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EXCELLENCE THROUGH BUSINESS VALUE ADDITION — A NEW PARADIGM

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It is futile to try to ignore the changes and to pretend that tomorrow will be like yesterday, only more so.
- Peter F. Drucker

One moment has the power to create history; one idea has the power to move millions; one person has the power to change a nation. *– AIG India*

Democracy,IT and a world-class corporate sector are the principal elements of India's soft-power - ET Leader

Remember that respect for India today is only because of its corporate sector. In the last 10 to 12 years, the corporate sector has created some of the best global Indian companies in the world – NR Narayana Murthy

Excellence is a laudable endeavour that delights all the stakeholders in the case of a company. Business value addition is a critical driver in such endeavour in the context of markets becoming global and business processes getting performed at different locations across continents. It is that 'value addition' which translates itself into business 'growth'.

India to be a developed nation by 2020

Free India is celebrating its shashtiabdhapoorthi standing at the threshold of a new destiny marked by a high potential of fast-growth in its economy (with GDP growth-rate likely to cross 9%). The international community has recognized the country's aspiration of becoming a fully developed nation by 2020, thanks to its brain power and service capabilities. India Inc and the professional community should rise as one man to help the nation achieve this goal,even surpass it.

There are, undoubtedly, complex challenges to be faced, like global competition, climate change and environment protection, natural resources depletion, poverty and social inequalities etc along with regional issues like regional imbalances, terrorism and the like.

The purpose of tomorrow's global company will be "to provide ever better goods and services in a way that is profitable and ethical and that respects the environment, individuals and the communities in which it operates" and one of its major challenges in this regard will be to meet the increased customer expectations.

Value addition – a must for meeting the fast changing business dynamics

To address its role as above, India Inc needs to identify its 'value stream' which, apart from supply, production and marketing chains, consists of a logical collection of its people, skills, tools and tasks that interact to promote customer satisfaction which, in turn, generates value to the business. Moreover, business operates today inclusively.

Today's business value distinguishes itself from the value of yesteryears which was measured in a variety of ways from time to time, such as size, volume, range and scale of operations, profitability, geographical spread etc. Today's value is being assessed in terms of 'triple bottom-line' with benefits from business getting extended to all the stakeholders including the society and the planet in terms of safety of its environment.

* FCS.

Business value addition depends on a successful balancing of the following five elements which form the basis for enterprise profitability, healthy community and a safe environment.

— Business as a balance of power between itself, government and civil society;

— Business and individuals think globally;

— Businesses are communities of people;

— Business thrives where society thrives; and

— For people to thrive, the planet must thrive.

In the past, value addition was made in a variety of traditional ways as dictated by the demands of the day. They included modernization, diversification, capacity addition, mergers and acquisitions, business reengineering and a host of others. However, following globalization and liberalization of the Indian economy on the one hand and the information technology revolution on the other, a new dimension has been added – that of steep multiplication of business volumes with quality and utility of products and services having to get benchmarked to world-standards to survive global competition and to grow, without in any way compromising on the traditional values and ethics.

Continuous Process Improvements (CPI) process that underlies today's business involves customer satisfaction, business leadership, managing information and analysis, planning, human resource utilization, quality assurance and quality results. CPI, BPR, BPO, KPO etc working together have led to business value addition in recent years through unprecedented high-volumes of business conducted 24x7 by giant-sized business, industrial and commercial units located and interconnected across the globe. This value addition should translate itself in terms of additional benefits to all the stakeholders as well as our planet Mother Earth.

Inclusive growth and sustainability – the new mantra for business success

Inclusive growth of business will be the new engine for the country's future economic progress. Despite rapid strides made in technological and industrial revolutions, radical improvements in the working of financial markets and creation of world-class scientists, doctors and engineers a continuing aspect of worry is the rising trend in social and economic inequalities in the country.

Individual productivity, and consequently the productive capacities of the whole nation stand severely limited by the following constraints:-

— Half of the country's population of children below the age of 5 is said to be still suffering from malnourishment and nearly 65% of those entering the primary classes are said to be drop outs into manual labour force.

— Nearly 30% of children do not receive even primary education.

— More than 60% of the labour force still remains dependent on agriculture which contributes less than 25% to India's GDP.

— About 40% of population are said to be out of the banking fold.

— 150 million Indians do not have access to drinking water - 750 million Indians do not have decent sanitation.

It is estimated that by 2020, while the world will have a shortage of 47 million working people; India will have a surplus of about 40-50 million. Sustained growth trajectory and profitability of India Inc is feared to be under attack by the rampant HIV/AIDS scourge as a large percentage of those affected by this deadly disease are in the industrial workforce. In addition, drug-resistant strains of infectious diseases like polio, TB are said to claim more than 14 million lives a year the world over. All this could affect the fortunes of many industries, notably, those relying on migrant workers such real estate, capital goods, power and transport, through attrition of the workforce, increased medial payouts, reduction in the number and purchasing power of consumers etc.

The above situation can be remedied only by joint efforts by the Government and the Industry who will necessarily have to reorient their respective agendas by making the growth process more socially and financially inclusive and regionally balanced. Only then, India Inc will be in a position to accelerate its pace, innovate its processes and products so as to ensure better goods and services. It is however distressing to note the country's PM's observations thus: "The emerging challenges, at home and globally, should make us firm in our resolve to be united and to be co-operative. I do not see enough commitment to such consensual agenda in our political parties, in our media, in our intelligentsia, and in our social elite. On this 60th anniversary of our Independence, I call upon every Indian to think of India first and work to make India first."

Dhanendra Kumar, Indian representative of IFC, Washington has recently said "A poised and confident India has set larger goals for inclusive growth and sustainable development. IFC is providing valuable advice and financing to help the private sector contribute to these goals".

Long-term competitive advantage – New millennium policy measures for value-addition

A new cutting edge has emerged – Globalisation – where a company with global perspective and operating policies develops such policies and actions sensitive to the local conditions - to enable penetration into the international markets through innovative measures detailed below in order to secure mega additions to business volumes, turnover and profits while maintaining and improving the product/service quality and utility to the customer and reducing, even avoiding, any damage to the environment.

1. *Unlock Innovation, create Intellectual property through relentless R & D*

   It is only through systematic innovation that a competitive edge would be maintained and long-term strategic intent for economic regeneration can be developed. Innovation should become a part and parcel of the economic activity.

   Corporate India, in recent years, is said to be spending 2.5 times more in paying for technological know-how than in developing its own. Earlier, it was even more at 10 times. It is said that it takes, on an average, 12 long years for a new drug to travel from the lab to the patent and costs an estimated $802 million in the process. Therefore unlock innovation by removing all barriers and hurdles to it. Do not restrict innovation only to the business product; work on processes, organizational structure, business model and the market too. Look for innovation from diverse and multiple sources for it can stem from employees, partners, suppliers and consumers too.

   India's new patent regime has prompted domestic pharma companies to considerably increase their R&D spend over the last five years. Success of any R&D is not so much in the number of patents obtained but in evolving those patents into marketable products. Towards this end, it is necessary for companies to rev up their research efforts to find new manufacturing processes that we can proudly call our own and that are aimed at ushering in new technology, specialty applications capable of being used by Indian industry to position itself well in world markets and reap the benefits of increased efficiency, lower costs and higher margins.

   The new products are also aimed at helping to even out the cyclical business fluctuations while opening up new frontiers. Learning to compete with globally benchmarked norms is integral to our effort at building high-value intellectual property. We have to pursue a growth path that breaks away from low margin products to stable and high margin new products of world-standards.

   India needs to leverage its affordable cost-base to deliver high value innovation to global markets by building excellence and to climb up the value chain. There is great potential in SMEs to rise above their current levels of productivity, if they centralize their R & D efforts in a common resource centre. The future is in moving the SME businesses (which have over 40% share in industrial output consisting of over 8000 value-added products and 35% of direct exports) into high-growth knowledge intensive sectors such as bio-technology and education, well inter-connected to each other and to sources of common funding.

   To cite an example, Megha Insulations promoted by a first-generation entrepreneur is the only company in India that produces CSI (calcium silicate insulation) using indigenous technology and supplying equipment to companies like Essar, ACC, Gujarth Ambuja, Hindalco, BHEL and L&T, among others. Most of these companies have been able to reduce power consumption significantly at their plants using Megha's heat insulation products. Hindalco unit of UP has reported reduction of energy consumption from 16,800 to less than 14,500 kwh per ton of aluminium produced. The cement industry in general is reported to have saved about 15% of energy costs through saving of 28,000 tons of steam coal worth about Rs.8 crore per year.

   Though globally, on an average, intangible brands, know-how contracts and other intangibles form roughly 62% of the enterprise value, in India it is 76% (as against 71% in USA and 72% in Australia). RIL's brand value is put at $ 5.8 billion while the values of TCS and WIPRO are put at $4.02 billion and $2.65 billion, respectively.

2. New initiatives in areas like bio-technology & bio-materials (eg. neem-coated urea and zinc-coated

urea and designing organism that can produce better chemicals or enzymes which can act as industrial catalysts to either produce valuable chemicals or destroy hazardous chemicals to name a few), metals (extraction of alumina from bauxite), rural education, health and entertainment.

3. *Developing CDM (Clean Development Mechanism) Projects*

CDM projects are undertaken not only to aid international efforts at greening the Mother Earth by 2012 (as part of their CSR) but also, though incidentally, to tap the huge financial (mostly foreign exchange) potential in selling the resultant carbon credits/CERs (Carbon emission reductions/rights) representing reductions in greenhouse gas emissions. India is said to have already cornered 43% of the carbon credits market while China has secured so far only 17% of the market. Morgan Stanley, the world's second biggest securities firm, is reported to have created a 'carbon bank' to sell greenhouse gas credits to factories, airlines and offices to voluntarily offset emissions blamed for global warming.Global voluntary emissions credit market had traded volumes of about 23.7 m metric tones last year worth $91 m.

Indian companies should take up high CER-yielding projects like HFC23. ITC, Suzlon, Shriram Fertiliser, Tata Steel, Balrampur Chini and others have already monetized their energy conservation in the International Carbon Credit Exchanges. Recently, GACL (Gujarat Alkalies and Chemicals) is reported to have earned Rs.16.56 crore by selling carbon credits in the international market (due to its switch-over to natural gas fuel from naphtha for its power plant at Dahej. This income is currently accounted for as 'Other income' pending development of an accounting standard for carbon-credits. GACL is said to be now eyeing more revenues by achieving even higher fuel efficiency using cleaner fuels for its plants, through three more CDM projects under Kyoto protocol, which will enable GACL to earn more carbon credits. The Ministry of Environment and Forests, GOI has estimated the global business opportunity to be valued over $ 10 billion.

Environment friendly tag is not yet a value addition point in India but it has great value abroad. Protecting the Environment has become necessary for companies abroad to improve their ranking in the international business and capital markets. International retail majors are insisting on social compliance by their suppliers and service-providers. Likewise, large institutional investors like Pension funds, Trusts etc have, as a policy, support capital issues of managements of only those companies who have established a creditable track record of CSR that includes environment protection.

Indian companies should therefore gear themselves up soon in this regard and arrange, in addition, external assurance also. Green products are a rarity here Eco-tourism, green buildings, environment-friendly hotels, organic food etc account for a miniscule percentage of our economy while consumption expenditure contributes about 64% of the GDP. "The environmental issues as well as technology development are key requirements for a company's competitive advantage. In the not too distant future, environmentally benign manufacturing will become one of industry's greatest strategic challenges, not only from an engineering perspective, but from business and marketing perspectives as well", says Moon B Shin, MD, LG Electronics India. A new breed of green-minded consumers are increasingly opting for environment-friendly producs like paper bags, CNG, biodegradable detergents and soaps, environment-friendly sprays, natural dyes, organic vegetables and fruits, non-polluting fuel, HCFC-free refrigerators and the like.

4. *Re-engineering & Restructuring exercises*

4.1 *Unlocking value from unused or under-used assets/ properties*

FMCG giant HUL is reported to be putting up for sale its real estate assets valued over Rs.400 crore (in cities like Mumbai and Bangalore). Telecom (Cellular) companies are understood to have decided to hiveoff their self-owned tower projects to independent 'stand alone' tower companies This measure is said to unlock investments by individual cellular companies valued over Rs.36, 000 crore (about $10 billion) per year (for additional 90,000 towers each required in FY08 and FY09) This measure will improve returns on investment and thus benefit customers and shareholders.

4.2 *Corporate & Business Restructuring* : Pruning away less effective businesses in terms of growth potential and returns on capital and leaving a smaller but richer mix of businesses for the future. Mergers and amalgamations is yet another mode. Diversification, de-centralisation are also to be considered.

4.3 *Outsourcing non-core operations & promoting e-commerce*

New collaborative business models need to be developed, nurtured and strengthened. Take, for instance, Blue Bird (India) which has outsourced capacity to assemble high quality notebook components manufactured by it to the local players (under the UNEP Global Action Plan (GAP) success mantra 'Think globally-Act locally'). It has also entered into manufacturing and marketing co-branded products in association with strong local brands developed by the local manufacturers in small niche markets.

Promoting e-commerce - i.e., use of computer networks to facilitate the transactions involving production, distribution, sale and delivery of goods and services in the market place- is essential to support global markets. Driving business on the internet – e-commerce- breaks barriers of space and time; it thus holds considerable promise for the companies and for the country majority of whose population is in villages and towns. E-commerce is poised to take over the country in the next few years after cyber legislation is further tightened. Buying and selling of cars, electronic goods, textiles, life-style products, real estate, entertainment goods like TV, Computers, Health equipments and services, Investment products etc. will boost the economic growth manifold.

All this is part of corporate strategy to further strengthen its market position. Thanks to the drop in revenues due to strengthened rupee in overseas market, WIPRO, the IT major, is planning for diversification – by making a foray into consumer products (said to be the business with which it started initially).

5. *Innovative & Cost-effective fund-raising and capital restructuring*

Raising funds from NRIs, FIIs, PEs or through ECBs, FCCBs, with attendant exchange risk covered adequately, to reap financial advantages of minimal debt-service charges and/or tax savings. Many overseas private equity funds have already entered India in a big way, with more to follow. ET of 7th August 2007 has reported thus under the caption owing reliance on cheaper ECBs helps companies bring down cost of funds": "The aggregate interest payment as percentage of total borrowings has come down from 6.4% in FY 06 to 5.6% in FY07 for 719 listed companies for which audited results were available……The reason for the reduction in the cost of funds is the rising share of external commercial borrowings (ECB) which is available at much cheaper rate due to prevailing liquidity conditions globally.

Outstanding ECB is said to have gone up by 84% against an increase of only 21% in domestic borrowings. As a result, the share of ECB in total borrowing has gone up from 21% in FY06 to 29% in FY07. Domestically, the minimum rate at which a medium term (5-6 years) loan is available for even AA rated companies is about 11% as compared with ECB rate of about 8-9%. Most of these companies belong to the manufacturing sector". The Union Government recently classified non-convertible and optionally convertible preference shares as part of ECB. ECB approvals have reportedly picked up during the first quarter and amounted to $ 8.7 billion during April-June 2007 compared to $ 4.4 billion in the corresponding quarter of the previous fiscal year.

6. *Cash management and shareholder value addition through Buy-back of shares*

This is a measure that helps the company with management of cash surpluses, boost its capital valuation, and lead to improved image in the capital market; it also helps the investor with funds for fresh investment in addition to a better rate of return on the remaining investment. It helps retention of key managers, especially those at senior levels.

7. *Undertaking more mega cross-border mergers and take-overs,* that help us to sustain in global markets through inorganic expansion and scaling up of operations. Wockhardt, Tata, DRL are some of those who have accessed European and American markets. It takes years, even decades, to access these markets if traditional regulatory route were to be followed. Wockhardt, for instance has not only accessed the $2-billion generic drug market in France but also extend Negma's (target company's) patented portfolio to other markets where the Indian company has a strong presence such as the UK, Germany and Ireland.

Tatas are weighing $2-billion bid for Arizona Beverages of USA. RIL is planning to set up a refinery in Gautemala, Central America. US-based PE fund Carlyle has made the highest PE investment in India ($416 million) in a single deal (HDFC) in the first seven months of 2007.

8. *Building-up brand value*

Brand is the face of the business for all stakeholders, including employees. The importance of brands in creating value for business cannot be overemphasized. A good brand name is the result of the goodwill that the company has acquired over the years, through its activities, performance and its esteem and acceptance in society. A company is perceived as an excellent place to work, based on its people, processes, and policies, values and the leadership. The company needs to be committed to its people, processes, and values and demonstrates the highest levels of ethics and commitment to its employees in all times.

Even ex-employees are being increasingly reckoned as brand ambassadors in many organizations like Marico, L & T, Sapient, NIIT and Tata Steel. As a HR strategy, these companies have a separate forum for gathering these ex-employees on select occasions or events to win their goodwill by seeking their views, opinions on company matters and in turn making them feel proud and loyal to their ex-employers.

Globally, it is said on average, intangible brands, know-how (R&D, patents etc) contracts and other intangibles (processes, latest Carbon credits etc) make up roughly 62% of enterprise value; in India it is higher at 76%. Companies have realized that working with established design houses (at home or abroad) gives them a deep understanding of consumer preferences with regard to branding and design. Collaborations/symbiotic relationships will shorten the gestation period for the brands apart from adding considerable value through credibility, class and finesse which in turn will enable the Indian company to gain entry into a promising emerging market with something as innocuous as a notebook.

RIL that pioneered retail participation in the capital markets under its founder Dhirubhai Ambani is said to command brand value of $5.8 billion. The Tata Group's crown jewel and India's largest software company, TCS, are on their way to be among India's top three brands with a valuation of $4.02 billion. Wipro follows as the second most valuable IT brand with a valuation of $ 2.65 billion Infosys with a brand value of $1.61 billion ranks as third most valuable IT brand. Among Banks, SBI ranks No.1 with a brand value of $ 3.14 billion followed by ICICI Bank with $ 2.04 billion.

9. *Improve image value* by pledging increased commitment to corporate social responsibility (CSR), by taking more and more new initiatives like PPP, to make a meaningful difference to the lives of all those people who support and sustain Indian industry. Promotion of health care, education, self-employment opportunities, skill development and up-gradation for rural youth, providing safe drinking water, building and maintaining roads that give access to rural markets, income generating schemes for women will ultimately unfold economic benefits back to the industry itself.

AP Government has recently promoted the first-ever state-level Bankers' Institute of Entrepreneurial Development (APBIED) in financial collaboration with NABARD and a couple of Banks. This Institute proposes to impart high-quality training programmes to rural poor and unemployed youth in medical transcription, computer accounting packages, hardware servicing, hotel management and the like. Training programmes for women self-help groups (SHGs).

10. *Protecting, Promoting and upgrading human resource skills*

The 21st century workforce would work more with their minds than with their hands in the past as the workforce will be more in charge of work than of people. Moreover, the business will mostly operate beyond national boundaries – more and more multinational- business managers will have to deal with diverse cultures, multiplicity of traditions and ethnic backgrounds.

As they stride into uncharted global territory for inorganic growth, companies will have to hone their employee-skills, especially with e-learning to enhance their performance and productivity. With immense competition in the market, companies need to continuously upgrade their systems, products and obviously their employee proficiencies, to meet the challenge of technological advancements. Today, it is only the leaner organisation that survives and wins. Knowledge and talent management are crucial for any organization.

Indian industry should encourage and rear some of its own personnel to become independent entrepreneurs at an appropriate stage of their career. This initiative adds tremendous value to the organization adding to its goodwill, an intangible and ever-appreciating asset whether on the balance

sheet or outside. "The Government haa to make it simple for small entrepreneurs to start companies in India" says Mr. Narayana Murthy of Infosys while adding" Entrepreneurial activity can have a tremendous impact on a country's development; it is the only way to create jobs and wealth today".

Large enterprises must help the small and medium enterprises in the country which provide support to their business and aid the country's economy by providing employment to a vast section of population.

Thanks to the CII initiative, many companies have installed or committed to install measures for managing anti retro-viral centres (ARVs) – some with assistance from ILO to overcome HIV scourge. Many State Governments have embarked upon programmes for attracting children of illiterate families into school. Many industries have commenced programmes for skill up-gradation of their work force.

11. *Risk Management, for risk mitigation and protection for innovation*

A penny saved is a penny earned. Global business necessarily involves considerable business risks- environmental, political, legal, accidental, technological etc.. Risk management is all about increasing the ability to take risks, risk identification, risk monitoring and assessment while minimizing the risks and protecting against unavoidable risks. Post 26/7 and 7/11 the dimension of risk has widened to natural disasters to terrorism too. Enterprise wide risk management framework is developed as a solution which involves participation of industry specialists for planning and implementation including development of contingency action plan to face and mitigate risks.

There is a direct correlation between risk and reward and a climate conducive to innovation and entrepreneurship is a *sine qua non* to long term economic prosperity.

12. *Financial inclusion measures to accelerate economic growth*

Industry must collaborate with Government in achieving financial inclusion- taking banking and financial services to geographical areas and people who have little or no access to such services – by allowing no-frills bank accounts, utilization of the services of NGOs and micro-finance institutions in providing banking services, tying up with the postal department for branchless banking, setting up of financial literacy and credit counseling centres, issue of smart cards, facilitating low-cost remittance products and the like. They could use the $125 million fund already established by the Government of India for the purpose; in addition World Bank assistance also could be sought. This has great potential for boosting up e-commerce.

13. *Value addition through external professional assurances*

The core of any free market economy is the free exchange of information and the availability of quality information. The quality of capital markets depends on credible financial information with assurance regarding all requisite legal compliances being available to investors and other users of annual reports of companies to take informed decisions. Audit and Secretarial certifications/confirmations regarding compliances play a key role in the success of the economic system. They provide the stamp of quality and credibility to the corporate documents whether sent to members or others including the Government (ROC) SEBI, Stock Exchanges, RBI, Financial Institutions and the like. In an era of self-regulation, this assumes special significance. Professionals like Company Secretaries become critical intermediaries in this scenario.

14. *Fixing Vision & Defining Mission*

There must be a well defined corporate vision and mission to guide the organization. While vision refers to a possible and desirable future state of a company, its mission will refer to the purpose, strategy, behaviour standards and values. A mission is the bedrock of company's strength, identity and success – its ultimate character and personality.

A company's culture and its mission will bear testimony to the contemporary political supremacy enjoyed by the country of is origin. Mission is an issue which involves both heart (culture) and the mind (strategy) of an employee. Tomorrow's company should seek to identify a purpose, an ideal which is far greater than the combined needs of all stakeholders. Strategy will define the business that the company intends to compete in, the position that the company plans to hold in that business, and the distinctive competence or competitive advantage.

Role of Professionals- as change agents and as partners in achieving Excellence

In each of the above business value addition endeavours, professionals like Company Secretaries have a significant role to play. There is a difference, however. Marketing professional service has come to mean selling professional's ability to honour a promise to the client coupled with an assurance to the society that relies on the professional. .

They should recognize the changes that have witnessed the managerial scene over the last few decades – that owners have become professional by the time professionals have become owners ; that owners and managers have learnt to recognize their mutual friendly existence as a future recipe for business success; that their distinct individual identities and boundaries of the past have blurred and dimmed over the years. Especially the new first generation entrepreneurs – likes of Ambanis, Bajajs, Rajus, Murthys – have realized the importance of modern tools of management in promoting their entrepreneurship to greater heights. The professionalisation of corporate management from the days of managing agents to the present day of CEOs, CFOs and CSs has been a long and successful journey indeed.

They therefore should increasingly aim to excel in rendering their services. Given the educational and professional qualifications and the rigorous training provided to him by ICSI, the Corporate Sector, the Regulators, the Government agencies, a Company Secretary should endeavour to develop not only a zeal for achieving excellence in every professional assignment awarded to him but also develop an innovative 'walk-the-talk' approach so that his contribution is no more measured by the bulkiness of his report or certificate but the benefits that the company actually reaps and demonstrates to the outside world. In addition, he/she must also act, in a way, as a trustee for the quality of the service to be provided, discharging its social responsibility.

For example, in Mergers & Takeovers, Carbon Credit purchases, financial assistance to sick units, a Company Secretary is ideally suited to act as consultants and undertake due diligence study of the target company/ unit and subsequently, join discussions with legal experts in documentation. CDM consulting is very lucrative. Likewise, in case of intellectual property, he can assist in patent registration and deal with all legal and secretarial issues surrounding it. Similarly, in fund mobilization, he can team up with his counterpart abroad to secure requisite clearances of RBI, Ministry of Finance and SEBI etc. and undertake the responsibility of completing entire documentation to the satisfaction of both the lender and borrower.

In matters pertaining to brand value promotion, up gradation of HRD, training facilities at home and abroad, he can ideally support the client by off-loading work pertaining to due diligence, negotiations, liaison, co-ordination, documentation, follow-up and the like with the authorities concerned including collaborating with Universities/ Management Institutes at home and abroad. For achieving excellence in these areas, he needs to develop an effective and sustaining (informal) net-work of colleagues in the profession and co-professionals in disciplines of law, accountancy, management and the like (through proposed LLP, if desired formally). What are required are a strong will, commitment and perseverance to excel in every professional endeavour coupled with dedication.

Way forward - a concerted strategic partnership between Industry, Government, Regulators, and the Professionals

Currently, the world business indictors for India are not very encouraging for a variety of reasons including terrorism.

What is needed, therefore, are proactive policies of the Governments at the Centre and in the States for promotion of cutting-edge technology in Indian industry coupled with progressive labour policies that provide the requisite flexibility in engaging and disengaging so as to subserve the country's long term competitive advantage. Sensible R & D as well as infrastructure investments has a multiplier effect, reviving up efficiencies and opening up new, emerging vistas for economic growth.

Our Hon'ble Prime Minister has been suggesting R & D funding at not less than 2% of GDP by 2012. In addition, exports must be made competitive with a pragmatic currency exchange and fiscal initiatives jointly by RBI and Ministry of Finance, IFC is reported to have reaffirmed its commitment to contribute to India's economy by expanding its investments in private enterprises in sectors where the funding agency is needed most.

The way ahead is thus concerted action by all the players including the Industry, the Regulators, the Investors, the Professionals, the NGOs and others to create stronger frameworks of law and regulation for the world's markets. There must be a clear-cut long-

term policy that assures continual technology upgradation and due operational autonomy for Industry supplemented by forward-looking fiscal and monetary policies designed to usher in business and industrial efficiency with productivity, right across the board. It is in the interest of global companies to be proactive and work in partnership with civil society, policy makers and others to help international organisations and governments create the frameworks necessary to strengthen and guide the market.

As a recent UK report put it "Companies need to focus on three specific priorities:

— *Redefining success* - defining and measuring success in a way that aligns and integrates the social, environmental, human and financial aspects of companies' work;

— *Embedding values* – defining, living by, and being judged by values that are publicly espoused and applied rigorously in challenging situations; and

— *Creating frameworks* - supporting sound national regulatory frameworks and international agreements, working with governments, NGOs and others to create them".

The report further added that 'together these actions would reinforce each other and enable companies to "expand the space" in which they operate - having greater impact and influence over a longer timescale. This is not about philanthropy or companies being seen to be 'doing well'. These are actions that serve the long-term interests of any company."

As Mr. Nandan Nilekani of Infosys put it "We are witnessing profound change in the way we live, work and interact in an increasingly global, interconnected world. This changing landscape presents us with challenges and opportunities we need to work with, and *status quo* is not an option. Business, as a force for good, has to respond to this changing landscape and make a positive impact on society and the environment. Truly global companies will need to develop a compelling vision which enables sustainable, profitable development of their business whilst benefiting the society at large."

SEBI should take forward its crusading effort to improve corporate governance with collaborative support of the Government (MCA) and specialist bodies like ICSI, ICAI, IIMs and the PEs. Professionals must continually update and upgrade their professional knowledge and skills for achieving excellence in their performance through active participation in, and knowledge contribution to, the continuing education programmes conducted for them by their respective Institutes.

Other regulatory bodies like RBI, IRDA and the Judiciary should direct their action in unison with the above philosophy.

All this should take India Inc forward, by creating wealth for itself and additional value for the stakeholders. It should also enable India Inc to address effectively issues such as climate change, social inequalities etc. which, in turn, will enable the country to address its own emerging socio-political challenges successfully and maintain a sustained growth for its economy.. For this to happen, India Inc needs to position itself as a global leader aided and ably supported by Professionals like Company Secretaries who should play their role of catalysts in this laudable national effort effectively. A concrete strategy would make a world of difference.

BUILDING CUSTOMER SATISFACTION THROUGH VALUE, SERVICE AND QUALITY

R SOUNDARA RAJAN*

There are five types of companies
Those who make things happen.
Those who think they make things happen.
Those who watch things happen.
Those who wonder what happened.
And those that did not know that
anything had happened.

Anonymous

INTRODUCTION

"Customer satisfaction occurs when you meet your customer expectations. Customer delight occurs when you not only exceed your customer expectations but also give what they want or desire" — Jo Anna Brandi,

President, 'Working Relationship/ Integrated Marketing System.

Customers provide the revenue stream for the organization continuity and sustenance. The very success of any organization is largely depends on its ability to satisfy and retain customers. A business without focus on **'Customer Satisfaction'** is at the mercy of market. It is 5 to 10 times more expensive to acquire a new customer. Most companies lose 40 per cent to 45 per cent every five years. The greatest challenge is to discover how to produce **'Product'** or **'Services'** which can give value to the customer, so that they can be loyal and give their continued support.

The terminology 'Customer' refers in a narrow sense the buyers of the product who provides a revenue stream. But in modern world, companies use more broader view and replace the term customer with stake holders. The customer delight cannot be achieved without the 'Employee Satisfaction', and 'Employee Engagement'. Suppliers provide the quality materials and no doubt the shareholders and financiers provide the capital. All of them are partners in the process of building a sustained growth. Hence the stakeholders cover all segments including the customers, employees, shareholders, financiers, distributers and suppliers. Kotler (1998) points out for sustainable value addition, the following aspects to be addressed- Stakeholders, Key processes, Resources, and Organization. (Fig 1)

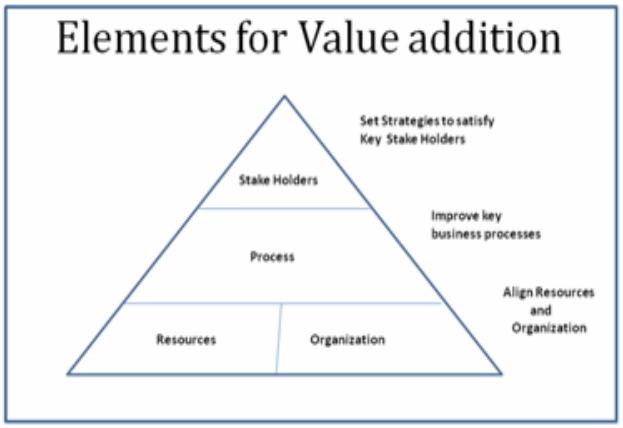

Fig. 1: Elements for Value Addition

[*Source* : Philip Kotler, *Marketing Management*, Prentice Hall of India (9th edition) p. 65]

CUSTOMER SATISFACTION

"A customer is the most important visitor on our premises. He is not dependant on us. We are dependant on him. He is not an interruption in our work. He is the purpose of it. He is not the outsider to our business. He is part of it. We are not doing a favour by serving him. He is doing us a favour by giving us the opportunity to do so" — Mahatma Gandhi.

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Customer is a person, household or company that over time yields a revenue stream. The customer is called profitable customer if the revenue stream exceeds the company's cost stream of attracting, selling and servicing that customer by a acceptable level. A good customer who provides more profit with less resource is always scarce because the customer is more knowledgeable and the competition is fierce. Satisfaction is a person's feeling of pleasure or disappointment resulting from comparing a product's perceived performance (or outcome) in relation to his or her expectation. Expressing the same in the form of expression:

SATISFACTION = PERCEIVED PERFORMANCE – EXPECTATION

Customer is satisfied if the delivered value from the product or service is more than the customer cost. Total customer value is the bundle of benefits customer expect from the given product or service. Total customer value is the sum of Product Value, Service Value, Personnel Value and Image Value. The total customer cost is the cost that the Customer incur in evaluating, obtaining and using the product or service. The cost can be monetary Cost, Time Cost, and Energy Cost. Customers use Value/ Price ratio for comparing the offers.

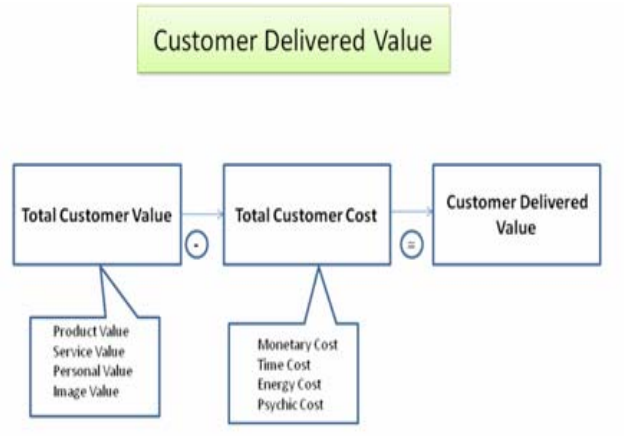

Fig. 2 : Customer Delivered Value

CUSTOMER RELATIONSHIP

'Look at our balance Sheet. On our asset side, you can see so and so many aircraft worth so and so many billions. But it is wrong; We are fooling ourselves.

What we should put on our asset side is , last year SAS carried so and so many happy passengers. Because that is the only asset we have got- people who are happy with our service and willing to come back and pay for it again." *— Jan Carlson, SAS Airline*

"Customer delight is a very delecate balancing act. You have to be part diplomat, part soother, part good listener and creative with the way you think"

— Jo Anna Brandi President
Working Relationship/ Integrated Marketing System

Organizations evolve different strategies to satisfy **Customers.** Traditionally marketing strategies focused on 4 Ps (price, product, promotion and place) to increase market share. The main concern of any organization is to increase the volume of transaction with the customer /client. Volume of transaction is considered a good measure of performance of marketing strategies. To increase profitability and revenue through customer satisfaction concepts such as 'Customer Relationship Management' (CRM) is evolved by modern business.

To add value to the customer and improve the customer relations the company has to:

(a) Identify the valuable customer and retain them with care and respect. Customers to be differentiated on lifetime value. From CRM perspective, the customer longtime profitability and relationship to the company is important. **'Treat each customer uniquely'** is the key for retaining valuable customer.

(b) Stay in touch *with the customer regularly to understand their requirement.* **Customer Loyalty** can be increased by personalization process. Personalization means the content and services to customer should be designed based on customer preferences and behavior. Demonstrate that you care about the quality of service. *Call customers and ask them questions like:*

Are you pleased with the service you received?

What did you like most working with us ?

What would you like to see improved ?

(c) Treat people with courtesy and respect. Remember that every contact with customer whether it is by Email , phone, written communication or face to face meeting leaves impression. Use phrases like ,

"Sorry to keep you waiting",

" Thanks for your Order",

" You are Welcome".

(d) Be Credible and Worthy of confidence. Credibility increases when appointments are kept and promises are acted. Failure to keep promises and to live up to the expectations can kill a budding relationship.

(e) Make the customer's experience so pleasant that the customer returns for repetitive orders. Be courteous, efficient and ethical in all dealings. Always be customer friendly and cost effective to clients. Always adhere to the time schedule given to the clients.

OTHER STAKEHOLDERS

"The only thing that works is management by values. Find people who are competent and really bright, but more importantly people who care exactly about same things you care about". — Steve Jobs, Co- founder of Apple Computer

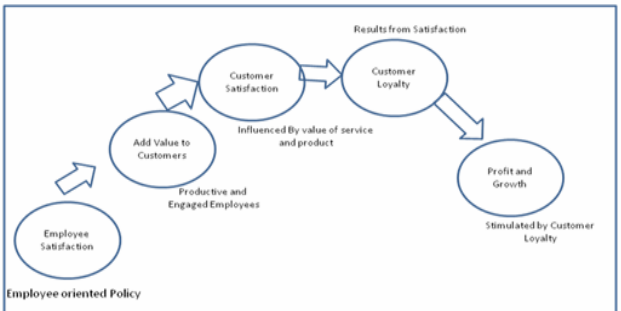

Fig 3 Service Profit Chain

Peter Drucker, known management guru observed that a company's first task is to 'create customers'. Iacocca, elaborated the same idea when he said that, 'the only job security anybody in this company (chrysler) comes from quality, productivity and satisfied customer. The customer satisfaction and delight can be achieved only through **'Employee Engagement'**. I would like to quote the experience of Stphen Covey, the author of *'The seven Habits of Highly Effective People'*. He was scheduled to train 175 shopping center managers at a particular hotel. When he arrived at the hotel, he was amazed at the level of service and the employee engagement to their work and service to customers. The service culture had impregnated the minds, hearts and attitudes of every employee there. It was spontaneous and at every level of employees without supervision. Every one owned the organization's vision and mission statement. It was in their blood.

He was in the side lobby looking at some art objects. Some one from the hotel came up and said, 'Mr Covey, would you like to see a book that describes the art objects in the hotel'. He next observed one employee high up on a ladder cleaning windows in a lobby. From his vantage point, he saw a woman having a little difficulty in a garden with a walker. She had not really fallen, as she was with other people. But he climbed down that ladder, went outside, helped the woman into lobby and saw that she was properly taken care of. Then he went back and finished his cleaning work. This clearly indicates the level of engagement. This reflected the courtesy and the culture of the organization. Customers would naturally love to associate with such organization for life time.

How such motivation and employee orientation is possible? Employee oriented policies keep employees motivated and results in high quality service. The quality service creates value to customers and results in Customer Satisfaction and Customer Loyalty. The loyal customers repeat orders and a continuous revenue chain is created. In other words who creates the loyal customer? It is the employee. The corporate performance is leveraged through **service profit chain linking employees and customers** through employee oriented policies (Fig. 3).

Perhaps the most valuable lesson what we can learn from Ken Blanchard's book *'The One Minute Manager'* is his recommendation on giving 'one minute praising' at every opportunity. The one on one relationships that individual workers have with their managers, and the trust, respect and consideration their managers show towards them on daily basis are the drivers to create energize work force. People come alive when their leader offer excitement, support, broader horizon and new challenges.

START WITH THE VISION

"If we keep doing what we are doing, we are going to keep getting what we are getting". — Stephen Covey

"Great business ' decide' their future. They are not dictated by it"

The overriding objective of the corporation should be to optimize over the time the returns to its stakeholders. To achieve this objective the corporation should endeavor to ensure the long term viability of its business and to manage effectively its relationship with its stake holders.

'If you don't know where you are going any road will lead you'. For effective functioning the company should set its vision and mission. Inspirational leaders

create an inspiring culture within the organization. He sets a vision for the company. He sets the mission to achieve by his team.

A **vision** statement outlines what a company wants to be. It focuses on **tomorrow**; it is inspirational; it provides clear decision-making criteria; and it is timeless. A **mission** statement outlines what the company is now. It **focuses on today**; it identifies the customer(s); it identifies the critical process(es); and it states the level of performance.

When a company collaboratively decides to express its vision, beliefs, goals, values and mission in words, it will give direction to everyone in the company. Therefore, it is important to involve all employees and give them a chance to indicate how they perceive the company and to identify what is important to them. Without involvement, there is no commitment. When there is no commitment, systems and procedures are only documents.

Hewlett-Packard employees have long known that radical change in operating practices, cultural norms, and business strategies does not mean losing the spirit of the HP Way - the company's core principles." HP's core ideology which has guided the company since its inception includes a deep respect for the individual, a dedication to affordable quality and reliability, a commitment to community responsibility, and a view that the company exists to make technical contributions for the advancement and welfare of humanity.

Johnson & Johnson continually questions its structure and revamps its processes while preserving the ideals embodied in its credo written by General Robert Wood Johnson more than fifty years ago. Their corporate mission statement and guiding philosophy, Our Credo, covers four main areas of responsibility: customers, employees, communities, and shareholders.

Another company, 3M sold off several of its large mature businesses in 1996 - a dramatic and surprising move - to refocus on its enduring core purpose of solving unsolved problems innovatively.

Take McDonalds. People do not swarm to the world's 11000 McDonald's outlets solely because they have delicious hamburger or they love hamburger. There are many restaurants make better tasting hamburgers.

People are flocking to a system, not hamburgers. This fine tune system delivers throughout the world a high standard of what McDonald's calls QSCV- Quality, Service, Cleanliness, and Value.

McDonald is effective only to the extent that it works with suppliers, Franchise, Owner, Employees and Others to deliver exceptionally high value to its customers.

— Philips Kotler
Marketing Management

The way that the vision and mission are communicated is important. This requires full commitment from senior management and may result in several changes depending on where the company presently is and how well it presently represents its vision. Once the direction is defined, then it will impact such things as strategic planning, objectives and goals. Strategic planning includes reviewing the vision and mission of the company and then determining what has to be done in order to achieve the goals of these statements. This normally translates into Objectives (Strategic Focus). Next, the company determines how it will know when the statements have been achieved. This translates into Objective Measures. From the measures, each department can set goals, objectives and measures that will help the company achieve its strategic objectives . When a company defines its values and guiding principles, one side effect is that some employees may find that their own value systems do not match the company's and they may decide to leave. It is important to stress that everyone needs to support the vision, mission, values and guiding principles if they are to be achieved.

RESOURCES AND PROCEDURES

"Great Things are not done by Impulse but by a series of small things brought together" — Anonymous

Every company has to recognize its strategic resources. For a service organization, Human Intellect, Technology and Processes (HTP) are the three key resources. **The corporate governance provides the structure and spells out the systems for making decisions on corporate affairs**, through which the company objectives are set, as well as the means of attaining and monitoring the performance of those objectives.

Systems and processes deal with matters such as delegation of authority, rules, procedures and relationships. The rules may be internal to control and monitor the processes or external for compliance of applicable laws. To lead and operate an organization successfully, it is necessary to break the company's operation into processes. The processes are further divided into sub-processes and procedures are evolved for managing them. Process managed enterprises

supports, empowers and energizes employees and focus them to provide customer friendly services.

Relationships include those between all related parties, the most important of which are the owners, managers, directors of the board, regulatory authorities and employees and the community at large. Rules and procedures are set to manage the processes by creating disciplined and repeatable design. The pay off is quiet high. Cost is minimized. Productivity is increased. Quality is achieved through standardization. Resource utilization is optimized. Success can come only by continuous performance improvement while addressing the needs of interested parities and aligned to organizational culture, values and ethics.

CONCLUSION

"To day customer don't ask ' what product do you offer ?' They ask, ' What value you stand for?', 'What practices have you developed to live those values daily?', 'What value addition you are providing to me? '……..."

The essential element for the sustained growth is the customer satisfaction and loyalty. This is achieved by employees through productivity, quality and their engagement with the organization. Leadership through their good governance set the tone for such organizational culture with a positive attitude in everyone in the organization. Let us re-call the value system quoted by Shiv Khera in his book *'YOU CAN WIN''.*

"There was a man taking a morning walk at a beach. He saw that along with the morning tide came hundreds of starfish and when the tide receded, they were left behind and with the morning sunrays they would die. The tide was fresh and the starfish were alive. The man took a few steps, picked one and threw it into the water. He did that repeatedly.

Right behind him there was another person who could not understand what this man was doing.. He caught up with him and asked, "What are you doing? What difference does it make?" This man does not reply, took two more steps, picked up another one and threw it into the water and said **'it makes a difference to this one'**. This is what the positive attitude towards life is.

No person was honoured for what he received. Honour has been the reward for what he gave. Leaders nurture and develop these values. They culture this habit in the organization to develop a team which carry the Mission, Vision and Core values of the organization to achieve Excellence. They set the right policies to motivate employees and other stake - holders. These loyal employees, create Service Oriented Architecture (SOA) and a culture which creates value for customers.

Such organization requires no governance as they are self governing, involved and committed. The leader may change but the culture lives. Rules and regulations do not bind these ethical organizations. They never allow any WorldCom and Enrons to happen. These champion companies, develop excellence through good governance. **"Good governance is a journey, not destination"**. The journey continues step by step for excellence and never ends. It is eternal.

PROFESSIONALISE FOR BUSINESS EXCELLENCE

DR. V BALACHANDRAN* & M GOVINDARAJAN**

INTRODUCTION

Today, there are professions, which nobody would have considered to be a profession in the past. While a businessman pays more attention to maximization of his profit, a professional is more concerned to provide an unmatched quality of service to his clients. Furthermore, every professional is required to have certain special characteristics compared to other sections of society, which give him a good status and image in the community. The ever changing business environment, complexity in our legislative framework and emerging new regulatory norms require business enterprises to seek the assistance, advice and support of competent professionals in different spheres of activities.

An enduring image of reliability and trust based on his knowledge, competence, experience and expertise, thorough honesty, integrity, good health, sharp memory line, constructive attitude, right approach, good temperament and behaviour, quick ability to grasp the essence of a problem from mass data of information, analytical skill and persuasive character are some of the ingredients that make an individual a respected professional in his own right. More than anything a professional should have a strong character, ethical values and professional commitment to serve the needs and aspirations of various segments of society. In simple terms if a corporate entity does not follow the prescribed legal requirements, the professional who is involved should have the courage and conviction to make his comments and observations on any matter for the benefit of company's shareholders and creditors which have any adverse effect on the functioning of the company in clear cut terms rather than keeping quiet.

BUSINESS EXCELLENCE

Business excellence is the achievement of outstanding results through use of quality management principles. It is the systematic improvement of business performance based on the principles of customer focus, stakeholder value, and process management. Key practices in business excellence applied across functional areas in an enterprise include continuous and breakthrough improvement, preventative management and management by facts. Business excellence, as described by the European Foundation for Quality Management (EFQM), refers to "outstanding practices in managing the organisation and achieving results, all based on a set of eight fundamental concepts", these being "results orientation, customer focus, leadership and constancy of purpose, management by processes and facts, people development and involvement, continuous learning, innovation and improvement; partnership development, and public responsibility".

In general, business excellence models have been developed by national bodies as a basis for award programs. For most of these bodies, the awards themselves are secondary in importance to the widespread adoption of the concepts of business excellence, which ultimately leads to improved national economic performance. By far the majority of organizations that use these models do so for self-assessment, through which they may identify improvement opportunities, areas of strength, and ideas for future organisational development. Users of the EFQM Excellence Model, for instance, do so for self-assessment, strategy formulation, visioning, project management, supplier management, and mergers.

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BUSINESS EXCELLENCE EMBEDDED IN THE TATA GROUP

Business excellence has been embedded in the Tata Group through a holistic methodology that enables companies to heed the call of quality. Words such as 'quality' and 'business excellence' have become so much a part of the management lexicon that they are sometimes taken for granted, observed more in the breach or by faddish rote. Not so in the Tata Group, where they have been embraced with a passion that reflects a deeper understanding of their significance to the health and wealth of all entrepreneurial activity. The quality movement in the Tata Group is defined by a framework known as the Tata Business Excellence Model (TBEM), which has been adapted from the renowned Malcolm Baldrige archetype. The Model works under the aegis of Tata Quality Management Services (TQMS), an in-house organisation mandated to help different Tata companies achieve their business objectives through specific processes. These processes — which have come to characterise the Tata way of enhancing and conducting its business endeavours — essentially relate to two factors: business excellence and business ethics.

PROFESSIONAL SERVICES

Professional excellence, whether in traditional or the novel forms of professional services, cannot be achieved today unless there is clear passion for value addition and provision of value through professional services. One has to be a champion of business value while rendering services to large small enterprises; shape value through excellence in compliance management.

Professional services though having similar characteristics has wide range of areas and activities. They involve rendering of expertise in the respective fields. A mixture of activities like, accounts, taxation. finance, legal etc. require specific knowledge and skills. Professional aptness of an individual is defined by the formal educational qualifications and by the quality of experience including upto date knowledge over the working span. Persons at the upper skill range in any occupation or group are recognised as professional persons and their occupations are referred to as professions. Examples of such professions are—Doctors, Engineers, Scientists, Architects, Lawyers, Chartered Accountants, Company Secretaries etc.

While interacting with a professional person, one generally comes across two features:

— Level of expertise

— Manner of conducting professional work.

— Services have been extensively defined, as a human activity aide to satisfy a human need and does not constitute a tangible commodity.

QUALITIES OF A PROFESSIONAL

With the complexity of business deals, stress on transparency of business operations, ethical execution of business transactions and investor-friendly management of business houses, and above all, the deep and great importance or recognition given to the need to achieve good corporate governance, the importance of company secretary is felt even more keenly.

The following ten qualities may be reasonably attributed to one such person:

1. Specialized skill and knowledge
2. Intellectual and practical training
3. High degree of sense of responsibility
4. Some degree of professional autonomy
5. Fiduciary relationship with clients
6. Code of conduct and ethics
7. Professional ideology and values
8. Operating organization's testing competence
9. Embargo on unfair methods of attracting business, and
10. High degree of discipline.

Thus, a professional, with the above qualities, shall automatically reposition himself to the changing needs and demands of the business environment. Company Secretaries both in employment and in practice have a pivotal role to play by counselling corporate bodies against improper, unethical, unfair, unlawful or questionable business practices. In reality, it is established that professionals are often found to be playing a supportive role to many company managements to hide facts about non-compliance of legal requirements or for window dressing of vital financial information.

VALUE CREATION

Value is created with the ultimate customer in mind in order to make a decent profit for not only the proprietors or owners but for various other stakeholders, like, employees, suppliers, lenders, management, and the society at large. In the context of increasing market competition, the process of creation of value has

become more customer-focused and customer-oriented. Customer, again, is judged from the context of the process at the end of which he is supposed to benefit. Therefore, there are external customers as well as internal customers. The idea has, therefore, changed from creation of value to co-creation of value. Further, this is done during and at the end of each smallest process in the link of processes that the business consists of. By enriching the content, the process and the cultivated perception at the beginning, during and at the end of each business process, a business creates excellence. Excellence is again further carried to perfectionism through the improvement of quality. For this purpose, the end-result or the purpose of each process is clearly defined. The enrichment continues even after the '" customer, internal or external, has received the product or service created for him. Thus, continuous enrichment of value that is conceived, invented, processed and created is what leads to excellence and the continuous excelling the excellence.

VALUE PROPOSITION

Value-added businesses seek to be rewarded for addressing identified needs of specific customer segments. Because customers may be unaware of these needs or using solutions for them. Value-added businesses must turn them on to their solutions by presenting their solutions clearly and persuasively. Value-added business can do this well if they have a well-defined and articulated value proposition. Value proposition is how a product or service (solution) is distinguished from all others in its domain so that target customers consciously select it as a superior option.

The value propositions of many companies emerge from their interactions with customers. However, in highly competitive and rapidly changing markets, where customers are time starved and overloaded with information, it can be risky to pretend they will discover the uniqueness embedded in an offer on their own. The process of discovering, developing and communicating one's value proposition is as important to business success as one's ability to deliver on the value proposition itself.

Today, Company Secretaries are required to compete globally. Shri. Raju, Chairman, Satyam, while inaugurating the convention on, "Beyond Creating Value" emphasised that the need of the hour was leadership from the manufacturing sector to create value in the service sector. Satyam has adopted a "full lifecycle value – creation model", which involves three concepts– thinking, doing and communicating.

The characteristics, the unique selling proposition, the value adding propensities, the advantages offered by the service – product should be clear and palpable in all aspects when the product is positioned in the service market. The preparation and presentation of the service product should be preceded by competition research, customer need research. Company Secretaries should recognise the importance of and methodology of creation of value with the customer. Company Secretaries, firms should develop customer centric culture, which includes:

- Understanding what customers seek
- Mapping competition
- Evolving a Positioning Strategy
- Bringing the value proposition alive
- Keeping track of changing needs

Value proposition emerges from the identified market gaps discovered during opportunity scoping. It recognizes that there are multiple approaches to addressing any market gap and begins with a thorough assessment of these competing approaches. The competing solutions are defined broadly to include both current and future solutions to ensure acute awareness of competitors as well as potential sources of obsolescence. Careful assessment of competing solutions to the problem can produce insights into how the defined solution can be improved to ensure its competitiveness.

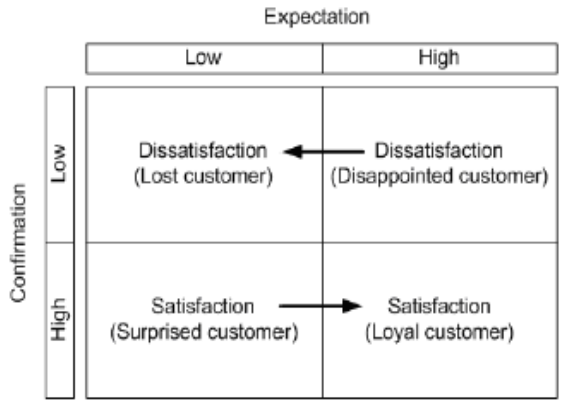
PROFESSIONAL EXCELLENCE

A Company Secretary who would aim for excelling the excellence and a continuous improvement towards perfectionism is the one who will recognize the preciousness and surpassing propriety of the process of value creation. Provision of professional services needs to be immaculately drenched in perpetual continuity in the depth of enriching value creation. A profound approach to nudge creative and beautiful solutions to various kinds of business problems will require the excellence of professional mind that is continuously generating energy, cheer and positive attitude. To understand business problems from the point of view of the customer and to co-create value by finding out the best and cost effective solutions to those problems will require a high quality of knowledgeable interactive skills.

MEETING THE CUSTOMERS' EXPECTATIONS

Meeting the customers' expectations is always an arduous task. For, value is obtained by sheer hardwork,

patience and perseverance. Value is a customer perception, defined as the satisfaction-to-acquisition cost ratio. Low satisfaction and high acquisition costs yield low values and high satisfaction and low acquisition costs generate high values. The term acquisition cost includes money, time and effort expended in acquiring and using a solution. "Satisfction is a relative term. It is a function of expectations and confirmation of expectations". Higher expectations of customers compel the value added businesses to provide them with better solutions. Thus by fulfilling their higher level expectations, value added businesses must endeavour to retain the customers at any point of time.



High expectation and low confirmation result in disappointment. No doubt the disappointment will lead to dissatisfaction. The dissatisfied customer will switch over to other professional with the same expectations. Contrarily, low expectation and high confirmation can result in pleasant-surprise satisfaction. At any given acquisition cost, customer loyalty is higher for solutions that create the highest satisfaction. It is of clear manifestation from the above discussion that value added businesses must strive to retain their customers by setting the appropriate expectations about a solution. They must also strive to fulfil their expectations. In other words, they have to ensure what is promised is consistently confirmed by customers. It implies that customer loyalty is higher for solutions that create higher satisfaction.

CONCLUSION

The profession of Company Secretaries which made a humble beginning in the sixties has now come of age. With profound knowledge, expertise and sharp management skills, they have reached the higher echelons of management hierarchy, making a niche for themselves. The clear and blended knowledge of various laws, taxation, finance, computers and corporate governance that they possess have made them versatile professionals capable of rendering wide range of services in diversified fields. Company Secretaries, as a profession, needs to understand the expectations of the customers so as to acquire competencies, skills and speed of work that will enable it to establish and nourish better relationships with customers. It is through such relationships that better business value can be added. The concept of customer has now expanded to cover all stakeholders who have expectations from the corporate entity or, for that matter, the business entity. For better corporate governance, which is the professed area of specialization of Company Secretaries, it is necessary that relationships with all stakeholders are continuously improved through better management and championing of stakeholder relationships.

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CORPORATE COMPLIANCE MANAGEMENT

PRAKASH PANDYA*

Corporate compliance management is as deep and vibrant as ocean. In this, various agencies including government and professional institutes, besides corporate have role to play. Of course without individuals no organization or government can exist. Thus, the role and approach of administrator, judiciary and law making agency as well as that of entrepreneurs and professionals is of immense significance. There is no doubt that compliance management, with no exception to corporate compliance management, extends beyond legal compliance and procedures, code of conduct and best practices. It is about managing compliance of legal, procedural and contractual obligations and national and international treaties, code of conduct and more. In this write up the focus is on legal compliances.

STRUCTURED APPROACH

A corporate can manage compliance of laws in a better manner, if approach is not casual but structured one. As a stepping stone, the Board of Directors and top management need to have compliance attitude. Benefits of compliance and risk of non-compliance should be clear. Thereafter, the scope of legal compliance need to be determined, debated and agreed upon. Some of the questions that may be confronted before proceeding in determining the scope of legal compliance could be -

(a) Whether entire operations of the organization to be covered or only one/few operations to be covered ? For example, only exports or only manufacturing unit at particular location.

(b) What should be covered ? Whether only statutory compliance or only contractual obligations or both ?

(c) Who will carry out the functions from within the organization ? Whether help of outside professionals should be obtained ?

(d) Who will monitor entire process and report to the Board of Directors ?

(e) What will be the cost? Monetary cost of internal auditors, involvement of staff (by way of overtime), external independent professionals and what will be time involvement ?

HOW TO GO ABOUT IT ?

As a first step, companies need to identify the laws applicable to it. Until we have module on industry specific laws, corporate need to carry out exercise on their own. Few corporates have already done this exercise and few others are in the process. However lot of duplication of efforts are happening, so long as companies in the same industry are concerned. Consequently, there are diverse practices within the same industry on legal compliances. Here, independent professionals certainly provide assistance and their experience becomes useful.

Once laws applicable is known to corporate, then the compliance requirements under various contracts may be assessed to get the comprehensive view of compliance requirements.

Thereafter, corporate need to check/run a test on the existing internal control systems to ensure compliance of laws. This can be achieved by calling for information from departmental heads. Sometimes departmental heads takes help of local professionals. Departmental heads, conventionally deals with business (day to day operations) and hence have no time to ensure legal compliances.

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To ensure value addition, companies need to be smart to carry out audit where it is not legally required and risk factor is high. Increasingly, it is noticed that companies carry out audit in areas where the law compels them to do so. For example, compliance certificate of listing agreement from independent professional on major clauses are required under the law. In such cases, there is no point in carrying it out again and publishing in annual report about the same. Companies need to find out laws where the legal compliance certification or audit may not be required under the law but is critical to its operation. To name a few, compliance of Foreign Exchange Management Act, Foreign Direct Investments, Industrial Policy, Intellectual Property Rights, Takeover Regulations and Prohibition of Insider Trading Regulations are critical to most entities listed on stock exchanges in India.

By remaining focussed on need of the company and ensuring legal compliance as per its own need, companies can not only reduce the time and cost of compliance but also gain the highest benefits (value addition) to its efforts.

Based on assessment of existing setup in organization to ensure legal compliance, corporate need to take call on need for checklist of applicable laws and examining existing checklists, if any.

The corporate then need to look at developing sustainable structure of legal and contractual compliance. Use of information technology like intranet on need to know basics is one of the effective means to achieve that.

It is good to decide at early stage in assigning risk levels to critical legal and contractual compliances. Depending upon level of compliance and risk associated therewith, corporate may decide to develop checklists on its weaknesses.

Since laws are ever changing, many a times by ignorance, non-compliance may also occur. As said in legal maxim ignorance of law is no excuse, one cannot escape responsibility by stating that laws are ever changing. Some times such ignorance of law turn out to be embarrassing moments for CEO and image of corporate also gets badly affected. To avoid such situations, corporate also need to ensure constantly updating checklists.

Legal compliance management and developing its system is not a one time process. Once system of legal compliance is in place, corporate need to continue on an ongoing basis to acquire knowledge, may be through training and seminars and effective communication of changes in laws in a timely manner to avoid non-compliance and avail benefits under the law (particularly under tax laws).

The corporate may determine tools for spreading knowledge, its updation and review in multiple ways. Few of them could be using intranet in companies, spreading latest changes, discussing implications of change of laws and modifying/updating master checklists. Some times internal control mechanism may need modifications.

Corporate may choose to have audit done either internally or by independent professional to assess the level of compliance in the organisation. Report on non-compliance may then be prepared and discussed with definite action plans and their time limits.

Besides regular internal audit of legal compliances, companies may carry out full legal compliance audit by an independent professional once in two/three years.

ROLE OF GOVERNMENT

Review of existing laws. Wherever possible to reframe/modify/re-enact existing laws as well as enact new laws which are as far as possible business friendly so that multiple social benefits arises like providing employment avenues and promote/create desire for education. Laws should be such that justice delivery should not only happen but also be felt by all. Help promote professional institutes to come out with industry specific applicable laws and compliances thereof. People needs to be convinced about the necessacity and mode of administering laws.

ROLE OF PROFESSIONAL INSTITUTES

Indian professional institutes need to come together and bring out manuals on Industry wise applicable laws. The Institute of Company Secretaries of India has already taken lead in this front by first coming out with Segment wise modules, proposing uniform practices for companies in the form of non-mandatory Secretarial Standards and continuing further with its efforts to introduce labour laws compliance management. If other institutes join hands with ICSI in this drive of compliance management, purpose of having industry wise modules on applicable laws can be achieved faster. The fruits whereof would be that entrepreneurs of particular industries and new generations will know laws that they need to comply

with. People will have better opportunities to specialise for particular industry of their liking. Though the exercise seems simple and is generally taken for granted and expected of professionals, in reality the position is different. It is mammoth task as there are Central laws, State laws, local laws, international treaties and contractual obligations. Today harsh reality is that entrepreneurs of even some of the best governed companies cannot be sure that they are complying with all applicable laws! Such an approach of government will give confidence to entrepreneurs that what laws they need to comply with.

ROLE OF CORPORATES

Corporates can also contribute to research initiatives of the professional institutes so that its fruits in the form of ready material of industry specific laws applicable is available to them. This can also help government and industry on acceptable level of compliance and its monitoring.

Lastly, it cannot be overlooked that mere compliance in letter is of no use. We have seen some of the largest, well known, profit making fortune companies though were considered to be following best practices have failed. Corporate compliance management, to conclude, calls for principles oriented approach.

CORPORATE COMPLIANCE MANAGEMENT — FOR ADDITION OF SUBSTANTIAL BUSINESS VALUE

S M GUPTA*

Company Secretary Profession can add substantial business value and generate corporate delight in a perfect manner by enhancing investor confidence and confidence of other stakeholders in the company including Banks, Financial Institutions, Government and Other Regulatory Authorities. These Professionals can ensure technical as well as actual compliance of different legal requirements not merely as a tick the box exercise but in their true spirit and purport so that all the stakeholders in particular and the society in general derives the benefits which are due to them. A company is also a corporate citizen and hence it has a greater corporate social responsibility. Moreover, corporate governance is required to encompass the technical boundaries of company law compliance and should reach beyond distribution of dividends to make its efforts an enriching experience for all sections of the society.

Corporate compliance management can add substantial business value only if the compliance is done with due diligence and is taken seriously. The term compliance and due diligence were earlier limited to public offering and equity investments but this is a subject which should be taken in broader perspective as research/analysis is also a part of due diligence. It may be mentioned here that the corporate professionals normally assist in making a deal after due diligence but post deal compliance is equally important. Making a deal may be easy but compliance is not. This is the reason why many companies have made corporate restructuring and other business deals but have produced little business value for the company. A large number of companies make a great deal of fuss by assembling a huge team and allocating a big budget but they loose their perspective in the momentum of the transaction and end up verifying only the target company's financial statements rather than conducting a fair analysis of the strategic logic and sustainability of the two business entities and of course the acquirer's ability to realise value from the deal or even enhance business value to the company.

Corporate compliance management is the effort made by an ordinarily prudent or reasonable party to avoid harm to another party or himself by due diligence before the deal and proper regulatory compliance after the deal. Compliance management is used for a number of concepts in large business decisions involving either the performance or strategical aspects of a business or the overall necessity of a deal with a certain standard of care. Hence, the role of a corporate professional in general and Company Secretary in particular is very important.

Corporate compliance management also involves a full process of research and analysis that takes place in advance for an acquisition, strategic investment, business partnership or even bank/institution finance in order to determine the value of the subject of the due diligence or whether there are any shortcomings in the documentation process.

Corporate compliance management also involves investigation and evaluation of the whole teams' characteristics, investment philosophy of the group and other terms and conditions before committing any capital investment. This exercise is undertaken in order to determine the potential issues which is expected to provide a realistic picture of how the entity is performing now and how it is likely to perform in the future and whether it will add and enhance business value and here the role of corporate professional is very very important.

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Corporate compliance management should broadly include compliance of :

(A) Corporate Laws

(B) Intellectual Property Right Laws

(C) Labour Laws

(D) Tax Laws

(E) Securities Laws and

(F) All other Laws affecting the company concerned depending upon the type of industry/activity.

(A) CORPORATE LAWS

Corporate laws are the main field of work for a Company Secretary and corporate compliance management broadly requires complete compliance of corporate laws. There are various laws which are required to be read and understood by a Company Secretary professional to discharge his day to day duties for the overall compliance management system. Some important Acts are discussed herein below in brief -

Companies Act,1956

Companies Act is the main Act from where the profession of Company Secretaries derives its existence. It was in 1975 that Sec 383A was inserted in the Act for the first time through the Companies (Amendment) Act, 1974 making it compulsory w.e.f. 1.2.1975 for all companies having a paid up capital of Rs.25 Lakh or more to compulsorily appoint a qualified Company Secretary as prescribed in the Company Secretaries Qualification Rules. Subsequently the limit of Rs.25 Lacs was increased to Rs.50 Lakhs and thereafter to Rs.2 Crores from 11.06.2002. Section 2(45) was substituted by the Companies (Amendment) Act, 1988 w.e.f 1.12.1988 to mean a Company Secretary within the meaning of clause 2(1)(c) of the Company Secretaries Act, 1980. The definition provided for an individual possessing the qualifications prescribed under the Companies (Appointment and Qualifications of Secretary) Rules, 1988 only to be appointed as a Secretary to perform the duties which may be performed by a Secretary under this Act and any other ministerial or administrative duties. The concept of a practicing Company Secretary was for the first time inserted w.e.f. 15.6.1988 describing a Secretary in Whole time practice under section 2(45A) meaning a Secretary who shall be deemed to be in practice within the meaning of section 2(2) of the Company Secretaries Act, 1980 and who will not be in full time employment.

Thus, it is the Companies Act which is the parent Act for the profession of Company Secretaries which has gone from the year 1975 to the present stage by providing required impetus and the Central government has reposed its confidence in the profession to a large extent which is evident from the fact that S.383A was suitably amended in the year 2000 to provide for every company which is not required to employ a whole time Company Secretary and having a paid up share capital of Rs.10 Lakh rupees or more to file with the Registrar of Companies a certificate from a Secretary in wholetime Practice called the Compliance Certificate certifying as to whether the company has complied with all the provisions of this Act. A copy of this Compliance Certificate is required to be attached with the Directors Report and is also required to be filed separately with Office of the Registrar of Companies with filing fees. The Compliance Certificate Rules provide for the format and other requirements of the same including that the said certificate will be laid by the company before its members in the Annual General Meeting.

Compliance certificate u/s 383A (proviso)

Section 383A of the Companies Act read with the Companies (Compliance Certificate) Rules, 2001 provide for annexing a certificate by a practising Company Secretary (PCS) to the Directors' Report of a company having the prescribed paid up capital and the said certificate *inter-alia* provide necessary information to the reader of the financial statements.

This journey of a Company Secretary from 1975 onwards and the support extended by the erstwhile Department of Company Affairs now known as Ministry of Corporate Affairs is the testimony to the fact that the profession of Company Secretaries is capable of taking challenges and opportunities provided by the corporate sector not only in compliance management but also as a corporate manager to meet global competitiveness.

Corporate Compliance management for a Company Secretary starts right from Companies Act, 1956 and whether in employment or in practice he has to be fully conversant with the following broad functions of a company.

Compliance will definitely depend upon the nature of business of a particular company and also on the fact whether it is a private company, public company, listed company, NBFC, sharebroking company, Investment company or otherwise but the broad principles of

Corporate Compliance under Company Law have to be understood by every Company Secretary. Some of them may be summarized as follows:

(1) Meetings

Essentials of a valid meeting

— *Properly convened*

Proper notice must be sent by the proper authority to person entitled to attend the meeting. Explanatory Statement must be annexed to the notice of the meeting as a statement setting out materials facts relating to each special item of business.

— *Properly constituted*

Proper person must be in the chair and rules as to quorum must be observed and the regulations governing the meeting must be complied with.

— *Properly conducted*

The Chairman must conduct the proceeding in accordance with the law relating to general meetings as per Companies Act (Sections 171 to 185) and the Company's own Articles of Association.

Types of Meetings

(i) *Shareholders' Meeting*

(a) Statutory Meeting : Statutory Meeting is the first meeting of shareholders. Every company limited by shares and every company limited by guarantee and having share capital must hold the meeting within a period of not less than one month and not more than six months from the date of commencement of business. A private company is not required to hold such meeting.

(b) Annual General Meeting (AGM) : The first AGM of every company must be held within 18 months from the date of incorporation or within 9months from the close of the accounting year which ever is earlier. Every subsequent AGM must be held at the earliest of the following dates:

— One meeting in each calendar year

— Not more than 15 months has elapsed from the previous AGM

— Within six months from the date of close of financial year

(c) Extra Ordinary Meeting (EOGM): EOGM is a shareholders' meeting called by any of the following:

— By the Board of Directors on its own motion

— By the Board of Directors on requisition of the members

— By the members if the board fails to call the meeting

— By the Company Law Board

(ii) *Class meetings*

(a) Preference shareholders Meeting: This meeting is called only when the rights of Preference shareholders are effected.

(b) Debenture holders Meeting: This meeting is called for the purpose of debenture holders when their rights are required to be varied or otherwise.

(iii) *Board Meetings and Committee Meetings*

Section 285 of the Companies Act says that in case of every company a meeting of its Board of Directors shall be held at least once in every 3 months and at least 4 such meeting shall be held in every year. Clause 49 of listing agreement provides that in case a of listed company, there should be at least four board meetings in a year and maximum time gap between two Board meetings should not exceed four months.

Section 286 of the Companies Act says that notice of every Board Meeting shall be given in writing to every Director for the time being in India, and at his usual address in India to every other Director. The Act does not provide any time length for notice of Board meeting. However, as per Secretarial Standard, at least 15 days notice must be given for a Board meeting.

Section 287 deals with Quorum for Board Meetings which provides that the quorum should be one-third of its total strength (any fraction contained in one-third being rounded-off as one) or two directors whichever is higher.

Section 289 deals with passing of board resolution by circulation. No resolution shall be deemed to have been duly passed by the Board, unless the resolution has been circulated in draft, together with necessary papers to all directors then in India (not being less in number than the quorum fixed for the board meeting), and to all other Directors at their usual address in India and approved by such of the directors in India or by a majority of such of them as are entitled to vote on the resolution.

Section 292 says that certain powers have to be exercised by the Board only at a board meeting -

— Power to make calls on share holders

— Power to authorize the buy back up to 10% of total paid up equity capital and free reserves

— Power is issue debentures

— Power to borrow moneys otherwise than on debentures

— Power to invest the funds of the Company subject to Section 372 A

— Power to make loans subject to Section 295 and Section 372A

Section 293 says that there are certain powers which the board can exercise only with the consent of the company in general meeting, i.e. before exercising there powers, necessary resolution has to be passed in the general meeting.

Audit Committee

(i) Clause 49 requires constitution of different Committees by all listed companies such as the:

(a) Audit Committee (b) Remuneration Committee (c) Shareholders' Grievance Committee etc;

(ii) Companies Act requires (under section 292A) constitution of an Audit Committee by every Public company having paid up capital of not less than Rs.5 Crores consisting of not less than three directors and such number of other directors as the Board may determine of which two-third of the total number of members should be Directors other than managing or whole-time director. The Section also provides for some other compliances by the Company.

(iii) Similarly all Non- Banking Financial Companies having assets of 50 crores and above are required to constitute an Audit Committee consisting of not less than three members of its Board of Directors for monitoring the transactions and for transacting other business as per the notification being notification no. DBS.192/ DG(VL)-2007 and DNBS.193DG(VL)2007 both dt. 22.02.2007 issued by the Reserve Bank of India.

(iv) Schedule XIII of the Companies Act,1956 requires compulsory constitution of Remuneration Committee by certain companies to be able to make payment of remuneration to their managerial personnel.

(iv) Court Convened Meetings :

These meetings are held with directions of the High Court under chairmanship of a Court appointed Chairperson. These meetings relate to amalgamation , mergers, reconstructions etc; and one of the most important thing to be noted for compliance in these meetings is that - a majority in number representing three fourth in value of the creditors or class of creditors or members or class of members as the case may be present and voting either in person or where proxies are allowed, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class; as the case may be, and also on the company as required u/s 391(2) of the Act. Other Procedures for such Court Convened meetings are to be followed as per the directions of the Hon'ble Court.

(v) Postal Ballot

Section 192A was inserted recently w.e.f 15.6.2001 to provide that a listed Public

Company may, and in the case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by Postal Ballot, shall, get any resolution passed by means of a postal ballot, instead of transacting the business in General Meeting of the Company. The section further provides for different compliance and includes voting by electronic mode. Subsequently Companies (passing of the resolution by Postal Ballot) Rules, 2001 were framed and the same were also amended subsequently. It is important to note that the following items of agenda are required compulsorily to be passed through Postal Ballot only:-

(a) alteration in the objects clause of Memorandum;

(b) alteration of Articles of Association in relation to insertion of provisions defining private company;

(c) buy back of own shares by the company under sub-section (1) of section 77A;

(d) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 86;

(e) change in place of Registered Office outside local limits of any city, town or village as specified in sub-section (2) of section 146;

(f) sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 293;

It is recommended that the requirement of Postal Ballot should apply to leases or creation of mortgages and charges by companies, where such mortgage or charge confers on the other party the right to take over the business of the undertaking in specified circumstances.

(g) giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A;

It is suggested that investment by way of acquisition, subscription, purchase or otherwise of the securities of any other body corporate in excess of the limits prescribed under sub-section (1) of Section 372A of the Act should be made on the authority of a Resolution passed by the shareholders by voting through Postal Ballot, though this requirement is not expressly provided at item (g) above;

(h) election of a director under proviso to sub-section (1) of section 252;

(i) variation in the rights attached to a class of shares or debentures or other securities as specified under section 106.

As per Section 192A besides the items of business mentioned as above, a listed Public Company may seek the approval of its shareholders through voting by postal ballot for any other item of business as it may decide but the following four items of ordinary business are required to be transacted at the Annual General Meeting only and not otherwise:

(1) consideration of accounts, balance sheet and the report of the Board of directors and auditors,

(2) declaration of dividend,

(3) appointment of directors in place of those retiring, and

(4) appointment of, and the fixing of remuneration of, the auditors;

In addition to the above four items certain special agenda like removal of Director, removal of Auditor and items requiring special resolution u/s 190 should also be transacted only at General Body Meeting of shareholders.

(2) Accounts and Audit:

Every company is required to maintain Accounts. and get them audited as required u/s 209 to 223 for Accounts and 224 to 233B for Audit. It may be mentioned here that earlier the things were different when Manufacturing and Other Companies (Auditors' Report) Order, 1988 (MAOCARO) was there and the Accounting Standards were being prescribed by the Institute of Chartered Accountants of India. Lot of changes have taken place globally in the wake of certain accounting irregularities resulting in a large crisis in

developed countries and public debate and discussion on the role of accounting professionals. The Sarbanes - Oxley Act came not only to regulate the accounting profession but also to bring transparency and disclosure in corporate dealings. Corporate governance has also been brought in a big way by Regulatory Authorities in India and other countries. In this background MAOCARO was replaced with CARO and it was subsequently amended by putting greater responsibility on Auditors. Secondly, a National Advisory Committee has been constituted by the Central Government on Accounting Standards pursuant to Section 210A of the Companies Act, 1956 and now the Accounting Standards have become a part of the said Act, as the same have been notified as Companies (Accounting Standards) Rules, 2006.

CARO requires reporting by auditors on a large number of following important items which are mandatory:-

(i) Whether the company is maintaining proper records showing, full particulars including quantitative details and situation of fixed assets and other matters related thereto.

(ii) Whether physical verification of inventory has been conducted by the management at reasonable intervals and matters related thereto.

(iii) Has the company either granted or taken any loans (secured or unsecured) to/ from the companies, firms or other parties covered in the Register maintained u/s.301 of the Act.

(iv) Is there an adequate internal control procedure commensurate with the size of the company and the nature of its business and other matters related thereto.

(v) Whether transactions that need to be entered into the Register in pursuance of Section 301 have been so entered and matters related thereto.

(vi) In case the company has accepted deposits from the public whether the directives issued by the RBI and Provisions of Sections 58A and 58AA of the Act have been complied with and matters related thereto.

(vii) In case of listed companies and other companies whether the company has an internal audit system commensurate with its size and nature of its business.

(viii) Where maintenance of cost records has been prescribed, whether such records have been maintained.

ix) Is the company regular in depositing undisputed statutory dues including

money into the Investors' Education and Protection Fund.

(x) Whether in case of a company which has been registered for a period not less than 5 years its accumulated losses at the end of the Financial year are not less than 50% of its net worth and matters related thereto.

(xi) Whether the company has defaulted in repayment of dues to financial institutions or banks or debenture holders.

(xii) Whether adequate documents and records are maintained in cases where the company has granted loans and advances on the basis of securities by way of pledge of shares/ debentures.

(xiii) Whether the provisions of any Special Statutes applicable to Chit Funds have been duly complied with.

(xiv) If the company is dealing in shares and securities whether proper records have been maintained of the transactions and whether timely entries have been made therein.

(xv) Whether the company has given any guarantee for loans taken by others from banks and financial institutions and whether the terms and conditions thereof are prejudicial to the interest of the company.

(xvi) Whether term loans were applied for the purpose for which the loans were obtained.

(xvii) Whether the funds raised on short term basis have been used for long term investments and vice- versa. If so, the nature and amount are required to be indicated.

(xviii) Whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained u/s.301 of the Act and if so, whether the price at which shares have been issued is prejudicial to the interest of the company.

xix) Whether securities have been created in respect of debentures issued.

(xx) Whether the management has disclosed on the end use of money raised by public issues and the same has been verified.

(xxi) Whether any fraud on or by the company has been noticed or reported during the year and if so, the nature and the amount involved is to be indicated.

(3) Dividend

Dividend includes interim dividend as defined in section 2(14A) of the Act and the same is declared by the Board of Directors. Final dividend is recommended by the Board to be declared at the AGM. Section 205 to Section 207 deal with the manner and time of payment of dividend. One of the important amendment on this subject was brought about in the year 2000 to provide for the following:

(a) The amount of dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend

(b) The dividend is to be paid within 30 days from the date of declaration

(c) If it is unpaid/unclaimed upto seven days from the expiry of the said 30 days then it is to be transferred to a special account called "Unpaid Dividend Account of .....Company Ltd./ Company Pvt.Ltd" within seven days

Thereafter as required under section 205C, the same is required to be transferred to the Investor Education & Protection Fund (IE&PF) after the expiry of seven years. It may be noted here that earlier when the unpaid/ unclaimed amount were being transferred under section 205A to the General Revenue Account of the Central Government a shareholder could apply to get back his money but now once the money goes to IE&PF no one will be able to claim his money back from the fund. Moreover, earlier only unclaimed/unpaid dividend were being transferred under section 205A but now the amount relating to the following amounts are also required to be transferred to the fund:-

(a) amounts in the unpaid dividend accounts of companies;

(b) the application moneys received by companies for allotment of any securities and due for refund;

(c) matured deposits with companies;

(d) matured debentures with companies;

(e) the interest accrued on the amounts referred to in clauses (a) to (d);

(f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the fund; and

(g) interest or other income received out of the investments made from the Fund

(4) Fixed Deposit Management

Section 58A has been amended to provide stringent measures for companies accepting public deposits. There are two types of companies which accept public deposits (i) Non- Banking Financial Company (NBFC) and (ii) Manufacturing Companies. While section 58A applies to both types of Companies, NBFCs are also required to comply with the directions issued by the RBI from time to time.

Companies (Acceptance of Deposits) Rules as amended prescribe the Rules for acceptance and repayment of deposits and maintenance of liquids assets by them. The RBI directions for NBFCs which are accepting public deposits require more compliances to be done by them. Auditors of NBFC are also required to give separate report to RBI for these deposit accepting NBFCs. Section 58AA and section 58 AAA were inserted by the Companies (Amendment) Act, 2000 providing for the following measures :

(i) Section 58AA has been inserted to protect small depositors with deposits of a sum not exceeding Rs.20,000 with the company in any financial year. This Section requires companies to inform the Company Law Board within sixty days from the date of default if a company failed to make repayment of deposits on maturity to small deposit holders. The company Law Board may make an order within thirty days from the date of receipt of intimation of the default calling upon the company to repay the deposit in question and the company shall be bound to comply with the order. The persons who are responsible for any default (both in respect of refund of deposits and compliance with CLB orders) shall be punishable with imprisonment, which may extend to three years and shall also be liable to fine of not less than Rs.500 per day during which such default continues.

(ii) Section 58AAA has been inserted to provide that the offences under sections 58A and 58AA

connected with or arising out of acceptance of deposits shall be cognizable offence under Criminal Procedure Code, 1973.

Section 58A(9) provides for the depositors to make an application to Company Law Board in case of non payment of their deposit by any company. The Company Secretaries of deposit taking companies must be very careful as any default in repayment of deposit and not complying with the above provisions of law will render them liable for prosecution as they are officers in default and this offence is a non-compoundable offence.

If any company makes any default in repayment of public deposit then they cannot take advantage of certain privileges available to these Companies otherwise.

(5) Transfer and Transmission

This is a very important compliance to be done by the Company Secretary and his department. There has been a complete change of scenario from paper share script to paper- less shares due to the advent of dematerialization. Although most of the shares of all big companies are in De-mat form but still paper securities are in circulation to some extent and they need to be transferred/ transmitted as and when presented to the company. SEBI had mandated that all companies are required to have a common registry for both physical as well as de-mat mode, which may either by in-house or outsourced. In-house facility has to be registered with SEBI under the SEBI(Registrar to an Issue and Share Transfer Agents) Rules,1993 otherwise the company has to appoint an independent Shares Transfer Agent (STA) or RTA for both the modes.

(6) Corporate Restructuring

Corporate restructuring has been widely used in developed economies as growth strategy and is increasingly becoming an order of the day in the Indian context to achieve competitive edge. In the present Global scenario, business organisations can survive only if they develop a high level of sustainable competitiveness. In order to maximise value creation it is important to focus on core competencies. It is therefore equally important to plan for selling a business, as it is to acquire a business. Acquisition of shares of a well-run and established company is the easiest way of taking over the same instead of setting up a new venture and facing all kinds of uncertainties. Mergers and acquisitions save the company from adverse effects of gestation period and teething trouble and achieve sustainable competitive advantage.

Business restructuring is required for one or more of the following reasons: -

1. Achieve financial viability
2. Acquire market share and tackle competition
3. Synergy of operations leading to optimum utilisation of resources
4. Get rid of loss making units and get sick units at throwaway prices
5. Enter new areas of business thereby saving gestation period
6. To focus on core business where the group is market leader and exit non core areas
7. Acquire Trade marks / Patents / Goodwill
8. Get tax benefits – accumulated losses, carried forward losses, depreciation, capital gains
9. Need to be pro-active to events happening around by updating the technology
10. Simplify organizational structures to gain customer focus and change from production driven approach to market driven approach
11. To focus on cost reduction drive by tackling surplus man power and eliminating chronic problem of low productivity
12. To meet the challenges arising out of the currencies becoming fully convertible, which makes possible instant movement of large amounts of capital across national boundaries.
13. To tackle in bringing down the debt equity ratio by sale of unwanted loss making unit and to reduce interest burden.
14. To expand dealer and consumer network

A scheme of merger or de-merger should be fair and reasonable. It should not be detrimental to public interest. So far as tax planning is concerned it may be mentioned here that tax planning may be legitimate but it should be done within the framework of law and subject to approval by the High Court. While doing the planning for amalgamation the following aspects are required to be kept in mind: -

1. All the properties of the amalgamating company or companies should vest with the amalgamated company.
2. All the liabilities of the amalgamating company

or companies should become the liabilities of the amalgamated company or companies.

3. The shareholders holding not less than three-fourths in value of the shares in the amalgamating company should become shareholders of the amalgamated company by virtue of the amalgamation.

In case of de-merger the following points should be taken care of: -

1. All the de-merged entities are companies. The Income Tax Act has defined a demerged company as a company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

2. De-merger involves transfer of one or more undertakings of the demerged company to the resulting company. A resulting Company has been defined inter-alia to mean one or more companies to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company.

3. Transfer is pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956.

4. All the property of the undertaking immediately before the de-merger becomes the property of the resulting company.

5. All the liabilities relatable to the undertaking immediately before the de-merger becomes the liabilities of the resulting company.

6. The property and liabilities of the undertaking(s) of the demerged company are transferred at values appearing in its books of account immediately before the de-merger (ignoring revaluation).

7. The resulting company issues in consideration of the demerger its shares to the shareholders of the demerged company on a proportionate basis.

8. Shareholders holding not less than three fourth in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger.

9. The transfer of the undertaking is on a going concern basis.

10. The demerger is in accordance with the conditions, if any, notified under section 72A(5) of the Income Tax Act by the Central Government in this behalf from time to time.

The procedure for mergers, demergers, takeovers and other forms of business restructuring is very complex and lot of preparation is required before the same can be taken up. This not only involves the compromises or arrangements between the company and its creditors or any class of shareholders but it also involves safeguard of public interest and compliance with various laws. The professionals are therefore required to do a lot of homework before embarking upon any scheme or plan for undertaking business restructuring.

(7) Registration and Modification of Charges

Section 134 of Companies Act provides that a charge can be filed by the company or by any person interested in the charge within 30 days from the date of creation of charge together with the instrument creating the charge.

If charge is not filed within the above 30 days Registrar of Companies (ROC) may allow next 30 days time on payment of such additional fees specified in schedule 'X' if there is sufficient cause for not filing charge timely. If a charge is not filed within the above time limit then the company has to make an application/ petition before the Company Law Board (CLB) for extension of time. CLB will grant extension of time u/s 141 if it is satisfied that the omission to file with ROC is accidental or due to some sufficient cause.

(8) Appointment of Managerial Personnel and payment of Remuneration

The company has to comply with the relevant provision of the Act while making appointments of Managerial personnel including sections 198, 269 and 309 read with schedule XIII of the Act. Every company having a paid-up capital of Rs. 5 Crores or more is compulsorily required to appoint a Managerial Personnel either Managing Director or Whole-time Director or Manager. While doing so compliance of Schedule XIII is also necessary which inter-alia prescribes the table of payment of remuneration in different parts depending upon the profitability and other factors. If a company is unable to comply with Schedule XIII then it is required to make an application to Central Government for its approval.

Competition Act, 2002

The Indian Market has to gear itself to promote and sustain fair competition. Accordingly, the existing law on matters relating to competition - the MRTP Act, 1969, is being repealed by the Competition Act, 2002 once it becomes fully operational. In the light of international economic developments the focus of this Act is on promotion of fair competition rather than curbing monopolies.

Establishment of Competition Commission of India (CCI): There shall be established Competition Commission of India to prevent practices having adverse effect on competition. The CCI shall replace the existing MRTP Commission under the MRTP Act, 1969.

This Act seeks to ensure fair competition in India, by prohibiting trade practices, which cause appreciable adverse effect on competition. Three such practices have been identified and shall be regulated by this Act, which are as follows: -

(i) Anti-competitive Agreements,

(ii) Abuse of Dominant Position,

(iii) Elimination/ reduction of competitors in market achieved through Combination.

An option has been given to the person/ enterprise entering into a combination to give intimation of the proposed combination to the CCI who on receipt of information or suo moto shall determine the effect of the combination. In terms of the Act, if a combination has or is likely to have adverse effect on competition within the relevant market in India, such combination shall be void.

The Act empowers the CCI to inquire into agreements, abuse of dominant position, or combinations taking place outside India, if they have or are likely to have an appreciable adverse effect on competition in India. If we consider a situation where there is a merger between two enterprises abroad, such as Company in U.K. and Company in U.S.A., which have subsidiaries in India, then the CCI will have powers to inquire into such a combination.

The Competition Act was enacted in 2002 keeping in view the economic developments that have resulted in opening up of the Indian economy, removal of controls and consequent economic liberation which required that the Indian market be geared to face competition from within the country and outside. The Competition Act, 2002 provided for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected herewith or incidental thereto

E-governance regime for e-filing of forms under MCA-21 Programme.

The MCA-21 project was inaugurated on 18.02.2006 at the ROC Office in Coimbatore where the first Company in India was registered through e-filing. Thereafter it was made on-line on 24.04.2006 at Mumbai and 30.07.2006 at Kolkata. The last location to go on-line was Jammu on 04.09.2006. Now all ROC offices in the country have gone on-line and are accepting Company documents in e-mode.

The Central Government started this Project under its e-Governance programme. The initiative was rightly named as MCA-21 to show the shape of things to come for all of us in the 21st century which envisages total transformation of the work at the Registrar of Companies (ROC) and RD Offices throughout the country taking us from a paper-based to a paperless environment. Prime Minister Dr. Manmohan Singh had launched the e-filing in Delhi on 18th March 2006 which shows the importance of the project. The system had gone fully live from 16.09.2006 under which all documents are required to be filed by Companies in electronic mode using digital signatures.

With the above system the entire e -filing is expected to be done from the virtual office. The present system of filing physical documents with the offices of ROC has already been replaced by the above project. The stake-holders are not required to visit ROC offices anymore and they can complete their transaction on a 24X7 and anytime/anywhere basis in the comfort of their own offices in the future scheme of things under this project. The future Company Law is poised for making the life of a citizen easy at least to this extent.

Benefits of MCA-21 Project

MCA-21 seeks to fulfill the requirements of various stakeholders including the corporates, professionals, public, financial institutions and banks, Government and the MCA employees. The key benefits of MCA-21 project are as follows:

(a) On-line incorporation of companies

(b) Simplified and easy mode of filling of Forms/ Returns

(c) Registration as well as verification of charges anytime and from anywhere

(d) Inspection of public documents of companies anytime from anywhere

(e) Building up a centralised database repository of corporates operating in India

(f) Enhanced service level fulfillment and customer relationship building

(g) Total transparency through e Governance

(h) Timely redressal of investor grievances

(i) Availability of more time for MCA employees for qualitative analysis of corporate information

(B) INTELLECTUAL PROPERTY LAWS

The whole concept of intellectual property is an age-old concept. The importance underlying intellectual property historically has been that of recognition and rewards associated with ownership of inventions and creative work to encourage inventive and creative activity to stimulate economic growth of a nation. We are moving globally from BPO to KPO. This is the age of knowledge economy. The professionals have to play a very important role not only in acquiring knowledge but also in reprocessing and reengineering it for common good. In the corporate parlance also expertise in the form of technology or other intellectual input is rewarded by liberal grant of Employee Stock Options and other incentives. In our country, in the wake of global developments we have updated our Intellectual Property Rights laws to make them compatible with the requirements of WTO and TRIPs. Some of the new legislations in the field on intellectual property are as follows:

A. Patents Act, 1970

B. Trade Marks Act, 1999

C. Design Act, 2000

D. Semi Conductor Integrated Circuits Layout Design Act, 2000

E. The Protection of Plant Varieties and Farmer Rights Act, 2001

F. The Geographical Indications of Goods (Registration and Protection) Act, 1999

G. Information Technology Act, 2000

The future laws under the intellectual property rights concept will also have an important element of risk management. The ownership and control of intellectual property also attract certain risks and this requires strategies and plans to mitigate those risks.The most important among others being the infringement of rights in intellectual property. The risk management strategy should take into consideration the situations where company's own Intellectual Property rights (IPRs) may infringe the IPRs of a third party and the company has a valid claim of infringement against the third party. It is also important to analyze the scope of any grant of rights in intellectual property assets , which may include licenses, distribution agreements, reseller arrangements and any other agreement or transaction involving transfer of IPRs that may impact its value.

Making Indian Intellectual Property Rights laws compatible with global trends

We are one of the few developing countries which have taken initiative to protect Intellectual Property Rights (IPR) and the same is evident from the fact that our Government has taken several steps to make our IPR laws compatible with the TRIPS agreement by making amendments to Copyrights Act, Trade Marks Act and the Patents Act. Moreover we have also brought out a new Designs Act to keep pace with the technological developments. Necessary Rules and Regulations are also being brought out to make these laws fully compatible with the relevant global requirements. The Trade Marks Act, 1999 was brought into force by a notification-dated 15.09.2003. The recent Copyright (Amendment) Act, 1999 is taking care of the protection of copyright issues and covers many areas, which were hitherto disputed. The Patents (Amendment) Act 2002 will take care of proper registration of Patents and protection of Intellectual Rights relating thereto. Earlier the Government had enacted the Information Technology Act in the year 2000 to provide statutory recognition and necessary legal framework for computer and other cyber related issues. In our country we are far ahead of other member countries of WTO in providing due protection to IPR and setting global legal standards.

(C) LABOUR LAWS

The following Labour Laws are important for Company Secretary Professionals under their over all Compliance Management System-

(1) The Industries(Development and Regulation) Act,1951

(2) Minimum Wages Act, 1948

(3) Payment of Bonus Act, 1965

(4) Payment of Gratuity Act, 1972

(5) Employees' Provident Funds and Miscellaneous Provisions Act, 1952

(6) Employees' State Insurance Act, 1948

(7) Workmen's Compensation Act, 1923

(8) Contract Labour (Regulation and Abolition) Act, 1970

(9) Industrial Disputes Act, 1947

(10) Industrial Employment (Standing Orders) Act, 1946

(11) Factories Act, 1948

(D) TAX LAWS

Direct Tax:

— Income Tax Act, 1961

Indirect Tax Laws:

— Sales Tax Laws(both State Act & Central Sales Tax Act)

— Central Excise Act, 1944

— Customs Act, 1962

— Service Tax

— Value Added Tax (VAT)

— Profession Tax

The above taxation Laws are some of the important Legislation which a Company Secretary Professional should know as he is the Principal officer of a company. Two new subjects are discussed here below:

Value Added Tax (VAT)

It has been often said that the prevailing sales tax system in different states with different rates of taxes, turnover taxes, entry taxes and octroi etc; requiring different kinds of documents for interstate transport of goods are difficult and complex. Taxation of inputs and outputs results in payment of tax on tax with consumers paying more than they are needed to pay. The levy of Central Sales Tax also results in the richer states collecting tax from the consumers in poorer states. In this background it is necessary to transform the whole system into a simple value added tax(VAT). Switching over to VAT is essential in the present scenario of open economy and is the need of the hour. It will provide level playing field to domestic trade and industry and consumer will also be benefited by getting goods at competitive prices. It is a well known fact that the existing system of sales tax does not allow local manufacturers to compete with the importers and the whole system is unable to meet the international competition for domestic exports. This system is non- neutral and results in multiplicity of taxation thereby leading to economic distortion. Thus, introduction of VAT is a timely step in the right direction. The corporate professional are required to be well versed in VAT laws of different states to be able to comply with the same.

Service Tax

Service tax was introduced in India in the year 1994 and till now there is no separate Act for levy of service tax. However, certain sections of the Central Excise Act, 1944 have been made applicable to the service tax law. Initially service tax levy had started only with three services but now they are covering a wide ambit of services provided in the country. Professionals were bought into this tax net in the year 1998. The rates of service tax have also gone up from a small percentage to 12% now with an education cess of 2% and additional secondary and higher education cess of 1% on service tax. The country is now moving towards uniform Goods and Service Tax law which will replace sales tax in phases. The corporate professionals are required to acquaint themselves to be able to comply with service tax laws also.

(E) SECURITY LAWS

Securities issue management and due diligence is one of the prime responsibility of a Company Secretary professional as he is also the Compliance Officer named in all offer documents. Companies raise capital/debt inter-alia through the following issues:-

— IPOs/Public Issue

— Rights Issue

— Bonus Issue

— Preferential Issue

— Employees Stock Option Scheme

— Debt Instruments

— GDRs/ADRs

— ECB/FCCBs etc;

Some of the Important Acts/Rules relating to capital issue management are discussed here below:

— Securities Contracts (Regulation) Act, 1956

— Foreign Exchange Management Act, 1999

— Depositories Act, 1996

— Securities and Exchange Board of India Act, 1992 & SEBI Guidelines

Securities and Exchange Board of India Act , 1992 & SEBI Guidelines

The Securities & Exchange Board of India(SEBI) is a Regulatory Authority which was set up by the Central Government for the twin purpose of Regulation of Capital market and protection of investors. SEBI has come a long way since its inception in the year 1992 and has come out with many Rules and Regulations. Some of the Regulations which are important for our day to day functioning are:

(i) SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997

(ii) SEBI (Prohibition of Insider Trading) Regulations,1992

(iii) SEBI(Buy-Back of Securities) Regulations, 1998

(iv) SEBI (Disclosure and Investor Protection) Guidelines,2000 as amended from time to time.

SEBI (Disclosure and Investor Protection) Guidelines,2002 also referred to as DIP guidelines mainly prescribes the matters relating to Issue of Securities including public issue, rights issue, bonus issue, preferential issue and other capital issues. It is divided into various Chapters and Schedules and the same are very comprehensive. These guidelines are being updated frequently and the Company Secretary is required to update himself regularly with these amendments so as to be able to handle the matters relating to the Capital issues of his company. Some of the Compliances which are essential for the Company Secretary going for any capital issue are the pricing, promoters contribution, lock-in requirements, preparation of offer documents, advertisement, book-building process, allotment , listing and several other aspects connected thereto. Before planning any issue he has to consult the Merchant Banker about the whole process and regularly interact with him during and after the issue. Now-a-days Red herring Prospectus is filed and he has to be well versed with the legal provisions so as to be able to complete his job without any difficulty.

Dematerialization of Securities

Trading of securities through Depository mode (Electronic mode) was introduced in India about a decade ago and has come a long way since then due to compulsory demat trading which is also known as scriptless or paperless trading. This requires paper securities to be de-materialised and kept in electronic mode. The system has been put in place after studying international practices like the US depository based trading and the UK depository system. The Indian system has taken overall concept from the international Capital market and the same has been fine – tuned to meet Indian conditions. We have to be very careful as the new system is also not totally free from certain negative aspects.

India had entered into the era of paperless trading with the Government promulgating The Depositories Ordinance 1995 on 20th September, 1995 which was subsequently enacted as The Depositories Act, 1996, providing legal framework for setting up of Depositories to record details of ownership of securities in book entry form. This demonstrated India's commitment and willingness to increase efficiency and transparency in its Capital Market. The Govt. was convinced that the establishment of depositories alongwith screen based trading will go a long way in boosting the investors' confidence and allaying the apprehensions of foreign investors about investing in Indian Capital Market

Listing agreement and Corporate Governance

Compliances under the listing agreement are the main thrust of a Company Secretary professional.

Major Compliances required to be followed under the Listing Agreement are briefly given hereunder:

Clause	*Compliances required*
Clause 16	Book closure / Record Date to be informed
Clause 21	Payment of dividend on shares, interest on debentures/bonds, redemption amount of redeemable shares or debentures/bonds
	Clause 32 Cash Flow Statement in the Annual Report, Consolidated Financial Statement and related party disclosures
Clause 35	Shareholding pattern containing details of promoters holding and non-promoters holding
Clause 41 as amended recently vide SEBI notification dt. 10.07.2007	(a) Un-audited financial results and other related items (b) Half - year results and Limited review Report by auditors (c) Auditors Qualification (d) Quarterly reporting of Segment wise Revenue, results and Capital Employed.

Clause	*Compliances required*
	(e) Consolidated Quarterly Financial results of parent company
	(f) Annual Results
	(g) Change of name due to new activity
	(h) Explanation regarding variations in utilization of funds and profitability
	(i) Status of number of complaints received from investors and redressed during the quarter
Clause 47	(a) Appointment of Company Secretary as Compliance Officer
	(b) Registration of share Transfer within 30 days and submission of a certificate with Stock Exchange(s) on a half yearly basis as per clause 47(c)
Clause 49	Corporate Governance
	(A) Mandatory Requirements:
	(i) Board of Directors
	(a) Composition of Board
	(b) Non- Executive Directors' Compensation and disclosures
	(c) Other provisions as to Board and Committees
	(d) Code of Conduct
	(ii) Audit Committee
	(a) Qualified and Independent Audit Committee
	(b) Meeting of Audit Committee
	(c) Powers of Audit Committee
	(d) Role of Audit Committee
	(e) Review of information by audit committee
	(iii) Subsidiary Companies
	(iv) Disclosure
	(a) Basis of related party transactions
	(b) Disclosure of accounting treatment
	(c) Board disclosures – Risk management
	(d) Proceeds from public issue, rights issues, preferential issues etc;
	(e) Remuneration of Directors
	(f) Management
	(g) Shareholders
	(v) CEO/CFO Certification
	(vi) Report on Corporate Governance
	(vii) Compliance (Certification by Practising Company Secretary or Company's Auditor)
	(B) Non-Mandatory Requirements:
	(i) The Board
	(ii) Remuneration Committee
	(iii) Shareholder rights
	(iv) Audit Qualifications
	(v) Training of Board Members
	(vi) Mechanism for evaluating non-executive Board Members
	(vii) Whistle Blower Policy

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as amended

A committee was constituted under the chairmanship of Justice P. N Bhagwati to remove the deficiencies of the 1994 Takeover Code and to make Takeover Regulations more equitable and transparent. On the basis of suggestions / recommendations made by the committee, SEBI came out with the above Regulations. These Regulations have since been amended from time to time to meet the requirements of trade and industry and protect interest of investors. It may be noted here that the Takeover Code inter-alia does not apply in the following situations: -

1. Acquisition of shares pursuant to a scheme
   - (i) Framed u/s 18 of Sick Industrial Companies (Special Provisions) Act, 1985
   - (ii) Of Arrangement or Reconstruction including amalgamation or merger or demerger under any Law or Regulation, Indian or Foreign
2. Acquisition of shares in companies whose shares are not listed on any stock exchange provided that

this exemption will not be available if by virtue of acquisition or change of control of any unlisted company, whether in India or abroad the acquirer acquires shares or voting rights or control over a listed company.

3. Acquisition of shares in terms of Guidelines or Regulations regarding de-listing of securities specified or framed by SEBI.

It may also be noted that most of the business restructuring is done through the Takeover route and many of these takeovers are friendly or agreed takeovers where the acquirer after agreeing to buy stake from the promoter group also buys shares from general investing public through open offer after complying with the Take-over Regulations and other legal requirements.

SEBI (Prohibition of Insider Trading) Regulations, 1992

SEBI had amended Insider Trading Regulations vide a notification dated 20.2.2002 completely re-writing the earlier provisions. One of the important aspects of this amendment was that the Regulatory Authority brought many provisions of the Sarbanes Oxley Act into these Regulations.

The following features reflect this thinking: -

(1) Several definitions were changed and new definitions were inserted.

(2) SEBI may initiate criminal prosecution u/s 24 in addition to any other action under chapter VIA.

(3) Preparation of a code of internal procedure & conduct for listed Companies.

(4) Disclosure of holding by Directors and substantial shareholders.

(5) Provisions for violation of the Regulations relating to disclosures.

Although some of the new Regulations were needed but all of them have, over a period of time, proved to be a little harsh given the conditions in our country. Generally speaking also all the US situations may not fully fit-in into our country and we have started realizing lately that our own laws are much better then the laws of other countries.

(F) OTHER LAWS

Pollution and Environment Laws have become significant and therefore a professional must be conversant with these laws in addition to above laws. The knowledge of other laws required for a Company Secretary will depend upon the type of Company/ activities of the Company where he is working. For example: A person working in the Banking Sector will be required to know about the Reserve Bank of India Act,1934 and the Banking Laws required for his day to day working. Similarly a person working in the Insurance Sector will be required to have specialized knowledge of the Insurance laws and he will have to regularly interact with Insurance Regulatory Development Authority. It is therefore required that Sector specific knowledge must be acquired in addition to the knowledge of general laws applicable in case of all Companies.

It may also be mentioned here that every professional should know General & Commercial laws like Transfer of Property Act, The Indian Stamp Act, The limitation Act, Arbitration & Conciliation Act, Negotiable Instrument Act, The Indian Contract Act, Civil Procedure Code and Code of Criminal Procedure etc; as a matter of compulsory knowledge to be able to discharge his duties as a true professional and giving a list of all these general laws is not possible due to space constraint. He will have to learn these laws depending upon the particular sector in which he is engaged as a Company Secretary or in other capacity but he should excel in every field in which he works and acquire knowledge on a continuous basis.

Conclusion

Corporate Compliance Management may be done by in house resources or outsourcing the job to consultants and specialized professionals/intermediaries having necessary registration with the Regulatory Authorities. The Corporate house may also seek legal counsel and other professionals to get expert advice in all areas but in all the cases the corporate professionals whether in employment or in practice have to understand the law and do their job professionally. There should be a full corporate Compliance Management System in place on a sustained basis so that the corporate professionals can discharge greater responsibilities to achieve this objective for addition of substantial business value.

THE PROCESS OF CORPORATE COMPLIANCE MANAGEMENT

SUDHEENDHRA PUTTY*

INTRODUCTION

Every company is bound to act within the laws, rules and directions laid down by the legislature. Further, it is also required to comply with the Memorandum and Articles of Association of the company and any other stipulations imposed by the financial institutions/banks and any other entity (ies) that may have a say in the affairs of the company by virtue of having a stake in it – financial or otherwise. Further, the management of every company has a fiduciary responsibility towards the company, the shareholders and other stakeholders such as the statutory authorities, vendors, customers and the general public. It is a primary expectation of all the stakeholders that the management act with reasonable care, skill and diligence. This, in brief, is the foundation of corporate compliance management which is the cornerstone and the ethos of good corporate governance.

NEED FOR CORPORATE COMPLIANCE MANAGEMENT

When the Indian economy metamorphosed in the early 1990s and was in the throes of liberalization, it also ushered in an unprecedented regime of self-regulation/self-management. While several stringent and business restrictive laws were either scrapped or simplified, the Government also sent down a clear message that the onus would be on self-discipline and that corporates would have to set their house in order and engage in self-control. In this background, it becomes pertinent to note that every company has to comply with a plethora of Acts and Regulations and that is where Corporate Compliance Management (CCM) gains significance. Without doubt, CCM is emerging as a vital aspect of overall management and corporate governance process. After all, legal compliances form the bulwark of good corporate governance.

"The multiplicity of laws, rules, regulations, etc has necessitated introduction of a system to ensure compliances under the laws. This has a two-fold objective. Firstly, to protect the interests of the customers, employees, revenue, environment and the directors and officers of the company. Secondly, to avoid any unwarranted legal actions by the law enforcing agencies and other persons as well. In most of the cases, the persons responsible for compliance and liable for punishment are directors and the principal officers of the company. Amongst the directors the responsibility of the managing and whole-time (executive) directors is greater. As a result of stricter enforcement of law and recent judgments of the Courts in some cases have necessitated making Legal Compliance Reporting System more effective[1] ". The risks of non-compliance of the law are many:

- Cessation of business activities
- Civil action by the authorities
- Punitive action resulting in fines against the company/officials
- Imprisonment of the errant officials
- Public embarrassment
- Damage to the reputation of the company and its employees
- Plummeting stock price and threat of de-listing of shares (in case of listed companies)
- Attachment of bank accounts.

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1 See Jurix – Secretarial Practice Recorder No. 197D, Legal Compliance Certificate for Board Meetings, Dr. K.R. Chandratre.

ADVANTAGES OF CORPORATE COMPLIANCE MANAGEMENT (CCM)

Apart from avoiding the risks of non-compliance, there are manifold advantages of CCM. These, *inter alia,* include:

— Better compliance of the law of the land

— Review of the status of legal/statutory compliances

— Safety valve for directors against unintended non-compliances/prosecutions, etc.

— Review of the position of pending litigation before the judicial/quasi-judicial fora

— Cost savings by avoiding penalties/fines and minimizing litigation

— Eliminating chances of being hit by law of limitation as pending cases are periodically reviewed

— Better brand image and positioning of the company in the market

— Enhanced credibility/creditworthiness that only a law-abiding company can command

— Concerns for the interests of the investors

— Enhanced implementation of the principles of corporate governance

— Professional management permeating all levels of the hierarchy.

STATUTORY RECOGNITION OF CCM

Although loosely worded, couched in ambiguity and lacking in clarity, the concept of CCM has already gained statutory recognition – at least for listed companies. Clause 49 of the Listing Agreement with the Stock Exchanges (as amended in 2004 based on the recommendations of the NR Narayana Murty Committee) provides that the Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliance. While this clause is subject to varied interpretation, what it has done is to provide the necessary importance to the concept of CCM. This statutory backing will provide the required impetus to take the process along.

THE CCM PROCESS

In general, a manufacturing or trading company may well be subject to over a 100 legislations – both Central and State. The CCM process will involve listing out various applicable laws to the company and specifying the actual compliance requirements. The CCM process, as detailed below, will culminate in presenting before the Board a Corporate Compliance Report (CCR). An illustrative list of the contents of such a CCR is as follows:

A. Corporate Laws

1. Companies Act, 1956 and the various Rules and Regulations framed thereunder, MCA-21 requirements and procedures.
2. Foreign Exchange Management Act, 1999 and the various Rules and Regulations framed thereunder.
3. Competition Law
4. Secretarial Standards/Accounting Standards/ Cost Accounting Standards issued by ICSI/ ICAI/ICWAI, respectively.
5. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
6. Foreign Contribution Regulation Act, 1976
7. Emblems and Names (Prevention of Improper Use) Act, 1947
8. Industrial Licensing (where applicable)
9. SEZ and STP regulations (where applicable)

B. Securities Laws

1. Listing Agreement with the Stock Exchanges.
2. Rules, Regulations and Guidelines issued by SEBI with particular emphasis on Insider Trading and Takeover Code.
3. Depositories Act, 1996 and Demat related matters.

C. Commercial Laws

1. Indian Contract Act, 1872
2. Sale of Goods Act, 1930
3. Transfer of Property Act, 1882
4. Negotiable Instruments Act, 1881
5. Arbitration and Conciliation Act, 1996
6. Intellectual Property laws – including those on Trade Marks, Copyrights, Patents and Geographical Indications

D. Fiscal Laws

1. Income Tax Act, 1961
2. Central Excise Act, 1944
3. Customs Act, 1962
4. Wealth Tax Act, 1957
5. Central Sales Tax/State Sales Tax/VAT
6. Service Tax.

E. Labour Laws

Law relating to payment of bonus, payment of wages, minimum wages, ESI, provident fund, gratuity, industrial disputes, factories, workmen's compensation, equal remuneration, industrial employment (standing orders), apprentices, and related laws.

E. Pollution/Environment related Laws

1. Air (Prevention and Control of Pollution) Act, 1981
2. Water (Prevention and Control of Pollution) Act, 1974
3. Water (Prevention and Control of Pollution) Cess Act, 1974
4. Environment Protection Act, 1986.

G. Industry Specific Laws

Legislations applicable to specific categories of industries – electricity, power generation and transmission, insurance, banking, chit funds, etc

H. Local Laws

These would include Stamp Act, Registration Act, municipal and civic administration laws, shops and establishments, etc

Individual companies may suitably add or delete to/from the above list as required. In addition, it would be a good practice to also report the following as part of the CCR[2] :

(a) Any agreement on stamp paper or plain paper

(b) Agreements with dealers, distributors, service dealers, OEMs, etc and letters terminating these arrangements

(c) Supply contracts, purchase orders and order acceptances

(d) Tender documents

(e) Bank and other guarantees

(f) Indemnities, legal undertakings and comfort letters

(g) Lease and rent agreements

(h) Service contracts, agreements or letters of appointments

(i) Consultancy or technical assistance agreements

(j) Tax collection or payment documents

(k) Suits, petitions and affidavits

(l) Reply to show-cause notices or demand notices

(m) Statutory returns, forms and notices

(n) Any document required to be executed under the common seal of the company

(o) Mortgage, hypothecation or any such document creating a charge on the company's moveable or immovable property.

(p) Notices and other documents in disciplinary proceedings against employees.

Several companies have in the recent past listed on overseas bourses and have also set up subsidiaries and joint ventures abroad. A note on their compliances – including specific compliances under the City Code in the UK and the Sarbanes Oxley Act in the US would be appropriate and make the CCR truly comprehensive.

NATURE OF COMPLIANCES TO BE REPORTED

The nature of compliances under each of the laws must include the following:

— Specific compliance under the relevant section/ rule like obtaining of approvals/consents/ licences/permits

— Maintenance of records/registers/books in the specified formats, if any

— Filing of periodic returns/forms with the statutory/regulatory authorities

— Provision of facilities (mainly under the labour laws)

— Any other specific compliances under the respective Acts.

NON-COMPLIANCES

The main purpose of placing a CCR before the Board is to appraise it of the level of compliances of the various

2. Jurix, *ibid*

laws applicable to it. In case of non-compliance, the CCR must state the following information:

— Specific description of the non-compliance
— Reasons for the same
— Likely time frame for effecting the compliance
— Penalties/risks due to non-compliance
— Monetary impact of the non-compliance
— Other implications, if any.

In case any legal/quasi-legal proceedings have been initiated against the company or a show-cause notice has been issued against the company, then the CCR must also disclose the following:

— Summary description of the case/show cause notice
— Steps initiated to refute/rebut/challenge the case/show-cause notice
— The current status of the same
— Probability of liability (monetary and non-monetary) where identified.

PROCESS OF CORPORATE COMPLIANCE REPORTING

Although the actual process of compiling the information under the various laws may vary from company to company and is dependent on various factors such as the number of units and scale of operations, a brief process of the CCR mechanism is as follows:

(A) Functional heads for the reporting of various laws have to be identified. For instance, the Company Secretary would be the functional head for reporting of company law, listing agreement and commercial laws. Similarly, the head of the Personnel Department could report the compliance of labour and industrial laws and the fiscal law compliance would be the domain of finance/accounts departments.

(B) Each of the functional heads may collect and classify the relevant information (listed above) from the various units/locations and consolidate them in the form of a report.

(C) The report shall carry an affirmation from the functional heads that the said report has been prepared based on the inputs received from the various units/offices and then list out the specific compliances/non-compliances, as already circulated to the functional heads.

(D) Each of the functional heads will forward their respective compliance reports to the Company Secretary/Managing Director.

(E) The Company Secretary would then brief the Managing Director and with suitable inputs from the Company Secretary, the Managing Director would consolidate and present, under his signature, a comprehensive CCR to the Board for its information, advice and noting. (A model CCR to be furnished by the Managing Director to the Board is given at Annexure)

(F) The whole process of CCR is contingent on the creation and implementation of comprehensive legal MIS.

PERIODICITY OF CC REPORTING

The CCR may be placed for review before the Board by the company on a half-yearly basis. In the case of a multi-product/multi-unit company, it may be placed at quarterly intervals. It must be ensured that as and when guidelines for holding of board meetings through video/tele-conferencing are issued, the CCRs must be included in the agenda for physical meetings only.

ROLE OF COMPANY SECRETARY

Although, the Company Secretary's role has undergone a marked change over the years and he has today emerged as an integrated corporate business manager and advisor, the compliance role is like a fulcrum of the profession. As an officer of the company at the centre of the decision making process, the Company Secretary is in a powerful position of influence. The *Best Practice Guide on the Duties of a Company Secretary*[3] lists, "Monitoring and laying in place procedures which allow for compliance with regulatory and legal requirements, particularly under the Companies Acts including legal requirements…." as one of the core duties of the Company Secretary. CCM will therefore be the logical extension of the fundamental duty discharged by Company Secretaries in industry. It will be both an opportunity and a challenge. The importance of corporate compliances will now be a matter for review at the very highest levels of management. This lays a

3 Issued by the Institute of Chartered Secretaries and Administrators, UK. It is also clarified by the Guide that the Company Secretary may not be personally involved with all areas of compliance and 'ensuring compliance' may be read as ensuring that satisfactory arrangements are in place to secure compliance.

tremendous onus on the Company Secretary to devise, put in place and constantly administer a legal MIS for regular reporting and monitoring of the corporate legal compliances. This will accentuate the Company Secretary's role in the corporate governance process and enhance the levels of professionalism.

CONCLUSION

Given the manifold advantages and benefits, it is advisable that all companies – private, public and section 25 companies - implement a CCM process to tone up their levels of corporate governance. This is an opportunity for the profession of Company Secretaries to carve out a niche for themselves in their core area of compliances.

Annexure

CORPORATE COMPLIANCE REPORT

It is hereby reported that the company has complied with the various statutory enactments, rules, regulations, orders, guidelines and notifications of both the Central and State Governments, relating to the business of the company, with specific reference to the following:

(a) The company has complied with the provisions of the Companies Act, 1956 and the applicable rules and regulations made thereunder.

(b) The company has complied with the various labour legislations (list them out) and the applicable rules framed thereunder, being applicable to the company.

(c) The company has complied with the provisions of the Income Tax Act, 1961 and the applicable Rules made thereunder and the TDS has been made.

(d) The Company has complied with the provisions of the various pollution control and environment related legislations (list them out).

(e) The company has complied with the provisions of the various fiscal laws (list them out)

(f) The company has complied with the provisions of the other applicable laws (list them out).

(Where there are any non-compliances, the above clauses may be reworded as follows:

"The Company has complied with the provisions of the ....laws, subject to.....(list out the non-compliances and details thereof). Details of pending litigation and show cause notices may also be listed herein, if any.)

This report is based on the confirmations/reports submitted by the functional heads and is given by the undersigned in the full knowledge that on the faith and strength of what is stated in the report, full reliance is placed by the board of directors.

Date:

Managing Director

REFERENCES

1. JURIX – Secretarial Practice Recorder
2. Legal Compliance Reporting mechanism in Bharat Electronics Ltd., Bangalore
3. Website of ICSA – www.icsa.org.uk.

CORPORATE COMPLIANCE AND "DUE DILIGENCE" — VALUE ADDITION

J SUNDHARESAN*

Corporate Compliance is the latest buzzword in the corporate world. Today, the Indian business community has realized the importance of compliance as a major tool in being competent to achieve excellence through business value addition and to satisfy the responsibility in the corporate system. Being diligent has a price and its share of emotions, sentiments, tragedy, comedy and of-course when things finally turn out favorable, a very happy ending! It is for this reason that corporates today are putting sufficient effort to maintain records in-house and elsewhere.

My experience

My first brush with diligence was in 1996, while working for a large telecom group, when we were faced with the challenge of handling an issue of ADRs, believed to be the first of its sorts in the country. One great thing about "being first", I sometimes used to wonder (of course, on a lighter vien), "since no one knows what is to be done, what you do may be the right one!!!". "

A pre diligence meeting was called for, comprising the head of the company and various other departmental heads. A leading banker was appointed to manage the ADR issue and a smart business school graduate informed the team that he would lead manage and he will be the "censor board" for the proposed diligence and that the members of the team were supposed to take his approval before committing on "numbers" (if it was the finance team) or on disclosing the "facts" (if it was the legal and Company Secretary's team). Not knowing what to say, and being the first time, all of us just nodded.

It all began with a grand kick off meeting and it reminded me of the opening scene in a bond movie. Even after 11 years, I still think that the "kick off" meetings have a charm, which makes the diligence exciting.

What is a Diligence?

Here is an extract from Wikipedia: -

"Due diligence is a term used for a number of concepts involving either the performance of an investigation of a business or person, or the performance of an act with a certain standard of care. It can be a legal obligation, but the term will more commonly apply to voluntary investigations."

Verily, a due diligence is a process built upon the edifice of "Performance", "Standard of Care" and "Investigation".

The expression due diligence, in commercial transactions, include an investigation into the matters of a company and an assessment of the risks in a commercial context.

Due Diligence, as an exercise, is something which has a set of common principles and procedure to be followed. Depending on the situation, a due diligence process is referred to by different names. As the famous saying goes, "don't judge a book by its cover", so also, the relevance and importance of the due diligence is to be recognized with reference to the type of due diligence.

" What is in a name ?' - You could call a diligence with many other names -

A Compliance Certificate - this form of diligence is a requirement under section 383A of the Companies Act, 1956 which makes it mandatory for all companies with a paid up share capital of not less than rupees ten

* Practising Company Secretary, Bangalore.

lakhs and not more than rupees two crores to attach along with the Directors' report a certificate from a practising Company Secretary for every financial year.

A Secretarial Audit - Though this form of diligence is not mandatory many state government companies/ companies in private sector have adopted this form of reporting and have attached to their annual report as a matter of good governance.

Legal Compliance - On an annual basis some of the corporate conduct this diligence as an in-house exercise to check on the various processes that the company possesses internally and whether the compliances are in place.

Annual Compliance Review - Another interesting form of diligence which can be an in house affair by leading corporate house to ensure that the house is in order.

Quarterly Statutory Compliance Reporting - A popular form of health check that is in vogue in many corporates to protect the interest of the top management. A certification is provided by the CEO to the board and in turn a back to back certification is obtained by various departmental heads.

Health Check Audit - This form of diligence is popular among venture capital funds who conduct this exercise on an annual basis to check if the compliance parameters in the company are under control

CEO / CFO Certification Under Clause 49 - This is another form of diligence which is mandatory for all listed companies in India to attach to its Directors' report a certificate to be issued by the CFO/ CEO of the company that the company has complied with all the requirements of law.

All this, in today's parlance, is termed as "corporate compliance" and as Company Secretaries, we are the torch bearers of the legal and corporate law diligence, either representing the company when in employment or doing the actual diligence, while in practice.

There is always a trade off between the persons sitting on the opposite sides of a diligence table, one trying to play an offensive role and the other doing the defence, which ultimately results in a healthy outcome.

Stages in a Due Diligence

A due diligence process can be divided into three stages (i) pre diligence, (ii) diligence,and (iii) post diligence.

A pre diligence is primarily the activity of management of paper, files and people.

1. Signing the Letter of Intent (LOI) and the Non Disclosure Agreement (NDA).
2. Receipt of documents from the company and review of the same with the checklist of documents already supplied to the company.
3. Identifying the issues.
4. Organising the papers required for a diligence.
5. Creating a data room.

The first and foremost in a deal for the management of the target company, is that the investor is to sign a Letter of Intent(LOI) or a term sheet which underlines the various terms on which the proposed deal is to be concluded. Immediately on receipt of the LOI the investors sign an NDA with the various agencies conducting a diligence, be it finance, accounting, legal or a secretarial diligence.

The company, would usually receive a checklist from the agency conducting the diligence. The checklist is invariably exhaustive in nature, and therefore, the company may either collate and compile the documents in-house, or outsource this to an external agency. While the data is being collated care should be taken to ensure that there are no loose ends that may probably arise.

As regards a data room, some of the important things that one should take cognizance of from the corporate view point are the following:

(a) Do not delay deadlines (leads to suspicion).

(b) Mark each module of the checklist provided for separately.

(c) In case some issues are not applicable spell it out as "Not Applicable".

(d) In case some issues can not be resolved immediately, admit it.

(e) Put a single point contact to oversee the process of diligence.

(f) Keep a register, to track people coming in and going out.

(g) An overview on the placement of files.

(k) Introduction to the point person.

During the diligence, care should be taken to adhere to certain hospitality issues, like:

(a) Be warm and receptive to the professionals who are conducting diligence.

(b) Enquire on the DD team(recommended at least thrice a day !!).

(c) Join them for lunch.

(d) Ensure good supply of refreshments.

(e) In case of any corrections - admit and rectify.

As regards the process of diligence, as a professional care should be taken to scrutinise every document that is made available and ask for details and clarifications, though, generally the time provided to conduct the diligence may not be too long and though things have to be wrapped up at the earliest. The company may be provided an opportunity to clear the various issues that may arise out of a diligence .

After the diligence is conducted, the professionals submit a report, which in common parlance is called the DD report. These reports can be of various kinds, a summary report; a detailed report or the like; and the findings mentioned in the report can be very significant, in as much as the deal is concerned.

There are certain terms used to define the outcome of these reports:

Deal Breakers : In this report the findings can be very glaring and may expose various non-compliance that may arise - any criminal proceeding or known liabilities.

Deal Diluters : The findings arising out a diligence may contain violations which may have an impact in the form of quantifiable penalties and in turn may result in diminishing the value of company.

Deal Cautioners : It covers those findings in a diligence which may not impact the financials, but there exist certain non compliances which though rectifiable, require the investor to tread a cautious path.

Deal Makers – which are very hard to come by and may not be a reality in the strict sense, are those reports wherein the diligence team have not been able to come across any violations, leading them to submit what is called a 'clean report'.

Interestingly, only after the reporting formalities are over and various rectifications are carried out, the "shareholders agreement" (which is the most important document) is executed . This agreement contains certain standard clauses like the tag along and drag along rights; representations and warranties; condition precedents, and other clauses that have an impact on the deal.

Post diligence : There can be interesting assignments arising out of the diligence made by the team of professionals. It can range from making applications / filing of petition for compounding of various offences or negotiating the shareholders' agreement, since the investors will be on a strong wicket and may negotiate the price very hard.

Hence, arising out of this diligence, there are various opportunities for a professional in practice, which may include *inter-alia*, compounding application to the statutory bodies, amending the various shortcomings and so on. In fact, filing of these applications become a pre condition to close the transaction, and therefore, the expertise of professionals is always in demand. Diligence is one tool which can add excellence in compliance levels, and is a business value addition as far as a professional is concerned, whether employed or in practice.

Thus, one can sum up to say that "Compliance is not the beginning in a well governed company, but is a statement by the management on the attitude of one and all in an organisation practiced in letter and in spirit". A due diligence exercise proves the level of compliance in a corporate and acts as a health check to ensure that the standards are maintained. A due diligence, therefore, can go as far as the law itself. Though to an extent, it may be a post-mortem exercise, it is still forward looking, futuristic and brings out the essence of a professional, in the truest sense. Due Diligence irons out the creases on the path to corporate excellence.

SEGMENT-WISE ROLE OF COMPANY SECRETARIES

DR. J P SHARMA* & ASTHA DEWAN**

INTRODUCTION

The Board of Directors (Board) is the decision making body of any corporate body. It usually consists of a chairman, executive and some non-executive directors. A Company Secretary (hereafter referred as CS) is very close to the Board that is the apex authority of the company. The services of a CS are very crucial for efficient functioning of a company. The role profile of a CS covers a wide variety of functions. He/she[1] acts as a vital link between the company, Board, shareholders, government and regulatory agencies. When the Companies Act was enacted in the year 1956, his functions were not defined in the Act. Section 2(45) of the Act only provides that any individual possessing the prescribed qualifications and appointed to perform the duties, which must be performed by a secretary under the Companies Act, and any other ministerial or administrative duties, is a CS. The present era of globalization has offered both challenges and opportunities to CSs. Diversification of the role and functions performed by a CS in different areas is the only answer to meet the challenges and capitalize on the opportunities. Thus, CSs are exploring opportunities and diversifying into new segments such as knowledge segment, organization segment, scale segment, geography segment and industry segment[2].

EVOLUTION OF THE PROFESSION OF COMPANY SECRETARY

Traditionally, the managing agency system occupied the most important place in the management of companies in India. The managing agents were the promoters, financiers and managers of the companies and they contributed in a significant way to early industrial development in India. The managing agency system, although its name implied a type of management, had also been connected with promotion and financing of companies. During the growth of this system in the nineteenth century, when there were not many industrial entrepreneurs and no facilities of a capital market, these functions in the industrial development of the country were more or less concentrated in the hands of managing agents. The managing agents took the initiative to start new enterprises. The historical importance of the system in the promotion and development of important national industries such as jute, cotton textiles, tea, coal, iron and steel, sugar and cement is well recognized. Even some of the new companies floated outside the managing agency system owed their promotion to well-known agency houses.

The managing agents played an important role in the supply of equity capital and loans and advances to companies. In India, there was shortage of equity capital. The specialized financing institutions generally provided only loan capital. The managing agents contributed a substantial part of share capital of companies under their management. In addition to that, large companies often had easy access to other resources, such as accumulated reserves and the new issue market. In attracting finance through new issues on the capital market, the managing agents played an important role. They acted as guarantors for a major part of secured loans from banks and loans from specialist financial institutions. Thus, they provided both equity and loan capital. In order to assist the companies, they not only attracted savings of others but also provided personal savings and savings of their companies or firms for the use of the companies under their management.

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As regards their managerial function, no definite conclusions can be established. It is hard to say whether the performance of companies under the managing agency system was superior or inferior to that under other systems of management.[3] The managing agents gave their entire time and energy to the growth of the concern. However, in-group management, when an agency manages several companies, certain economies of large-scale organization accrue to the managed companies. This is an inherent advantage of the system. But a vast majority of managing agencies managed only one company each. While there was no scope in their case for the exercise of economies of group management, there was also no room for concentration of economic power. Although, it should make no difference whether these individual companies were managed by managing agents or exclusively by managing directors, there seemed to be a slight edge in favour of the managing agents. Where they acted as promoters of these enterprises, their interests were closely linked with the future of the concerns. There was identification with the interests of the management and the company on account of their personal stake in the business. Apart from this, the security of tenure for a fairly long period and the connection of remuneration with the net profits of the enterprise, promoted and maintained incentives for efficiency that were not available for salaried executives under other forms of management. Thus, what seem to be appreciated most about managing agents were their entrepreneurial skills, competitive resilience, identification of interests with the financial fortunes of the principal companies and their continuity and integration of their management.

However, the managing agency system was criticized on account of concentration and improper use of economic power and the cost of maintaining the system. Due to several shortcomings and increasing malpractices in the managing agency system, many restrictions were initially imposed on the working of managing agents and ultimately, the system was abolished in 1970's. The profession of Companies Secretaryship filled the void created by the abolition of managing agency system.

The commitment to develop the profession of CS in India was made by the late C.D.Deshmukh, the then Finance Minister.[4] The profession got a standing and a status of its own in the year 1968 with the Government of India setting up the Institute of Company Secretaries of India (hereafter referred as ICSI). The Institute was converted into a statutory body under the Company Secretaries Act, 1980, to develop and regulate the profession of CSs in India.[5] The ICSI, the apex body for CS professionals in India, has a very important role to play in training and molding CSs in the light of the changing economic and legal scenario in India. The amended provisions provide that all companies with a paid up share capital of Rs. 2 crore or more must have a qualified whole-time Company Secretary. To give extra impetus to practicing Company Secretaries, the concept of Secretarial Compliance Certificate (Sec.383A)[6] was introduced in the Amendment Act of 2000.

POSITION, ROLE & FUNCTIONS

The concept of a Secretary is as old as the corporate sector that goes beyond the companies of the 17th century like the East India Company formed in 1600. In 1885, Lord Esher in his judgment[7] considered him a clerk or servant, who is to do what he is told to do. Similar view was taken in number of pronouncements in India too.[8] As per this traditional view, he had no power to strike a name off the register of members without Board's authority[9], could not participate in the management of the company's affairs and not negotiate contracts on behalf of the company[10] , not call meetings of shareholders without board meeting[11] , not register transfers of shares without the Board's authority[12] , and could not borrow money in the company's name.[13] This traditional view of a Company Secretary was altogether changed by Lord Denning in his judgment on 26th May, 1971[14] , when considering him an officer of the company with extensive duties and responsibilities, he observed that times have changed and the Company Secretary is a much important person now a days than he was in 1887.

Today, as a most important statutory officer of the company at the center of the decision making process, the Company Secretary is in a powerful position of influence. The changing role and importance of a Company Secretary has also been incorporated in the Statutes over the years. The present day Company Secretary is empowered to perform functions under the MRTP/Competition Act, Income Tax Act, FEMA, Excise Customs Act, etc.

OBJECTIVE OF THE STUDY

The objective of this study is to examine the role of CSs with special reference to different segments as identified by the ICSI. The study also aims at providing suggestions and recommendations to help CSs function better in their respective areas.

RELEVANCE OF THE STUDY

The services of a CS are very crucial for the efficient functioning of a company. His work profile covers a wide variety of functions. He is a compliance officer of the company as well as a corporate planner and strategic manager. He also looks after legal, accounts, finance, personnel and administrative functions in the company. He renders services in areas such as corporate governance and secretarial services, corporate laws advisory and representation services, financial markets services, taxation services, international trade and WTO services, management services.[15] In recent times, liberalization, de-regulation of controls and rapid corporatisation has increased the demand for CSs in corporate functions.

Keeping in view the growing need of CSs, the ICSI has undertaken various professional development programmes, extensive research projects and brainstorming sessions to identify the role of CSs in the fast changing scenario. The ICSI and Centre for Corporate Research and Training (ICSI-CCRT) conducted a brain-storming session on segment-wise role of CSs. The ICSI has published various modules on industry segments highlighting the role and functions of CSs in each segment. These modules cover banking industry, capital market intermediaries – credit rating agencies, depository participants, merchant bankers, mutual funds, portfolio managers, registrar to an issue and share transfer agents, stock brokers and sub-brokers, stock exchanges, venture capital funds; entertainment industry; insurance industry, IT enabled services and Business Process Outsourcing, non-governmental organizations, pharmaceutical industry, power sector and tourism industry etc.

The present study would enable CSs, be it in employment or in practice, to provide focused, in-depth and innovative services across all the segments. It would also help them to explore different opportunities and venture in new segments and industries, create awareness about their potential in various segments and enable them to render value-added diversified services within segment.

RESEARCH METHODOLOGY, SCOPE & LIMITATIONS OF THE STUDY

Both primary and secondary data have been used for the study. The study has been conducted using a questionnaire administered to a sample of 240 CSs in three segments. These segments are portfolio managers/ merchant bankers,[16] media and entertainment industry and IT Enabled Services (ITES)/Business Process Outsourcing (BPO) industry. The questionnaire was sent to the CSs through post as well as by e-mail for the purpose of collecting necessary data. Besides this, discussions and interviews with a number of CSs, who represent both the Company Secretaries in employment and in practice, were also carried out to make the study a comprehensive one. The responses received from CSs (out of 240 CSs approached, only 104 responded to the questionnaire) formed 43.33% of the planned sample for the purpose of study. Of the total number of respondents, about 40% (42) of the respondents are working as portfolio managers /merchant bankers while only 26.92% (28) fall in the segment of ITES/BPO industry. In all 32.70% (34) of the respondents represent the media and entertainment industry.

The scope of the study is to have a comprehensive, in-depth analysis of role of the CSs in only three different segments. Apart from the basic limitations such as inadequate time and resources needed for conducting a study of this type, low response rate, small size of sample are the other constraints identified during the course of this study.

MAJOR FINDINGS

The study reveals following facts and findings:

(i) With the increase in the presence of women in different professions, it would be valuable to study the role of women in the profession of CSs. The study reveals that of the total respondents, 61.54% are male while substantial portion i.e. 38.46% is female.

(ii) Majority of the respondents (32.69%) fall in the age group of 30-40 years.

(iii) Most of the respondents (i.e. around 41%) have a work experience of 10-15 years and have changed the job 3-4 times (around 35%). Changing jobs in their short span of work experience reflects on the various kinds of factors, which force CSs to shift to some other company. These factors could range from monetary to non-monetary factors such as job dissatisfaction, lack of role clarity, inadequate support from the industry, lack of support from family especially in case of females, etc.

(iv) Of the total respondents, around 62% (40) were Associate Company Secretaries (ACS) while around 38% (64) fall in the category of Fellow Company Secretaries (FCS). It has been observed that some of the CSs, even though working in this field for many years, have still not applied for FCS (senior membership). The reasons

why many CSs do not apply for FCS despite having the requisite years of experience, is that they have diversified into other corporate regulatory areas rather than confining themselves to the hardcore secretarial function. Other reasons may be that many of the senior CSs are from academics having not much interest in continuing with their affiliation with the ICSI.

(v) Of the total respondents, 58.65% fall in the category of Company Secretaries in employment while 41.35% are Company Secretaries in practice.

(vi) As revealed by the table1, regulators including SEBI, RBI, MCA, ROC govern the CSs working in their respective segment. The Ministry of Information and Broadcasting and the Software Technology Park of India (STPI), both of which falls in 'any other' category are the major regulators in the case of media and entertainment industry and ITES & BPO industry respectively while the SEBI is the major regulator for CSs working as portfolio managers.

Table 1: Regulators Governing the Segments

Regulators	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
SEBI	21	10	8
RBI	2	NIL	1
MCA	10	8	2
ROC	9	4	6
Any other	NIL	12	11
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(vii) Table 2 presents different kinds of functions, which a CS performs. The analysis of the table clearly reveals that representation and compliance & procedural are the major functions performed by CSs in the case of portfolio managers and ITES & BPO industry, respectively. In comparison to above two segments, CSs in media and entertainment industry have given the maximum weightage to management functions, which fall in 'any other' category.

Table 2
Function-wise Classification

Functions of CSs	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Compliance & Procedural	4	3	9
Advisory	13	6	8
Due Diligence & Certification	3	9	6
Representation	20	3	3
Secretarial Administration	2	2	2
Any Other	NIL	11	NIL
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(viii) Table 3 reveals different compliance and procedural functions, which a CS performs. In the case of portfolio managers, filling of returns and reports to concerned authorities is a major function performed under the compliance and procedural functions head. Analyzing the table with respect to media and entertainment industry & ITES & BPO sector, it can be seen that establishing internal procedures/processes in accordance with regulations got the maximum weight age of 44.12% and 35.71% of the respondents, respectively.

Table 3
Compliance & Procedural Function-wise Classification

Compliance and Procedural Role	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Regulatory filing	15	3	4
Set up internal policies/ procedures	6	15	10
Monitoring exercise	9	9	7
Training	8	5	5
Breach reporting	4	2	2
Total	42	34	28

Source : Questionnaire based responses

(ix) Table 4 presents different advisory functions, which a CS performs. As is clear from the table, in the case of portfolio managers, the maximum number of respondents advises their clients on matters such as capital restructuring, capital offering, etc. In the case of media and entertainment industry, it can be seen that majority of the CSs play an advisory role on applicable legislations. When analyzed from the point of view of ITES & BPO sector, the table reveals that the maximum number of respondents advise senior management on compliance issues.

Table 4
Advisory Function-wise Classification

	Advisory Role	*Total No. of Respondents*		
		Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Senior Mgt.	Compliance issues	3	5	7
	Regulatory amendments	8	3	5
	Business agreements	NIL	NIL	1
	New Business Initiatives Advisory	NIL	NIL	2
Clients	Business partners	2	2	6
	Disputes resolution	NIL	NIL	1
	Applicable legislations	3	15	3
	Regulatory amendments	6	4	1
	Capital restructuring/ capital offering	11	3	1
	Company incorporation/ day-to-day mgt. issues	9	2	1
	Total	**42**	**34**	**28**

Source : Questionnaire based responses

(x) Table 5 reveals different kinds of due diligence and certification functions, which a CS performs. In the case of all three segments, majority of the respondents have given weightage to 'any other' category. According to them, they do not perform the due diligence and certification functions as majority of the respondents of the study are Company Secretaries in employment. Besides this, in the case of portfolio managers, 19.05% of the respondents have ranked secretarial/compliance audit reporting as the number one due diligence and certification function, which they perform. In the case of media and entertainment industry, it can be seen that secretarial/compliance audit reporting and annual report certification got equal weight

age from of the respondents. From the point of view of ITES & BPO sector, the data reveals that 21.43% of the respondents have ranked secretarial/compliance audit reporting as the number one due diligence and certification function they perform.

Table 5
Due Diligence and Certification Function-wise Classification

Due Diligence and Certification Function		*Total No. of Respondents*		
		Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Certification w.r.t	SEBI guidelines/ listing agreement/ corporate governance	2	1	1
	FEMA/STPI regulations	3	NIL	2
	Annual Report	5	7	4
Secretarial/Compliance Audit Report		8	7	6
	Any other	24	19	15
Total		**42**	**34**	**28**

Source : Questionnaire based responses

(xi) Table 6 provides role of representation/liaison function, which a CS performs. The analysis of the table in the case of portfolio managers clearly depicts that liaisoning with shareholders/clients/ customers etc. dominates the list with a total voting of 38.10% of the respondents in its favour.

In the case of media and entertainment industry & ITES & BPO sector, it can be seen that around 50% of the CSs in both the segments reported that they mostly perform representation function before various regulatory authorities for seeking various clarifications etc.

Table 6
Representation Function-wise Classification

Representation/ Liaison Role	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Judicial / quasi-judicial authorities	4	9	10
Regulatory authorities	15	18	14
Foreign regulators	7	NIL	1
Shareholders/clients/ customers etc.	16	7	3
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xii) Table 7 provides administrative functions, which a CS performs. In the case of portfolio managers, the highest concentration is in the category of drafting and conveyance with 42.86% of the respondents falling in this category i.e. interpretation of agreements, rules etc. received the maximum number of votes from CSs. From the point of view of media and entertainment industry & ITES & BPO sector, the data reveals that convening meetings of Board, shareholders etc. dominates the list with a total voting of 35.29% and over 30% of the respondents respectively.

Table 7
Secretarial Administration Function-wise Classification

Secretarial Administration Function	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertain-ment Industry*	*ITES & BPO*
Convene meetings	5	12	9
Drafting and sending notices	10	7	6
Drafting minutes	9	5	5
Drafting & conveyance	18	10	8
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xiii) 64.29%, 67.65% and 82.14% of the respondents reported to have been vertically reporting in the case of portfolio managers, media and entertainment industry and ITES & BPO industry, respectively as is revealed by the table 8.

Table 8

Vertical Reporting-wise Classification

Vertical Reporting	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Yes	27	23	23
No	15	11	5
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xiv) Regarding the persons whom they are reporting to, in the case of portfolio managers, the majority of the respondents give feedback to the Board (BOD). In the case of media and entertainment industry & ITES & BPO industry, it can be seen that the most of the respondents reported to Chief Executive Officer as revealed by table 9.

Table 9

Vertical Reporting Role-wise Classification

Role in Vertical Reporting	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertain-ment Industry*	*ITES & BPO*
CEO	8	15	13
BOD	22	9	10
MD	12	6	5
Any other	NIL	4	NIL
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xv) In the case of portfolio managers, media and entertainment industry and ITES & BPO sector, it can be seen that of the total respondents, 69.05%, 76.47% and 85.71%, respectively reported to have been horizontally reporting (table 10).

Table 10

Horizontal Reporting-wise Classification

Horizontal Reporting	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertain-ment Industry*	*ITES & BPO*
Yes	29	26	24
No	13	8	4
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xvi) Regarding their role in horizontal reporting, the majority of the respondents stated that liaisoning with department's head, advising to business partners on regulatory/legal issues and collecting information from various departments for presenting before Board etc. is the major role they perform in the case of portfolio managers, media and entertainment industry & ITES & BPO sector, respectively (table11).

Table 11

Horizontal Reporting Role-wise Classification

Role in Horizontal Reporting	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertain-ment Industry*	*ITES & BPO*
Advising business partners on regula-tory/ legal issues	10	14	8
Collecting infor-mation from depts.	7	9	14
Liaison with dept's head	25	11	6
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xvii) Majority of the respondents are working at the senior management level in the case of portfolio managers & media and entertainment industry while in the case of ITES & BPO industry, maximum number of the respondents are at middle level (table12).

Table 12

Position in Value Chain-wise Classification

Position in Value Chain	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Senior mgt.	20	18	11
Middle mgt.	12	13	15
Entry level	10	3	2
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xviii) Majority of the respondents in all the three segments have role clarity [table13 (i)] and are satisfied [table13 (ii)] with the role assigned to them. The analysis also reveals that the percentage of respondents having role satisfaction is lesser than the percentage of respondents having role clarity. Thus, despite role clarity, there are various other factors, which determine the role satisfaction level of the CSs such as recognition, support from Government, regulatory authorities, industry etc.

Table 13(i)

Role Clarity-wise Classification

Role Clarity	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Yes	39	29	26
No	3	5	2
Total	**42**	**34**	**28**

Source : Questionnaire based responses

Table 13(ii)

Role Satisfaction-wise Classification

Role Satisfaction	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Yes	26	20	23
No	16	14	5
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xix) As per table 14 the maximum respondents in case of portfolio managers and ITES & BPO industry, felt that the profession is not receiving due Governmental support, while on the other hand, 23 respondents out of a total of 34 in case of media and entertainment industry said that profession is receiving support from the Government. According to most of the CSs in these segments, the Government has not been able to fully recognize the core competence and value additions to the corporate world being made by CS fraternity. Similarly, compulsory secretarial audit is still waiting to be given statutory recognition. There also exists discrimination between CA and CS Institutes with respect to governing the Act, rules, regulations, etc. However, some CSs even reported that the Government is giving due recognition and support to them. In their view, provisions of section 383A, regarding the compulsory appointment of CS and provision of compliance certificate, have helped CSs in making a presence in the market.

Table 14

Government Support-wise Classification

Government Support	*Total No. of Respondents*		
	Portfolio Manager	*Media & Entertainment Industry*	*ITES & BPO*
Yes	13	23	7
No	25	9	19
No comments	4	2	2
Total	**42**	**34**	**28**

Source : Questionnaire based responses

(xx) A very striking feature of the scheme of corporate governance envisaged in Clause 49 is the pivotal role played by a CS. The study elaborates on the role of CSs in the corporate governance. Of the total respondents, around 80% of CSs have rendered services to non-listed organizations while only around 20% of them have worked for listed organizations. This segregation will help in studying the fact as to how many organizations where a CS is rendering his services are complying with the requirements of Clause 49 of the listing agreement (especially the non-mandatory requirements). Majority of the respondents in all the three segments are training their Board members in the business model of the organization (54.81%), sending half-yearly declaration of financial performance including summary of the significant events in the last six months to each household of shareholders (75%), have established a whistle blower policy (65.38%) but do not have a remuneration committee for determining the remuneration package of the executive directors (around 70%).

To sum up, one can say that CSs in each of the three segments perform functions including the compliance and procedural, advisory, due diligence and certification, representation and secretarial administration, but the weightage assigned to each of these functions is based on factors including the nature of organization, job profile, their capacity and proficiency at work etc. Thus, even the role of two CSs working in same segment may differ because of the above factors.

RECOMMENDATIONS

The economic and industrial liberalization measures are providing challenging and promising opportunities to the profession of CS. Getting recognition from the Government authorities, updating themselves, competing with other professions, globalisation are few challenges which CSs are facing today. Following recommendations emerge out of the study to enable CSs provide focused, in-depth and innovative services and role across all the segments:

(a) CSs are required to look beyond their traditional compliance role and expand the job role in diversified areas; it's always better to have an additional qualification in law, finance, accounting or international trade so that the job role can be expanded to provide continuous challenges.

(b) Update themselves on all related matters including the RBI regulations, labour laws, excise and custom regulations, IT matters, etc.

(c) A CS should have knowledge of more than one foreign language, other than English, to compete with the global professional firms.

(d) Managerial and leadership skills are two of the few areas where the CS profession lags behind. Therefore, sound knowledge on management areas like T&D, finance, marketing management, etc. is the present day need of a CS.

(e) The focus must be on client servicing and their satisfaction.

(f) The ICSI provides vast knowledge to its members. CSs should try to apply all their acquired knowledge and ability in the management and administration of their organization/client organization.

(g) A CS is a custodian of public interest and acts as a vital link between company and other stakeholders. Keeping this point in view, a CS has corporate social responsibility in addition to his obligation towards the company.

(h) CSs, while issuing certificate regarding compliance of mandatory conditions of corporate governance under clause 49, should also emphasize the organizations to also comply with non-mandatory requirements for the better functioning of the organization and safeguarding public interests.

CONCLUSION

A CS provides all inputs, support and assistance to a company in its growth. Therefore, it would not be wrong to say that the career opportunities for CS professionals have evolved with times. They are no longer restricted to companies, financial institutions performing traditional jobs but their role now include among others cases of valuation, mergers, amalgamations, management consultancy, indirect and direct taxes, information technology, etc. Hence, with the growth of the Indian economy and the setting up of new ventures and business enterprises, the opportunities for CSs have increased manifold. Thus, what is required is to reposition the profession of CSs, from traditional Company Secretary to strategic corporate manager. He should look forward to occupy the driver's seat instead of being contended with playing the role of co-passenger in a motor rally.

ENDNOTES

1. The profession of CS is practiced by males as well as by females. To avoid repetition, hereafter he will represent both he/she.
2. http://www.icsi.edu/
3. Basu, S.K (1958), "Managing Agency System in Prospect and Retrospect", Calcutta, p.5.
4. Ramachandran, R. (1993), "Corporate Management and the Company Secretary". *Chartered Secretary,* Oct, 23: 1023.
5. http://www.icsi.edu/
6. A company having paid up capital of Rs.10 lakh or more is to file with the Registrar of Companies a compliance certificate. The Central government has prescribed the format of compliance certificate.
7. *Newlands* v. *National Employer's Accident Association Ltd.*, (1885) 53 LJ 242 and reiterated in *Barnett Hoares & Co.* v. *The South London Tramways Company C. A.*, (1887) 18 QBD 815 and *George White Church Ltd.* v. *Caranagh* (1902) AC 117.
8. *Diwan Chand* v. *Gujranwala Sugar Mills Co.* (1937) 7 Comp Cas 203 (Lah); AIR 1937 Lah 644.
9. Re. *Matlock Old Bath Hydropathic Co.(*1873) 29 LT 324.
10. Barnett Hoares & Co., 1887.
11. *Haycraft Gold Reduction and Mining Co.*, Re (1900) 2 Ch 230.
12. *Chida Mines Ltd.* v. *Anderson* (1905) 22 TLR 27.
13. *Cleadon Trust Ltd.*, Re (1938) 4 All ER 518.
14. *Panorama Development (Guildford) Ltd.* v. *Fidelis Furnishing Fabrics Ltd.*, (1971) 3 ALL ER 16 (CA).
15. http://www.icsi.edu/
16. Now-a-days, merchant bankers are playing a dual role i.e., they are also acting as portfolio managers, besides discharging their duties as a merchant banker. To avoid repetition, both the terms i.e. portfolio managers and merchant bankers are used interchangeably.

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CALIBRATING COMPETENCE FOR PROFESSIONAL EXCELLENCE

VIPIN AGARWAL*

The times have changed and the concept of globalised world has become much more pronounced now than envisaged earlier. The genesis of earlier notification to the best of reasonable assumptions must have arisen from the fear of competition and loosing market opportunities for one established breed of professionals. The Hon'ble Supreme court has very appropriately advocated the cause of learnings, up gradation and widening of knowledge base by good professionals while reasoning out the basis of their deciding against the notification issued by the ICAI. The technological advancements have perhaps created far more opportunities today than ever foreseen in yesteryears creating an even higher demand for professionals. However, the moot point which remains as the foundation of professional success, survival, growth and elite positioning emerges from calibrating competence for professional excellence.

All my professional brethren would agree that inspite of low pass percentages, reasonable legal protection for earning the professional livelihood, the pass outs from IITs, IIMs are in greater demand even internationally, offered higher emoluments inspite of not having any legal compulsions for corporate sector to availing their services. The answer lies simply in perceived excellence the pass outs from such alma mater bring for creating value in the market place by corporate enterprises. Coupled with this is the rapidity of change in market place in terms of shortening life cycles, power of knowledge becoming the engine of successful enterprises, huge demand on measuring productivity of white collared work force and wider application of quantitative techniques in real life business scenario.

Therefore, the fundamental theme of professional excellence is that it creates a "pull" value juxtaposed to a "push" value emerging from legal compulsions, notifications and enactments. Excellence signifies the execution of activities conveying a finesse notwithstanding the complications, challenges and constraints involved. For instance, the doctors performing complicated surgeries to protect human life in sensitive organs like brain, heart, liver are outcomes of professional excellence. Such excellence is not an outcome of passing out from the medical college but a commitment for calibrating competence. The challenges faced by a professional are not confined to the domestic territory of regulation, but developing ability to deliver as per the regulations of other countries in the wake of rampant business process / knowledge process outsourcing. The scale of competencies is not confined to professional execution, but also encompasses around a number of personal competencies to effectively present, negotiate, manage and demonstrate comprehensive excellence on a continuous basis.

Calibration of competence in the context of our profession can be classified into two broad categories:

(i) Functional calibration of competencies for professional excellence

(ii) Generic calibration of competencies for professional excellence.

FUNCTIONAL CALIBRATION

Functional calibration for professional excellence essentially means upgrading the professional knowledge both in applied and evolving realms of professional conduct. To paraphrase this further, functional calibration can be subdivided into following categories : -

(i) advanced / higher education

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(ii) practical applications

(iii) continuous measurement

(iv) competence of communication

(v) working on depth and width

Advanced / post qualification education

It is a matter of great pride that our Institute has continuously tried to keep pace with the changes emerging *inter-alia* anticipated to emerge to navigate the theme of professional excellence. Apart from the recent launch of post qualification course, the institute launched a post membership qualification course especially designed for a highly specialized sector of financial services. The course content encapsulated a comprehensive know how apart from maintaining high standards of evaluation in examination.

Members who pursue such higher education not only carry the rhythm of continuous learning but also improve their perspective, horizons and keeping the inquisitiveness to learn. It is an excellent opportunity the institute provides to calibrate competence for professional excellence and more number of members should pursue such post qualification courses.

Our profession is neither a pure science nor a pure art, but an amalgam of the two like the classical definition of economics. However, in today's world economics is becoming more of a science with the application of advanced mathematical models. Similarly, our profession is poised to be split into an era of micro specialization like medical profession be it the area of corporate governance, compliance, planning or specific industry types. One such major thrust area emerging in near future would be pertaining to WTO. Calibrating competence in this area would not only become the basis of professional excellence, but also create immense opportunities for professional services.

Practical applications

The true test of professional excellence is demonstrated or comes to test when one is supposed to find quick solutions to problems arising in the practical world. Incidentally, as and when such problems arise, there are big business compulsions involved entailing large financial stakes. In our professional experience, we have witnessed a number of situations involving contradictory opinions, views even with respect to interpretation of a common guideline, sections of the statute etc. For instance, the prize winners to the query published in Chartered Secretary every month are repeated several months in a year. Of course, it would be safe to assume that the winners are not the only respondents to the queries published eliciting response from the members. However, the winners demonstrate an urge to calibrate competence for professional excellence by delving deep into the realms of practical applications.

Continuous measurement

It is a very common saying in management, "what gets measured, gets done". Therefore, for calibrating competence, a system of continuous measurement is a must. Incidentally, the evolution of "Quality" paradigms of management processes has ensured that each and every function, process or activity is measurable. Measurement is not restricted to line activities having quantifiable targets like number of cars produced or sold, but extendable to staff functions not responsible for any such apparent quantifiable targets of measurements.

Without measurement, it is difficult to define the steps of progress, performance yardsticks. So if one drop a day can fill a bucket, one drop signifies the measure of improvement which results in generating some liters of water when accumulated. Illustrations of such measurements could be reduction in fee paid to consultants, reduction in time taken to carry out compliances, no of cases getting cleared by regulatory authorities in first go, percentage resubmission / rejection, reduction in observations from audit committee etc.

Competence of communication

One of the fundamental calibration of competence our professionals require is with respect to the power of communication. For achieving success in professional life, it is paramount that our power of communication is par excellence. Power of communication indicates the power to express our mind and intent coherently with the right words and complete clarity. More often than not, our professionals are subjected to high rigor of sensitive communication while dealing with corporate affairs, board of directors comprising eminent personalities, joint venture partners, know how partners and stakeholders accustomed of finer standards of communication.

Discharging the responsibilities of a principal officer comes under closer scrutiny when the competence of communication shadows the professional excellence. The purpose of communication in spoken form or written

form hovers around being clear, concise, crisp and convincing. This also requires making efforts in understanding the language better. Some of the common goof ups coming to notice pertain to mixing similar sounding words with different meaning, for instance, *precedent* vs. *precedence*, *apprise* vs. *appraise*, *complement* vs. *supplement*, *predecessor* vs. *successor*, *benign* vs. *malign*.

Incidentally, much to the popular belief good communication competence is not a function of the type of schooling or the legacy of family. Prowess of communication is more an outcome of self-effort, dedication and commitment than strictly a function of our schooling or foundational training.

Another dimension of competence of communication relates to public speaking *inter-alia* making power point presentations. Some of the key competencies surrounding good public speaking / delivering power presentations are as follows : -

1. Avoid reading a speech with eyes glued to the lectern or reading text imprinted on the power point slides
2. Establishing rapport with audience is very important and this may need aligning the thought with body language / gesticulations
3. Rehearsing pays
4. Spending five or six seconds looking at each person in the audience
5. Pausing instead of inflicting "ums" and "ahs" on the audience
6. Speaking a bit louder than the normal and use larger gestures than they feel originally comfortable with
7. Controlling the emotions and being in control of time, neither too short, nor too long
8. Staying focused on the purpose, content, objective
9. Smile and humor blends well in public communication
10. Building a bridge than churning out a mechanical roll out.

Working on depth and width

Assuming the growth in profits of a company reflect the depth of a company and growth in turnover reflects the width of the company, then the darling of shareholders would be a company having good scores in depth as well as width. To prove this further, many companies with high earnings per share enjoy low price earnings and many companies with good growth in turnover are quoted at discount.

Therefore, growth in depth and width is needed to touch the scale of excellence. In the context of our professional system, the depth would translate to attaining reasonable expertise on the facets of secretarial throughput, whereas the width would demonstrate the ability to develop understanding many other areas driving the business performance of a company i.e. strategic planning, cross functional leadership, customers, suppliers, value chain, processes etc.

GENERIC CALIBRATION

Generic calibration of competence revolves around non functional aspects signifying our individual personality, emotional maturity and leadership. To elucidate this further, we would classify the generic calibration as follows : -

(i) Self leadership

(ii) Emotional intelligence

(iii) Spiritual intelligence

Self leadership

Before we commence our journey in the professional arena, we are first our own client or customer. If internally, we feel compressed, incomplete, tentative and in conflict, its difficult to expect excellent results in the outside world. So the first calibration happens with the self. The starting point of this calibration is self commandment, personal hygiene followed by discipline, value system, health and appearance. Some of the salient components of self leadership are as follows : -

(i) Walking the talk

(ii) Strategic thinking

(iii) Innovative and enterprising

(iv) Influencing and persuasive

(v) Driving and decisive

(vi) Problem solver

(vii) Embracing failure

(viii) Being a learner lifelong

Walking the talk

Doing what we want others to do is one of the core principles of self leadership. By the way, the definition of leadership is most commonly misunderstood to connote a designation in the hierarchy. Each one of us is a leader in our own sphere and owe responsibility to ourselves to navigate our life. It would be apt to quote the incident of Mahatma Gandhi, excelling in his professional and personal life by any touchstone, when he did not pay attention to the request of a woman who wanted him to counsel his young son to stop eating jaggery until the time Gandhi himself stopped eating jaggery. Walking the talk builds credibility for following.

Strategic thinking

Excellence in profession emerges from the quality of thinking in the practical world. This translates to developing an understanding on the business scenarios, industry trends, product lifecycles for committing investments, likely shifts, emerging opportunities and projecting next five, ten year scenarios of the business. To develop such competencies one has to participate in cross-functional teams, read theory and relate the developments with actual happenings in the marketplace and understand the perspective from various functionaries.

Innovative and enterprising

Being innovative is an essential competence of self leadership and always precedes excellence. It would be inappropriate to conclude that there is no scope for innovativeness in the functional area of Company Secretaryship. Innovativeness is all pervasive than confined to areas of applicability. Besides being innovative, being enterprising is another competence of self leadership. Enterprising does not essentially means doing our own business or being self employed, but also includes thinking like the entrepreneur for the growth of organization.

Influencing and Persuasive

Organizations are represented by large pool of qualified manpower working under specific structures. In a competitive world, each function of an organization is manned by qualified, competent personnel who are no longer susceptible to earlier era of command and control. Therefore, access to the board of directors or such other apparent proximity to power centers can no longer become the basis to have our existence in the organizational leadership. In order to effectively deal with internal and external customers, it would be paramount to be influencing, persuasive as tools of presenting ourselves. Two key words powering the persuasiveness are "if" and "then". For instance, if you do this, then this is what happens or likely to happen.

Driving and Decisive

Professional excellence notwithstanding the discipline of specialization demands the leadership to be decisive and driving. Indecisiveness only reflects the lack of clarity, fear of being wrong, poor competence and insincerity to the responsibility. Therefore, professional excellence would demand taking quick decisions even while taking a risk of being wrong in some cases, driving the initiatives with vigor and devotion, leading from the front than taking shelter in some kind of shadow.

Problem Solving

Problem solving is the touchstone of professional excellence. In our day to day life, there are two types of responses we get, one who reports a problem and want a pat for being loyal and the other who comes with two possible solutions while describing the problem alongside.

Embrace Failure

One of the most important and powerful tenet of self leadership is embracing failure than rejecting failure. Lincoln appropriately put failure as victory is going from one failure to the other. One has to bounce back from failure to moveon. So getting up and trying again with due self reflection, self correction to start again.

Being a Learner Lifelong

People who are open to learning lifelong are always open to acquire, build new perspectives, keep making efforts in measuring their learnings from each experience, encounter, development courses. People who are closed to learning are generally limited in their sphere of knowledge, have too little to add and too little to delete, found aloof and isolated, prefer defined routines, repetitive routines and *status quo*. For professional excellence, calibrating the process of continuous learning, every day, every hour learning is very important. We become old if we stop learning irrespective of our biological tabulation.

Emotional intelligence

Emotional intelligence refers to the capacity for recognizing our own feelings and those of others, control

impulse, empathize, self motivation, persisting amidst frustration, carrying faith in self, maintaining high self worth, dealing with criticism, rejection, annoyance, restricting need for self approval, self appreciation, separating the subtle messages packed in subtle words and being in command than control over self. To quote Aristotle, " anyone can become angry – that is easy, but to be angry with the right person, to the right degree, at the right time, for the right purpose, and in the right way- this is not easy"

This competence is one the most important competencies for professionals performing top management roles. Each human individual carries unique background right from childhood to his adulthood in terms of experiences, learnings, impressions and formation to dealing with particular situations. Some people are termed as aggressors, intimidators, passive, mild, cool, friendly, democratic, people's man, rule bound, principle bound so on and so forth.

Emotional intelligence allows us to understanding the types of people we are dealing with and accordingly train ourselves to tune our behaviors / emotions. It is typical for factually knowledgeable professionals to immediately respond in a meeting with connotations like "not allowed", "not possible", "illegal", "criminal offence", "too complicated" etc. Such spontaneous comments are termed as emotionally immature comments since no professional holding a fiduciary position in a professional corporation would generally propose what is precluded by legal framework. However, the discussions around any such propositions is largely governed by the picture being seen by a large section of the members of the meeting from the business perspective of growth / expansion. Therefore, invariably such responses are dubbed as "negative personality" leading to facing unwarranted disgrace. Competently calibrated professionals can mould themselves by acquiring the competence of agreeing instead of *prima facie* disagreeing and then passing subtle comments like "they may like to revert with a cross check on relevant legal framework on how to deal with such a subject".

The other illustrations of emotional intelligence are getting into debates, arguments, conflicts, proving a point, confrontations, piloting disagreements and quoting micro specialized facts to demonstrate superiority of intellect. For instance, in some situations quotations are made of sub section, circular number, case citation amidst gatherings representing varied backgrounds.

Some of the illustrations conveying lack of emotional intelligence : -

(i) Forming membership of smoking gallery and letting loose
(ii) Constantly seeking approval
(iii) Not knowing the importance of silence
(iv) Showing bravado " It does not matter to me", "Who cares", "can't take such non sense", "holier than thou", " even my father did not dare say this to me, how dare he", " won't continue like this for long"
(v) Carrying low self esteem
(vi) Indulging in self defeating patterns
(vii) Trying to be clever and smart
(viii) Showy
(ix) Unconscious of body or non verbal language– for instance, constantly adjusting the spectacles, repeatedly clearing the throat, keeping the hands in pocket, standing crossed arms etc
(x) Using apparently genuine excuses, eg "there was a break down in computer", "heavy traffic jam"
(xi) Getting informal too soon
(xii) Discussing wife and kids
(xiii) Not knowing what to talk or where to start, where to stop, what to say and what not to say
(xiv) Feeling uneasy and out of place
(xv) In a hurry, impatient, blaming others
(xvi) Casual dressing

Some of the illustrations conveying emotional intelligence : -

(i) Empathizing when someone is bemoaning
(ii) Relaxed, cool and calm in stressful situations
(iii) Responding than reacting
(iv) Keeping a strong positive body language
(v) Showing interest and involvement
(vi) Appreciative of others' viewpoint including making attempts to understanding their viewpoint before responding back to facilitate health interaction
(vii) Being articulate and remaining focused
(viii) Being balanced – including personal life

(ix) Ability to connect with people of diverse background, culture, setup and education

(x) Making mental notes, owning responsibility

(xi) Not indulging in complaining, condemning, criticizing

(xii) Smiling, easy, radiating health, confidence, upkeep of sound professional knowledge and values

(xiii) Smart, well groomed business dressing.

Spiritual intelligence

By spiritual intelligence, my reference is essentially to the right part of human brain. We all know that left brain is the logical, rational, analytical part of human body, whereas right brain is the creative, imaginative, intuitive and dreaming part of our body.

We all invariably use more of our left brain, rightly so, as per the nature of our duties, responsibilities and the normal conduct of life essentially driven from the left function of the brain. However, in this process we ignore the power of our right brain which if activated and used effectively can help us calibrate our competence to excellence in life including the professional life.

Many a times the excellence is defined our presence of mind, sharp reflex, quick suggestion, connecting with right person, book, reference material with high degree of spontaneity. To illustrate this further, browsing through July 2007 issue of the Chartered Secretary, my attention is drawn to the upcoming National Convention and the list of topics to be covered for paper writing. With an intention to attempt contribute a paper after a gap of many years, I have to select one topic and *prima facie*, I like all the four topics. So unable to exercise a choice, I drop the idea of struggling to select a topic and move on to next pages until my attention is caught by the Supreme Court case judgment of *ICAI* vs. *ICFAI*. In a fraction of second, the topic gets chosen and the process of writing commences with constant flow of thoughts revolving around the subject.

Calibrating competence on this dimension essentially refers to maintaining calm, poise, serenity and tuning to the creative problem solving of right brain. Dr Frederick Banting invented the insulin injection very widely used for treating diabetes used his spiritual intelligence or the creativity of right mind to invent this drug. Nikola Tesla, a pioneer in the field of electricity developed The Tesla coil which works on principle of static electricity used his right brain to calibrate his competence for professional excellence.

Another aspect of spiritual competence is the power of giving. On so many occasions, we have observed resentment among people for not getting due increment, being passed over for a promotion / hike, client refusing to honor the bill, terminating professional contract in favor of a cheaper alternative, so on and so forth. The spiritual competence guides us to continuously measure the value we deliver through our professional engagement and only focus on expanding the value we so deliver without focusing on the return on such value generation. Sooner or later, the valid and meritorious compensations delayed or denied hitherto start manifesting in multiples, leave alone the number we were feeling resentful about.

The process for developing this competence is rather simple. One has to become more self-conscious, attentive to the internal guidance and flashes arising with such attunements. However, this is not to be mixed up with fantasies and castles in the air.

Conclusion

Calibration of competencies for professional excellence is not a one-time effort, but an ongoing journey of self-evolution with no prescription for start time and end time. Competencies are not restrictive to good knowledge of one particular aspect of professional subject but revolves around a complete blend of the persona a professional carries. The crucial factors of success are hidden in the arena of emotional and self-leadership competencies which play an equally significant role in manifestation of scale of success. For practicing members, especially the challenges are high since the standards of professional excellence amidst a varied cross country clientele would revolve around both substance and form. Building competencies would require investments, effort and determination for pursuing excellence than settling down for average.

Let us collectively rise to the encashment of opportunities coming our way to excel and service an international clientele.

LEGAL PROCESS OUTSOURCING (LPO) — THE EMERGING SPACE AND SOME REALITIES

RANJAN MUKHERJEE*

Introduction

Continuous value creation for all stakeholders in a transparent way of doing business is the call of the day. To achieve this value creation on the reality of fierce competition has forced the business entities to eliminate costs and forced to transfer non-core processes to the expert service providers. This has become common across the world. The reduction of operational costs and lesser turn around time with high quality of professional job are being considered as main gains from outsourcing.

Worth of any profession is always measured in terms of value content of the service of such profession. The way of creation of value cannot remain static. In fact, it should change faster than the other changes to satisfy the need of the clients of the profession. This continuous change of perception creates change in expectation from a professional service. Any knowledge driven profession should cultivate excellence of knowledge continuously and such excellence should create a mark on the delivery system for the society and economy where it operates. The value delivery system must deliver visible benefit to the clients, through a bankable way.

The scope of new professional jobs and revenue

Indian IT industry has been appreciated across the world in last 15 years for its ability to create value continuously for its clients. This value creation path has started taking visible shape in many knowledge driven professions including legal services.

The objective of this paper is to lay some grounds on legal services where the Company Secretaries by virtue of their own merit, may chip in and gradually obtain a level playing field amongst the lawyers, accountants and other professionals.

No one perhaps will disagree that the Indian legal profession is still bounded by many restrictive practices like foreign law firms are still not allowed to practice in India, advertisement and bank borrowings are still taboos. The Indian legal profession, still also suffers from a significant degree of nepotism and gender bias, which prevent many competent legal professionals from achieving their professional goals within traditional legal practice. As a result, a significant portion of legal professionals who provide significant service in non-litigation areas of legal profession (including Company Secretaries) remain under-utilised.

However, 850,000 law professionals trained in legal system, consistent with laws in the US and the UK (British Common Law), India is the ideal destination for outsourcing of legal service. It is worth to mention that about 75,000 fresh law graduates are coming out every year from all law colleges of the country.

The following table shows the volume of jobs being undertaken by Indian professionals and revenue earned and future potentiality and corresponding figures of the USA, which shows the totality.

This table has been drawn from an article [Legal Process Outsourcing (LPO) – *Hope* v. *Reality*] which is the product of a research work conducted by *Evalueserve.*

[*Evalueserve* is an Indian LPO service provider in mainly patent area, founded in 2000, having 160 employees and operates from India, China, Chile].

* FCS.

	2005	*2010*	*2015*
Number of Indian legal professionals giving service to US	1,300	5,200	16,000
Revenue [earned and estimated revenue in US$ in million] by Indian legal professionals from their services in the US	56	300	960
Legal professionals available in US [Estimated figures in millions]	0.97	1.125	1.3
Revenue [earned and estimated revenue in US$ in billions] by Legal Professionals	270	360	480

The above shows that there shall be significant growth in outsourcing business (from US$ 56 million to US$ 960 million in a span of 10 years) but if total figure in terms of percentage is seen it shall show only 0.2% [(960/480000)x100] of the total revenue perhaps shall be outsourced from US to India.

The nature and volume of legal expenses of US

The Chartered Accountant, the monthly journal of the Institute of Chartered Accountants of India in November 2006 carried an interesting article on the subject of LPO which gives the following detail relating to nature and volume of legal expenses of US.

Category of jobs	*Annual spend $ bn*	*% of total Spend*
Office operations	6.2	31.1
Litigation support	4.9	24.6
Word processing and secretarial	2.9	14.6
Information systems	2.5	12.6
Marketing	0.85	4.3
Legal Research	0.62	3.0
Financial & Accounting	0.50	2.5
Library	0.50	2.5
Legal recruiting	0.35	1.8
Human resources	0.20	1.0
Patent & trademark prosecution	0.40	2.0
Total	19.92	100

The urge to minimize operational costs beside hiring efficiency in non-core areas collectively have given opportunity to BPO businesses, and lately such outsourcing assignments are concentrating in knowledge driven areas, like finance and accounts, human resource development, statistical analysis, market survey, online education, e-publishing and legal process outsourcing.

Various models relating to legal service outsourcing

The market has witnessed certain models being followed by the industry across the globe, so far as the legal process outsourcing jobs are concerned.

Outsourcing through procurement wing

Procurement wing of any business is responsible for procurement of resources of any kind for the business. There are some reputed companies who have had given assignment to their own procurement wing to evaluate the cost and effectiveness of their own legal department *vis-à-vis* outsourcing possibility. These companies are United Technologies Corporation, Oracle Corporation, Bayer AG, JP Morgan, Merrill Lynch, Motorola, Pfizer, Tyco, Wyeth etc.

Utilisation of IT

Utilisation of IT in every aspect of legal department and in law firms have reduced re-work, costs beside reduction of turn around time to the clients. This utilization of IT has taken place in e-billing to the customer on online basis, developing knowledge base and storing knowledge base electronically and tagging them for easy retrieval beside e-filing of forms with law implementing agencies.

Job sharing with the lawyers

Research on law points, beside finding out proper documents from the clients and tagging them as attachments for the litigation, providing developmental report on litigation and preparation of brief for the counsels are being done by back office brains of the lawyers and mostly these brains are not involved in appearance before the courts.

Fixed price contracts

More and more fixed price contracts are being made for legal services including all indirect costs for the job.

Offshoring jobs

Subject to compliance of outsourcing laws or export controls for the jobs, many legal services are being rendered by offshore office based in India for their clients based in UK or US.

Capability building

Rendering high caliber professional service require many valuable inputs, which the service provider from LPO has to set in before even seeking for any assignment. Some of the inputs are as follows:

Infrastructure

Setting up of office should be in such a place where city infrastructure and social safety factors are available. The inner side of LPO office should have close circuit surveillance and access restrictions, beside facilities for video conferences and tele-conferences, LAN connections and intra-net connectivity for cross-exchange of knowledge and data base within the organisation. Ideally, LPO must have locked work rooms, without any connection with media. Employees are not allowed to take pin drives or CDs, personal computers, cameras or cell phones with camera in the work place. No personal possessions (purse, bags) are allowed to bring on the work desk, every employee is supposed to keep their personal possessions in the locker outside the work rooms. No free access to internet is allowed or downloading of files. No employee is allowed to take access into client data base. Surprise checks on every computers and physical checking of purse, bags and drawers, are conducted by the security personnel. Movement of employees in the office is traced through access card. These security aspects are audited by the third parties to conform international security standards. Clients normally check these security points before assigning any job to a LPO. In fact many LPOs in India have already demonstrated high level security beside high quality professionals and the same have been appreciated by foreign clients.

Manpower quality

The LPO should consist of professionals with proven track record and professionals who are willing to gather new knowledge and apply such new knowledge in their performance on a continuous basis. Success of LPO is dependent on quality of persons and perhaps on nothing else. LPO should always attract quality professionals because:

— LPO takes a merit based approach relating to recruitment.

— LPO gives variety of experience and scope of accruing in-depth knowledge on country specific laws.

— LPO may offer superior compensation to young professionals in their early stage of careers.

On the other hand, LPO is not only creating scope for professionals with legal background. India is having very large pool of graduate engineers who are getting attracted to patent service segment. In early 2006 about 400 high quality engineers got engaged in providing patent services such as literature searches, prior-art-searches, technology and patentability assessment, patent claim mapping, etc from India. May be in future more engineers shall join this field as professionals.

LPO industry has already introduced a certification test called Global Legal Professional, this niche examination shall help the industry to screening law graduates as prospective candidates for LPO resource persons.

Conclusion

The present volume of business of Indian LPO is small. The experience gathered so far may be utilized for further growth, because enough space is still available. It is now a challenge to the professionals including Company Secretaries, how best they can fit in to this basket of LPO, by exporting their rich knowledge and expertise in this filed by developing strong network with other professionals within and outside India.

OPPORTUNITIES & CHALLENGES BEFORE THE CORPORATE PROFESSIONALS — AN OVERVIEW

DR. R N NIGAM* & DR. (Ms.) POONAM VIJ**

Rapid globalization, cross border investment and business operations coupled with speedy and emerging pattern of changes in business environment, development of information technology, and the overall global requirements of both investors and the business, have led to the fast expansion of professional horizons. This has further led the professional bodies- such as the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India to incorporate in their curriculum the areas needed in accordance with the present day worldwide requirements of business and industry.

Increasing convergence of Accounting and Auditing Standards and integration of India with world economy has thrown open plethora of opportunities and avenues for professionals be they in practice or industry to progressively raise their standards to match global parameters not only in traditional areas but also in non traditional areas like Risk Management and Hedging, Commercial Arbitration, Mergers and Acquisitions, Capital Restructuring, Change Management Service, Corporation Governance, Corporate Restructuring, Business Strategy, Corporate Finance Consultancy, Business Valuation , Servicing Global Organization, Outsourcing Operations, Protecting IPR and the like with emphasis on greater accountability and transparency.

Revolutionary development in telecommunication, multimedia and information technology has created a tremendous impact on all avenues of professions as in the case of all sectors of economy. Globalization and proliferation of multinationals have broken down national, regional and political boundaries. All these developments are bringing about inexorable changes in our outlook, approach, methodology and tools.

It is, therefore not too late to revisit and reposition the profession, and to translate the challenges into opportunities by adapting to rapid changes across global economic environment.

Today the world capital markets do not have any borders. Physical distances and barriers have been removed / reduced by massive developments in communication, transport and E-commerce. A number of large companies are establishing their businesses in emerging economies like India and China. Cross border capital market transactions, mergers, acquisitions, takeovers, hiking/increasing the stake all over world have become normal practice/events among the corporations and the corporate business events. It is, therefore high time that professionals should see progressive liberalization of services in WTO Regime as an opportunity in India rather than as a threat. It would welcome opening up of the new vistas to the accounting sector provided professionals from India get effective access to the market of export interest. It can be assumed safely that given a proper institutional and infrastructural framework and support, the profession in India will rise to the occasion and would blossom into an internationally competitive profession. Following proactive measures are slated to be further intensified to gear up to meet the urgent imperatives of a globalized profession in current scenario.

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NETWORKING OF PROFESSIONAL FIRMS

Most Indians, no doubt professional firms are dominated by small and medium size practices (SMP). The large practicing firms constitute a very miniscule percentage of total number of firms. This traditional model may not be viable and ideal to meet the demand of national and transnational corporate sector due to their inability of not being able to respond to new challenges faced owing to lack of updated knowledge and skills for capacity building to practice in non traditional areas preventing their growth and development.

Networking of professional firms at domestic, national and international level will be a imperative solution to meet the emerging challenges and opportunities This would help firms to pool their resources effectively without giving up or losing their individuality and to deliver services of one or more types at multi location points with or without having their physical presence. Networking would also facilitate consolidation of firms over a period of time, which will be an added advantage. However, it is desirable that all networking firms comply with the applicable ethical requirements prescribed by the competent authority time to time in this respect.

GLOBALIZATION OF PROFESSION & CONSOLIDATION OF FIRMS

The traditional role of professions has undergone a sea change with fast pace of globalization of the economy. It leads to the definition of international professionalism. The Indian call centers are excellent example of the reach and width of such potential. The electronic mobility has replaced physical travel as a result of which professional can sell their services to any organization in any part of the world but how? The answer lies in consolidation/ merger of professional firms.

The corporate world's cross border mergers, demergers, acquisitions and takeovers have become common these days for securing survival, growth, expansion and globalization of enterprise and achieving multitude of objectives.

The merger of small and medium size professional firms would be effective in acquiring the capacity to render bigger assignments of large national and multinational companies spread over bigger geographical area with a backing of specialists in different areas of work. A merged big entity will always be superior to a network arrangement. Limited Liability Partnerships (LLP) would facilitate growth of professions as this structure would facilitate to form multi-disciplinary large partnership firms with flexibility of operations and would prove a good risk mitigation structure in world services market. The LLP bill introduced in Parliament in 2006 is expected to become law soon.

MULTI DISCIPLINARY PARTNERSHIPS FIRMS

Globalization is resulting into cross border investment and operations and has an impact on the working of different professionals. Complexity in laws demands specialization. The emerging demand for 'single window' concept in professional services is imperative. Multi Disciplinary partnership (along with employment/retainers) among Company Secretaries, Cost Accountants, Chartered Accountants, Advocates, Actuaries and Architects would facilitate providing all specialized services under one roof.

SPECIALIZATION IN MANAGEMENT CONSULTANCY SERVICES

In view of tendency to outsource the decision making process Management Advisory Consultancy services are gaining importance and prove to provide value addition to the client's business. The national and cross border takeovers, acquisitions and mergers are not uncommon these days. A professional firm can aspire to build a team specializing in due diligence, debt syndication, IPO issue related services, raising finance, KPO & LPO services, financial / operational restructuring of corporate clients, corporate governance and so on. However to achieve comprehension and growth specialization is the key factor.

If every partner and his supportive team should specialize in particular field of practice with continuous updating of knowledge, needless to mention, the firm should be able to render specialized value added business services globally and would stay fit in the global competitive environment.

No doubt stress on transparency and corporate governance and emergence of knowledge society have offered myriad of present and future opportunities for developing the new skills, technical expertise and a futuristic vision for professionals. However to cash in on these opportunities professionals need to constantly updating and enriching their knowledge.

The future will belong to those who can cope with changes and reinvent themselves in the profession in the light of diversifying expectation of clients. It is a time to reposition the profession and translate challenges into opportunities. Let the entire world look at India as

a global hub of professional services likes of which are seen in information technology sector.

RENDERING GLOBAL CONSULTANCY SERVICES

Today, the world is passing through an era of globalization and business expansion. There is great shortage of professionals through which different kinds of work such as documentation, compliance of legal requirements and the like could be done smoothly. Members of the Institute of Company Secretaries of India, Institute of Chartered Accountants of India, Institute of Cost & Management Accountants, Bar Council of India etc. can be instrumental in this regard.

There are many countries which do not have any professional bodies which have persons who are legally authorized and have competency to handle such work. More so, these countries cannot afford to establish the professional institutes on the pattern of what we have in India, U.K., U.S. and other countries. Therefore, it is high time for the Indian professionals to grab these opportunities. The countries which need services of Indian professionals are ready to assign the above jobs at very competitive costs. These countries are unable to set up professional bodies for the reasons of high cost of establishment. Therefore, they have to depend upon the Indian professionals.

More so, the companies across the border which are in search of business partners and bring the FDI to India, our professionals can be of great help. The route through which the investments can be brought to India which may be more beneficial to the country where from such investment is coming from, by taking the advantage of fluctuation in the value of currency. Here the time at which such investment can be arranged is also important. To sum up, rendering of the above services are highly lucrative for the Indian professionals.

HEDGING AND RISK MANAGEMENT SERVICES

Over a period of time the investors, the corporate sector, the mutual funds have realized that in a situation of volatility in the stock market all possible efforts should be undertaken to protect the investments. Since the investors- whether individuals, corporate or mutual funds may be having professionals on their rolls, they will have to bank upon the services of professionals. The Indian professionals are definitely competent to recommend measures for hedging and risk management, so that either there may be profits or the investors may be in a position to minimize their losses during the volatility.

CREATING VALUE OF THE PROFESSION AND BUILDING A BRAND

Value is a conviction that a person holds about a specific mode of conduct and the importance which he attaches to his convictions. A value represents prime evaluation of moral or social good. Values stem from personal beliefs, opinions and standards. They are dynamic because people seek test and change values. Every generation reviews the values of preceding generations. Corporate and professional values imply what a company or profession believes in and stands for. Values may differ from one company or profession to another and even from individual to individual. Values are important to professionals because these reveal what is really important to an organization. Values are the basis for any profession, may be chartered accountancy or Company Secretaryship.

Value depends to a great extent upon social values. Social values refer to the beliefs shared by the members of a society concerning desired and undesired behavior.

Value creation and brand building are interconnected. One cannot go alone. Customers have a Trust on the brand. The customers/clients want the quality work, for which they are ready to bear any cost. The customers/clients these days go for 'Brand'. No client/customer wants to go for a non-branded product or services. For this reason, first the professionals should build a strong and popular brand and do all efforts to bring the same to the knowledge of the client/ customers. Once a strong brand is built, value of the business and the professionals is bound to be higher in the domestic and the global markets. For this, the professionals will have to develop their strong skill and competency. This need to be communicated to the customers by arranging seminars, discussions, round table conferences and bringing out some journals demonstrating the quality services, and professional competency of professionals. In fact, the values and branding are the fundamental components that have powered the transformation of any company.

ENSURING GOOD CORPORATE GOVERNANCE – A BIG OPPORTUNITY & CHALLENGE BEFORE THE PROFESSIONALS

Liberalization, privatization and globalization (LPG) wave sweeping through countries and continents and overwhelming public interest in corporations has led more and more corporations to realize that growth without a social face cannot be sustained for long. They are increasingly heading the concepts like 'inclusive

growth'. They are successfully inter winning their Corporate Social Responsibility (CSR) with their business strategies to the benefit of all, As the effect of mis-governance in any corporation initiates chain of unfortunate events affecting the entire economy in addition to the considerable damage to the corporations' wealth.

Corporate governance practices are usefully begun by emphasizing that governance is different from management at large. The terms governance and management are used interchangeably though conceptual difference exists between the two viz. while the management runs the enterprise, whereas governance ensures it is being run in the right direction and within the statutory framework. In other words, the management is task oriented and concerns itself with execution of tasks to achieve pre-determined goals and objectives. However the governance is strategy oriented and encompasses framing the policy and ensuring disclosure and transparency. The focus under 'management' is internal to control, direct and monitor the activities of management/managerial with in the meaning of the Companies Act, 1956, personnel and executives and to make them accountable for proper implementation of pre-determined policies. On the other hand, the focus under governance is external, it involves accountability of promoters and directors to the outside world, namely, the stakeholders. Though the concepts are distinctive, there is a common thread, which establishes inter-relation between the two- **'better governance leads to better management'.**

The key aspects of good corporate governance include transparency of corporate structures and operations: the accountability of managers and the boards to shareholder : and corporate responsibility towards stakeholders. While corporate governance essentially lays down the framework for creating long-term trust between companies and the external providers of capital, it would be wrong to think that the importance of corporate governance lies solely in better access of finance. Companies around the world are realizing that better corporate governance adds considerable value to their operational performance. Here the professionals corporate are of great value to the corporate sector. The corporate professionals ensure that the companies adopt the methodology of good governance within the regulatory framework as prescribed by the law governing the companies. And there is proper compliance of the statutory requirements.

To sum up, it is now well established that values and brand are the main source of stability in the profession, and the society. The values and the brands in the profession are largely based on the social values and the trust of the society. The values and brands of individual professional collectively determine the overall value and brand of the profession's values.

MOST CONVENIENT WAY OF RAISING FINANCE AND IMPROVING THE DEBT EQUITY RATIO

KAUSHIK MUKHERJEE*

Raising of finance through preferential issue of shares is undoubtedly the best way of raising finance while improving the debt equity ratio. The only consideration for such an issue is, when the share prices are going up and the trend is expected to continue. Preferential issue can be of equity shares, fully convertible debentures , partly convertible debentures, convertible warrants on private placement basis to prospective Investors. The companies can encash their credibility in the capital market and industry by issuing share at a handsome premium.

The Securities and Exchange Board of India (SEBI) has got clear cut guidelines on preferential issue under chapter XIII of SEBI (Disclosure and Investor Protection) Guidelines, 2000. It is always advisable to have latest copy of guidelines downloaded from website taking any reference from the same .

The Company should check and ensure the following before embarking on Preferential Issue :

— That the Articles contain provision to make further issue of shares /FCD/PCD/Convertible Warrants, if not, the Articles must be amended.

— Resolution under section 81(1A) is passed by the members of the company at a general meeting enabling the preferential issue.

— The total holding of the promoters is not already 55% or more or, by virtue of such preferential issue to promoters , their holding should not cross 55% . If so, the issue cannot be made to promoters group. However, the preferential issue may be made to others.(As per Regulation 11 of SEBI, Substantial Acquisition of Shares and Takeovers, Regulation 2004 [SAST]).In case of issue of warrants , however percentage ceiling would be triggered only when warrants are converted into shares and not at the time of issuance of warrants i.e even if the warrants is issued to promoters and percentage goes up by more than 55% , the SAST provision would not be applicable, unless and until it is converted into shares. Moreover the creeping acquisition cap can also be complied if the conversion of warrants into shares take place in phases.

Clarification of BSE in this regard is as follows :

A. Regulations 10 and 11 of the Takeover Regulations are triggered by acquisition of shares entitling the acquirer to exercise voting rights beyond the threshold limits specified in the said regulations . In case of an acquisition of convertible securities such as warrants which would entitle the acquirer to exercise voting rights, exceeding the threshold limit specified in regulation 10 or 11, the regulations are triggered on conversion of warrants, or exercise of option, as the case may be, whereby the acquirer acquires voting rights on such convertible securities. Therefore, at the time of issue of warrants by the company, regulations will not be triggered.

B. As per regulation 11(1) of the Takeover Regulations, no acquirer who, together with the person acting in concert with him, has acquired, in accordance with the provisions of law, 15 percent or more but less than 55 % of the shares or voting rights

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in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 % of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the regulation. "On perusal of your letters, we understand that pursuant to the conversion of warrants , the promoters would acquire less than 5% equity shares in the company in each of the financial years ending on March 31, 2006, March 31, 2007 and march 31, 2008. In view of this, if at the time of conversion of warrants into equity shares by promoters of the company regulation 11(1) as it exists today prevails, the public announcement as required under this regulation would not be required as the acquisition of additional shares will be within the creeping limit of 5%".

— The "Prospective Investors" had not sold their shares during the six months prior to the relevant date i.e the date thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81(1A) of the Companies Act, 1956, to consider the proposed issue.

PROCEDURAL FORMALITIES

1. Convene the Board meeting to consider and finalize the preferential issue. No advance intimation to stock exchanges is required to be given, as it is not specifically mentioned in Clause – 19 of the Listing Agreement. The word "Preferential Issue" of share and warrant is not covered. However, as a matter of good corporate practice, various companies do inform the stock exchanges in advance .Post the news on the company's website, if any. This is a "sensitive item", which will have influence on the market price of the share, hence, care should be taken to ensure that the company is really sincere to go for the issue.
2. Procure "Commitment Letters" from the prospective subscribers before the Board Meeting , to be placed before the Board.
3. Inform the stock exchanges about the outcome of Board decision soon after the meeting. Post the news on company 's website , if any. The number of shares, the issue price, the names of proposed investors and date of General Meeting to pass resolution u/s 81(1A), should be given to the exchanges.
4. The above Board meeting should decide the date of General Meeting to take necessary approvals – to amend capital clause and articles, if required, to pass resolutions under section 81(1A). Check whether the current authorized capital can accommodate the increased capital, otherwise, increase it suitably.
5. Dispatch notice to all members of the company at least 23 days prior to the date of meeting.
6. File six copies of the notice with the stock exchanges as required by the listing agreement.
7. Ensure to obtain the following documents:

   A. From Allottees:

      (a) Commitment letters mentioning:

         (i) The issue price

         (ii) No. of shares to subscribe

         (iii) Aware that the subscribers knows about the lock – in of 1 year/3 years

         (iv) No. of shares held presently or declaration that does not hold any

      (b) PAN No.

      (c) Demat no., DP name and no.

      (d) If the investor is a company

         (i) The names , addresses , PAN no. of the directors of those companies.

         (ii) If FII or OCB , its RBI registration no. with an attested copy.

   B. From the company:

      (a) Passport size photos of all the directors, in such number as equal to the no. of exchanges.

      (b) PAN no. of directors

      (c) Present and permanent addresses of directors

8. Write a letter to the stock exchanges, enclosing a copy of the Board Resolution and notice of General Meeting, seeking its checklist for obtaining pre–allotment "in–principle" approval for making the allotment. Arrange to obtain statutory auditors certificates, as per requirements.

9. Follow up the exchanges till you get the checklist. Model checklist for BSE and NSE pre-allotment "in – principle" approval under clause 24(a) is enclosed marked as "Annexure–A".

10. The current holding of the prospective investors should be locked in for a period of six months from the date of proposed allotment. Hence, if there are any such shares, write to NSDL and CDSL to get the appropriate form for initiating the locking process, in coordination with the Registrar of the Company. It is advisable to lock it for 6 month plus 15 days from the date of General Meeting.

11. Submit all the initial documents to stock exchanges before the date of General Meeting, so that we can obtain their "in – principle" approval at the earliest after the General Meeting with a certified copy of the General Meeting resolution.

12. On the appointed day, convene the general meeting as per schedule Intimate the stock exchanges about the outcome of general meeting soon after the conclusion of the meeting. Post the news on company's website, if any. If the meeting gets adjourned for any reason then to inform the Stock Exchanges to get adequate extension of time for allotment of Shares

13. Immediately after the General Meeting follow up for In-principle approval from Stock Exchanges and upon receipt to get the cheques/ DDs from the prospective investors towards the issue price.

14. After Bank confirmation of realisation of cheque, convene Board Meeting/Allotment Committee meeting to allot shares.

15. Issue letters of allotment to all the subscribers.

16. Inform the Stock Exchanges about allotment as soon as the meeting is over within 15 minutes, as per listing agreement.

17. Organise to get the following four required certificates from statutory auditors of the company:

    (a) "lock in" of shares confirmation certificate

    (b) Compliance of Section 81(1A) certificate.

    (c) Confirmation of receipt of allotment money certificate.

    (d) Compliance of SEBI guideline certificate.

    Plan to obtain the certifications by next day of allotment of shares. The Managing Director should also give all the four certifications.

18. File Form No. 2 and 5, if applicable, with ROC. Though 30 days time is available, this should be filed immediately, as the proof is to be submitted to stock exchanges.

19. Intimate NSDL, CDSL and Registrars about the allotment giving the distinctive numbers of shares. Though the physical certificates may not be given but the shares will be credited to demat accounts, the distinctive numbers should be generated.

20. Follow up to get the post allotment In – principle Approval and listing,trading approval from the stock exchanges. Close monitoring and follow up with the Exchanges is required to complete the process. Model checklist for BSE and NSE post- allotment "In – Principle" approval and listing, trading approval is enclosed marked as "Annexure –B".

21. Submit the whole lot of documents to stock exchanges, as per the checklist, in the same serial order, to avoid further queries and delays. Sign all the pages with the company's stamp.

22. Write Individual letters to all the subscribers intimating the credit of shares into their demat accounts and the date upto which they are locked in.

    Registrars do the "Corporate Action" in co – ordination with depositories.

23. Submit the "Credit Confirmation Letters" from the depositories to the stock Exchanges, for obtaining their final " Listing and Trading" approvals. The Stock exchanges will issue the final listing approval letter with intimation to brokers.

POSTAL BALLOT *VIS A VIS* GENERAL MEETING RESOLUTION

Various companies are going for postal ballot for passing the section 81(1A) instead of General Meeting. There is no restriction that it has to be passed in a General meeting, but if it is by way of postal ballot , the share price can never be mentioned in the postal ballot notice. The reason being, postal ballot has to give minimum 30 days time to the investors to take the decision and 35 to 40 days time is required for the declaration of result by the Chairman i.e. from the date of dispatch of notice by postal ballot to the declaration of result by the Chairman. Since the "Relevant Date" is the date 30 days prior to the date of declaration of result by the Chairman , the share price cannot be ascertained at the time of issue of notice of Postal ballot. Hence in the case of postal ballot, share price can never be mentioned in the notice. The Investors has to take the decision on price, which they have to calculate based on SEBI Guidelines. However till date there has been no restriction from SEBI or Stock Exchanges in this regard. In fact various companies have done preferential issue by way of postal ballot for the simple reason that it gives wider opportunity to the scattered shareholders to exercise their franchise

SEPARATE ISIN

In respect of Convertible Warrants or fully or Partly Convertible Debentures, the Company may apply to NSDL and CDSL for creation of separate ISIN No. To identify such new instrument. Once such no. is created by the Depository, the Warrants/FCDs/PCDs will be credited into that account with individual credit to the respective allottees. However this is not mandatory. On the date of conversion, those instruments will be transferred from the Warrants ISIN No. to equity shares ISIN no. Correspondingly , the no. of equity shares will increase to the extent of Converted Warrants/FCDs/PCDs.

ROLE OF COMPANY SECRETARY

For getting approval from stock exchanges, close follow up is absolutely essential, because the prior and post in principle approval can take 7 days to 6 months, depending upon follow up being done. It is always advisable to have experience of the whole thing rather than delegate it to the consultant to do the needful. The stock exchanges welcome the executives of the company and appreciate their anxiety to have the allotment in time.

My personal experience is that stock exchanges are extremely professional and they are putting utmost efforts so that the companies can adhere to the guideline for allotment of shares within 15 days from the passing of the resolution. Only in exceptional cases, the stock exchanges give extra time for making the allotment, which is then calculated as 15 days from the date of letter of stock exchanges granting in principle approval.

Annexure – A

Checklist for BSE – Clause 24(a) approval

1. A certified copy of the resolution passed by the Board of Directors in which the company has propose to issue securities on a preferential basis together with a certified copy of the Resolution passed u/s 81(1A) of the Companies Act, 1956 , by the shareholders of the company.
2. End use of the proceeds to be raised through this preferential issue.
3. The present paid up value (i.e towards face value) of these securities should be intimated.
4. The company should intimate that the proposed equity shares to be issued on a preferential basis would be ranking pari- passu in all respects including dividend with the existing equity shares of the company.
5. A certificate from the Statutory Auditors of the company should be submitted certifying that the pricing of the shares issued on preferential basis is as per SEBI (DIP) guidelines. The Auditors should specifically mention in detail about the Relevant Date , average of weekly high and low of the closing price of the shares quoted on the Stock Exchange during the six months preceding the relevant date and the average of weekly high and low of the closing price of the shares quoted on the Stock Exchange during the two weeks preceding the relevant date and kindly note that the working of the pricing of quotation/ rates should be mentioned specifically on the Auditors certificate only.
6. The certified true copies of the proposed allottee's letter addressed to the company in which they have given consent for subscribing to the proposed issue of aforesaid securities should be submitted.
7. The Managing Director of the company should certify that the proposed allotment of securities does not violate Clause – 40A of the Listing

Agreement and the company will continue to maintain (post issue) the non- promoter holding in the company as per clause 40A.

8. A certificate from the Managing Director as well as the Statutory Auditors of the company should be submitted certifying that :

   — the proposed allottees of the aforesaid securities are holding their existing shares only in dematerialized form.

   — the proposed allottees of the aforesaid securities have not sold/ transferred any equity share during the six months period prior to the Relevant date.

   — the proposed allottees of the aforesaid shares have not sold / transferred any equity shares from the relevant date till the date of execution of the lock- in by the Depositories. (If applicable)

   the company has complied with the lock- in provision as required under clause 13.3.1 (g) of the SEBI (Disclosure and Investor Protection) Guidelines i.e where the shares , warrants , PCDs, FCDs or any other financial instruments convertible into or exchanged with the equity shares at a later date , are issued on preferential basis , the shareholders who have sold their shares during six months period prior to the relevant date as applicable, shall not eligible for allotment of shares on preferential basis and the details of the lock –in of the equity shares are as under :

This certificate should be in the following proforma:

Name of the Allottees	*Number of Shares*	*Date of Lock in*	
		From	*To*
	Total		

9. The company should obtain the confirmation letters from the National Securities Depository Ltd./ Central Depository services (India) Ltd. specifically mentioning that they have frozen/ kept the entire pre preferential allotment shareholding of the allottees of the aforesaid securities are under lock in as per the request made by the company in respect of compliance of the lock in provision as required under clause 13.3.1(g) of amendments to SEBI (Disclosure and Investor Protection) Guidelines, dated the 8th April,2004 and the certified true copies of the same should be filed with the exchange.

10. A certificate from the Managing Director as well as Statutory Auditors of the company should be submitted specifically certifying that the company has complied with all provisions / guidelines issued by Securities and Exchange Board of India under the Preferential Issue Guidelines and further the company has also complied with all the legal and statutory formalities and no statutory authority has restrained the company from issuing the proposed shares.

11. The company should intimate the Exchange the process by which the company has identified the allottees of these proposed securities and also inform that whether the proposed allottees are related to the directors/promoters of the company and/or persons acting in concert with the directors/promoters of the company.

12. The company should intimate the exchange whether the allottees of these proposed securities are related /connected with each other's and/or persons acting in concert with each other's.

13. The Managing Director of the company should confirm :

    "That the proposed preferential issue to be made by the company is in accordance with the provisions of the Substantial Acquisition of Shares and Takeovers Regulations,1997 of the Securities & Exchange Board of India.

    The proposed preferential issue of shares and allotment made does not/does require (strike off which is not applicable) the acquirer to make an open offer under the said regulation".

14. A printed copy of the notice issued to the shareholders of the company for conveying the Extra – Ordinary / Annual General Meeting along with the Auditors certificate regarding pricing of these shares submitted at the time of the Extra–Ordinary / Annual General Meeting for shareholders approval should be submitted.

15. Names of the companies, firms of other parties listed in the register maintained under section 301 of the Companies Act, 1956.
16. Names of the companies under same management and having common directors should be submitted.
17. Names, addresses together with their P.A.N / GIR Numbers of the allottees of these shares should be submitted.
18. Name and addresses of the Directors of the allottee companies should be submitted.
19. Kindly let us know the names of the stock Exchanges where the securities of the company's are listed.
20. Latest profile including business activities of the company should be submitted.
21. The certified true copies of latest annual Reports of the company should be submitted.

Kindly note that, the company should submit the documents/information as stated above in the same order as early as possible. Further the company should not proceed with the allotment of the above – mentioned securities without obtaining prior approval of the exchange.

CHECKLIST FOR NSE– CLAUSE 24(A) APPROVAL

1. Certified true copy of the resolution passed by the Board of Directors approving the issue of securities.
2. Certified true copy of the notice convening the AGM /EGM of shareholders along with the explanatory statement annexed thereto where the proposal for issue of Equity Shares on preferential basis is to be put for approval.
3. Confirmation from the company stating that the proposed allottees have not sold any shares of the company for the period starting from six months prior to the relevant date till relevant date.
4. For the allottees not having any pre- preferential holdings, confirmation from the Company that they do not hold any equity shares of the Company for the period starting from the six months prior to the relevant date till date of allotment.
5. Confirmation from the Statutory Auditors / Practicing Chartered Accountant/ Practicing Company Secretary:-
   (a) the entire pre preferential holding of the proposed allottee shall be locked in for the period starting from the relevant date up to a period of six months from the date of allotment (clearly mentioning the quantity of pre –preferential holdings and the lock in release date) and
   (b) entire shareholding of the allottees is in dematerialized form.
6. Certified true copies of the holding statements of the beneficiaries account of the allottees (clearly mentioning the quantity of pre – preferential holdings and the lock in release date) :-
   (a) confirming that the entire pre preferential holdings of the allottees is under lock in for the relevant period.
   (b) confirming that the entire shareholding of the allottees is in dematerialized form.
7. If the preferential allotment to promoters, their relatives, associates & related entities, for consideration other than cash, valuation report of valuation of the assets in consideration for which the shares are proposed to be issued done by an independent qualified valuer.
8. NSDL/CDSL confirmation for corporate action for lock in of pre- preferential holdings.
9. If the lock in does not commence from the relevant date :
   (a) Confirmation from the Company to the effect that the proposed allottees having pre-preferential holdings have not sold any shares of the company from the relevant date till the date of commencement of lock-in.
   (b) Transaction statement of the Beneficiary A/c's of the proposed allottees having pre- preferential holdings from the relevant date till the date of commencement of lock-in.
10. Kindly confirm that the new shares shall rank *pari–passu* with the existing shares of the Company, in all respects, including dividend.

Annexure - B

BSE – Post Allotment " In – principle "Approval and Listing , Trading Approval

(a) *For listing of securities allotted on conversion :*

1. A certified true copy of the Resolution passed by the Board of Directors in which the company has allotted these warrants should be submitted along with the certified true copy of the Resolution passed by the Board of Directors in which the company has allotted equity shares on conversion should be submitted.

2. The enclosed form of share holding pattern as well as distribution schedule form should be submitted duly filled in as per its format along with the relevant Annexures as stated therein (Pre & Post –Issue).

3. The distinctive numbers of these shares should be intimated.

4. The market price of the shares when these securities were allotted should be intimated.

5. The present paid up value (i.e towards face value) of these shares should be intimated.

6. The company should pay annual Listing Fee for the year 2007- 2008 including the enhanced capital.

7. The company should pay a non – refundable processing fee of Rs. 50,000/- for processing this listing application. Please note that the said processing fee should be sent by a separate demand draft.

8. The certified true copies of the detailed Bank Statement of the account should be submitted in which the company has deposited the application /allotment monies received by the company from the applicants of the aforesaid shares together with the names of the parties and such supporting documents in respect of the entries of deposits /withdrawals involving major amounts and the entries of the deposits should be highlighted .

9. A certificate from the Auditors of the company should be submitted specifically certifying that the certificates of the shares issued on preferential basis have been stamped with an enfacement as under :

   " These shares will not be sold/ transferred/ hypothecated until _____
   (1/3 years from the date of allotment)

   This certificate should be in the following proforma :

No. of shares	*Distinctive Numbers*	*Date upto which they are non – transferable*

10. In case these shares are allotted to other than promoters, then kindly submit an auditors certificate in the under mentioned format :

    "We hereby certify that the company has allotted _____ shares as per section 81–1A resolution passed by the company on _____ to other than promoters .

    We hereby further certify that the none of the allottees of these shares were coming under the definition "Promoters" and "Person/s acting in concert".

11. A certificate from the Managing Director as well as Auditors of the company should be submitted specifically certifying that the company has received on _____ the 10% upfront money amounted to Rs.____ /- against the allotment of these warrants and 90% Application/ Allotment Monies amounted to Rs.___ /- against allotment of equity shares on conversion of the warrants on ____ from the applicants of the aforesaid shares.

12. A certificate from the Managing Director as well as Auditors of the company should be submitted specifically certifying that the company has complied with all the provision / guidelines issued by SEBI under the Preferential Issue guidelines and further the company has also complied with all the legal and statutory formalities and no statutory authority has restrained the company from issuing and allotting the aforesaid shares.

13. A declaration from the Managing Director of the company should be submitted specifically certifying that the documents filed by the company with the Exchange are all identical and same documents filed by the company with the Registrar of companies /SEBI/ Reserve Bank of India /FIPB in respect of the allotment / enlistment of the aforesaid shares issued on a preferential basis on the exchange.

14. A certified true copy of the company's letter addressed to Reserve Bank of India intimating about the allotment of shares to NRIs/FIIs etc. (if applicable) should be submitted.
15. The company should submit the details of its Board of Directors as per the format enclosed for updating the records of the exchange.
16. Acknowledged copy of form no. 5 as well as form no. 2 filed with ROC in respect of increase in share capital of as well as allotment of the aforesaid shares by the company should be submitted.
17. Names, address together with their P.A.N /GIR Numbers of the allottees of these shares should be submitted.
18. Name and addresses of the Directors of the allottee companies (If applicable) should be submitted.
19. The enclosed prescribed listing application forms should be submitted duly completed in respect of these shares.

(b) *For listing of securities allotted on Preferential basis:*

1. A certified true copy of the Resolution passed by the Board of Directors in which the company has allotted these shares should be submitted along with the certified true copy of the Resolution passed u/s 81(1A) of the Companies Act,1956, by the shareholders of the company.
2. The enclosed form of share holding pattern as well as distribution schedule form should be submitted duly filled in as per its format alongwith the relevant Annexures as stated therein (Pre & Post –Issue).
3. The distinctive numbers of these shares should be intimated.
4. The market price of the shares when these securities were allotted should be intimated.
5. The present paid up value (i.e towards face value) of these shares should be intimated.
6. The company should pay annual Listing Fee for the year 2007- 2008 including the enhanced capital.
7. The company should pay a non – refundable processing fee of Rs. 50,000/- for processing this listing application. Please note that the said processing fee should be sent by a separate demand draft.
8. The certified true copies of the detailed Bank Statement of the account should be submitted in which the company has deposited the application /allotment monies received by the company from the applicants of the aforesaid shares together with the names of the parties and such supporting documents in respect of the entries of deposits /withdrawals involving major amounts and the entries of the deposits should be highlighted .
9. A certificate from the Auditors of the company should be submitted specifically certifying that the certificates of the shares issued on preferential basis have been stamped with an enfacement as under :

   "These shares will not be sold/ transferred / hypothecated until _____ .

   (1/3 years from the date of allotment)

   This certificate should be in the following proforma :

No. of shares	*Distinctive Numbers*	*Date upto which they are non – transferable*

10. In case these shares are allotted to other than promoters, then kindly submit an auditors certificate in the under mentioned format :

    "We hereby certify that the company has allotted _____ shares as per section 81–1A resolution passed by the company on _____ to other than promoters.

    We hereby further certify that the none of the allottees of these shares were coming under the definition "Promoters" and "Person/s acting in concert".
11. A certificate from the Managing Director as well as Auditors of the company should be submitted specifically certifying that the company has received the Application/Allotment Money aggregating to Rs. _____ /- from the applicants of these shares against the allotment of ___ shares.
12. A certificate from the Managing Director as well as Auditors of the company should be submitted specifically certifying that the company has complied with all the provision/guidelines issued by SEBI under the Preferential Issue guidelines and further the company has also

complied with all the legal and statutory formalities and no statutory authority has restrained the company from issuing and allotting the aforesaid shares.

13. A declaration from the Managing Director of the company should be submitted specifically certifying that the documents filed by the company with the Exchange are all identical and same documents filed by the company with the Registrar of companies /SEBI/ Reserve Bank of India /FIPB in respect of the allotment / enlistment of the aforesaid shares issued on a preferential basis on the exchange.

14. A certified true copy of the company's letter addressed to Reserve Bank of India intimating about the allotment of shares to NRIs/FIIs etc. (if applicable) should be submitted.

15. The company should submit the details of its Board of Directors as per the format enclosed for updating the records of the exchange.

16. Acknowledged copy of Form no. 5 as well as Form no. 2 filed with ROC in respect of increase in share capital of as well as allotment of the aforesaid shares by the company should be submitted.

17. Names, address together with their P.A.N. / GIR Numbers of the allottees of these shares should be submitted.

18. Name and addresses of the Directors of the allottee companies (If applicable) should be submitted.

19. The enclosed prescribed listing application forms should be submitted duly completed in respect of these shares.

NSE– POST ALLOTMENT " IN – PRINCIPLE "APPROVAL AND LISTING, TRADING APPROVAL

1. Part I – Letter of Application
2. Part II – Issue Details (in case of equity shares)
3. Part III– Issue Details (in case of securities other than equity shares).
4. Part IV – Distribution Schedules along with annexures thereto.
5. Certified copy of the resolution passed by the Board of Directors approving the issue of preferential/private placement.
6. Certified true copy of the notice convening the AGM/EGM of shareholders along with the explanatory statement annexed thereto where the proposal for issue is to be put for approval.
7. Certified copy of the resolution passed by the shareholders at the AGM /EGM approving the preferential /private placement /increase in the authorized share capital.
8. Certified copy of the resolution passed by the Board of Directors for allotment of securities on preferential /private placement basis.
9. Certified true copy of the shareholding pattern of the company , pre and post issue of shares in the format given as per clause 35 of the listing agreement as on the date of allotment (Annexure for holding above 1% and footnote for total foreign holdings to be given.)
10. Certificate from Statutory Auditors that the issue of securities on preferential basis / private placement basis has been made in accordance with SEBI Guidelines.
11. Certificate from Statutory Auditors / Practising Chartered Accountant / Practising Company Secretary for the following confirmations :
    (a) The pricing of the issue along with the detailed working of the same.
    (b) The company has received the entire consideration payable prior to the allotment of shares.
    (c) The total shares under lock in (along with the dates of lock-in) and additionally confirming that the locked in equity shares if issued in physical form have been enfaced with non –transferability condition
    (d) The entire pre- preferential holdings of the allottee (mentioning the quantity) is locked in for the period starting from the relevant date up to a period of six months from the date of allotment.
12. If the allottee does not hold any pre – preferential holdings, confirmation from the Company to that effect.
13. Confirmation from the Company Secretary that the allottee has not sold any equity shares of the company for a period of six months prior to the relevant date (to be submitted even in case

the allottee does not have any pre – preferential holdings)

14. Certified true copy of Holding Statement of the allottee issued by the Depository Participant confirming that :

    (a) Entire shareholding of the allottees is in dematerialized form.

    (b) The entire pre- preferential holding of the proposed allottee is under lock in for the period starting from the relevant date up to period of six months from the date of allotment.

15. Confirmation from the Company Secretary that the shares issued to NRIs are as per guidelines issued by Reserve Bank of India and confirmation submitted to RBI for the same, if applicable . In case not applicable, give reasons for the same.

16. In case of preferential allotment to promoters, their relatives, associates and related entities, for consideration other than case , the valuation report of an independent qualified valuer valuing the assets in consideration of which securities are proposed to be issued.

17. Names of allottees and number of shares allotted to each allottee.

18. In case allotment under sec 81(3) of Companies Act :

    (a) A confirmation signed by the compliance officer of the company duly counter confirmed by the statutory auditors of the company /practicing company secretary confirming that the said allotment has been made in accordance with the provision of section 81(3) of the Companies Act,1956.

    (b) Certified true copy of the loan agreement signed with the Financial Institution duly identifying and marking the relevant provisions that provide the option to convert such loans into shares of the company.

    (c) Details of the internal approvals of the Board of the company to give effect to the option exercised by the Financial Institution.

    (d) Certified true copy of the Article of Association of the Company duly identifying and marking the enabling provisions to convert the loan.

    (e) Certified true copy of the correspondence from Financial Institution invoking the relevant provisions of the loan agreement which provide them the right to exercise the option.

19. Confirmation from the Company secretary that the shares issued rank pari – passu with the existing equity shares of the company including dividend.

20. Listing fee as applicable.

GLOBAL DIMENSIONS OF BUSINESS VALUE

DIVYA SAXENA*

INTRODUCTION

Business globalization is leading to widespread restructuring of international systems, processes in various corporations. Traditionally, international business strategy is based upon the individual domestic markets and sets up objectives and policies separately to satisfy the specific requirements of different countries. As international communication and exchanges extend, especially under the trends of political regionalization and rapid economic growth in various countries, the 'global market' a new type of international market is emerging. This global market is based on the shared and common demands of different countries. It integrates different national preferences into a core entity act as a fundamental and non-differentiable market requirement. Multinational Corporations are, therefore, keen to learn about and develop global or world products and to restructure their worldwide manufacturing systems. The emergence of the global market and intensification of global competition is matched by major developments in technology. In general, the new driving forces—global market opportunity, new patterns of competition and re-organizing potential or possibility—require a new generation of networks beyond the classical pipeline of physical business transformation. The linkages with the environment through sourcing, strategic alliances and R&D networking are of course important for the networks.

A ***'globalised approach'*** involves closely managed coordination of a dispersed business system and integration of both product and services design, development and production techniques. The global business is now seen as a unified whole with a mechanism of sharing knowledge and / or with elements of the task being performed in the most advantageous and efficient manner. In recent years, various companies have started adopting global business strategy by networking the Joint ventures in different nations based on specializing its product lines and centralizing key manufacturing processes. Based on its aggressive foreign direct investment, mergers and acquisitions, today's businesses are increasingly faced with decisions involving global considerations and capability development.

CONCEPT OF DIMENSIONS IN BUSINESS

Dimensions grow and change with business needs/ choices. The possibilities of creating new dimensions and changing existing ones are endless, as such it's easy to add new dimensions on the list and there's no limit to the number of dimensions, or the number of values, that can belong to each dimension. It enables an easy shift to new and unforeseen business models so as to grow in all kinds of new directions. They enhance the business decision making process.

Scope of Business Dimension

Dimensions for business value creation includes the following:-

- Enterprise readiness and the state of production applications;
- Business needs, as prioritized by function;
- Costs of implementation – Incremental versus comprehensive;
- Enterprise optimization versus functional optimization;
- Environmental constraints; and
- Technological constraints.

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Thus, the Dimensions Approach help us to better understand where your business is going or moving. Accordingly, the basic advantages of dimensions are as follows:-

— To explore how your business operates on various levels;

— To grow and change your tools along with your business; and

— To base important decisions on information you can trust.

Thus, the entire 'dimensions concept' is especially useful at the global level, giving the ability to control certain dimensions centrally, while leaving others at the discretion of local offices / branches. It develops the analytical tools in an easy way and base important business decisions on reliable information network. Infact, it facilitates simultaneous use of multiple dimensions or change existing dimensions to reflect the business processes.

MEANING OF GLOBAL DIMENSIONS

'Dimensions' of business in global context denotes different peoples, cultures and languages from around the world having a huge influence on the society. The following variables of global dimension must be noted in this context:-

— Social justice, values and perceptions;

— Sustainable development;

— Interdependence;

— Human rights;

— Diversity;

— Global citizenship;

— Appreciate the importance of a global context;

— Make links between local and global issues;

— Critically evaluate values and attitudes, appreciating the similarities between people everywhere and learning to value diversity;

— Understand the global context of business value proposition; and

— Develop skills that will enable them to combat injustice, prejudice and discrimination in global context.

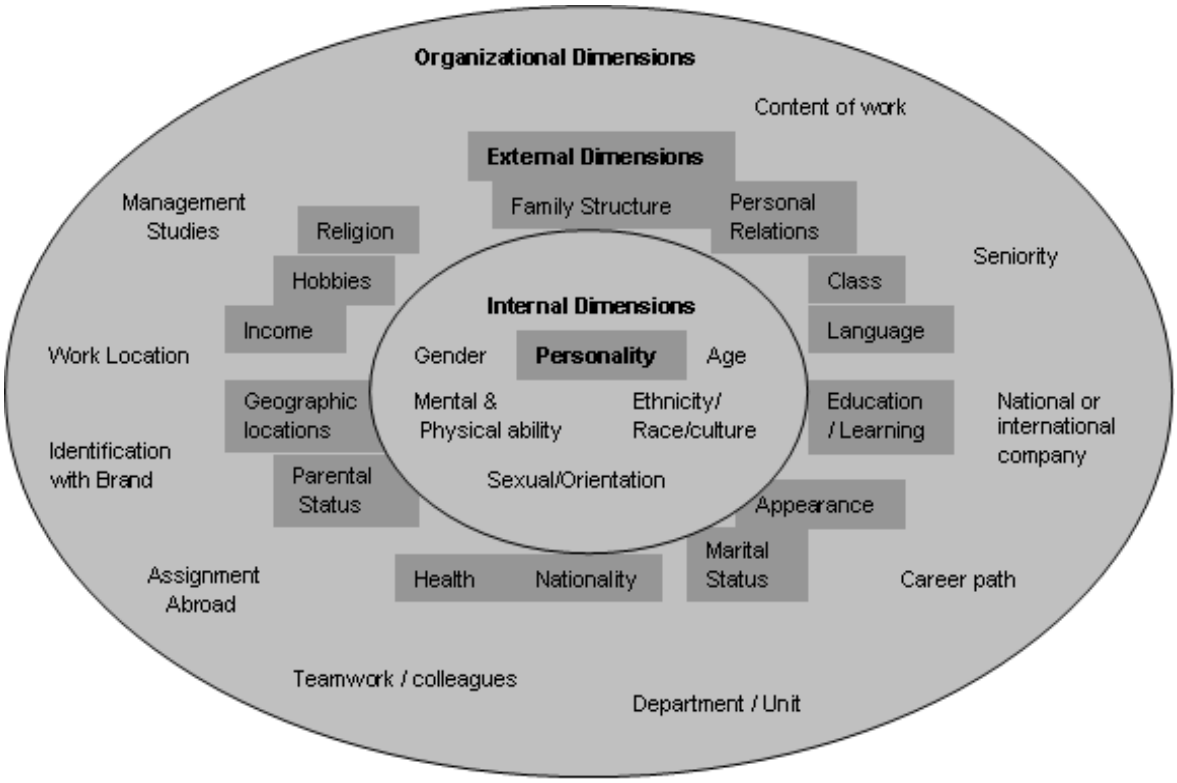

Figure-1 : Model describing diversity dimensions of business

ASPECTS OF GLOBAL DIMENSIONS

Subject	*Key Concept*	*Global Dimension Aspect*
Business Art and design.	Cultural understanding.	Diversity, Interdependence Global citizenship.
Corporate Citizenship.	Democracy and justice rights and responsibilities identities and diversity critical thinking.	Social justice, human rights, diversity, values and perceptions.
Corporate Design and Technology.	Cultural understanding.	Sustainable Development Global citizenship.
International Language (English).	Cultural understanding.	Values and perceptions, Global citizenship.
Cross Country Geography.	Interdependence, Environmental interactions, Cultural understanding and diversity.	Interdependence, Sustainable Development, Values and perceptions, Global Citizenship Diversity, Social Justice.

The integration of Information Technology with business performance is of major importance. The successful companies place major emphasis on one of three strategies – **operational excellence, customer intimacy or product leadership.**

FRAMEWORK OF BUSINESS STRATEGY AND FOCUS

Major Focus Identified	*Dimensions*
Operational excellence, i.e emphasize efficiency and reliability; end to end supply chain optimization.	— Organizational efficiency & effectiveness — Supplier relations — Economies of production
Customer intimacy, i.e emphasize flexibility and responsiveness; customer service, market – place management.	— Customer relations — Marketing support
Product leadership, i.e emphasize creativity, product development, time to market and market communications.	— Product and service enhancement — Competitive dynamics — Business innovation.

For the aforesaid purpose, the companies be classified into:-

1. Manufacturing firms;
2. Service firms.

PRIMARY STRATEGY OF FIRMS

— Services firms place significantly more emphasis on operational excellence i.e efficiency and effectiveness than do manufacturing firms.

— Product leadership including creative development is valued more as a strategy for manufacturing firms than for services firms.

— Differences in emphasis are less associated to hub-sectors of manufacturing such as computers and electronics than do services firms.

Strategies to business	*Manufacturing*	*Services*
Operational excellence i.e. emphasize efficiency and reliability, end to end supply chain optimization.	34%	44%
Customer intimacy i.e. emphasize flexibility and responsiveness, customer/ services, market place and management.	36%	36%
Product leadership i.e. emphasize creativity, product development, time to market and market communications.	30%	20%

RANK AND PERFORMANCE OF BUSINESS VALUE DIMENSIONS

'Rank' refers to the executive rank of the strategic importance to the firm of the business value dimension. However, 'Ratings' refers to the executive assessment of business technology contribution to overall performance of the business value dimensions. Accordingly, the measurement of business value is gauged in one of the following three ways or in a combination viz; Systemic, Extrinsic, and Intrinsic.

The Systemic Dimension - It is the dimension of formal concepts i.e ideas of how things should be. This dimension is the one of definitions or ideals, goals, structured thinking, policies, procedures, rules, laws, oughts and shoulds etc. It is one of perfection. If a person values something or someone systemically, then that person has to fulfill the idea perfectly. Thus, the valuation is based on total and complete fulfillment of an idea. You either perfectly fulfill the concept (ideal, definition, law, policy, etc.) or you do not fulfill the concept. When a person pays too much attention to this dimension the resultant behavior is an overemphasis on doing thing, an excessive pre-occupation with planning and having things be done perfectly, a strong tendency to measure everything and everyone against a preset idea of how they should be and an inability to be comfortable with changes and surprises.

The Extrinsic Dimension - This is the dimension of comparisons, relative and practical thinking. It includes the elements of the real, material world, comparisons of good / better / best, and seeing things as they compare with other things in their class. This is the dimension of seeing things and their properties as they apply in different contexts. This dimension is not actually addressing the thing itself but addressing how the thing or person contains the properties of the group or class to which it belongs. To value a person extrinsically is to compare that person in relation to other persons. This is the primary dimension of business. When a person pays too much attention to the extrinsic dimension, the resultant behavior will be an overemphasis on getting things done now, a tendency to see other people as functional commodities and a need for things to constantly be happening. When a person does not pay enough attention to the extrinsic dimension, the resultant behavior will be a tendency to avoid unpredictable situations, a devaluing of what it takes to get something done and an avoidance of the fulfilling of social norms and values.

The Intrinsic Dimension – It is the dimension of uniqueness and singularity. This is the dimension of uniqueness, of person or things as they exist in themselves. There is no comparison and no fulfilling of concepts. The fulfillment of a concept (systemic) or the containing of properties (extrinsic) are ignored because of the 'essence' or 'being' of the object. This is the valuing of an object or person with an eye toward its singularity, essence, uniqueness, or spiritual being. When describing or valuing persons or objects in this dimension, one becomes personally involved with the object / person.

TECHNIQUES OF GLOBAL BUSINESS DIMENSIONS

The following are the techniques of global business dimension:-

Techniques of Global Business Dimensions	*Salient Features*
Performance Orientation	It reflects the extent to which a community encourages and rewards innovation, high standards, excellence and performance improvement etc.
Uncertainty Avoidance	It is the extent to which a society, organization, or group relies on social norms, rules and procedures to alleviate the unpredictability of future events.
In-Group Collectivism	In-group collectivism is the degree to which individuals express pride, loyalty and cohesiveness in their organizations or families.
Humane Orientation	Humane orientation is defined as the degree to which an organization or society encourages and rewards Individuals for being fair, altruistic, friendly, generous, caring and kind to others.
Institutional Collectivism	The degree to which organizational and societal institutional practices encourage and reward collective distribution of resources and collective action.
Future Orientation	It is the degree to which a collectivity encourages and rewards future-oriented behaviors such as planning and delaying gratification.
Assertiveness	It is the degree to which individuals are assertive, confrontational and aggressive in their relationships with others.

VALUES AND BUSINESS

For business leaders to lead with authenticity, integrity and service to others requires environmental sustainability, protection of international human rights, employee empowerment, improving the quality of life in the workplace and overall community development. It is commonly believed that various types of businesses can use their influence, products and services to not only increase profitability but also to improve the quality of life for the global community. The primary function of any business is to create value, by producing and marketing goods or services whose value on the market exceeds the sum of the costs of the factors of production. Creation of 'Value' is, therefore, the *sine qua non* of corporate profitability. Until recently, only two production factors were considered sources of value in the production function inspired by classical economics viz; Capital (C) and Labour (L). However, the advent of the information society introduced a third source of value in the production function viz; Knowledge (K).

The value proposition constitutes an essential definition of the activity of a company, its rationale and what makes its economic equation possible and thus, encompasses all elements related to products and services offered by the company, which are valued by the customer and for which the customer is ready to pay. In general, the value proposition comprises **three principal dimensions viz; Costs, Time and Attributes**.

— 'Costs' refers to the price the customer must pay to obtain the product, of a given quality.

— 'Time' includes the time required to find information about the product and to order and obtain it, however, the buyer may be willing to pay more to reduce the time frame.

— 'Attributes' encompass elements that define the "qualities of the proposition" viz; sales conditions, guarantees, regularity of supply by the vendor, customer service policies, complementary services, brand image, convenience, etc.

Measures for the business value perspective includes the following:-

— Value linking

— Value acceleration

— Value restructuring

— Technological innovation.

Domains of Business Value

Business Strategy	*Business Risks*	*Business Evaluation*
— Product or Service Quality	— Business strategy risk	— Business value
— Customer responsiveness	— Exogenous changes, such as technological advances, provide the opportunity to achieve a better design via complementary changes	— User orientation
— Management information		— Internal processes
— Process flexibility		— Future readiness

FACTORS AFFECTING GLOBAL BUSINESS VALUE PROPOSITION

— **'Values and Culture'** – 'Culture' can be defined to be a common and learned way of thinking and behaving among a group of people. It has been viewed as everything that people have, do, and think as members of their society. A culture is a system of meanings, through which people interpret their expectations and which directs their behavior and identifies several different levels of cultures, such as nations, genders, generations and organizations, to use in studying cultures. While ethical values are deeply bound within a culture, it is often difficult to make them visible or to understand them. In the global economy, there is an increasing need for different nations, companies and individuals to work together in co-operative efforts. This emerging global perspective emphasizes the need for individuals to behave competently within a different cultural environment. However, individuals should understand that ethical values may exist in one culture which are different from the ethical values in their own society.

Evaluating values of another culture in developing a paradigm for international co-operation, first, it is important to determine the values of another culture and then to try to understand those values. A problem which arises from this paradigm is whether it is possible to accept all the values of other cultures. Today, business is subject to a myriad of influences that require managers and leaders to equip themselves with new knowledge and skills - to manage complexity and address the emotional as well as the financial aspects of corporate life. The corporation is now a complex web of relationships operating principally as a social organism. Added to this is the growing expectation that corporations understand the need to behave ethically in managing the social assets with which they are entrusted viz; employees' superannuation and pension funds, the interests of the communities in which they survive, the safety of employees and customers, and welfare of consumers who use their products and services, the natural environment with which they interact and for which they are responsible, the social welfare of citizens of other countries from which they buy materials and inventory and the integrity of the marketplace itself in promoting social interests. How the organization interprets and responds to these multiple inputs and turns them into complex spectra of light in the form of positive outputs will ultimately shape the ethical landscape of business and determine its future and fate.

— **'Ethical Standards'** are not set by business but by society as a whole. It is this interface with society's expectations and the way business gets done that is shaping the public debate in which the nature of business ethics is being defined. Business leaders will continue to be pressed to move out from behind- as well as to move beyond legal compliance. They must step up to the challenge of explicitly managing stakeholders' accountabilities arising from the impact of their products and services as the ethical dimension of their enterprises. The 21st Century corporate governance requires an 'ethical strategy' for core business activities that takes account of the potential negative impacts of the corporation and its products and services. "Governance – for Enterprise Architecture—identifies the key elements of the architecture and the responsibilities behind the definition of those key elements. An 'ethical strategy' also seeks to balance the positive benefits and attributes of the output of the business with a clear acknowledgment of the potential harmful effects so that stakeholders can make informed choices about buying from or working with the business. Thus, developing a heightened awareness of the interconnectedness of business and the ethical accountabilities are necessary. In this respect, there are **three dimensions of ethics- personal, organizational and social** which can be aligned to nurture a coherent and healthy personal identity while working co-operatively to build a better future for all in the organizational spirit. It must be stated that modern day ethics rests on notions of 'duty of care' to others, 'individual virtue' and visions of personal identity, character and concern for the sort of person we become and the societies we bring forth. 'Ethics' is not just about morality, it can become a challenging dimension of personal and corporate life that will lead to higher performance.

— **'Innovation'** - In today's challenging global market, enterprises must innovate to survive and bring significant value to their shareholders', customers and employees. It is important that this innovation occur in all dimensions—**product, process, and organization**—to improve competitiveness and overall business performance. It must be noted that the companies who demonstrate continuous innovation are consistently result oriented, more rewarding with higher market valuations etc. 'Innovation' can occur spontaneously in almost any situation, however, the ability to continuously innovate requires an environment that nurtures collaboration and enables the intellectual assets of the enterprise to be leveraged to their maximum potential. In an environment for innovation, "Enterprises must be able to capture, manage, and leverage their intellectual assets in a proactive manner." Product Lifecycle Management (PLM) is the business strategy that best allows organizations to establish such an environment. This strategic approach helps enterprises achieve their business goals of reducing costs, improving quality and shortening time to market, while innovating their products, services and business operations.

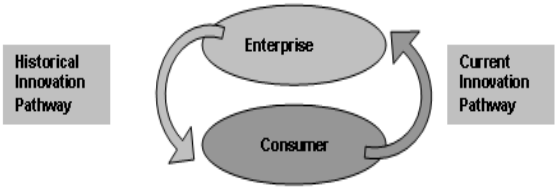

Figure-2 : Business Value Analysis

— **'Flexibility'** — It implies the ability to shift at least part of the enterprise's focus quickly in response to external forces for example, to take advantage of changing markets, exploit new technology or address increased competition. A successful company can move smoothly into the right position at the right time. Conversely, an unsuccessful company often is not flexible oriented. Infact, it needs to be developed and as a set of capabilities over time and requires hard work, discipline and leadership.

— **'Specialization'** — The company focusing on its core strengths and depend on partners to fill in gaps and exploit opportunity areas. It will facilitate sincerely to dedicate limited resources to those areas of the business that truly differentiate a company from its competitors.

— **'Simplification'** by looking for opportunities to make business easier and straight forward, most companies have re-engineered their businesses internally as well as externally.

— **'Standardization'** — Implies the interactions of people, processes and technology in the business. 'Standardization and rules' create an environment where decisions can be made at the point of interaction and become the "glue of collaboration." 'Business standardization' can thus, facilitate the expansion into new markets and regions as companies aim to globalize their businesses.

— **'Sensing' and 'Adaptability'** — 'Sensing' includes external impacts to the company, such as new competitor products or emerging technologies, as well as monitoring the internal measurements for areas to improve. On the other hand, 'Adaptability' is the ability to better respond to the ever changing industry environment.

— Anticipating customer needs and preferences and to get products to the market in time to meet those needs.

— Aligning tactics and resources to the company's strategy.

— Operational changes without changing organizational structures.

— Changing processes without changing technology.

— Identifying and incorporating emerging technologies into products, services and operations.

— **'Employee Management'** — It includes external factors such as market share and market environment, as well as internal company factors including organizational culture, management styles and human resource management practices.

— **'Internal process'** — The emphasis is on stability, internal organization and adherence to rules, where norms and values are associated with efficiency, co-ordination and uniformity.

— **'Volunteerism'** — All the Countries have a strong tradition of individuals undertaking voluntary work in their communities. The concepts and practices of corporate volunteering and formal employee involvement have emerged largely from business behaviour and culture in the West. 'Volunteerism in action' explores a programme that offers 'volunteering opportunities to its employees, employees' children, business partners and other stakeholders'.

— **'Environmental Issues'** — There are environments of varying complexity in which the business scenarios exists and consequently there are a variety of technologies and tools that may be needed in these different environments. Executives need to explore their beliefs about managing and their relationship with others in the Organization.

— **'Global Strategy'** — Is defined through a pattern of goal-directed decisions based on an industry position in which the competitive forces are perceived to span national boundaries. Because the industry is linked across countries, the business pursuing a global strategy considers that its "competitive position in one national market is affected by its competitive position in other national markets". This linking of competitive positions across country locations implies that the international activities of the organization must be integrated in a manner that develops and sustains advantage in response to the cross-national competitive forces.

— **'Knowledge Management'** — It covers organizational behavioral science, collaboration, content management and other technologies.

— **'Managerial Adaptation'** — Due to differences between national cultures so as to effectively perform the managerial functions of business activities.

— **'Cultural Diversity'** — Amongst international divisions of a global firm may actually impede efforts

to merge activities and expertise between those units. Specifically, direct (market, production, technology) and indirect (knowledge-based) benefits are more difficult to exploit when cultural diversity makes activity sharing and expertise transfer less efficient. It postulates that culturally related international firms will enjoy greater efficiencies than culturally diverse multinationals.

— **'Information Technology' (IT)** as supporting global business strategies while at the same time IT can also be a major catalyst in the globalisation process itself.

— **'Social Responsibility'** is becoming a generally accepted principle that applies to a growing variety of business partnerships involving multinational and local enterprises in industrialized and developing economies alike. In this context, the 'Corporate Governance' as a global movement progressed in fits and starts from the mid-1980s up to 1997. There were the odd country-level initiatives such as the Cadbury Committee Report in the United Kingdom, 1992 or the recommendations of the National Association of Corporate Directors of the US, 1995. Whereas, the occasional International Conference on the desirability of good Corporate Governance has been directed to improving the quality and frequency of disclosures. Independent oversight of management comprises the role of independent, statutory auditors who are appointed by shareholders to audit the company's accounts and presents a true and fair view of the financial health of the corporation. Indeed the quality and independence of the statutory auditors are fundamental to corporate oversight. While it is the job of the management to prepare the accounts, it is the fundamental responsibility of the statutory auditors to scrutinize such accounts, raise queries and objections (if the need arises), arrive at a true and fair view of the financial position of the company and report their independent findings to the board of directors and through them to the shareholders and Investors of the company. Infact, in the wake of a number of corporate scandals, the corporate governance system has to be reinvented to make it more catalytic, vision customer driven as well as the community oriented. Besides the concept of Corporate Social Responsibility (CSR) in gaining impetus in the present time whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. As it is rightly stated that responsible behavior leads to sustainable business success. CSR is all about managing change at company level in a socially responsible manner. The main function of an enterprise is to create value through producing goods and services that society demands, thereby generating profit for its owners and shareholders as well as welfare for Society, particularly through an ongoing process of job creation. However, new social and market pressures are gradually leading to a change in the values and in the horizon of business activity. There is today a growing perception among enterprises that sustainable business success and shareholders' value cannot be achieve solely through maximizing short-term profits, but instead through market-oriented yet responsible behaviour. The main features of CSR are as follows:-

— CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest;

— CSR is intrinsically linked to the concept of sustainable development viz; the businesses need to integrate the economic, social and environmental impact in their operations;

— CSR is not an optional "add-on" to business core activities, but about the way in which businesses are managed.

CSR has its coverage in enterprises, amongst policy-makers and other Stakeholders, as an important element of new and emerging forms of governance, which can help them to respond to the following fundamental changes:-

— Globalisation has created new opportunities for enterprises, but it also has increased their organizational complexity and the increasing extension of business activities abroad has led to new responsibilities on a global scale, particularly in developing countries.

— Considerations of image and reputation play an increasingly important role in the business competitive environment, as consumers for more information about the conditions in which products and services are generated and the sustainability impact thereof and tend to reward, with their behaviour, socially and environmentally responsible firms.

— Financial stakeholders ask for the disclosure of information going beyond traditional financial

reporting so as to allow them to better identify the success and risk factors inherent in a company and its responsiveness to public opinion.

— As knowledge and innovation become increasingly important for competitiveness, enterprises have a higher interest in retaining highly skilled and competent personnel.

Indeed, awareness of CSR issues and concerns will contribute to promote more sustainable investments, more effective development co-operation and technology transfers. Both processes of trade and financial markets liberalization should be matched by appropriate progress towards an effective system of global governance including its social and environmental dimensions. By abiding by internationally accepted standards, multinational enterprises can contribute to ensure that international trade markets function in a more sustainable way.

Impact of CSR on Business and Society — CSR can support the creation of an atmosphere of trust within companies, which leads to a stronger commitment of employees and higher innovation performance. A similar atmosphere of trust in cooperation amongst other stakeholders (business partners, suppliers, and consumers) can increase the external innovation performance. Consumers' confidence fostered through CSR can be a major contributor to economic growth. CSR policies can also boost the societal benefit that enterprises create with regard to innovation. Enterprises generally agree that CSR helps them in managing their risks, their intangible assets, their internal processes and their relations with internal and external stakeholders.

'Transparency' is a key element of the CSR debate as it helps businesses to improve their practices and behavior and also enables businesses and third parties to measure the results achieved. CSR benchmarks against which the social and environmental performance of businesses can be measured and compared are useful to provide transparency and facilitate an effective and credible benchmarking. The interest in benchmarks has resulted in an increase of guidelines, principles and codes during the last decade.

Benchmarks of CSR

Benchmarks of CSR	*Basis Features*
Codes of Conduct	To adopt codes of conduct relating to labour issues, human rights and the environment. Codes of conduct are innovative and important instruments for the promotion of fundamental human, labour and environmental rights and anti-corruption practices - especially in countries where public authorities fail to enforce minimum standards
Management Standards	To face a wide range of complex issues in areas such as labour practices and supplier relations with implications across their organizations, businesses, regardless of sector, size, structure or maturity would benefit from the inclusion of social and environmental issues into their daily operations. In this context, CSR Management Systems - like Total Quality Management Systems - could allow enterprises to have a clear picture of their social and environmental impacts which can help them to target the significant ones and manage them well.
Accounting, Auditing and Reporting	In the last decade, more and more companies have started to publish information on their social and environmental performance. Triple bottom line" reporting of economic, social and environmental indicators is emerging as a good practice.
Brands and Labels	As consumers express a growing preference for socially and environmentally responsible products and services, assess to relevant information about the social and environmental conditions of production is crucial to help them to make informed choices.
Socially Responsible Investment	The decision of making investment keeping in view the socially responsible role of modern business.

— **'Quality'** is consistently listed as one of top competitive priorities and has become a prerequisite for success in the global marketplace. 'Quality' helps a firm gain a competitive advantage by delivering goods to the marketplace that meet customers' needs, operate in their intended manner and continuously improve quality dimensions in order to 'surprise and delight' the customer. Quality remains the foundation of competitive advantage, even if a firm's short-term attention has drifted to speed-to-market, cost reduction and other concerns.

— **'Integrated Risk-management'** involves the managerial issues relating to management of business risk through adoption of applicable protection laws concerning corruption, anti-trust, consumer safety, environmental protection and insider-trading etc.

— **'Resource and Training'** have been increasingly used synergistically to excel the performance of corporate responsibility through business networking system.

— **'Interdependence in Economic Relations'** in trade, investment and global production and also in social and political interaction among organization and individual across the world.

— **'Changing Attitudes and Preferences'** towards doing or managing the production and operations viz; collaboration of competitors to set technology standards that facilitate the industry growth, common promotion of favorable regulations or legislations, cooperation and incentive among firms with their suppliers to improve product quality in order to boost demand.

— **'Technical and Agency Efficiency'** represents the degree to which a firm can maximize output for a given combination of inputs or indicates the firms ability to use the least cost production process, while 'agency efficiency' refers to the extent to which the exchange of goods and services in the vertical chain has been organized to minimize the coordination agency and transaction cost.

— **'Competitiveness'** is a function of the company's ability to exploit and leverage their resources in adding value, products and services more efficiently and effectively than competitors.

— **'Dynamic Capabilities'** are defined as "the firms ability to integrate build and configure competencies to address rapidly changing environment". They are, therefore, used to manage resource and competences which need to be constantly renewed and developed.

— **'Core Competencies'** build on optimum resources combining easily in new and mutually reinforcing ways to multiply the competitive value of specialized resources.

— **'Organizational Structure'** processes and culture to judiciously concentrate organizational attention on core competencies. Organization need to fundamentally shift to practices imparting new wave to **capitalize on the new resources and capabilities** so as to establish a new and durable basis for sustainable competitive advantages.

— **'Organization's Ability to Communicate'** This means that the Members of an organization need to understand the basic values of their organization and they need to have opportunities to reflect upon them together. The trend towards participative leadership, team management and learning organization theories might offer opportunities for shared and equal communications about values. The emergence of **corporate governance and corporate social responsibility** (CSR) are two critical areas of management strategy and operations.

— **'Ethical Guidelines'** for Multinational Corporations (MNCs) are included in several international accords adopted during the past four decades. These guidelines attempt to influence the practices of MNCs in such areas as employment relations, consumer protection, environmental pollution, political participation and basic human rights. Their moral authority rests upon the competing principles of national sovereignty, social equity, market integrity and human rights.

— **'Digital Convergence'** is diversification and creates growth through new products in new markets. In fact, digital convergence solutions create the most attractive growth opportunities in global marketplace.

— **'Upgrading'** implies making better products, with greater efficiency adopting skilled activities. Thus, ***upgrading means 'innovating to increase value added'.*** Enterprises may achieve this in various ways, as for example by entering higher unit value market niches, by entering new sectors, or by undertaking new productive or service functions. It involves the following activities viz;

product upgrading, functional upgrading and inter-sectoral.

— **'Proactivness'** — Cultures that emphasize entrepreneurial initiative by encouraging entrepreneurs to pursue and anticipate opportunities and to participate in new or emerging markets are classified as proactive. It is crucial to an organization working because it is concerned with the implementation stage of entrepreneurship.

— **'Competitive Aggressiveness'** refers to a culture's propensity to promote entrepreneurs to be achievement oriented by challenging competitors or improving their position relative to other firms. This is an important component because new ventures are much more likely to fail than established businesses. Thus, an aggressive stance and intense competition are critical to the survival and success of new start-ups.

— **'Political / Legal Factors'** — a political system needs to be built on freedom of choice, individual rights, democratic rules, and check and balances of government. Moreover, the direct actions or inactions of governments are very influential for the opportunity conditions for entrepreneurship / business expansion and development. Governments can ensure that markets function efficiently by removing conditions that create entry barriers, market imperfections and unnecessary regulation by providing funding to encourage risky and innovative research and development, supporting incubator programs, freeing trade policy, practicing disciplined fiscal policy, increasing the availability and productivity of labor, and deregulating industries and privatizing state owned enterprises, governments can show support for entrepreneurial activity.

— **'Social Factors'** A variety of social factors also are regarded as necessary conditions for the business value addition. Societies that place a high value on social mobility between classes, independent thinking, a low need for support and conformity and a strong drive towards higher material wealth, tend to be more entrepreneurial in nature as they encourage autonomy and pro-activeness—all hallmarks of a strong organization.

— **'Global Marketplace Cultures'** focuses on new marketplace cultures and the changing roles and responsibilities of marketers, consumers and marketing scholars in the global economy.

— **'Cultural Competencies'** in commercial Organizations includes the cultural know-how which can be seen as a new kind of business capability, which is emerging as a central success factor in globalizing, extremely competitive markets.

— **'Enterprise Architecture'** — covers the holistic view of an enterprise's processes, information and information technology assets as a vehicle for aligning business and IT. The challenges usually arise around how to link the enterprise architecture efforts into the overall enterprise processes and how to leverage them as assets used regularly by a variety of stakeholders. To operationalize, enterprise architecture, using the dimensions of policies and principles, processes, measurement and tool enablement.

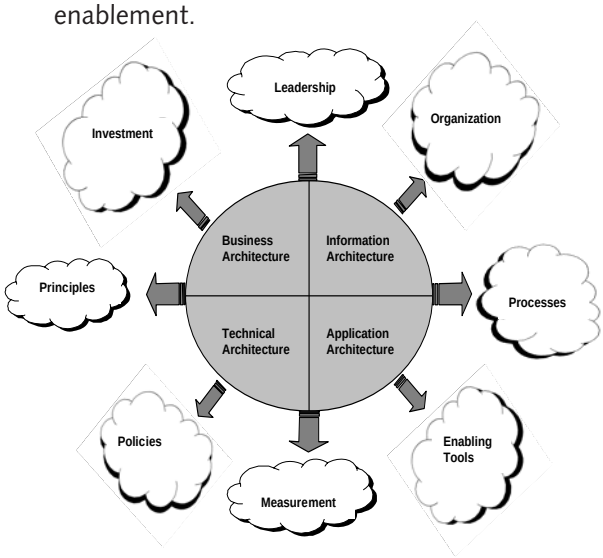

Figure-3 : Enterprise architecture governance framework

— **'Global Diversity'** as a business policy provides a framework that supports business processes and procedures by considering, integrating and leveraging diversity globally. The 'global diversity' regularly reviews the Global Diversity Policy and is responsible for making any revision or clarification, as warranted. 'Managing Diversity' in the organization allows to leverage individual potential and creativity. The diverse capabilities that reside within the talented workforce enable to anticipate and fulfill the needs of our diverse customers, providing high quality products and services. As such, 'Global diversity' is the subject to internal review by Management and / or HR and / or the Global Internal Audit Services.

— **'Human Values'** such as honesty, transparency, trustworthiness and accountability are the foundation for all business activities, inappropriate behavior on the part of an individual not only harm those immediately affected by the negative impact on collaboration and team efficiency, but also endangers the good reputation of the company as an employer of choice. Every employee is expected to ensure a working environment that is free of all forms of harassment or discrimination. There should not be any direct or indirect discrimination in employment and promotion decisions or in any personnel actions on the basis of ethnicity, race, culture, gender, age, sexual orientation, mental or physical ability or any other factor protected by law.

— **'Business Intelligence'** — It covers business aspects of efficient and effective cooperation of every team within the global organization based on a common understanding of the company's values and objectives, as well as a respectful way of thinking and acting towards each individual companies can enhance communication and gain a competitive edge.

— **'Global Business Interdependence'** — It must be stated that for most nations, political and economic stability depends on participation in a complex international trade network. Some countries depend on the export of manufactured goods, while others rely on tourism while some other countries requires raw material imports or labor from neighboring nations etc. this implies business interdependence on global basis.

— **'Role of Foreign Direct Investment (FDI)'**— Financial stability is critical to global trade development and economic growth, building strong financial system requires high quality international standards in financial management, close supervision, effective corporate governance and better coordination amongst international financial institutions.

— **'Global Branding, Retailing, Distribution and Communication'** are the critical issues relating to brand building, product innovation, advertising and distribution strategies in addition to focusing on newer organized retailing opportunities in the context of a changing global business environment. Companies must harness the coherence and scale of a global brand, as well as the closeness of a local brand if they wish to succeed.

— **'Shared Values'** — The most powerful nation in the world has to understand that sound governance is serving all human beings not merely the strong. To deal with global threats, we need legitimate, global cooperation based on globally consistent principles. To be globally consistent will mean that we should start implementing common values in all aspects of life. To ensure sustainability of peace and stability, it is required to guard the values and apply them consistently not only domestic but also globally.

— **'Social Entrepreneurship'** — It combines the passion of a social mission with an image of business-like discipline, innovation and determination commonly associated with for instance, the high-tech software companies. Those who are more innovative in their work and who create more significant social improvements will naturally be seen as more entrepreneurial. Social entrepreneurs are reformers and revolutionaries. They make fundamental changes in the way things are done in the social sector. Their visions are bold and attack the underlying causes of problems, rather than simply treating symptoms and are regarded as the achievers of long term social return on investment.

— **'Role of Enterprise Policy'** is to help create a business environment which supports the world's most dynamic knowledge-driven economy, entrepreneurship and a sustainable economic growth. Its objective is to ensure a balanced approach to sustainable development which maximizes synergies between its economic, social and environmental dimensions.

— **'Transparency and Reporting System'** It includes effective communication network with stakeholders, public reporting or other measures so as to enhance the transparency in information flow.

— **'Environmental Policy'** — Environmental requirements have developed, over the last 25 years, to become most critical factors for business value addition. It may be stated that the global undertakings which follow sound environmental standards, are, in medium and long term, more competitive on the international market, as environmental standards promote innovation and modernization of processes and products and lead to cleaner technologies. Enterprises are increasingly sensitive to these demands both to retain existing customers and to attract new customers.

— **'E-commerce'** will bring significant changes to business, consumers, government and the economy.

Companies are changing the way that they undertake their business. E-commerce has significant implications for the whole of business process and its adoption has led many organizations to re-engineer the way that they do business.

— **'Changes in Prices and Inflation'** — The combination of reduced production costs and increased competition over the internet will have a significant downward pressure on prices and inflation further adding value to business proposition.

— **'Business Networking'** — In dynamic market, many firms create competitive advantage by combining their internal resources with complementary assets from strategic partners encouraging division of labour and specialization. The firm's business network enable them to adapt to new opportunities and challenges by tapping into the network's broad and diverse base of resources.

— **'The Knowledge View of the Organization'**— Knowledge of how resources are brought together, coordinated, integrated and put into use is the essence of successful firms. All industries undergo substantial change, whether driven by the customers, competitors and technology. This change creates continuous pressure for business to improve their product and services which ultimately makes learning the only sustainable source of competitive advantages. Knowledge management determines the company's knowledge requirements and the knowledge acquisition and learning processes. Knowledge management strategies determine in operational terms the learning and innovation capacity of the firm.

DRIVING FORCES TOWARDS GLOBALIZATION

'Globalization' defined as the process of moving from an independently managed businesses serving local markets to networks of businesses serving the businesses' chosen markets in a coordinated and optimized way. Thus, 'capability development' is one of the key motivations of the process of globalization. It is one kind of internationalization involving internal coordination and external cooperation in business networks. The inter-network relationship, especially with strategic alliances and other functional departments, is becoming more and more important in internationalization. "Globalization is no longer an objective but an imperative, as markets and geographical barriers become increasingly blurred and even irrelevant." As such, globalization of business has two clear characteristics—geographic dispersion and interdependent coordination between factories, units, branches etc. Understanding of these forces is essential to the understanding the missions, capabilities and behaviors of business globalization. Emerging global markets have fuelled development of global product and related strategies in classical global industries such as pharmaceuticals and electronics and also customer dominated industries. Global competition is another driving force dispersing business domain to access strategic resources along the value-adding chain. Regional free-trade and economic deregulation in FDI are clear drivers for the company to adopt its regionally based global strategy.

ISSUES RELATING TO 'GLOBAL BUSINESS'

'Global Business' implies the intensive study of the following issues:-

— To develop, transform strategy processes to facilitate adopting an international strategy.

— To understand more about international strategic alliances based on business networks.

— To explore wider network relations with other functional departments, especially for global product development and capability building.

— To explore the detailed relationship between businesses capabilities, to understand the contribution of a network to each of its nodes / branches etc.

— To identify the detailed distinctive capabilities of each network business configuration so as to make international strategic decision more efficiently.

Apart from the above, a society's propensity to generate autonomous, risk-taking, innovative, competitively aggressive and proactive companies, firms and entrepreneurs will depend on its cultural foundation. The role of economic, political / legal, social factors and global competition based on agility, creativity, and innovation are increasingly stressing the need to establish a global business climate whereby entrepreneurship assumes a prominent role.

FACTORS AFFECTING GLOBAL BUSINESS

— The mobility of employment, capital, products and technology is making business increasingly global in its transaction and its effects.

— Laws and market forces are necessary but insufficient guides for conduct.

— Responsibility for the policies and actions of business and respect for the dignity and interests of its stakeholders are fundamental.

— Shared values, including a commitment to shared prosperity, are as important for a global community as for communities of smaller scale.

— Business can be a powerful agent of positive social change.

— To affirm the necessity for moral values in business decision making. Without them, stable business relationships and a sustainable world community are impossible.

— Responsible corporate leadership is turning toward independently formulating a viable and sustainable global ethics.

As such, global consciousness is presently developing within the realm of business and as it develops, the business community is socially responsible developing and becoming a buzzword amongst the corporations rapidly entering a new stage in the evolution of socially responsible business.

GLOBAL BUSINESS DRIVERS

The global business driver approach provides a tool for envisioning the business entities to impart effective management of business on global basis. Accordingly, global business drivers (GBDS) are those entities that benefit from global economies of scale and scope and thus contribute to the global business strategy. They are the means for assessing high-level global information requirements and focus on broad business entities (e.g., Customers, Suppliers, Orders, Projects, Storage facilities etc.) and capture current and future information requirements that are shared across dispersed operating units within the firm's business. The alignment of worldwide computer-based information systems and integrated business strategies is critical to the success of multinational firms in a highly competitive global market. Information technology (IK) can drive a firm toward globalization in a number of ways. Using computer and communications technologies, firms can extract the information components from tangible products, or substitute knowledge for material, and then instantly transport the electronically represented information or knowledge throughout the world. Value can be added or an information-based product can be used at the most economically advantageous location. Information technology can thus, facilitate a global strategy. Henceforth, it can be a key facilitator of day-to-day global operations.

Variables of Global Business Drivers

It includes within its domain the following variables:-

— Joint resources including human resources;

— Rationalized and flexible operations through global interdependencies;

— Risk reduction;

— Global products;

— Quality;

— Suppliers, Customers etc.

Joint Resources — Human resources is a key global business driver for many firms / companies. Historically, organizational design focused on efficiently allocating people to work tasks is the critical factor imparting efficiency in global business. Throughout the industrial revolution, corporate hierarchies, departmental structures and the scientific management movement all sought to physically align people so as to most efficiently attack the work. As knowledge flows replace the material flow in production of goods, firms will learn to electronically share valued human resources on a global scale.

Global Interdependencies found in operations can be global business driver requiring integrated I/T solutions. Operational interdependencies might arise from the need for rationalized or flexible production or manufacturing. In rationalized operations, different country unit build different parts of the same product based on availability of skills, raw materials, or favorable business climate. In Inflexible operations, the operations are moved from one country to another, such as in response to labor strike, or raw material or skill shortages. Flexible operations can also provide new economies of scale. The ability to shift production schedules from one country to another helps to optimally manage manufacturing and service capacity. Firms pursuing strategies that entail globally dispersed production functions and rationalized and flexible operations find it necessary to share manufacturing planning systems, process control systems and work-in-process inventory system, across country boundaries.

Risk Reduction — Managing the firm's cash flows and assets that are affected by real shifts in currency values. This means diversifying the value of the firm's assets.

Global Products — This business drivers related to products being introduced that are identical or nearly

identical across national boundaries. The reasons are varied. First, global products are emerging because of the increasing influence of multinational corporate customers who seek consistency across their dispersed operations. Second, globe-traveling consumers demand products and services regardless of location. Third, global products can provide the basis for economies of scale. Consumer needs and wants are becoming more homogenized around the world because of both communication technologies and travel. The more rapidly and more widespread firm can introduce a new product, the greater the potential benefits derivable from both market saturation and subsequent low-cost positioning. Advances in information technology can help meet requirements of timeliness, consistency and low costs etc.

Quality — 'Total Quality Management' is emerging as another key global business driver. As firms benchmark their operations against "world class" standards and as interdependence increases between their domestic and international operations, a requirement for a cross-border approach to quality improvement is gaining force.

Suppliers — Worldwide procurement offers opportunities for competitive advantage through economies of scale, enhanced buyer's power, increased reliability. But there are even more compelling global business drivers that manage the relationship of the firm with its business partners, customers, and other external stakeholders. These inter-organizational inter-dependencies are driving firms toward major internal transformations. Information technology is a key enabler of these transformations. In an industry in which technological innovation is rapid, the advantage will often go to the firm that can most quickly diffuse breakthroughs in materials, components, or tools emerging from their supplier's research and development facilities.

Corporate Customers — The most common drivers of global integration today are the customers who are themselves seeking globalization. Providing worldwide support requires rapid and accurate communication and information processing across the firm's country units. Firms that cannot meet their global customers' requirements will lose in competition to suppliers' who can.

To effectively manage the trends of global business, a new type of organizational structure i.e the Electronically-wired Network Organization, can help satisfy the global consistency and efficiency requirements, while simultaneously maintaining local responsiveness, flexibility and accountability. A hierarchical structure often proved to be the most effective as firms expanded internationally and encompassed multidivisional, multifunctional organizations. E.g Firms like E. I. Du Pont de Nemours & Co., General Motors Corp., Siemens A.G., and Matsushita Electric Industrial Co., Ltd., exploited this type of structure during the first half of the twentieth century.

Techniques of Global Business

— **Vertical Disaggregation** - The firm's value chain is dispersed globally and its business functions, such as product design, development, manufacturing, marketing and distribution are performed by independent organizations within a network.

— **Business Groups** - Each function is not necessarily part of a single organization, business groups are identified, assembled, placed in a location and coordinated by means of brokers / agents.

— **Market Mechanisms** - The major functions are held together primarily by mechanisms such as 'transfer prices' between business units rather than by the plans and controls.

— **Full Disclosure / Information Systems** - Widely accessible computer-based information systems are used as substitutes for authority relationships and lengthy trust-building experiences. A global alliance requires that we decide on the best organizational relationships to establish.

— **Independent Profit Center** - where authority for product development and sales is pushed down to each independent node.

— **Spin-off Partnerships** - where independent businesses are spawned from the main organization using former employees and assets.

— **Spin-in Partnerships** - where ideas and unique assets from external groups are acquired or set up as separate units and become nodes in the organization itself.

— **Licensing** - where the Company contracts with independent businesses to use its brand name, sell its special formulas, or market its technologies.

— **Pure Brokering** - where the Company contracts with independent businesses to solve problems, perform knowledge-based activities or to undertake direct production or service activities.

BENEFITS OF GLOBAL BUSINESS – the main benefits arising out of global business operations are as follows:-

— Increased business efficiency;

— Rising prosperity;

— Dissemination of technology;

— Expanded consumption possibilities, greater knowledge and awareness of different cultures.

STRATEGY TO MEET GLOBAL COMPETITION

— To restructure the business operations based on geographical and cultural characteristics.

— To centralize business units based on the requirement of economies of scale to support whole regional market rather than traditionally national markets.

— At global level, to standardize the manufacturing and managerial processes and share them with other international regions.

— At product development level, to promote the generalization of regional products from national ones and further global products from regional ones, but all of them share the standardized operating system.

— At group coordination level, to develop, introduce and implement sharable managerial processes like new product development and manufacturing operation benchmarking globally.

— The global coordinated configuration can accelerate sharing of resources and knowledge and learning in the group to strengthen the economies of scope and scale and other capabilities for the future.

CHALLENGES AHEAD FOR PROFESSIONALS

Globalization has brought about cataclysmic changes in how business leads to function. There has been a metamorphic change in the competitive landscape. As companies become global, they have to design strategies to deal with the diversity of needs and interest. There are several trends that represent major challenges for the management of small and medium sized enterprise (SMEs). These include the globalization of the world economy, influence of IT, information system (IS) and e-business as sources of added value and vectors of competitiveness and the development of human and intellectual capital as well as organizational learning. It is vitally important for leading companies to adopt business strategies which combines traditional corporate goals of higher profit and lower cost with a strong commitment to environmental stewardship and social improvement.

Business professionals in such globalised business scenario must be very proactive to identify business solutions that the firm needs to be competitive worldwide and tie them to strategic business imperatives. In this context, the role of Company Secretaries as a corporate professional is very critical as to discharge functions and responsibilities in diligent manner by being very responsive, alert, enthusiastic, dynamic, risk taking as well as multi-dimensional with a future foresightedness and keeping a problem solving approach. The ability to give the best through consciousness of latest corporate trends, developments in legislative and regulatory framework so as to further act as a facilitator of value addition to modern business dimension. In this respect, the following points must be taken into consideration:-

— For successful implementation of global business projects, a talented team of professionals belonging to multi cultural environment is vital. The international composition means that the team lives in a multi-cultural environment on a day-to-day basis.

— Infrastructure - The lack or incompatibility of standards in communication and computer infrastructure is a major problem in developing global systems of business. But great inconsistencies in infrastructure have usually been brought up by the firm's own management. The winners will be the firms that can align worldwide information systems with integrated global business strategies.

— Other barriers - A variety of other hurdles await the developer of global business applications. Profit and loss responsibility often lies at the country level, complicating project prioritization and allocation decisions. Cultures, language etc. are some of the predictable problems though the firm may have settled on a single official language. Even then, however, there will be major failures in interpersonal communication.

— Executives desiring to transform their firms must begin recognizing the need for their personal transformation. The development of strategies

for matching the competition in the related industry. A more effective strategy involves exploring the needs of customers and how they can be better served. Effective leaders are motivated by an inner vision, purpose and mission. Executives need to explore their beliefs about managing and their relationship with others in the Organization. Executives must also examine whether their values are relevant to the present time, not simply reflections of the past. They must seek to revitalize the organization's shared values. The challenge facing executives is that of transcending the fear and anxiety associated with the forces of personal transformation.

— An organization's existing structures may be out of alignment with—or even inimical to—a superimposed regional strategy. Effective governance is needed to coordinate the integration of the enterprise and ensure an organization reaches its full potential. By specifying policies for how shared services are funded, accessed, updated and managed across all business units and incorporating this guidance into Enterprise Architecture Governance. Governance framework clearly defines who is empowered to make decisions and how the business measures progress towards achieving its goals.

— For achieving satisfactory returns for shareholders in the long term depends on the sanctioning of the company and its products by a range of stakeholders viz; employees, consumers, suppliers, competitors, communities, local authorities, government and others. The idea is that there is a homologous relationship between producer / stakeholder and consumer and incorporating this interface into the business strategy which will help the company to harmonize its commercial objectives with socio-economic and environmental considerations.

— Global business needs a framework in which the benefits can be transferred and multiplied across society, without the unintended ill consequences that can arise from globalization. That framework must incorporate recognition of the needs and interests of individual nations and communities and greater co-operation between business. Both literally and figuratively, global business is bringing more and more people to market, giving them new opportunities to trade and exchange, to work differently, to access education and training, to acquire property and capital. In all of these ways, global business is liberating people while at the same time creating new value. Teams of empowered employees, consultants, suppliers, and customers are thus required.

— In networked organization, 'structure' will dominate strategy, credentials will give way to performance and knowledge and human resources will be the only sustainable advantage. They present difficult information management challenges. Among these are developing a flexible and efficient information architecture, establishing new values, attitudes and behaviors concerning information sharing, building databases that can provide integrated customers' support on a worldwide basis and protecting personal freedoms and privacy.

— A critical issue in the study of businesses competing in global industries is the relationship between international strategy and implementation requirements. Understanding international strategy implementation is based on the following premises (1) The choice of international strategy influences the extent to which the activities of an international business must be linked or integrated across countries. (2) International operational capabilities—defined by the level of coordination, managerial philosophy and geographic configuration—determine an organization's ability to manage these intra-organizational linkages.

— The international operational capabilities are created and controlled through three administrative mechanisms: centralization, formalization, and integrating mechanisms. Businesses competing with a country-by-country or multi-domestic strategy attempt to isolate themselves from global competitive forces through protected market positions or by competing in industry segments that are most affected by local differences. The competitive advantage of a multi-domestic strategy is, therefore, based on developing non-imitable responsiveness within each country context. Enterprise executives have to understand that timely, accurate knowledge can mean improved business performance. Two technologies have been central in improving

the quantitative and qualitative value of the knowledge available to decision makers: business intelligence and knowledge management.

— Many Enterprises are becoming increasingly "knowledge-centric," and, therefore, a larger number of employees need access to a greater variety of information to be effective. Whether or not entrepreneurs operate in cultures that support new ideas, experimentation, novel solutions to problems and the creative processes of entrepreneurs will determine the strength of the innovativeness dimension. Highly innovative cultures will likely experience positive results in terms of new technologies, products, services, or processes within their respective countries.

— The external environment includes economic, political / legal and social forces that provide the broader context for the organization's to operations. A favorable external environment, however, will ease all the barriers and encourage entrepreneurial potential.

— Process of continuous innovation, adaptation and learning. Global brands demand a global brand management team. The regional and international organization is in place to maintain brand leadership. Companies with large brand portfolios tend to have separate managers for each brand. Regardless, global brand managers have the authority and resources necessary to implement key decisions based on performance/ measurement. In order to sustain a global brand's long-term position, there must be consistent and widespread brand equity measurement.

— Managing and developing customers, suppliers, collaboration relationships and other related value has become one of the most important success factors for any company in today's global business environment. One of the goals is also to develop a framework for network management that would help in identifying the managerial competencies and organizational skills needed in managing networks. Companies, therefore, need to pay more attention to their internal capability building and new patterns of manufacturing system searching to create a proactive competitive influence rather than a reactive responsiveness to the new industrial environment

LIMITATIONS OF GLOBAL BUSINESS DIMENSIONS

— Over-standardizing or over-simplifying the brand and its management, resulting in a culture of discouraged innovation at the local level.

— Use of the wrong communication channels, resulting in inappropriate investment and business decisions.

— Underestimating the investment in spending and time for a market to become aware of the new brand.

— Not investing in internal branding to ensure regional employees understand the brand values and benefits that are to be communicated and delivered consistently.

— Failing to modulate performance metrics based on local variables. Assuming the business strategy calls for going global and the analysis provides support for the strategy, the company must ask whether it has the culture, organization and processes that lend themselves to developing a truly global business.

— Lack of global vision and appropriate strategies during the internationalization have become major barrier to the effective management of international operations.

— The analysis using Global Business Drivers (GBDs) must emphasize the specifics of the business, their suppliers, distributors, products and customers.

— Failing to recognize differences within the firm. Global business drivers are seldom exactly the same across business units.

— Cultural differences across country units that may make it difficult to reach consensus initially on the GBDs.

— Lack of senior business management involvement in the GBD Analysis. Senior management must be willing to sponsor and participate in the GBD Analysis and play a leadership role in the move to an integrated global information technology.

FUTURE COURSE OF ACTION

What is clear is the need to follow core principles and management practices when choosing to conceive a global business plan. What separates the winners from the losers is a resolute commitment to rigorous strategic, creative, and innovative execution. Assuming the business strategy calls for going global and the analysis provides support for the strategy, the company must

perform a self-examination and determine whether it has the culture, organization and processes that lend themselves to developing a truly global organization. Apart from this global branding and marketing of products and services will be the key business issues that have direct impact on shareholders' value and wealth creation.

CONCLUSION

Information technology simultaneously drives and facilitates global business. As firms seek to harness the IT to the task of managing the modern globalised business system, the role of corporate professionals as a catalyst would further enlighten the strategic thinking, management and control keeping in view the global dimensions of business value by imparting high degree of flexibility, transparency, reporting, communication, knowledge updation etc. so as to meet the challenges of highly competitive global business environment. In this context, it must be stated that the winners in this global environment will be those firms/companies that can align worldwide information systems with integrated global business strategies. Further, the global business driver analysis helps to identify the business entities where global coordination can provide a competitive advantage. It can rightly be said that the companies that will get ahead and stay ahead in today's interconnected business environment will be those that take control of technology and not those that let technology take control of them. Accordingly, the business leaders must utilize fruits of information technology so as to reap optimum results through increased profits, value addition, brand image as well as social welfare.

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CORPORATE SOCIAL RESPONSIBILITY (CSR) FOR BUSINESS EXCELLENCE

NARESH KUMAR*

"The power of money is the power to give it away."
– N.R. Narayana Murty – Infosys' Iconic Founder

INTRODUCTION

The emerging business environment offers unprecedented opportunities and challenges to the corporate sector for value addition through excellence. 'Business Excellence' in the corporate world means not only making decent profit by optimum utilization of resources but also contributing for the welfare of the society. It is the balancing act between profit earning and social good. With the growing importance of corporate governance, the thrust has been on value addition both as a strategy for maximizing shareholders' wealth and contributing for the social welfare. In this context an attempt is made to discuss the concept of business excellence through value addition and offer few suggestions to the corporate sector.

BASIC CONCEPTS

Following basic concepts are clarified to discuss the subject in proper perspective:

'Business Excellence' is the process of value addition by efficient use of productive resources - manpower, raw material, machinery and capital - into goods and services to satisfy both material and welfare needs of the society.

'Consumer' is the king, who rewards the business for the value it creates for him. The business, therefore, earns customer loyalty by offering him the best in terms of quality, price and services. He, being at the centre of all economic policies and activities, the business is becoming more and more customer-focused and customer-oriented. The term is used in a broader sense to encompass other market participants and segments of civil society. An enlightened consumer, by exercising a choice in favour of 'socially responsible' companies, can unleash a powerful force of incentives.

'Corporate Social Responsibility' (CSR) is the commitment of businesses to contribute for sustainable economic development by working with the employees, local community and society at large to improve their lives in ways that are good for business and for development. It is the contribution of corporate sector for the philanthropic causes like education, health, water, environment and community welfare.

"Corporation" is the legal innovation of capitalism- an artificial person with perpetual succession having rights and liabilities in its own name. It is the most powerful institution of the 19th century that has been transforming not only economies but also quality of life of societies.

'Economic Value Addition' (EVA) is the system of corporate management that defines profitability in terms of return on capital above the cost of servicing the capital employed. It is the barometer of a company's efficiency in capital allocation. According to Joel M. Stern– 'Companies that have adopted the EVA framework have consistently outperformed their peers in fundamental performance and have rewarded their shareholders with better wealth creation'. EVA can be enhanced through innovation, technology, skill and workmanship.

'Professional Excellence' is the instrument of corporate governance and business ethics. It has acquired a noble connotation where business community lends a helping hand in taking up the socio-economic welfare work, which is the prime responsibility of the Government.

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PROFIT EARNING VERSUS SOCIAL WELFARE

There are two divergent schools of thought on role of corporation. According to one school, corporation has been created by the society to generate profits by efficient use of resources. Renowned economist Milton Friedman states -"The business of business must only be business. The first and last duty of corporation is to make profit and serve interests of shareholders." He believed that for companies to have social objective, would be a distraction from their main task of running their businesses efficiently and making healthy profits, of course, through honest means. Any shouldering of social responsibility by companies may provide incentives for the government to shirk its responsibility. It was further argued that private sector initiatives in the domain of government would create a moral hazard problem – providing an escape route to governments not to do their job, and shunt their responsibility to corporate. Theoretically, this leads to non-optimal utilization of productive resources.

According to the other school of thought, corporation is not an end in itself, but a means to an end, that is, sub-serving the larger interest of society. It is the society, which has created corporation and provided it resources to grow and develop. It is the responsibility of corporation to contribute for the quality of life and welfare of the society, more so because it has all the needed expertise, competence, talent, ability and resources. It is, therefore, quite natural for a profitable and ethical company to contribute for the good of the society.

Maslow's theory of hierarchy of needs gives its own justification for CSR. According to Maslow human beings have a hierarchy of needs and they will satisfy them progressively – first comes the basic needs of hunger, second comes needs of love and affection from fellow human beings and finally the self-actualization needs. Applied in the corporate context, this would mean that a company would initially aim at maximizing profit prompted by self-interest. When shareholders and employees are well taken care of, then altruism is a luxury open to companies, which generate so much more wealth that they think beyond themselves and want to 'give back' something to the society, which has given them so much. An appropriate example, which fits both paradigms of expiation and altruism, is the institution of Nobel Prize set up by Alfred Nobel, who after making riches through the invention of dynamite promoted the noble cause of excellence in science and humanity.

Niall Fitzgerald, CEO, Unilever, resolves the controversy by stating that 'CSR is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it —— because it is good for our business.'

CONVENTIONAL AND MODERN BUSINESS STRATEGY

In the conventional business strategy, companies concentrated on the primary goal earning maximum profit for the shareholders and social responsibility was on the peripheral. In this paradigm, the more the profits, the greater was the capacity to contribute for social good. This model was, however, not sustainable for the simple reason that it created a vicious cycle - companies in the process of making profits deteriorated the natural and social environment, then more and more resources were required to repair the damage. This was like a man cutting off the branch of tree on which he was sitting. The more efficiently he cut, the less sustainable his position became. The inability of the planet earth to support this paradigm is obvious. The society cannot tolerate the self-destructive profiteering model having no concern for the society.

A good corporate citizen is a business entity, either public or private, which makes a significant contribution to the public good. It could take a variety of forms, like strengthening education and health delivery systems, alleviating poverty, furthering the cause of training and employment, helping the handicapped, giving less-privileged children a better future.

In India, traditional business houses like Birlas and Tatas and modern like Infosys and Wipro have not only created wealth but also been aligning themselves with the community development programmes around their projects. They are taking pains to ensure that socio-economic welfare projects promoted by them are self-sustainable. The underlying principle is to involve the local community from the beginning so that on completion the beneficiaries can successfully take over and manage the project on their own.

According to Azim Hasham Premji, Chairman, Wipro, "First of all, business must do well what it is supposed to do – deliver value to customers, employees and shareholders – and this with the highest integrity and transparency. That is basic to being bona fide member of the larger eco-system or society in general. Second, business must act with the realization that their action (or inaction) has a significant influence on the society of today. And that we must use this influence for the good of the society, for example, by being

responsible ecologically, and by contributing deeply to a cause that has socio-economic impact."

SOME SHINING EXAMPLES OF BUSINESS EXCELLENCE

Following are some shining examples of business excellence where companies that have married the business and social goals with amazing efficiency:

When Nestle got permission from the Indian government in 1962 to set up a dairy plant in Moga, Punjab, the company realized that the area was arid and poorly irrigated. In addition, milk output of the livestock with farmers was pathetically low, besides the high mortality rate of calves. Due to poor infrastructure and lack of resources, milk could not be transported over even short distances. Nestle, used to source its needs in native Switzerland from a large base of small farmers, realized that to replicate the same value chain in Moga it would need to marry its competitiveness with social transformation. Consequently, the company built refrigerated lorries as collection points in each town; and along with the lorries it also sent all kinds of experts (such as veterinary surgeons and agronomists) to provide farmers with technical expertise. Nestle even provided them with financial and technical support for constructing deep-bore wells. The availability of water, apart from affording enhanced irrigation and access to surplus crops, also improved the quality of livestock's feed crop, thereby not only improving milk yields but also increasing their life-span. The project has resulted in higher living standards in Moga, with 90% of households today having access to electricity and telephones. Nestle got access to its quality raw material and its rural suppliers gained a higher standard of living. Today, this has become Nestlé's abiding template in some of its other sourcing markets, such as Brazil.

The Aditya Birla Centre for Community Initiatives and Rural Development is an outstanding example of uplifting about 3,500 villages around their project across the country. The activities include self-reliance through the engine of sustainable livelihood, clean water, health and employment. The thrust of the approach is on motivating the social workers and aligning the local community for its betterment projects.

Tatas have been pioneering in promoting educational institutions and hospitals. Recently, Tata Teleservices Limited is investing about Rs.1,000 crore for its rural thrust that will include setting up of specialized 3,000 base stations in difficult terrains in rural areas. The company will launch mobile handset models to provide connection to rural areas.

Infosys Technologies disbursement of Rs.126 crore among its 58,000 employees as 25th anniversary gift through the Infosys Employee Welfare Trust in 2006 has again enhanced its reputation as creating wealth, managing wealth and distributing wealth to its stakeholders. Earlier when it touched the US$ one billion revenue, it had given US$ 1,000 to each employee. The company that has created 58,000 high quality, high disposable income jobs, contributed to over US$ 2 billion a year to exports and raised the image of India by conducting business legally and ethically. By creating and sharing the knowledge and wealth, Infosys has raised the inspiration of India. According to Nandan Nilekani, Chief Executive Officer, Infosys, "We try to be a role model for how companies need to be regarded in the larger context of society – in the way we run our company, work practices, ethical behaviour, corporate social responsibility and so on. We have to make sure that we are responsive to the environment."

Azim Premji Foundation, with its vision to "significantly contribute to achieving quality universal education to facilitate a just, equitable and humane society" has been focusing on improving the standard of elementary education. The Foundation has been active in Himachal, Uttaranchal, Punjab, Delhi, Rajasthan, Gujarat, Madhya Pradesh, Chhattisgarh, Orissa, Karnataka, Andhra Pradesh, Pondicherry and Tamil Nadu. In less than six years, with over 60,000 teachers 250 professionals and 1,000 paid field volunteers. The Foundation has covered 16,600 schools, three lakh children, 60,000 teachers. The aim is to develop "proof concept" in partnership with the government on a scale that is necessary to influence the larger system across India. The idea is not to develop small `islands of excellence', but to work towards contributing to systemic changes to help the government deliver quality universal education across the country. The foundation seeks to build partnership with local governments, individuals, communities and NGOs.

ITC's supplementary learning centers, which help poor students cope up with their lessons and improve their abilities, also benefits educated local youth who serve as tutors. It conducts teacher-training programmes to raise the standard of teaching in government-run primary schools. It also helps NGOs to organize summer camps, sports and other extra-curricular activities.

ITC's intervention has been leveraging micro-credit and skills training to generate alternate employment opportunities. Increased income in the hands of rural women means better nutrition, health-care and

education. It has organized village women into micro-credit groups. Group members make monthly contributions to create a saving corpus. The corpus is used to extend soft loans to group members, thereby weakening the role of the moneylender. The system of mandatory contribution further strengthens the saving habit, leading the capital augmentation. The empowered groups function autonomously and take their own decisions, including sanction of loans and collections of repayments. The result is win-win situations in which enterprises are able to source their products directly and at the same time sell to a new income group.

According to Travis Engen, CEO, Alcan: 'We know that the profitable growth of our company depends on the economic, environmental, and social sustainability of our communities across the world. And we know it is our best interests to contribute to the sustainability of those communities.'

RECENT SURVEYS

Following surveys demonstrate that enlightened companies are making a conscious effort to build strong business principles and corporate policies, which has positive impact on the community.

Global Public opinion on the changing role of companies, conducted by Environics International, which interviewed around 1,000 people from both developed and developing countries like USA, Canada, Mexico, Britain, France, Germany, Japan, India, Russia and Nigeria, revealed that:

- A significant number of investors consider a company's social performance while making investment decisions
- In the richer countries, social responsibility contributes greatly to the brand image of a company
- Companies ignoring social responsibilities run the risk of losing market share
- North American consumers represent the most socially demanding market for companies
- Citizens of the developing world are increasingly putting a lot of pressure on companies to assume greater social responsibility

Nottingham University Business School, conducted a study covering seven developing countries in Asia (India, Indonesia, Malaysia, Philippines, Singapore, South Korea and Thailand) to assess the state of CSR interventions in these countries. The study revealed that although India is poorer than many of the other countries covered under the study, it ranked number one in terms of CSR penetration. About 72% of India's top 50 companies undertake CSR initiatives supported by well-defined policies. Countries like South Korea (52%), Thailand (42%) and Singapore (38%) were behind India in CSR penetration levels.

Some of the important corporate interventions have been targeted at sectors like health and education – ranging from adoption of public health facilities by companies, supplementing existing government programmes like the mid-day meal, assessing and improving learning outcomes in primary education through teacher training and improving overall learning outcomes. There are well-defined regulations in the area of environment, health and safety as well as laws governing minimum employee benefits. The emphasis is particularly on community development.

KEY AREAS FOR BUSINESS INTERVENTION

The first priority for business intervention is to promote the cause of primary and secondary education for the disadvantaged students. Investment in education by the corporate sector is investment in the future of nation. India must realize its full potential in primary education to nurture the capabilities of her future citizens and to become an educated country.

The lack of focus on primary and secondary education, particularly for disadvantaged students is a cause of serious concern for the nation. There are 200 million children below the age of 14, out of whom 20 million are without schools. Almost 35% of children in standard five cannot read and write.

The second priority for business intervention is to contribute for the harmonious and balanced growth of urban and rural areas.

The unprecedented growth of metropolitan cities and haphazard urbanization has resulted in growing air, water and soil pollution. There is lack of potable water. The quality of life is deteriorating because infrastructure and civil facilities are crumbling. The government alone cannot check and remedy the alarming situation. The present multidimensional problems can best be tackled with the active involvement and cooperation of the corporate sector.

India has to develop its own model of growth that stimulates productive economic activity in rural areas.

Rural India has to be connected with better roads and telecommunications for nurturing and stimulating local entrepreneurship. The strategy for India's growth lies in generating employment and spreading income throughout its population, 70 per cent of which live in rural areas.

Integrated development of rural and agricultural economy is the key to socio-economic development. The rural sector has potential to rapidly 'spread around' rather than 'trickle down'. In this context, Prof. C.K. Prahalad in 'Fortune at the Bottom of the Pyramid' rightly calls for corporations to design products/services for the enormous population at the bottom of the pyramid. The basic assumption is that this segment of population also has some disposable income and companies could still make profit on large volume by manufacturing and selling tailor-made products having demand in rural areas. The other aspect is to create wealth at the bottom of the pyramid, by increasing the disposal income and buying power in the rural areas. For example, companies can buy artisans' products and use these for corporate gifts. Companies can also facilitate spreading wealth by convening meetings, conferences and professional development programmes in rural areas rather than five star hotels in metropolitan cities. In India, where only one percent of people own securities, the concept of 'wealth creation' must extend beyond the stock market. Companies have to foster widespread participation of rural population for economic transformation.

There is need for all round harmonious development by creating self-sustaining and environment friendly modern cities, towns and villages by synthesis of traditional culture, spiritual values and modern infrastructure. This requires an integrated development plan - provision for good housing, community asset building, appropriate sustainable technologies, functional planning and user-friendly infrastructure. For healthy living, it is essential to make available on self-help basis clean environment, satellite communication, potable water, and renewable energy through solar/wind/bio-gas, school, hospitals, parks, playgrounds and community centers. The underlying objective is to promote socio-economic welfare of habitats on sustainable basis.

The management and administration of model cities, towns and villages should be on the principle of "Bhagidari" by a core group of public-spirited persons of high integrity drawn from diverse areas in business, public life and beneficiaries. The infrastructure facilities should be operated and maintained on the principle of self-sustaining welfare activity. This will also provide avenues for the local people to contribute towards socio-economic activities by pooling their knowledge, experience and skills for the common welfare.

SUGGESTIONS

The hallmarks of business excellence should be creating wealth and contributing for a holistic approach to development - preserving environment and promoting institutions of social welfare. In this context, following suggestions deserve careful consideration:

1. One of the prime goals of business is to contribute towards community development. It is an opportunity and challenge for the Indian corporate sector to promote the concept of holistic development – quality and standard of living for Indians. The corporate sector can intervene to reduce people's dependency on the government for health, education and infrastructure projects through the public-private partnership (PPP) model. The PPP model has well-defined responsibility and accountability for undertaking and implementing the social welfare projects. For example, PPP model is ideal in the education and health sectors to allow adoption of primary schools and public healthcare facilities by companies, or leveraging the services of professionals from the private sector for delivery of education and public health services.

2. The corporate sector can act as a role model for building the first few model cities, towns and villages as a pilot-project. The community can follow the lead by multiplying the example. In fact, enlightened and professionally managed companies are in an ideal position to promote community development programmes through capacity building initiatives. They can bridge the gap of knowledge and resources between rural and urban areas and synthesize the developmental approach and efforts of corporate, government and NGO sectors. The corporate sector has the multidisciplinary knowledge, skills and financial resources to provide creative and cost effective solutions to the complex problems of the society.

3. Generally, a heavy moral overhang shrouds most CSR intentions. In many companies CSR is dictated by an over-arching sense of moral responsibility. The choices are usually dictated

by the chief executive's social sensibilities or the priorities set out by the board of directors. It is a sort of cheque-book CSR. Corporate donations are given to schools, trusts and charitable foundations working for social welfare programmes. There is lack of sustained commitment and genuine concern for the end result. The CSR should, therefore, be an integral part of corporate culture and core responsibility of the board of directors and Chief Executive Officer. They should have a long-term engagement necessary to produce the results in the vast social fabric. They should be responsible for the results in terms of environmental sustainability and social good and not only for the return to shareholders. In fact, commitment to socio-economic development programmes gives companies not only corporate reputation but also consumer patronage for their quality products and services.

CONCLUSION

In modern society, governments with limited resources alone cannot cope up with the varied and complex needs of modern society. Governments need the help and support of all stakeholders, particularly intervention of business community, which has the capability and resources, to meet the challenges of socio-economic development.

Indian corporate sector is well placed to play a much larger role in augmenting national income and social welfare. Companies have created assets and facilities that span the length and breadth of the country, and, therefore, constitute the front of the engagement with civil society. Communities around their catchments can feel the physical presence of companies. This gives them an opportunity to directly engage in synergistic business activities for creating livelihood and at the same time preserving natural resources. In fact, companies have, more than financial resources, the crucial managerial capability to ensure efficient delivery of social projects. Thus, Indian corporate sector is in an ideal position to significantly add to government efforts through PPP model in pursing growth with equity.

In India, all stakeholders (the government, private sector organizations, development agencies, NGOs and other constituents of civil society) have to work together to address the developmental needs of the country and provide worthwhile solutions to the socio-economic problems. It requires closer interaction amongst the stakeholders for the simple reason that the other cannot replace efforts of one agency. The challenge primarily lies in creating institutional arrangements and mechanisms to cater to the new requirements and provide the best results.

The society and people sustain and give freedom of growth to corporate sector because it has been adding value to the resources. In turn, it is the responsibility of companies with vision, values, leadership and capability to contribute for the quality of life of the society, besides pursuing the goals of entrepreneurship and economic growth. The corporate sector should, therefore, champion the cause of CSR because merely earning profits for investors and producing goods and services for consumers are not sufficient to justify its existence. In the emerging business scenario, market forces are making CSR a crucial component of value creation.

Management expert Michael Porter in *Strategy & Society* (with co-author Mark R Kramer, Harvard Business Review, December 2006) has aptly remarked: "The fact is, the prevailing approaches to CSR are so fragmented and so disconnected from business and strategy as to obscure many of the greatest opportunities for companies to benefit society. If, instead, companies were to analyze their prospects for social responsibility using the same frameworks that guide their core business choices, they would discover that social responsibility can be much more than a cost, a constraint, or a charitable deed – it can be a source of opportunity, innovation, and competitive advantage."

Business excellence is applied within the framework of a corporate philosophy, which factors the needs of the community and the regions in which the corporate entity functions.

CORPORATE GOVERNANCE AND EXPECTATIONS OF STAKE HOLDERS

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INTRODUCTION

Corporate Governance is a buzzword but it is looked at and different authorities on the subject have defined it differently from their own viewpoints. However, the key to good corporate governance is a well functioning, informed board of directors.

"Desirable Corporate Governance - A Code evolved by CII; defined the scope of the corporate governance as follows-

"Corporate Governance deals with laws, procedures, practices, implicit rules that determine a companies ability to take informed managerial decisions *vis-à-vis* its claimants – in particular it's shareholders, customers, the state and employees. There is a global consensus about the objective of 'good' corporate governance: Maximizing Long term Shareholders Value."

"This objective follows from a premise that, in well performing capital and financial markets, whatever maximizes shareholders value must necessarily maximize corporate prosperity, best satisfy the claims of creditors, employee's, shareholders and the state."

MAXIMIZATION OF STAKEHOLDERS VALUE.

Maximization of stakeholder's value can only be achieved only by following an orderly sequence of logical steps. However, it can not be denied that basis of these steps is Good Corporate Governance.

In his article "The Ultimate Result of Corporate Governance Value Management" (Chartered Secretary, August 2003) Ranjan Muhkerjee analyses the steps involved in the chain and indicates process involved in maximization of value for the stakeholders in the following flow chart

The Chart shows that a company operates in a market place and it has to take advantage of the business opportunities. Hence the stakeholder's value is dependent on the market conditions. In view of the author no matter what expectation of the stake holders are ,if the company fails to earn money by generating the value from it's operations, it cannot fulfill any of the expectations of any single stakeholders.

At the same time it is to be noted that corporate strategy drive their broad guideline from the "Mission" of the company, which are to be generated from the foundation of corporate values. The corporate values themselves emerge from the Good Corporate Governance and basic tenants underlying the same.

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ETHICS VS. *CREATION OF VALUE*

There is a debate in Corporate Circles about the manner in which the objective of value creation should be achieved. In long-term it will be desirable that the Board of Directors follows the "Code of Best Business practices" and the same should be adopted as the very basis of the Corporate Mission and Corporate Vision. Yet, all stakeholders rate the performance of the Board on the basis of the long-term value creation for them. It may therefore be a need to strike a balance between two objectives stated above. There is need of a strong commitment to the code of best business practices not only at board level but also throughout the company.

STAKEHOLDER'S EXPECTATIONS

The expectations of different category of stakeholders vary and depend on nature of his stake in the company. A tabular presentation given below broadly spells out the position in this regard:

Stakeholder	*Nature of interest*	*Expectations from company*
Shareholders	Ownership of Equity	A fair return on investment
Creditors/ suppliers	Loans/Supply of goods	Transparency in terms of contract and timely settlement of supply bills
Customers	Buyer of goods	Safety / Quality of goods and/or services as per standard
Employees	Provision of Manpower	Remuneration / Reward, Career advancement, Training and Empowerment
Government	Infrastructure Provision and Safe Environment	Payment of taxes due, Response to Government Initiatives
Society	Safe working Environment and Value	Environment protection, System, Corporate Social Responsibility.

MEASURES TO MEET THE STAKEHOLDER'S EXPECTATIONS

In order to ensure "Good and Sound Corporate Governance" in a company and to meet the stake-holder's expectations, the company should adopt following polices and principles:

— Honesty and transparency

— Accountability and responsibility to stakeholders

— Fairness in dealings

— Independence in Board decisions

— Observe Corporate Social Responsibility

— Compliance of governance rules and regulations

— Building of goodwill and Corporate Image

The provisions of the Companies Act 1956 and its rules and regulations provide for several measures to enforce Corporate Governance.

Listing guidelines laid down by the SEBI in clause 49 clearly spell out requirements for Good Corporate Governance. These include:

— Appointment of Independent Directors and Chairman

— Adoption of Code of Conduct

— Appointment of Audit Committee

— Appointment of Remuneration Committee

— Appointment of Nomination Committee

— Shareholder's Grievance Committee.

— Risk Evaluation and Management

— Whistleblower' Protection.

Laws or rules alone cannot prescribe totality of the Corporate Governance. However, the companies need to adopt the measures as a "Responsible Corporate Citizen".

FAMILY BUSINESSES AND CORPORATE GOVERNANCE

In India, the traditional and family manage business have in the past, followed their own style of "Corporate Governance". It was characterized by secrecy in

operations. The management of the human resource was based on staunch personal loyalty to the family managing the company and employee's carrier advancement and the promotions in management ladder were based on whether one was a close kin or belonged to their caste.

The financial management of such companies involved a small shareholding of family group in managed companies but they controlled the composition of board of directors through a complex pattern of shares held by related entities and the Charitable Trusts (in which family members were managing trustees). The measures to shift funds and profits were through related party transactions, which were not transparently and fully disclosed in the reports of directors to the shareholders.

The stakeholders could not or did not react as the management gave reasonable dividends and there was appreciation in the value of shares (because of indirect support in share market due to family dealing in them).

However, times have changed and these very Family Managed Companies are now adapting themselves to modern business management methods and are adopting the global norms of transparency good corporate governance in their companies to satisfy stakeholders expectations and to meet requirements of laws.

CHANGES IN CORPORATE GOVERNANCE IN GLOBAL COMPANIES

There is also a material and significant change in behavior of Indian companies listed on the Stock Exchanges. Even the companies wanting to attract " Direct Foreign Investment", especially the ones, which are forward looking, are voluntarily adopting the GAAP and following Sarbanes-Oxlay Act of U.S.A to enable to get their securities listed in New York Stock Exchange. There is a sea change in the attitude of shareholders and they are better organized to demand transparency in the affairs of the company. They are demanding compliance of the rules of Corporate Governance and circulation of working results in time.

The shareholders have also become more proactive, this can be judged by following illustrative actions in some cases:

— The shareholders of an international insurance company pressed for and succeeded in forcing withdrawal of Executive Compensation Plan.

— Filed a class action suit against a firm for waving "Executive Loans".

— Forced that Executive Severance Package be got approved from the shareholders.

— The shareholders are asserting their rights to take important management decisions and their approvals can not be taken for granted.

ROAD AHEAD

Corporate Governance is not a subject with static contents. It has to move with the changes in business environment. It, therefore, will continue to evolve over a period of time. To enhance its effectiveness following steps may be considered by Central Government and SEBI:

— Enhance the level of disclosure of information to capital market

— For shareholders and potential investors

— Ensure the information submitted to authorities or shareholders is of "reliable", "Frequent" and "of Good Quality"

— Measure for an "Effective Corporate Control" be strengthened by providing internal checks, internal audit and constituting a structured and fully empowered Audit Committee

However, there are limitations to what Regulatory Authorities can do G.N.Bajpai, former Chairman, SEBI once observed, "Corporate governance is delivering, satisfying and satiating expectations of the stakeholders at large. A regulator cannot legislate ethics. They can lay down rules and define structures but good governance have to emerge from people who manage interest of stakeholders."

COMPANY SECRETARIES AND CORPORATE GOVERNANCE

Company Secretary is defined as an "Officer" under Section 2 (30) of the Companies Act, 1956. He is also named as an "officer in default".

Company Secretary is also the secretary to Audit Committee, Remuneration Committee, Shareholders Grievances Committee and Nomination Committee set up as per clause 49 of the listing agreement. He has to ensure that meeting of the board and its committees consider all prescribed reports, disclosers by directors of related party transactions and important papers they are required to peruse as per clause 49 and the provisions of the Companies Act, 1956. He has to ensure that the

Board follows the procedures as prescribed not only as per the Act and rules but also in it's true sprit. He should also give an impartial advice whenever he is called upon by the Board to do so. No doubt the Company Secretary should follow the Secretarial Standards for the Board meetings as also the Guidance Notes issued by the ICSI for Corporate Governance. In this way, the Company Secretaries will continue to play an important role in enhancement of the stakeholder's value.