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CORPORATE GOVERNANCE SPECIALISTS
(AN M. DAMODARAN INITIATIVE)

Expert Expressions
Corporate Governance Demystified

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*The fourth Annual 2 day Corporate Governance Summit, Gatekeepers of Governance, held on 9th and 10th November, 2017, at Trident, BKC, Mumbai, brought together persons, rich in experience and with varied exposure, to deliberate on contemporary as well as timeless issues in Corporate Governance. In the presence of a truly enlightened and engaging audience, the panelists shared their perceptions of the practices, processes and principles of Corporate Governance. This newsletter, the twenty first in the series, provides a small example of the takeaways.*

**Editor**

## GATEKEEPERS OF GOVERNANCE


Setting the tone for 2 days of deliberations, Mr. Azim Premji in his Keynote address highlighted the fact that good corporates do not wait for rules and regulations in order to put in place sound governance policies and practices. He identified four important pillars, namely, principles, transparency, integrity and responsibility for an entrepreneur to run a sustainable business that caters to the interest of all stakeholders. Advising young entrepreneurs to use the moral compass when confronted with tough choices, he emphasized that if anyone compromised on her principles, repetition was inevitable. Mr. Ramesh Abhishek in his Keynote address indicated that a number of foreign entities coming in through the FDI route wanted to tie up with local enterprises and their universe of choice will ordinarily be limited to enterprises with good standards of Corporate Governance. In his address, Mr. Ajay Tyagi, Chairman, SEBI, referred to the fact that well governed companies command a premium in the market place. He spoke of three regulatory principles, namely, balanced Board representation (with shareholder directors, management directors and independent directors), balancing profits with public interest, and an effective enforcement mechanism. In conclusion he mentioned that it was necessary to think out of the box to put in place a relevant regime for Corporate Governance. Left unsaid was the inevitable conclusion that governance would have to move from ticking boxes to complying with principles that factor in the interest of all stakeholders.

In the context of a seeming explosion on the regulatory front, the Summit addressed the question of regulatory impact assessment. The right architecture, the right objectives, the right regulations, and the recognition of ground realities were identified as the cornerstones of a good regulatory framework. It was noted that regulations focus more on the protective role rather than the productive role of Directors. The fiduciary responsibility of the Board towards all stakeholders was highlighted. There seemed to be an anomaly in that companies are supposed to be the democracy of the majority while regulations attempted to protect the minority interests. The regulator's dilemma was whether to write out specific regulations and be accused of being overly prescriptive, or to lay down only the principles and be accused of leaving too much for interpretation. The problem of smaller companies having to comply with the same regulations as the larger companies was stressed. It was felt that systemically important institutions should be subjected to a higher level of regulation, leaving smaller companies to bear a lesser regulatory burden. However detailed the regulations are, they cannot prevent corporate failure, and even in the case of corporate fraud, the action, more often than not, is corrective and not preventive. The need for quick and effective enforcement action by the regulators was highlighted.

Discussions on the rationale, if any, for different Corporate Governance standards in PSUs brought up some stark realities. Should social objectives lead to lesser valuations? Was the possibility of second guessing by statutory authorities and investigative agencies leading to paralysis in decision making? Was the unwillingness of the

majority shareholder to distinguish between ownership and management the mother problem? Were the CEOs that did not resist extraneous pressure, being pushed around more?

Is all of the blame for Corporate Governance failures to be laid at the promoters doorsteps? Interesting insights such as usurious tax rates encouraging dishonesty and the perception that profit making was bad, if not downright illegal, were forcefully articulated. The fact that profitability and good governance can go hand in hand found emphatic endorsement. The increasing disconnect between stakeholders and management was noticed with concern. Whether the business put employees first or customers first, it needed to heed their voice. Even differences within the organization become power plays rather than exercises in communication, with objectivity sacrificed along the way.

When Governance comes, can IDs be far behind? It was agreed that independence of mind cannot be legislated. Persons with right values and beliefs and a strong character could alone be truly independent. On getting into Boardrooms, IDs with counterproductive knowledge and experience should unlearn much of what they know. A less appreciated component of the role of IDs is that they should protect promoters from themselves and their excesses. Anyone that cannot commit quality time should not overstay their welcome on the Board.

On day 2, the enlightened audience got to hear firsthand from Mr. Uday Kotak, why the Kotak Committee did what it did. Responding to observations that the recommendations constituted incrementalism and did not travel far enough, Mr. Kotak said that the Committee's approach was evolutionary and its attempt was to get a buy-in from all the 25 members drawn from different interest groups. Even then, two Ministries of Government of India, in separate letters. chose to express serious reservations on grounds of jurisdiction, cost and the like. On PSU governance, he was of the view that a Holdco structure, which would distance Government, might be preferable from a governance perspective.

Given recent skirmishes in the corporate arena, with Boards unable to hold their own, a question that needed to be addressed was " Do Boards matter?" While the broad distinction between Boards that performed and those that did not was noted, the question arose whether Boards that started out as collegial and cohesive, became collusive with the passage of time. In a young country, with fast changes ushered by technology, was outdated knowledge in boardrooms being passed off as wisdom? The role of the Chairperson is ensuring that Boards measured up to expectations was not lost sight of.

With statutory recognition accorded to them, were KMPs the puppeteers in the Boardroom scripting the proceedings, with Directors being reduced to actors? It was recognized that this perception, while true in some cases, went beyond their assigned role in Boardrooms. With suitable empowerment, the journey from supporting actor to scriptwriter seems relatively easy.

What has majorly distinguished Gatekeepers of Governance from other interactions on Corporate Governance is the quality of the audience. The Fourth edition held this November saw animated discussions with an enlightened audience pitching in. They came, they engaged and they concurred (mostly!).

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