Valedictory Session: Summary and follow up

Opening Remarks
Mr. Chandrajit Banerjee, Executive Director, NFCG

Mr. Seshasayee, Mr. Choraria, Mr. Louis Bouchez, Mr. Eimon Ueda, a very good afternoon and a warm welcome to all of you to this valedictory session of 2006 Policy dialogue on corporate governance in India.

Over the last two days, we have had deep insights into several issues of corporate governance. We focused on the role of Board in related party transactions, best practices for dealing with non-controlling shareholders, international standards and practices for accounting, audit and financial disclosures, corporate governance of SOEs, a very lively session, this morning on corporate governance and capital market regulation and just now, we discussed the role of the board and insolvency and corporate governance.

We had from the Ministry, yesterday the Minister, Secretary, senior Government officials, the OECD officials, the World Bank, the corporate India who shared their views and discussed these issues.

Now, we have with you, Mr. Damodaran, Chairman SEBI. Who else could have been a better and a more appropriate speaker at the Valedictory Session.

Your presence Sir is indeed a source of great motivation. Mr. Damodoran, Sir, may I quote to you, one of the comments that you made last year at the CII's Corporate Governance summit and I quote 'if a company does not have good corporate governance practices in place, it cannot have good corporate governance on a sustained basis. We look forward to your Valedictory address today and once again, a warm welcome to you, Sir.

May I also welcome Mr. Seshasayee, Vice President, CII and Managing Director, Ashok Leyland. Mr. Seshasayee has been a member of the Dr. Irani Committee and so your perspectives from the Industry's point of view would be most pertinent today. A special welcome to you.

We have with us also the President of ICSI, Mr. Choraria and he will give us a professional perspective at this dialogue session.

But before I request you to speak, may I request our OECD partners, Mr. Louis Bouchez as well as Mr. Eimon Ueda to give a crisp summary and the road ahead emanating from this two day policy dialogues.

Address:
Mr. Louis Bouchez, Senior Corporate Governance Specialist, OECD Secretariat

Thank you Mr. Banerjee, Mr. Damodaran, Mr. Seshasayee, Mr. Choraria, Ladies and Gentlemen. I am honored to share some quick thoughts with you about the past two days. I am not going to summarize, I am just going to look ahead.

From the OECD perspective, we have been thinking, how can we bring it further. The OECD has this attitude of looking for tangible things. We talk for two days, what's the delivery, what's the product. We know that the product is in our minds but we are sure, this was not the last conservation on this topic, so we have been trying and we have been talking with lot of the delegates and participants over the last two days and also the speakers, what are the issues to be considered. Let me suggest four issues.

Corporate governance of non-listed companies, yesterday we have heard during two session's lots of interest and also from the Ministry of Company Affairs, we have learnt that it is a big issue. Corporate governance of groups of companies, of course, groups of companies are present in very length in India and some of them are very successful, also in terms of corporate governance, however, it is a complicated issue, which is related to one of the topics of yesterday, namely related party transactions. Earlier today, we talked about corporate governance of state owned enterprises, again we see very successful examples of state owned enterprises, and however we also learnt from the Ministry that there is a lot to do in time ahead. Finally, the role of institutional investors. We have learnt from people from practices from the companies that indeed the shareholders are becoming active but it is indeed the Institutional investors that could take a lead role in order to enforce proper corporate governance practices, so these four topics, we just wanted to suggest on behalf of the OECD to be taken further. By whom. I think, the natural player which in the Indian corporate governance debate, who should lead the road ahead would be the National Foundation for Corporate Governance, so Mr. Banerjee, these are just four suggestions.

Finally, I could suggest a way, how within the OECD context, we do this. The OECD has developed a format in tackling these things. We set up specific task forces or working groups which include all the stakeholders, companies, Ministries, the Institute of Directors, the Institute of Secretaries to Boards etc., which focus on one topic and come up with a set of concrete recommendations, not huge documents, a two page document, spelling concrete recommendations for policy makers to take further. However, this only works within a set time framework otherwise it will end up in endless debate and I can assure you that OECD and its member countries are in expert in that. So this could be a format for the way ahead.

Address:
Mr. Eimon Ueda, Head – Outreach Unit, Financial Sector Reforms, OECD

Mr. Damodaran, Mr. Choraria, Mr. Seshasayee, Mr. Banerjee, Ladies and Gentlemen, I am very pleased to give remarks in the final session but after the remarks made by my colleague Mr. Louis Bouchez, my remarks will be very brief.

On behalf of the OECD, I would like to express sincere appreciation and gratitude to all the moderators, presenters, discussants and the participants for your very active and frank discussions, which I think, have made this conference very fruitful.

I would particularly thank all the foreign participants who have come all the way from respective countries inspite of their busy schedules.

Through out these two days, I have been so much impressed by the eagerness among the Indian presenters and the participants to further reform efforts on corporate governance. Now, your economy is going at a very fast pace and your stock market is unprecedentally booming. To be honest, I had been a little bit concerned that some sense of complacency might be arising among the Indian people but I was wrong. I have been so much encouraged by hearing that you will be making further efforts to further try to harmonize the Indian laws, regulations, codes and the practices, more in line with international standards or best practices, which are accepted widely by many countries but it is most welcome to the International community. Having said that, I cannot over emphasize the importance of such efforts to be continued in order to keep the momentum of the current strong economic growth. The OECD would be very much pleased if we could further help or contribute to your honest efforts to further improve corporate governance.

If I touch upon OECD activities on corporate governance in coming months in this Asian region, we are going to organize a meeting of Asian Network on Corporate Governance of State Owned Enterprises, probably in May in Singapore and also we are planning to hold a Conference on Corporate Governance of Banks in Asia, probably in June in Hong Kong, which is more relevant for banking regulators and also we are planning to our annual meeting of the Asian Round Table on Corporate Governance to be held probably in September in Bangkok. In this connection, I would like to take this opportunity to thank the World Bank or the IFC for providing indispensable partnership for us and for those conferences or meetings, I just mentioned, we are surely expecting continuous and active participation from India.

India is now becoming one of the very important partner country for the OECD. In its various policy areas, of course including corporate governance. We would be very happy if cooperation between India and the OECD could be further strengthened through our activities.

Finally, I would like to thank again, the Ministry of Company Affairs, National Foundation for Corporate Governance, Confederation of Indian Industry, Institute of Company Secretaries of India and Institute of Chartered Accountants of India for co-organizing or supporting this Conference and I would like to again thank all the participants in this conference and also, I don't want to forget to thank all the staff members who have been diligently supporting this conference for these two days.

Special Address:
Mr. R. Seshasayee, Vice President, CII & Managing Director, Ashok Leyland
Mr. Damodaran, Mr. Louis Bouchez, Mr. Eimon Ueda, Mr. Choraria, distinguished participants, ladies and gentlemen.

I am sure that you had two days of very productive discussion, given the very distinguished list of speakers that I have seen and the even more distinguished gathering of participants.

I must begin by complimenting Mr. Damodaran for the Sensex moving to an unprecedented 10,000 mark. I am sure, he is going to say, please don't compliment me because I have nothing to do as a regulator, whether the Sensex moves up or down. But I have a reason to compliment him and the reason is that, quiet often, India is surprised by its own success. They get worried when we have success. I have often been asked, when our industry, which is particularly sticklike, commercial vehicle industry, has a good spell for a couple of years, notching very high growth rates, everybody in our industry gets worried, there must be something wrong in it. So we do get worried, when something goes up and then success is in front of us. Success not only surprises us but sometimes also success also brings about its share of scandals. The fact that today, when you have this unprecedented pace at which the stock market is behaving, the fact that, that level of rise and the wealth creation, that has happened, has left us still not feeling nervous about it, not feeling worried about it and feeling quiet confident doesn't account to the fact that there is now much created degree of reliance on the oversight of the sentiments of the regulator and therefore, you believe, you accept that wealth is not something to be worried about, that it is legitimate, success is something that is sustainable and for that reason, I would certainly use this opportunity to compliment Mr. Damodaran and his team at SEBI.

Corporate governance has a very esoteric value. This is not clearly a specification. I am sure, the last couple of days the deliberations must have focused on the fact that this is not a black and white situation. It is more like beauty, it is more like a value that needs to be felt, understood and practiced. It's often when societal norms evolve, it often happens that you have exemplary who are taking this forward by a few inches. If education as a value has to be a societal value, you need exemplary who move forward taking education up.

I recall, when I met, first lady medical graduate in my hometown, she was the first to go to a Medical College. She was in here late eighties, when I met her and I was in my teens and she said that her going to the college at that time was such a novel and such a path-breaking effort that she said, I knew that everyday when I was going there, the only thing I had in mind was that I was going to lead a lot of people who wanted to come in but were silently watching me and therefore I simply could not afford to fall out, I had to go through this grind because I was conscious of the fact that my first step would lead many others to follow, and that's always, an exmplary's duty. In this context that values of corporate governance have to be moved forward through examples, through people who believe that is a value, which has a certain return, is relevant for corporate activity and has to be demonstrated.

I am glad that CII took the first lead on this, many years ago, in 1996 we formed the first Committee on Corporate Governance, much before legislation came into being and that is because it was well recognized that we need people who can take this movement forward by defining a certain set of values, which need to be emulated and which can have a return and that is what CII has been committed to, since then. The act of pushing the frontiers of this values, if it is as exotic, it has beauty, we need to keep pushing the frontiers, re-defining what corporate governance means and that's a role, CII is certainly committed to.

When that happens and you see people following, law then has to follow. Law has to be one step behind in exemplar. In the case of corporate governance, it is not very easy to formulate legislation because governance is not black and white and therefore to be able to equate good governance with the number of independent directors or the number of times, you hold the Board meeting or the number of disclosures that you make, is a very simplistic way of doing it but nevertheless, the law has to move, at least one step behind the exemplar and I think, when law does that, it lays the minimum standard and keeps raising the bar. We can keep arguing whether the law is in fact moving far ahead, whether it is necessary or even right, a legitimate to translate values as corporate governance in terms of simplistic laws and quiet often always, there is a protest, when law intervenes in this kind of situations.

I remember the amount of protest that we have had from corporate sector when the simple issue of quarterly disclosure was legislated, everybody said, it is going to be impossible or much more difficult. At best, justice is not black and white. Law can be binary but justice cannot be and a simple situation like a killing or a murder, you have a variety of interpretation, even if you don't have someone striking you, a threatening posture of an opponent could very well be the start point of offence. So you have a very wide variety of interpretation possibilities when you come to interpreting law to dispense justice and in a thing like corporate governance where the subject itself does not lend so easily to binary interpretation, justice is bound to be much more difficult and it is over years that you interpret law, build the body of opinion so that there is a certain predictability in the behavior of courts, behavior of regulators in trying to interpret and steer the course of justice and this is precisely the reason, why judgments have to be referred constantly to interpret law and to follow the course of justice that is being followed in the past.

In the case of corporate governance, it is nascent, we don't have a body of interpretation, we don't have a body of experience of dispensing justice on the basis of law and it is in that respect, a dialogue is very important, sharing of experiences, the manner in which law has been interpreted, not in terms of letter but in terms of spirit and that whole body of experiences and interpretational positions will certainly hasten the process of staying on the course and this is where, I think, the dialogue has been extremely important and I am sure that we have stood the game by this dialogue at both ends.

Finally, I would like to say that in this particular case of corporate governance, there is no reason why India cannot take a leadership position. We need to hasten the process of pushing the frontiers, we need to get governance laws, which don't necessarily have to be reactive on following what others have done but what we should believe is good governance for the sake of good economy and good participation and that is something, which may I say, is pretty much native to us. The concept of trusteeship, the concept of managing the wealth for others, even in the family circumstances, the concept of Kartha in a joint Hindu family is a very ancient concept. This is not an alien concept to us. We need to re-discover our values, put them back for the benefit of corporate progress and for the benefit of the economy.

I am once again, very thankful to the OECD for partnering this and I am sure that the four issues that you have highlighted, Mr. Bouchez, will certainly be taken forward. These are difficult issues. The normal areas where we can look at an intermediary like a regulator to play the role and these will have to be self-governance in most cases, far more difficult areas to tread on but nevertheless, I can assure you that we will take this forward together with you and others and try to redefine the standards for these. Let me thank once again, all those who have been involved in this in bringing together this Conference.

Valedictory address:
Mr. M. Damodaran, Chairman, SEBI
Mr. Seshasayee, Mr. Choraria, Mr. Louis Bouchez, Mr. Ueda, Mr. Banerjee, Friends.

We have heard of one day matches, we have heard of five day matches, of course some five day matches end in less than five days. The two day match on corporate governance, I believe is just about to get over.

It is difficult coming in at the end of two days, when you have had, everyone who is knowledgeable on the subject sharing his or her thoughts with you, when you have all manner of reasons, all manner of explanations, for why you need to do, what you need to do, it is difficult coming in at the end of two days and to attempt to tell you something that you might not have heard or might not have been exposed to in the last two days. I won't even try because corporate governance in this country has been debated for years. You heard Mr. Seshasayee mention that CII set up the first Committee as far back as in 1996. There has been no shortages of Committees in this country, there has been no shortages of committees, outside of this country. Almost everything that needs to be said, that needs to be written, that needs to be spoken, even that needs to be prescribed is, I think, already in place. I am hoping, like I believe, every stakeholder and every industrial enterprise is hoping that 2006 represents the year in which we commence 'walking the talk'. When we commence practicing corporate governance a little more than we have practiced it so far, when we commence understanding that it is not a prescriptive regime, that it is not a checklist that you need to deal with and when you are finished and done with the checklist, you say, we have arrived, there is nothing more to be done.

I am delighted to follow Mr. Seshasayee in the batting order. He mentioned the role of the exemplar and I believe, that is very important. Even as he was speaking to you, I was telling myself that Corporate India does not have too many exemplars of that level. Here is one man, who I believe, in sharing his thoughts with you today was only 'talking the walk', he had already walked that distance. He had already implemented in his company what needed to be done by way of value driven corporate governance system, not a checklist driven corporate governance system, not a prescriptive system but a system in which, you explain to all stakeholders that governance driven by values, governance driven by pursuit of the maximum good of the maximum number is governance that will stay the course is governance that is sustainable. Here is a gentleman, who practiced that. I am hoping that starting 2006, you will find many more people walking down the path that he and his company have walked on.

Even in India, with its presence standards of corporate governance, there are companies which are synonyms for corporate governance. There are companies, which the world over are recognized as models of corporate governance and fortunately there are a few and far between and the effort of all who are seated here and all of you and your friends outside, people in your spheres of influence should be to see that with every passing month, with every passing year, more people buy into the value system, which is corporate governance, more people see it as not just another empty exercise, more people see it not as are being forced to do something, which we don't want to do because somebody else wants us to do that. Even outside of India, when you discuss this, with various people, you get the feeling that this is something that is being thrust on unsuspecting entrepreneurs. You hear the argument that corporate governance drive will inhibit entrepreneurship, you hear it mentioned even in developed countries on occasion that the strong CEO model is important for development and a strong CEO translates in the minds of those people that articulate this point of view, as a CEO who lives by his own rules, occasionally perishes by his own rules.

I saw an article recently in the context of the on-going trial in the United States that skilling and lay are facing. The 12 member Jury was to be selected and there was a helpful suggestion from someone that they ought to pick up 12 Chief Executives of companies, which are suffering from the Sarbanes Oxley Act, because they are the guys who will bring skilling and lay to book because the errors of omission and commission that these gentlemen had practiced in their time, have in a sense, visited the CEOs of those companies. The perception is that something has happened because of the errors of a handful of people and that something is negative, that something is imposed, that something is a repressive regime. I think, we need to get away from all of that.

Corporate governance would have arrived only if those that are expected to practice it, practice it because they see value in it, not because as people often ask me, the fear of being de-listed in India, if you don't comply with Clause 49 of the listing agreement, not because when the company law is enacted, you would be found to be non-compliant with the provisions of the Company Act but because you see value in it for all stakeholders. I think, that message has to get across. That debate about corporate governance has to proceed far beyond where it was, in the last twelve months in this country, which is the arithmetic of board composition, which is the cost of certification of internal controls.

I believe, businessmen all over understand the difference between expenditure and investment and my effort and I hope you will share this effort with me has been to convince them that the money that you spend on putting your systems in place and certifying that systems are in place ought to be seen as investment in a concern that is hoping to capture market share, hoping to capture mind share, hoping to improve the lot of the common man and of the stakeholder and society and not as an item of expenditure that is postponable, that is avoidable, that is something that some unthinking person has imposed on you.

If you talk to regulators, they will explain corporate governance, in terms of the simple formula 'comply or explain'. To my mind, that is an unsatisfactory approach. Comply, the word itself implies that somebody is forcing you to do it, what the British describe as the fear of the policeman, your conduct is good because somebody is standing behind you to ensure that you don't step out of the line. Comply or explain, explain to your regulator, explain to a larger constituency, explain to your stakeholders, why you haven't measured up to a prescriptive regime. I would rather that we talk in terms of practice or perish. Let us understand that if you do not practice a value driven corporate governance, your company will not stay the course. People will ask questions, even in a country as tolerant as India, even in a country where attendance at AGMs is poor, even in a country where people don't ask questions because they believe, managements have a divine right to run companies as they see fit.

People will start asking questions, people will start voting, people will start demanding compliance with values and this brings me to one of the four issues that was mentioned by Mr. Bouchez, which is the role of the institutional investor. If you look at the shareholding patterns of companies in India, you will find that institutional investors have significant shareholdings. Have those investors measured upto your expectation and mine. I will not answer that question here. I will just leave you with the thought because there are two ways in which shareholders, especially institutional shareholders ought to act when companies don't function as well as they need to because institutional investors represent money of a number of people. They ought to ask questions in Board rooms, they ought to ask questions in AGMs, they ought to vote effectively. When all of that doesn't work, they have to exit the company because when a large institutional exits a company, the market will then judge that company on the basis of that one move and will then accord the right kind or the wrong kind of value to that company.

So to begin with, I believe, institutional investors must vote with their hands. If that doesn't work, then you vote with your feet, you exit your company. If institutional investors remain passive, if they believe that they have done the good deed the day they invested and thereafter they will wait for whatever comes to them by the way of dividends or if their representatives in Board rooms believe that peaceful co-existence with management is why they are in the Board rooms, in the first place, if they practice the philosophy that 'ask no questions, you will be told no lies', is the best way to live peacefully, then clearly, institutional investors don't deserve to have your money mine We must ask these questions of them as we ask of company managements.

In India, not so long ago and I am glad that, that debate doesn't exist today. The question was raised, why do you need corporate governance for Public Sector Undertakings or State Owned Enterprises. After all, these are owned by the Government. Government represents the people, the people includes the shareholders, the tax payers. Why do you then need to have governance for those people? To those that ask me that question and I am often asked a lot of difficult questions on these subjects, my answer is simply this that in 1992 when banking sector reform was introduced in this country and you had income recognition and asset classification norms, the question was asked, a 100% Government owned bank, why does it need to make provisions for non-performing assets. The question clearly is based on an understanding that ownership captures within itself all the essence of good values.

Sometimes, people performing ownership functions also are captive to this kind of erroneous impression. Sometimes, you find that ownership and management are not distinguished in the minds of those who perform ownership functions so there is a lot of back-seat driving, there is a lot of micro-management, often in the name of regulation, there is control. I think, we need to understand also, as regulators that our job is not to ensure how individual companies are run but to create the environment in which companies run according to a value system, call it corporate governance, call it what you will, will deliver value to all stakeholders.

As of 01 January 2006, all of you know that the checklist approach to corporate governance is in place as far as listed entities in India are concerned because Clause 49 of the listing agreement lays down in considerable detail, what listed companies are expected to do in the area of corporate governance. Many people believe that, that is the end of the story. I want you to believe and I want those outside of this room to believe that, that's the beginning of the story, that really, in a sense, indicates to you something like, what the chapter headings in a book do. Now, you got to put flesh into that.

To take the simple question of Board composition, many people believe that if you put the right number of so called, independent directors on the board, your conduct is consistent with the prescriptive regime . What they don't realize is that if in selecting those people that you put on the boards, you don't do so with a sense of care and caution and commitment. You will destroy value rather than add value because this is not a game of numbers.

People will perceive, what managements have done, what promoters have done, when they look at the composition of directors. This does not remain secret. They will see relationships that exist to the disadvantage of the minority shareholders. They will read into those, not so fair intent and then they will, in the market place, not reward such companies, that's the future that will happen in this country. As I said, we are a tolerant lot, we are a patient lot but when we move in that direction, we move with a certainty of purpose and I am sure, we will get their during 2006 as far as most companies are concerned and when a large majority of companies practice corporate governance, those that don't will be seen as standing outside the crowd of performers. They will be seen as those that destroy value, they will be seen as those that don't exist for stakeholders and then the market will decide, whether they need to exist or don't need to exist. You don't need a regulator to do that. You don't need Stock Exchanges to say that you are violating listing agreements. People that invest in the market, will take care of those after this message gets across to them that value driven companies are the best insurance for all stakeholders.

I think, what happens, with most of human conduct is that we have a fear of the unknown. You heard about the quarterly rendering of accounts, which was initially seen as a huge obstacle. Today, no one even talks about it. If for argument sake, you sat with a group of CEO's and told them that, why don't we do away with this and get back to annual rendering of accounts or half yearly rendering, you won't have too many buyers there because that's now become a way of life.

I want to leave you with this thought and that is that notwithstanding all the work that we need to do in the area of corporate governance, if you look around you, if you look at governance practiced in several other countries, we aren't doing too badly at all. We are doing better than many other countries, not just in this region but in even countries outside this region. That does not mean that we need to wait and wait for them to catch up with us. What that means is that consistent, with the leadership position, this country had enjoyed, several years ago and the kind of leadership position this country will reclaim in the 21st Century, consistent with that approach, we need to set bench-marks, we need to raise the bar, we need to get the movement going and this, I believe, is an area where India can play a legitimate leadership role.

I compliment the organizers of this conference for the effort that they have put in, for the kind of subjects that they have addressed, for the participants that they have drawn and for doing this in early 2006 because it somehow fits in with my understanding that the theory is in place. What we need now is the practice of corporate governance and this will be the year in which we get started with the practice. I wish you luck in that Endeavour. Thank you.

Closing Remarks:
Mr. H. M. Choraria, President, Institute of Company Secretaries of India
Mr. M. Damodaran, Mr. R. Seshasayee, Mr. Ueda, Mr. Bouchez and Mr. Banerjee and participants.

The economy of the world is taking a different turn and a different direction. The investors are looking to India, China and other Asian economies for the momentum of growth as well as for equity. With both Chinese and Indian economies slated to grow around 10% per annum, the focus of economic activity and investment is shifting towards these economies.

On the legal financial sector, economic and regulatory reforms front, the Indian political economy is taking rapid stride. The task is daunting and complex, the challenges are enormous but the determination is rock solid and a conference of this stature on policy dialogue on corporate governance in India is happening soon after the Indian Stock market having crossed the psychological barrier of 10,000, is a bench-mark for National Foundation for Corporate Governance itself with OECD and Ministry of Company Affairs, the CII and the ICSI and ICAI joining hands for the policy dialogue on corporate governance and the Valedictory session of the dialogue being blessed by Chief of SEBI, Shri. Damodaranji, the Universe of investors from the world over is being assured that India will be the pride and safe destination for their money.

Over the past two days you have heard a galaxy of experts and corporate leaders about the determined progress, India is making on the various issues and principles of its corporate governance framework across the private and state sector. The conference thus was able to flag various policy issues that need to be addressed to improve the corporate governance framework in India. The enforcement of law and the dispatch of business in tribunals and the Court to withstand the pressure of speed and accuracy demanded by the globalized environment were on the forefront when the policies were discussed, the role of professional as professionals are the centre figure in the corporates. They have to see that substance should be given to importance than the form.

As an Institute, we are also aware of our role. We are in the process of building capacities for our members. We have come out with various standards and guidance notes to harmonize and standardize the practices and procedures followed while undertaking the corporate activities. These guidance standards suggest, best practices followed by professionals, corporates all over the world. As you are aware, the three bills governing the three professional institutes are, Parliament, it is likely to be enacted shortly. The Bill also contains two very important provisions, one is Quality Review Board. The Board will prescribe and review the standards of attestation services, it will go a long way, then there will be drastic change in mechanism for disciplinary actions and once the Bill is in place, the justice will be delivered faster and the cases will be disposed off quickly.

Thank you.