

# Conversations on Corporate Governance

## Dialogue 2: Corporate Governance and Financial Regulations



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## Dialogue 2: Corporate Governance and Financial Sector Regulations

Corporate governance practices help to build a healthy and transparent relationship among different sets of stakeholders of a company and enable the building of sustainable businesses. In India, Corporate governance has evolved largely through legislation, including subordinate legislation. Based on the implementation of the recommendations of several committees that were set up from time to time, there has been a significant improvement in Board composition, independence of the Board, Board evaluation as well as increased disclosures through Management Discussion and Analysis (MDA) and other parts of the annual report. Thus, regulation plays an important role in strengthening the culture of Corporate Governance in a company. However, to make regulations efficient and effective with the changing times, it is imperative for the regulators to carry out timely assessments of the relevance of existing regulations and impact of proposed regulations both in terms of its cost and benefit to the society.

In this context, NSE, jointly with Excellence Enablers - a corporate governance advisory firm, had recently organized a **webinar on “Corporate Governance and Financial Sector Regulations”** – the second dialogue in the three-part Corporate Governance Webinar Series on September 22<sup>nd</sup>, 2020.<sup>1</sup> The session involved thought-provoking discussions with a high-profile panel – Mr. M. Damodaran, Former SEBI Chairman and Founder, Excellence Enablers, Mr. S. Mahalingam, Former CFO and Executive Director, TCS and Mr. V. G. Kannan, Former Chief Executive, IBA and Former MD, SBI – where they shared their views on the role of regulation in promoting corporate governance. In this report, we summarise the key highlights from the deliberations.

- What is the need for clear, concise and well-defined regulations?: Corporate governance seeks to ensure that the legitimate expectations of all stakeholders are met. This is premised on an acceptable behaviour pattern attempted to be ensured through appropriate regulations. There is scepticism around regulations either because they are the result of kneejerk reactions to certain events or because of regulatory hyperactivity, leading to regulations that do not, in a cost-effective manner, serve the public good. With clarity in objectives, it is easier to write regulations that are relevant and congruous with existing laws, rules and regulations, no matter which regulatory organisation they originate from. Consultation among regulators and lawmakers is important to rule out inconsistency in provisions, which might confuse the law-abiding corporate entities and leave loopholes for exploitation by the less well-intentioned.
- Appropriate vs excessive regulations: Considerable benefits have accrued to stakeholders because of regulatory changes such as auditor rotation, decriminalisation of some offences under the Companies Act, 2013, Business Responsibility Report and the like. Board meetings and Committee meetings have increased in number, and the quality of deliberations has considerably improved. However, regulatory overreach that results in control and micro-management reduces the initiative and effectiveness of Boards, and in the case of banks and similar institutions, risk aversion becomes more pronounced. An excessively prescriptive regulatory regime will result in Boards of Directors becoming Boards of Compliance, leaving them with little time to discharge other functions relating to providing guidance to management. Regulations should not result in Boards getting involved in operational matters. That compliance is a support function and should not lead to reduced management bandwidth for business matters, needs to be recognised.

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Please click [here](#) to listen to the recording of the webinar.

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<sup>1</sup> The first dialogue held on August 19<sup>th</sup>, 2020 was on the topic “Crisis Management: The Lessons Learnt. Please click on the link to watch the recording on [YouTube](#) and read the summary report on [NSE’s website](#).

- Need for Regulatory Impact Assessment (RIA): Compliance should not have an excessively overarching role that can reduce the significance of the risk management function and the vigilance function. If regulations are to have contemporary relevance, and be cost effective, it is necessary to have a proper Regulatory Impact Assessment (RIA) mechanism. This could be ensured by having, in each regulatory organisation, an authority that previews proposed regulations, before they come into being, and eliminates existing regulations which have lost relevance.
- Regulation should address the twin problems of conflict of interest and asymmetry of information: While lawmakers and securities market Regulators in India and elsewhere have put in place instruments such as regulations on Prohibition of Insider Trading and the Audit Committee's approval of Related Party Transactions, it needs to be examined whether more needs to be done in this regard, without of course adversely impacting the ability to do business.
- Should regulation be ownership-neutral?: Where Government is the majority shareholder, there is a tendency on the part of regulatory organisations to grant either exemptions or extensions of time. On the other hand, public sector undertakings must cope with CAG audits and supervision by the CVC, in addition to the ownership role of the administrative Ministries sometimes translating into supervision. This has resulted in Boards of public sector undertakings spending far too much time on compliance than on the conduct of business. The requirement of a level playing field is, therefore, both urgent and important.
- Single vs multiple regulators: Questions have often been raised whether a single regulator or a lesser number of regulators is a solution to the confusion that sometimes exists because of multiple regulators. While there can be a lesser number of regulators based on the commonality of the regulated universe or identifiable synergies, this should not be done mechanically with a focus only on the number of regulators. A single regulator has been experimented with in some other jurisdictions and has been found to be not free from complications.
- Regulation has both a stock and a flow element: A Regulatory Review Authority that addresses the stock element of regulations that have ceased to be relevant is a crying need. Additionally, it should preview proposed regulations, which addresses the flow element of regulation. It is necessary to examine the advantages that might accrue from having sunset clauses in regulations, so that they are compulsorily revisited to assess their continuing relevance. An Authority for Advanced Rulings will also help in ensuring *ab initio* that regulated entities do not, for bona fide reasons, act in a manner, which is inconsistent with regulations. Since ignorance of the law is no excuse, compliance should be facilitated by writing laws and regulations in simple language, preferably with use of simple sentences.
- There is a need to evaluate the overall cost and benefit of compliance to the society: While compliance is an important requirement, the fact that it comes with a cost should not be lost sight of. Regulatory oversight should not lead to intrusion and to shutting out innovation in the corporate sector. The price paid by society for compliance should not be disproportionate to the benefit that the prospective regulation seeks to confer. A Stewardship Code, where institutional

investors assume additional responsibilities, is often a good instrument to ensure meaningful corporate governance. Capacity building in regulatory organisations in-line with the size and complexity of the regulated universe undergoing significant changes is also important.

- An appropriate corporate culture often drives higher standards of Corporate Governance: With increasing maturity over time, both in regulatory organisations and regulated space, governance should be driven by trust and not by excessive prescriptions. Comply or Explain (corex) seems to be the best approach to secure the right balance between compliance/governance and business. It is time to have a regulator-regulatee relationship based on trust. “Trust but verify” ought to be the philosophy underlying meaningful and pragmatic regulation.

## Key speakers

### Welcome address

Mr. Vikram Limaye, *MD and CEO, NSE*

### Introductory remarks

Dr. Tirthankar Patnaik, *Chief Economist, NSE*

### Panel Discussion



**S. Mahalingam**  
*Former CFO and Executive Director, TCS*

Mr. S. Mahalingam started his career with TCS in 1968, when the company had begun its operations, and served it for over 4 decades. In TCS, he worked across all departments, ranging from sales to business and operations to finance and strategy. He has managed the company's operations in London and New York during its early days. He was appointed as CFO of TCS in 2003, and as the company's Executive Director in 2007. He played a key role in helping TCS emerge as a successful global company. He has also headed the Confederation of Indian Industry (CII) – Southern region.



**V. G. Kannan**  
*Former Chief Executive, IBA and Former MD, SBI*

Mr. V.G. Kannan was the Chief Executive of Indian Banks' Association (IBA). He served as the Managing Director of SBI, in charge of Associates and Subsidiaries. He held a Board level position in the Bank supervising the businesses of SBI's five Associates Banks and nine Indian subsidiaries. Prior to being appointed as Managing Director of SBI, he was the Managing Director of SBI Capital Markets Limited (SBICAP), the largest Indian Investment Banking Company in India. In addition to holding a number of important positions in SBI, he has had extensive exposure to diverse financial activities such as Asset Management, Life Insurance, General Insurance, Custodial Services, Primary Dealership, Investment Banking, Broking, Credit Cards, Pension Funds and Factoring services.



**M Damodaran**  
*Chairperson, Excellence Enablers and Former Chairman, SEBI, UTI and IDBI*

Mr. M. Damodaran is Chairperson, Excellence Enablers Private Limited and Former Chairman of SEBI, UTI and IDBI. He serves on Boards of Directors, including as Non-Executive Chairperson of InterGlobe Aviation, and on Advisory Boards of several companies. He successfully led the revival efforts of UTI and IDBI. He created the unique Stressed Assets Stabilisation Fund (SASF) which helped clean IDBI's books. He was also the Former elected Chairman of the International Organization of Securities Commissions (IOSCO)'s 80-member Emerging Markets Committee for two years. He has chaired several committees of the Government of India, RBI and some chambers of commerce. He was Former Chief Secretary of the Government of Tripura. He is a recipient of several awards and recognitions.

## About National Stock Exchange of India Limited

National Stock Exchange of India Ltd. (NSE) is the world's largest derivatives exchange by trading volume as per the statistics published by Futures Industry Association (FIA) for 2019 and ranked 3rd in the world in the cash equities segment by number of trades as per the statistics published by the World Federation of Exchanges (WFE). NSE was the first exchange in India to implement electronic or screen-based trading. It began operations in 1994 and is ranked as the largest stock exchange in India in terms of total and average daily turnover for equity shares every year since 1995, based on SEBI data. NSE has a fully-integrated business model comprising exchange listings, trading services, clearing and settlement services, indices, market data feeds, technology solutions and financial education offerings. NSE also oversees compliance by trading and clearing members with the rules and regulations of the exchange. NSE is a pioneer in technology and ensures the reliability and performance of its systems through a culture of innovation and investment in technology. NSE believes that the scale and breadth of its products and services, sustained leadership positions across multiple asset classes in India and globally enable it to be highly reactive to market demands and changes and deliver innovation in both trading and non-trading businesses to provide high-quality data and services to market participants and clients.

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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.

For more information, please visit: [www.excellenceenablers.com](http://www.excellenceenablers.com)

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