection, in compliance with Indian regulations (such as the Personal Data Protection Bill), is key.</i>
<u>Executive Compensation</u>	<i>The Nomination and Remuneration Committee should ensure that executive compensation is aligned with company performance and shareholder interests. Equity-based compensation, such as Employee Stock Ownership Plans (ESOPs), is commonly used to retain talent. Introducing clawback provisions to recover bonuses in cases of misconduct is a prudent measure.</i>
<u>Shareholder Rights</u>	<i>Pre-IPO companies should amend their Articles of Association (AoA) and shareholder agreements to comply with SEBI's listing norms, addressing issues like lock-in periods for promoters, pre-existing shareholder agreements, and ensuring compliance with public listing requirements.</i>
<u>Regulatory Compliance</u>	<i>SEBI's (Issue of Capital and Disclosure Requirements) Regulations, 2018, provide the framework for IPOs, covering</i>

	<i>eligibility, disclosures, and promoter contribution norms. Companies must also comply with periodic reporting obligations as per SEBI's LODR, ensuring timely updates on shareholding patterns, financial performance, and material events.</i>
<u>ESG and Sustainability</u>	<i>Environmental, Social, and Governance (ESG) factors are becoming increasingly significant. Pre-IPO companies should adopt SEBI's Business Responsibility and Sustainability Reporting (BRSR) guidelines and align with global best practices to meet investor expectations.</i>
<u>Leadership and Culture</u>	<i>A strong governance culture fostered by ethical leadership is critical. The CEO and board should ensure transparent communication and uphold high governance standards as the company transitions to public listing.</i>

In summary, PRE-IPO companies in India must develop a governance framework that adheres to the regulatory standards set by SEBI, MCA and other relevant authorities, ensuring sound governance, financial transparency, and risk management. This prepares the company for the rigor of public listing and in stills confidence in investors.

RELEVANT CASE LAWS

Tata Consultancy Services (TCS) IPO Case – SEBI vs. TCS (2004)

- **Overview:** TCS, one of India's largest IT firms, faced scrutiny from SEBI during its IPO process. SEBI investigated whether TCS had provided sufficient disclosures in its prospectus related to certain business risks and financial statements.
- **Outcome:** SEBI highlighted the importance of clear, accurate, and comprehensive disclosures in the Draft Red Herring Prospectus (DRHP), which all companies must file before going public. This case emphasized the necessity for pre-IPO companies to ensure transparency and compliance with SEBI's disclosure norms.
- **Relevance:** Pre-IPO companies must maintain complete financial transparency and ensure all material facts are disclosed to avoid potential regulatory penalties and market skepticism

Sahara Group Case – SEBI vs. Sahara India Real Estate Corporation (2012)

- **Overview:** The Sahara Group raised funds through optionally fully convertible debentures (OFCDs) without proper disclosures and SEBI approval, arguing that the offering was a private placement and did not require SEBI oversight.
- **Outcome:** The court ruled in favor of SEBI, mandating that Sahara return the funds to investors with interest. It was held that Sahara's OFCDs were public in nature, and SEBI's jurisdiction extended over them.
- **Relevance:** This case underscores the importance of adhering to SEBI's guidelines on public offers and private placements. Pre-IPO companies must clearly distinguish between private and public offerings and ensure all fundraising activities comply with SEBI regulations.