UNLISTED BUT INFLUENTIAL: WHY PRIVATE COMPANIES NEED STRONGER CORPORATE GOVERNANCE?

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Introduction

Corporate governance refers to the systems, processes and rules used to govern the management and control of a company.[1] In the evolving landscape of corporate India, governance discourse has traditionally centered around listed companies, driven by investor protection mandates and regulatory scrutiny from bodies like SEBI. However, private and unlisted companies, while often shielded from the public eye, wield significant economic and social influence. They form a substantial part of the Indian corporate sector, accounting for a major share of employment generation, innovation, and private capital flows. The assumption that unlisted companies pose lesser systemic risks due to the absence of public shareholders is increasingly proving to be misplaced. High-profile governance lapses in prominent unlisted entities such as Byju's have demonstrated how their failures can cascade through supply chains, disrupt financial markets, and erode stakeholder trust.

Unlike listed entities, private companies operate with greater operational flexibility and less stringent disclosure requirements, which, while facilitating entrepreneurship, also create spaces for opacity, related-party transactions, and weak board oversight. As family-owned businesses, start-ups, and unicorns continue to grow in size and global interconnectedness, the boundaries between private and public impact are blurring. Investors, creditors, employees, and even regulators are increasingly demanding governance practices that ensure accountability, transparency, and ethical conduct irrespective of listing status. The need for stronger governance in private companies is not merely a matter of compliance it is a strategic imperative to build sustainable businesses, attract long-term capital, and prevent reputational and financial crises.

[1] Malladi Gayathri, Corporate Governance For Unlisted Companies, 6 International Journal Of Law Management & Humanities 6 (2023).

Regulatory Framework In India

The Companies Act, 2013 provides a rubric for corporate governance in unlisted companies. However, the extent to which governance is required is based on the nature and size of the company. For instance, Section 149 requires independent directors only for listed public companies and certain classes of public companies that meet specific thresholds of paid-up capital or turnover.[2] Moreover, an audit committee, nominations and remuneration committee are not mandatory for all unlisted companies. Furthermore, financial reports are required on an annual basis and only regulated companies are required to make quarterly filings. The Act has brought many valuable governance provisions, however, they apply to unlisted companies only in a selective manner. Many rapidly growing start-ups register as private companies to side-step the stricter governance rules of a public company. So much so that this regulatory arbitrage allows them to operate in a gray area, while wearing the burden of billions in investor funds.

Governance Challenges in Unlisted Companies

While listed companies and unlisted companies both operate under different regulatory frameworks, core principles of corporate governance like accountability, oversight and transparency are common to both. However, the corporate governance structure for unlisted companies is often distinct in terms of form and implementation, due to differences in the ownership, governance, and organizational structure.[3] Typically, the ownership of unlisted firms is concentrated, usually consisting of founders, family members, or a small number of investors. This means decision making processes are less complex and reduce the perceived need for regulatory intervention. Regulators like SEBI, are primarily concerned with the protection of public shareholders, and they devote fewer resources to organizations that do not raise funds in the public markets and do not present a systemic risk.

In startups and mid-size private company contexts, a high degree of flexibility in the legal structure is often considered of utmost importance for facilitating decision-making speed and appropriate flexibility to continuously evolving concepts. Tight regulatory constraints can, in such instances, stifle entrepreneurial potential and limit experimentation.[4] However, it is important that a distinct, yet meaningful corporate governance framework tailored for unlisted companies exists that seeks to balance the more flexible means of innovation, with the need to

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[2] The Companies Act 2013, § 149.
[3] J.A. McCahery & E.P.M. Vermeulen, *Governance for Non-listed Companies*, 73 Oxford University Press 216, 121-124 (2008).
[4] *What are the major compliance for unlisted companies in ROC*, SKMC GLOBAL (July 15,2025, 10:30 AM) https://www.skmcglobal.com/blog/what-are-the-major-compliance-for-unlisted-companies-in-roc

be accountable for those worth significant finances being raised and invested in unlisted companies. As unlisted companies attract more institutional capital and gain larger influence in the economy, respectively, there are regulatory expectations warranted between boards providing oversight, allowing for transparency and ensuring that investors are protected.

The Byju's Debacle

The recent cases of governance failures at Byju's illustrate the potential dangers of weak oversight. Byju's, once one of India's flagship ed-tech start-ups, serves as a cautionary tale of the value of corporate governance. The startup was lauded for rapid growth, before hitting a proverbial iceberg and suffering multiple governance failures including opaque financial reporting, misrepresenting revenue claims, misuse of customer data, and failure to fulfil legal obligations. The problems started when inconsistencies in audited financials and delay filings with the regulator were publicized, resignation of the members of the Board whereafter multiple investors and customers began expressing frustration.[5] Things took a turn for the worse after creditors including the BCCI started using the insolvency process. One of the most controversial episodes included the management trying to preferentially settle with one single creditor, thus marginalizing the rights of others as stakeholders.

The collapse of Byju's sends a clear message to India's nascent startup ecosystem: governance needs to improve as companies grow. In the early phases of development, many startups are focused on scaling rather than on internal controls; however, weak governance becomes a significant concern when startups create interest from institutional investors and the public. Some takeaways from the Byju's case include not just requirements for statutory compliance, but also for disclosure, board structures, and accountability on behalf of stakeholders.

The Need for a Tailored Governance Framework

The evolution of venture capital, private equity and foreign capital in unlisted businesses has revealed shortcomings in the regulatory framework over the last ten years. A number of these businesses are managing investments at amounts equal to those levels of mid market listed businesses with reporting obligations being bare minimal, creating an imbalance in information flows from management to users of that information. This lack of periodic disclosure limits both a stakeholder's ability to identify distress, proposes to the governing body and/or business

[5] *Byju's shareholder Prosus cites poor corporate governance for board exit,* THE ECONOMIC TIMES, (July 15, 2025, 11:30 AM) https://economictimes.indiatimes.com/tech/technology/byjus-shareholder-prosus-rips-edtech-company-for-poor-corporate-governance-in-statement-on-board-exit/articleshow/102098234.cms?from=mdr(2023).

continuity events as well as facially distinguish whether such event was a result of previous governance obligations, requiring scrutiny. Also, standards may exist across some industries while others do not even disclose what compliance levels exist as well if governance obligations do exist. The previous issues create a systemic risk, often for businesses undertaking operate cross border transactions, even expanding market share is being concentrated in a single firm in significant sectors of the economy. The regulatory issues can be addressed through adjustable reforms like a multi-tiered governance structure based on the capital levels raised or number of stakeholders to balance between encouraging innovation while promoting a certain level of accountability as best practice.

It is critical to bolster corporate governance in unlisted companies in order to protect investors and maintain stability. A key recommendation is to introduce baseline governance standards for all private companies that raise external funding, regardless of their size. These standards should include transparent financial reporting, board accountability, and compliance frameworks to ensure responsible management. The same practice should be put in place for mandatory quarterly disclosures as part of the quarterly financial report, especially for those companies dealing with institutional or public money. This disclosure could be uploaded via an MCA portal, allowing regulators to have greater visibility into the financial risks of the company, making it easier for them to spot possible risks early.

Companies should be nudged to have at least one independent director and should have internal committees, including audit, risk, and remuneration committees.[6] This would allow for some external oversight and start to professionalize the internal controls. In addition to whistleblower processes, there should be a corporate conduct code, with a standard template created by the Ministry of Corporate Affairs. Timely, independent governance audits conducted by qualified independent professionals will again improve transparency and will help highlight risks before they can grow into a problem.

Conclusion

The growth of unlisted companies in India and their powerful role in the economy has largely exceeded the government systems developed to help monitor their governance. While the level of flexibility given to unlisted companies helps promote innovation and create entrepreneurial opportunities, it has also propelled major gaps on consistency of governance principles which

[6] Duguay R., *The Effect of Financial Audits on Governance Practices: Evidence from the Nonprofit Sector*, 62 SSRN Electronic Journal 533, 52-55 (2022).

open doors for opacity, mismanagement, and investor risk.

Governance in unlisted companies, must now be seen as an essential component for sustainable growth, not wishy-washy best practice. It is possible to develop a base governance standards for improved governance such as financial disclosure, independent board oversight, ongoing compliance checks etc. as a connection between flexibility to accountability. As private companies become increasingly significant in stimulating India's economy, they need to accept that governance is, and will continue to be, an asset that aids business strategy, rather than a regulatory burden. Transparency, balance, and a proactive approach towards governance will help not only prevent future crises but also lead to long term success in an interconnected corporate world and model of scrutiny.