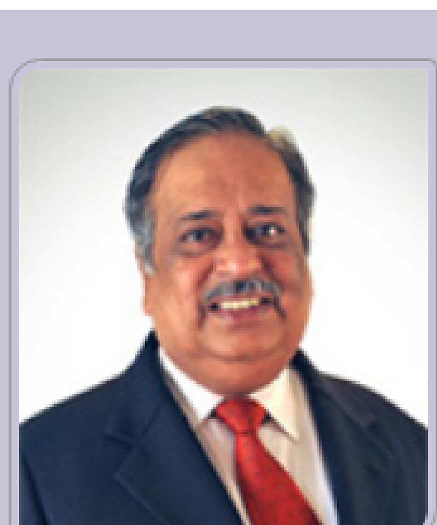
A series of interfaces with the entire range of stakeholders of Corporate Governance, has given rise to a number of questions, issues, concerns and, happily, some suggestions and solutions. In each issue of this monthly newsletter, we will be getting two experts to articulate their thoughts on a specific topic. The twelfth issue is now with you. Needless to add, we welcome your feedback.

Editor

DO DISCLAIMERS HURT DISCLOSURES?



We live life in the increasingly shrinking space between disclaimers and disclosures. An opinion, fenced in, and sometimes hidden, by "ifs, buts, and wherefores" cannot give rise to much confidence. Obfuscating what ought to be obvious, advice that is rendered, and paid for, sometimes proves the adage that language was given to man to conceal his thoughts. Reading between the lines is no longer an option, but a compulsion. As you will see below, Vinita Bali and Eki Kshirsagar don't pull their punches.

M. Damodaran

Chairperson, Excellence Enablers

Former Chairman, SEBI, UTI and IDBI

Vinita Bali

Independent Non-Executive Director on Boards
and Former Managing Director
and Chief Executive Officer,Britannia Industries

Common sense and logic suggest that any disclosure with a disclaimer, in its very essence, is contradictory. The dictionary defines disclosure as "the act of making something known", whereas a disclaimer is a statement that denies something, especially responsibility. Furthermore, a disclaimer is a formal statement that the person or company making the statement is not legally responsible for something.

The purpose of a disclosure is to give added information to financial statements, usually as an explanation for activities that have significantly influenced the company's financial results. If we hold this to be true, then a statement by auditors that they do not express an opinion on the financial position of a firm because their examination is not broad enough to enable them to form an opinion, is contradictory at best, and effectively, an abdication of responsibility. The role of auditors is to report and comment on governance practices in the companies they audit, and disclosures are meant to provide shareholders with the information that they need to assess the performance of the company and the directors' stewardship of their assets. As share ownership moves from individuals to institutions, the responsibility for reporting in fact increases.

The objective must therefore be to continually improve the quality, relevance, usefulness and timeliness of information to shareholders. Additionally, with the changing expectations that society and investors have of companies, and the way they fulfil those obligations and duties, Boards now have greater responsibility, including risk management, and the role of Directors is more demanding than it once was.

Disclosures with Disclaimers do not inspire a great sense of confidence.

EA Kshirsagar

Independent Non-Executive Director on Boards
and Former Director-in-charge, A.F. Ferguson & Co.
(Management Consultancy Division)

Do disclaimers hurt disclosures? Of course they do because the adviser's opinion is meant to assure the user of the report that the contents of the report have been independently examined and found to be in order. But wait, life is not so simple! Stricter laws and complex regulations mean that it is not in the interest of the adviser to give a clear Yea or Nay. So begins the great game of drafting the report and its disclaimers! The denser the language, the more twisted the syntax, the better it is. After all, the purpose for all concerned is to have a report appended. Who reads it anyways? If anyone does, good luck to them to deal with the verbiage.

Many hours of my youth were wasted in drafting such reports / notes for certificates to the Controller of Capital Issues, the Controller of Imports etc. These august bodies had the power of life and death over the client, and all they wanted was a certificate to be appended. What it said was often not read. So the conscientious professional put in a forest of Christmas trees of disclaimers and got his fee. But why was all this charade required? Those were the Permit / Licence Raj days.

We are now liberated, or so we think. Now the devil has taken on a new avatar as the Regulator. He is the natural descendant of the previous controllers and has the same DNA. Therefore, the same need for disclosures and reports thereon. So the cycle of life goes on as before!.

READERSPEAK - Contemporary Issues in Corporate Governance

"G. Pradeepkumar, Chief Executive Officer, Union Asset Management Company"

"This was a brilliant piece explaining the concept of corporate governance and the key issues that one faces today on this subject, in the most lucid language. It also sets out clear actions that could be undertaken by the industry, regulators and the government to improve governance. I really wish that every person with interest in corporate governance reads this newsletter."

Do let us know of any specific issues you would like to see addressed in subsequent issues.