THE WEEK

Indian companies have made positive progress in corporate governance

The survey says that companies should conduct Shareholder Satisfaction Survey

By Abhinav Singh Updated: March 09, 2022 15:06 IST

Companies operating in India have made positive progress towards adopting corporate governance standards in India though there are still a number of aspects which still need attention. As per the second edition of the Excellence Enabler's Survey on Corporate Governance and Business Responsibility Report there is a lot more that is needed on behalf of companies. This survey also aims to serve as a mirror to the under performing entities and tries to show them where they stand at present, in relation to what many others have attempted, and succeeded in doing.

As per the survey one of the factors that significantly influence the performance of a company's board is its size. With 5 mandatory Board committees, there ought to be enough Board members to ensure that committees are properly constituted, and do not have the same members on almost all committees. The survey observes that much needs to be achieved in this regard as in FY 2021, minimum Board size was 5 (making it non-compliant), and maximum Board size was 19. In the previous 4 FYs, the average size of the Board was 11 in each year.

The survey observes that as per the Section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors. As per Regulation 17(1)(a) of SEBI LODR Regulations, 2015, Board of Directors shall have an optimum combination of executive directors (Eds) and non-executive directors (NEDs) with at least one woman director and not less than fifty percent of the Board of Directors shall comprise of non-executive directors. However an interesting finding of the survey says that as of March 31, 2021, 9 companies (8 PSUs and 1 PSB) had less than the prescribed minimum of 50 percent, and were non-compliant with SEBI LODR Regulations, 2015. That means that much is desired on this front.

Similarly as far as Independent Directors (IDs) are concerned in company boards the survey observes that as on March 31, 2021, 17 companies (of which 11 were PSUs and 2 were PSBs) had less than the prescribed minimum number of IDs, and were non-compliant with law and regulations indicating improvement on this aspect. The survey points out that in order to be effective a Board should have an appropriate mix of EDs and NEDs. In the absence of the optimum mix a company's Board will not get the benefit of the insight of persons who have executive responsibilities and experience.

Another interesting observation in the survey points out that as per the SEBI LODR Regulations, 2015 separation of the posts of Chairperson and MD and CEO has been made voluntary. The Chairperson is the Chairperson of the Board, and the MD is the Chief Executive of the company. Combining these two roles in one person runs counter to the basic principle of Corporate Governance which is that the management, headed by the MD, shall be answerable to the Board headed by the Chairperson. If both the Chairperson and the MD have executive responsibilities, the requirement of Corporate Governance does not get adequately addressed. As per the survey in the previous 4 FYs, 12 PSUs did not have separate Chairperson and MD and one company had a non-executive Chair in FY 17, but has combined the posts of Chair and MD ever since.

The survey also highlights that with companies increasingly having a global presence, geographical diversity of Directors has assumed importance and given the pace and the nature of change in the economy and in the corporate world, induction of younger persons on the Boards will increase relevance of Boards. It has been observed that attempts are being made by companies to induct more younger people in their boards in India.

The survey has also observed that the minimum number of Board meetings prescribed by law and regulations is 4. Experience has however shown that companies that have at least 6 Board meetings, of sufficiently long duration, are able to extract more value from the Boards. Companies that were surveyed have exceeded the minimum of 4 meetings.

One interesting highlight of the survey points to the while there is no provision in the Act prescribing the minimum number of meetings of CSRC (Corporate Social Responsibility Committee), given the enhanced emphasis on the role of the CSRC, it should ideally have 3 meetings during a FY. These could look at sanctioning projects, monitoring the progress of implementation, and assessing the impact of the programmes. Progress is being made as far as convening the meeting of the CSRC by companies.

The survey report highlights the importance of spending on CSR (Corporate Social Responsibility) and spending less than the statutory minimum is indicative of inadequate attention being given to society as a stakeholder. Blaming the shortfall in expenditure on implementing agencies or the lack of projects seems to be an excuse, rather an explanation.

The survey besides a whole lot of other aspects also highlights the risks which the companies face and have identified in order to mitigate them. The survey report points out that risk mitigation commences with a robust process for identification of risks, and an assessment of their impact and probability. Some of the other risks which stand out over the last three FYs are shareholder activism, lack of succession planning, absence of business continuity plan, inadequate HR and talent management, geo-political risks and the scope and coverage of D&O Liability Insurance Policy.

The survey also recommends that companies should conduct Shareholder Satisfaction Survey as it helps them to identify areas for improvement that need to be worked on and to reinforce those aspects that seem to be meeting with the approval of the shareholders. However, a survey conducted through the process of administering questionnaires, many of which can be responded to mechanically, does not serve the purpose that is intended. Questionnaires should contain questions that are open-ended, and invite the respondents to express, in their own words, their thoughts, ideas, and concerns. The multiple-answer format may not yield the desired results.

The survey also states that the Prevention of Sexual Harassment (POSH) of women in the workplace is one of the most important responsibilities of management. Towards this end, cases of this nature are expected to be examined and disposed of, fixing responsibility in instances where the allegation is established. The survey points out that two major weaknesses seem to be the mechanical manner in which cases are "disposed of" and the inadequate punishment that often does not serve as a deterrent or help to create the right working environment.

The survey was conducted by Excellence Enablers Private Limited that specialises in the field of corporate governance and is based on Corporate Governance related vital information, that is available in public domain, about each listed company. The firm has used the Annual reports and website disclosures of NIFTY 100 companies as a base to look at parameters that impact on, and manifest, the Corporate Governance standards of companies.

Source: https://www.theweek.in/news/biz-tech/2022/03/09/indian-companies-have-made-positive-progress-in-corporate-govern.html