

## THE VIEW FROM THE OUTSIDE 29<sup>TH</sup> JULY, 2014 | MUMBAI

### SUMMARY OF ROUNDTABLE DISCUSSIONS WITH HEADS OF PROXY ADVISORY FIRMS IN INDIA

#### Rationale

As a part of Excellence Enablers Private Limited's ongoing efforts to examine the various aspects of Corporate Governance from the point of view of different stakeholders, it was considered extremely useful to get the perspective of the Proxy Advisory firms who have an objective view from the outside on the goings on within corporate entities and the implications thereof for stakeholders. Most viewpoints and perceptions on Corporate Governance or on a company represent a view from the inside depending on the stakeholders' perception of how certain actions of the corporate entity impact them. The perspective of the Proxy Advisory Firms as enlightened observers of the corporate scene will bring a sense of objectivity and completeness to the exercise that we have embarked on.

#### DISCUSSIONS

##### Need for Proxy advisory firms

- Proxy advisory firms were set up because companies often ignored the perspective of the retail shareholders who could not raise their voices.

##### Corporate Governance in India

- Both Indian promoters and Indian MNCs leave a lot to be desired with respect to Corporate Governance. Governance should not be equated to complying with the law.
- The governance model in India is not suited to the shareholding pattern in the country.
- Positions such as Chairman cum Managing Director (CMD) / Executive Chairman and Executive Managing Director (MD) / Chairperson Promoter negate the essence of Corporate Governance.
- Indian companies should consider all their stakeholders as important and not only their shareholders.
- Markets attach a governance premium to stocks of companies. Sooner rather than later, hopefully constructive criticism will become a norm in Indian Boards.

##### The Companies Act, 2013

- The Companies Act, 2013 is in the right direction. However, laws on Governance should have been different for the Public companies and the Private companies.
- There are a number of inconsistencies in the Act. Under pressure from big corporate houses, inconsistent circulars and notifications have been issued.

##### Boards

- Boards are often unaware of their role and fail to act in the right manner.
- Culture plays an important role in Indian Boardrooms. Most Independent Directors (IDs) do not voice their concerns in Board meetings, even though they might raise them in private conversations. If any one ID articulates her concern(s) in the boardroom, others might find it easier to do so too.
- Unlike the position now, the average age of Board members should not be too high.
- Instead of mandating one woman director on the Board, law should have mandated an independent woman director since companies tend to induct a woman relative on the Board. Further, most companies waited till the deadline before finding a woman director. The general intention was to avoid complying with the law.
- Since most companies schedule their Audit Committee (AC) meetings on the same day as the Board Meetings, there is a pressure on the committee to finish its meeting in a limited time. AC meetings, especially the one that considers the final accounts, should be scheduled a day prior to the Board

meeting. Analyst meeting post the Board Meeting also adds to the pressure of completing the meeting in a limited time.

- Most Directors are uncomfortable with the Chairperson's evaluation. In case one director articulates her concern about the Chair, it will persuade the others to speak too. Further, with younger Directors being inducted to the Board, this would happen sooner rather than later since they are less tolerant, and would ask the questions that come to their minds.
- Annual report of a subsidiary is often not prepared since its report and accounts have to be consolidated with the annual report of the parent company.
- DIR 11, an online form, has to be filed by a Director when she resigns from a Board, in which *inter alia* she has to give the reason for her resignation. Unlike before when a Chairperson had the option of not sharing a resignation letter with the Board, DIR 11 is a step towards transparency. However, little can be done if a Director chooses not to state the real reason behind her resignation. In times to come, with class action suits being a possibility, hopefully, some IDs will state the real reasons behind their exits.

### Independent Directors

- At the time of appointment, the role of IDs is not defined. They form a cozy club and often do not raise issues in the boardroom. They shy away from dissenting, even if they feel strongly about the issue. In case some IDs raise issues, it is often not appreciated by the promoter.
- Stakeholders expect IDs to perform their assigned role once they are appointed to the Board.
- The desire to contribute to the deliberations at the Board should be a motivator for IDs. Unfortunately, most IDs do not want to rock the boat, leading to suboptimal quality of Board deliberations.
- Indian Boards should have a lead ID, especially if the Board has an executive Chairperson. However, without the law backing such a position, the effectiveness of a Lead ID is questionable.
- Compensation to IDs should be balanced so that it does not adversely impact their independence.
- Before joining a Board, an ID should consider reputational risks too.

### Managements

- Management of a company is expected to be fair in delivering value to the stakeholders of the company. However, this fairness is tough to define.
- Managements sometimes feel that retail shareholders invest their money in the stocks of a company only for short term gains and so, it should not result in an increased accountability of the company to them.

### Annual General Meetings (AGMs)

- It is a common practice for companies to appropriately place their own employees at AGMs.
- Certain Related Party Transactions (RPTs) between a parent and a subsidiary company, especially on issues such as royalty, should be taken to the shareholders.
- E-voting, a powerful tool for shareholders, is a positive step. Show of hands does not reflect the number of shares held by a shareholder. Companies are unhappy with this provision since they would know the result of each resolution in advance of the AGM, and it could be embarrassing for them. Earlier, if any irregularity in voting was suspected, for the results to be reconsidered, Registrar of Companies (ROC) required support of at least 150 shareholders, which was often difficult to get.
- Initially, there was confusion on e-voting. Companies were not sure whether e-voting was to replace physical voting or whether it was in addition to physical voting. Companies also had to ensure that duplicate voting was avoided. Ministry of Corporate Affairs (MCA) too did not provide any clarity on this.
- If e-voting is made voluntary, and not mandatory, it will kill the spirit of Governance.

### Audit Committee, Audit and Auditors

- Regulator(s) should assume a bigger role in increasing and improving an auditor's disclosure and effectiveness.

- The quality of accounts of companies is questionable. Auditors do not get adequate time to audit the accounts because each company wants to be the first to declare its results. The number of disclaimers made by an auditor has increased. To make matters worse, a delay in declaring results is linked with an increased chance of them being engineered.
- There are a number of controls on the preparation and presentation of financials. Institute of Chartered Accountants of India (ICAI) too sends out its suggestions periodically. However, this does not necessarily translate into improved effectiveness of the accounts.
- If an auditor raises tough questions or refuses to sign the audit report, she is changed by the company/ management. Boards too fail to ask the right questions because of the perceived pressure of promoters on the Board.
- For change of auditors, ACs lean on managements. They fail to recognise their role of choosing an auditor, and taking this decision to shareholders for ratification.
- Auditors should be more aware that they are accountable to the shareholders of a company who appoint them.
- An Audit firm should not be a limited liability partnership (LLP) since there is unlimited liability in the nature of its work.
- In RPTs, companies often look at mutuality of interest. It is easy for companies to find loopholes in the law and use them to their advantage.

**EXCELLENCE ENABLERS**  
**CORPORATE GOVERNANCE SPECIALISTS**

**ADDING VALUE, NOT TICKING BOXES**

## **EXCELLENCE ENABLERS PRIVATE LIMITED**

Excellence Enablers Private Limited (EEPL) is an initiative that focuses on implementation of better corporate governance practices, improvement of Board performance, including audit and evaluation, training of directors and engagement with stakeholders of governance. It is founded on the firm belief that the gap between performance and potential can, and must, be bridged. Consistent with that belief, all our offerings are tailor-made to the specific needs of the organisation or the individuals concerned.

Given that our founder, Mr. M. Damodaran, introduced Clause 49 of the Listing Agreement, dealing with corporate governance in India, and has been a part of both public sector and private sector Boards, as well as performing and underperforming Boards, we offer experience based consultancy and courses on the journey from compliance through governance to performance. Further, given his success in turning around organisations that had been written off, we are uniquely positioned to offer courses on leadership, organisational transformation, and building winning teams.

EEPL has a number of highly experienced and renowned consultants and faculty members who have helped, and continue to help, us deliver programmes that have been well received.

### **All rights reserved.**

No part of this publication may be reproduced, stored in retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of Excellence Enablers Private Limited.

Views expressed do not represent the views of Excellence Enablers Private Limited and are a summary record of the observations made by the participants at the interface.