

39th
National Convention
of
Company Secretaries

CORPORATE DYNAMISM AND INNOVATIVE PROFESSIONALISM

BACKGROUND

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CONTENTS

1. THEME PAPER CORPORATE DYNAMISM AND INNOVATIVE PROFESSIONALISM <i>CS N K JAIN</i>	1
2. EMERGING ROLE OF COMPANY SECRETARIES IN PRACTICE : A STUDY <i>PROFESSOR J P SHARMA & SONIA THAKKAR VIJ</i>	14
3. DISCUSSION PAPER CORPORATE DYNAMISM AND INNOVATIVE PROFESSIONALISM <i>CS SUTANU SINHA & DR. S K DIXIT</i>	34
4. HARMONISATION OF COMPANIES BILL VIS-A-VIS CORPORATE LAWS <i>CS ALKA KAPOOR & CS DEEPA KHATRI</i>	41
5. HARMONIZATION OF FINANCIAL REGULATIONS : A CAPITAL MARKET PERSPECTIVE <i>CS SONIA BAIJAL & MAHESH KUMAR AIRAN</i>	53
6. LEVERAGING GLOBALISATION FOR TRADE IN PROFESSIONAL SERVICES <i>ARCHANA KAUL</i>	62
7. DYNAMIC BUSINESS ENVIRONMENT AND RISK MANAGEMENT <i>CS BANU DANDONA</i>	69
8. COMPLIANCES TO CREATIVE SOLUTIONS – VISION 2020 CHALLENGES <i>CS SAURABH JAIN</i>	76
9. DYNAMIC BUSINESS ENVIRONMENT, REGULATORY CONVERGENCE & INNOVATIVE PROFESSIONALISM <i>CS LAKSHMI ARUN</i>	81
10. RECENT DEVELOPMENTS IN COMPANY LAW <i>CS KRISHAN PAUL DUTT & CS SONU LAKHANI</i>	87

(iv)

11. IMPORTANCE OF INNOVATIONS IN MAINTAINING COMPETITIVE EDGE : A PROFESSIONAL PERSPECTIVE <i>CHITTRANJAN PAL & CS NANDINI RAJ GUPTA</i>	94
12. COMPLIANCES TO CREATIVE SOLUTIONS – VISION 2020 CHALLENGES : TAX LAW PERSPECTIVE <i>CA APARNA CHAUHAN & CA NIKHIL AGARWAL</i>	99
13. HARMONIZATION OF COMPANIES BILL WITH INFORMATION TECHNOLOGY ACT <i>SHRUTI B GUPTA & SUDHIR KUMAR SAKLANI</i>	104
14. PROFESSIONAL COMPETENCE IN TECHNOLOGY DRIVEN REGULATORY REGIME <i>CS DISHA KANT & CS RAKESH KUMAR</i>	110
15. PROFESSIONALISM IN THE DYNAMIC BUSINESS ENVIRONMENT <i>CS KHUSHBU MOHANTY & CS NISHITA SINGHAL</i>	118

THEME PAPER

CORPORATE DYNAMISM AND INNOVATIVE PROFESSIONALISM

CS N K JAIN*

The Curtain Raiser

Times have changed. Today is marked by rapidity, complexity and volatility. Dynamism of the creative kind and innovation of the skillful professional are the solutions present times await. Yet the advent of the aggressive and creative corporate and the memorable tool of the governance professional as the driving kingpin may be regarded as the specialties of the present world. Company Secretary being the governance professional of the prime order, her professionalism is the need of the time to drive creative corporate dynamism.

If we look around us several factors of the negative kind find prominence in business journalism of today. Global growth rate is declining. Capex in India is contracting. The RBI has raised the repo and reverse repo rates over 10 times in succession. Inflation is not abating. IPOs are simply not forthcoming. FDI is waning. At the global level large corporations are shedding employees by thousands. The US could avoid embarrassment of the sovereign financial failure only at the last hour. Nouriel Roubini who had predicted the 2008 global financial crisis in his 2004 article in New York Times has predicted vulnerably high American debt to GDP ratio in 2014 and 2015.

Be that as it may, it will be the innovative professionalism of the governance professional that will turn the tables for the corporate world. That would be a challenge of the tallest order. But that's why we, Company Secretaries, are there at the right time and in the right space. But then we need to understand the dynamics of both corporate dynamism and of innovative professionalism in its true spirit. The Theme of the 39th National Convention of Company Secretaries is sculpted in that context. Whether it is corporate governance, regulatory compliance, financial and non-financial reporting, mergers-acquisitions-takeovers, corporate planning, financing from India and abroad, cross-border investments or taxation, multicultural integration or change dynamics, absorption in research or visibility in product or service delivery, the need for diversity, whatever may the corporate activity be, it will be the creativity of the governance professional that will set the tone of tomorrow's corporate

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BACKGROUND

dynamics. The truth is that when negativities abound and performance indicators recede, the inner excellence is challenged and innovation gathers urge to come to the fore.

Good Bye Bono

Creativity and innovation of the professional kind may not begin and end with understanding the writings of Edward de Bono or similar western thinkers. We need to go deeper. We need to explore further. Lateral thinking or creativity through techniques like brainstorming, wild ideation, think-tank networking, etc; are of the peripheral intellectual kind. But does creativity end on the periphery or with the stretched or blended intellects? Is there something much more to it? There certainly must be for, even large firms of the western world are replacing expensive and exquisite perks given to executives for recreation (through clubs, games, and entertainment allowances) by on-the-house facilities like 'quiet rooms' or 'meditation rooms' to spur their creativity. Innovation is related to creativity.

New attitude

Innovative professionalism relates to the inner dynamics of individual professional. The difficult-to-understand axiom about such a professional is the way in which she engages herself in inner development, absorption of knowledge rather than gaining of knowledge, gaining of insights, development of foresight and hindsight, application of science and knowledge rather than of information to come out with miraculous solutions that may not solve the problems but actually remove them. Such a professional creates knowledge by swiftly removing the burden of information overload, for she easily sifts 'knowledge' from 'information' and insights from complex and troublesome issues. She finds great opportunities in problems and is therefore able to welcome them. The normal human tendency to resist surprise ills and unwelcome incidents is easily jettisoned by such a professional. But how does that attitude develop?

End that

Innovative professionalism must be all about attitude. Attitude comes from positive change in perception and more than that from the ability to perceive creativity. A problem may appear a straight jacketed legal and logical roadblock to a given business objective. But such a problem develops from the information about what the law is. Knowledge of law is far beyond information about the legal provisions or their interpretation. It is said that "To know is not only to know but to know and to doubt and therefore not to know anything". It is also said that "Creation is not the continuation of what is, or what was, but the ending of that". Rather than a beginning marking the beginning, the beginning lies in and begins with the end.

Broaden the radar

Edward de Bono talked about reversing the logic. Rather he talked about the need to jettison Aristotle's vertical logic. $A=A$ but is not equal to $\text{not-}A$. But the actual truth may lie in between. Innovative professionalism is the ability to get that breakthrough around the problem. Learning is normally supposed to be and equated with adding information or knowing

mathematical or engineering techniques. But that learning may make up only an educated and qualified adult who may apply logical solutions to expected events and logistical situations. For eg. If the RBI changes rate of interest qualified bank officers in a bank may easily and quickly churn out new circulars about interest rates on deposits and interest rates on various types of loan by applying mathematical formulae that they 'learned' in their classes on banking. But if there is suddenly a wave of defaults on loans or a sovereign debt crisis, it is revealed that the bank officers have only 'learnt' to react rather than to be proactive. Even their action of issuing new circulars on the change of bank rate by the RBI is only a quality reaction nor have those officers taken pains, it would be revealed, to anticipate broad financial crisis and to prepare to make the bank stay afloat for the crisis was never on their radar.

Reversing logic

An example on reversing the logic concept may not be out of place here. I was once giving a talk on "Creative Thinking" to CEOs of India's State Bus Transport Bodies. As we were discussing their individual institutional problems, we came to the motto of one particular State transport body. Its motto was "To reach every place in the state". I asked if there were difficulties in providing the bus service to even the smallest places in the State. Yes, there were several unreachable places where passengers were available and yet the bus could not reach there as a motorable road did not exist. There appeared to be no way the bus could reach there. Reversing the logic I posed the question, "If the bus cannot reach there, can the village or the place reach the bus?" Comparing the situation with a large Sea vessel which is anchored away from the port and the passengers are taken in small boats from and to the ship, the solution emerged that the State Transport could engage bullock carts that will bring passengers to the away-parked State bus and take the passengers alighting from the bus to the village every time the bus is expected to reach the spot.

Non-scholastic

One is given to understand that the 2008 global financial crisis and its epicenter in the US financial system was very logically predicted and made known by the economist Nouriel Roubini in his essay published in 2004. The causal factor as was noted by him was the sudden downfall logically predicted by him in the American home prices that had consistently risen in the preceding 60 years. But no corporate CEOs or highly rated corporate leaders of financial or other sectors had even taken note of the coming downturn while planning their corporate activities in spite of their high-end education from world class universities! The expected likelihood of the crisis was not mentioned in the annual reports to shareholders. There was no question of informing the shareholders of the corporate plan in case the crisis actually occurred. Creative thinking makes you learn a great deal that they do not teach in Harvard or any business school.

Widening horizon

How does one develop this art that ushers in innovative professionalism is the central concern of this Paper. Creativity, said George Bernard Shaw, is not like "A tree growing out of air". It does require the grounding in the soil, air, water, and light. You do have to master the

tradition, the modes of traditional thinking and the environment from maximum possible angles. There is an example Shri Fali Nariman quotes in his thoughts written at the beginning of *Competition Law Today* edited by Vinod Dhall (Oxford University Press 2007). Following are the passages from Nariman's writing at the beginning of that book —

“—In the nineteenth century the great American Judge, Oliver Wendell Holmes reminded men of the law (there were no women in the legal profession then): ‘To be master of any branch of knowledge, you must master those which lie next to it’. And in the 1940s E.C.S. Wade, in an inaugural lecture in Cambridge, urged that : ‘ We should teach (and practice) law as a great human institution serving social and economic ends and in relation to the world in which we live’ —

— Sir Walter Scott had been trained to become a lawyer, but his interests were in literature. He wrote novels. In *Guy Mannering* he showed that he had not forgotten his early impressions of what a lawyer should aspire to become: the hero in the novel visits the house of a Scottish lawyer (Counsellor Pleydell), and is shown in to the lawyer's study, the walls of which are lined with a collection of the classics and other tomes on varied subjects. ‘These’, says Playdell, ‘These are the tools of my trade. A lawyer without history or literature is a mechanic, a mere working mason. If he possesses some knowledge of these he may venture to call himself an Architect’. If a lawyer is to be at all worthy of the society which he (or she) serves - then the yearning must be to become an ‘Architect’ in the law, not to remain a mere mason!”

Subtle combustion

An individual professional would, to her own advantage master her own discipline, but should not stop at that if she is to become an innovative professional. She should aspire to become an institution in herself, build a personal brand and mould herself into a walking university. Let me cite from the Report of the National Knowledge Commission that has made recommendations for reforming higher education in India. “We would like to point out that there are no great universities in the world that do not simultaneously conduct world class programmes in science, astronomy, management, languages, comparative literature, philosophy, psychology, information technology, law, political science, economics, agriculture and many other emerging disciplines.” Innovation comes from cross-fertilization of ideas. An innovative professional's mind must combust with cross-fertilized ideas. It must draw in a sublime manner from disparate streams of knowledge. “Drawing from all kinds of works, all kinds of pursuits, all kinds of sublime interests, all kinds of sniffy touches, abiding in all, speechless and unadoring (albeit full of adoration), the soul flourishes in ones Heart—” says the Sage Shandilya in the Chhandogya Upanishad. There flourishes creativity and innovativeness - - - There, in the highly developed mind! The Heart is the seat of the enriched mind. Imagery, ideation, capacity to create new idiom of expression, innovative personality, cultured and choate individual, co-operative and integrated spirit in personality are the result of such inner pursuit of excellence while one remains in the humdrum of professional life.

From Shandilya

In the earlier paragraph I had quoted from the Shandilya Widya of the Seer Sage. It is

BACKGROUND

difficult to dilate on it and to convert Sanskrit idiom into the language of this Paper. But it appears the insights of the sage hits at the root of dynamism and innovation, creativity and co-operation. Sanskrit language is extremely plastic, expressive beyond imagination and inspiring without end. Luckily creativity is its substratum, positivism its hallmark, and Indianness its glory that has flown and merged with all Indian languages. Hence dynamic innovativeness and resourcefulness should never remain problems for the Indian professionals and for Indian corporates. When professionals become innovative resources in themselves corporate dynamism would become a great instrument in nation building. Sage Shandilya refers to the infinite creativity of the soul when it discovers its ability to merge into and find its oneness with other individuals in the organisation and the society, the environment with its grandeur of flora and fauna, water flows and water bodies, present and coming generations, interests and motivations. The Seer tells us that everyone's fulcrum is made up of the dynamic ability to merge equally easily with the tiny shine of the morning dew drop as well as the immeasurable brightness of the mid-day Sun, with the tenderness of a delicate flower as well as with the hard and harsh heavy machinery, for the Soul pervades all. It takes insight to see it shining and blossoming everywhere. An innovative professional will endeavour continuously and till the end to develop this insight. Will then corporate dynamism be far behind ?

Corporate Dynamism

Dynamics of corporate world are a whirlwind. "Business at the speed of thought" is the new culture of the information age. Information revolution has overtaken the speed, the complexity, and the mobility of the Industrial Revolution era. The growth, multinational reach, cultural diversity, cross border linkages, globalised capital flows, the flat-world conceptualism, shareholder activism, hedge and pronzi finance are all bewildering facts of modern corporate life. Add to that the multi-country interactive regulatory frameworks, legal domains, taxation complexities and human conduct-cum-governance structures- - and you get the ebbs and flows of the corporate ocean that overwhelm corporate professionals from time to time.

Dynamic DNA

How does the professional withstand this dynamism that often acts like dynamite for her professional competence and professional outlook? To that question we will turn later on when we come to professional team culture as a concomitant of innovative professionalism. Presently we will focus on the issue as to how will a corporate build up dynamism in its DNA for the purpose of its own sustainable progress. The answer, one may concede will be found in the way in which the corporate trusts and builds its own people power. Capital, liquidity, physical assets, technology, market share, and such material acquisitions and possessions do matter. Yet sustainable and dynamic progress, peace and understanding, co-operation and co-creation, motivation and passion for work can happen only when the human force is nurtured, cultured, and consistently developed to work as individuals and as teams in a way that continuously enriches work experience and the human force in keeping with the times as they shape.

The human grain

Times keep changing. Past merges with the future in order to become the present. "Both

BACKGROUNDER

the time past and the time present are contained in the time future and the time future contained in the time past.... If all time is eternally present all time is irredeemable" [T.S.Elliot, *The Four Quartets*]. Human force that builds its power to joyfully act to shape the coming times will build for the corporate its necessary dynamism. The approach may therefore be perceived with emphasis on the corporate acting to create passion for corporate purpose in its people. One constantly observes corporates collectively defining their Mission and Vision, and their action plans for pursuing these over a decade or so. And yet, corporates get habituated to killing the passion that naturally exists among its people. So the barrier to corporate dynamism is the heavyweight of the corporate processes and mechanical lifestyles that happen to overtake the development of insights in the grain of its people and in the DNA of its people power.

Lead Elixir

As governance leaders they have to lead the way, first, for themselves, on their own. That will give them the confidence to stimulate in corporate a learning, creative culture. Creation of the self out of the self is full of travails. Only those who willingly go through those travails that are full of elixir will enable building a creative corporate organization. This will then be your task ahead:

Learning Innocence

Innocence is innate ability to flower with curiosity. It's the expansion of consciousness, without likes and dislikes, with what is seen or heard. It's absence of expectations, with innate happiness soulfully flowering. Good governance, in a mature organization, looks at building a long-living organization. Long life of a corporate depends upon the curious innocence of a child that a corporate is able to garner in its people and teams. This innocence enables a corporate to become a learning organization. Fixated opinions or set views are prerogatives of adults or old who are bound to soon atrophy and die.

Fire Within

Corporates must exert themselves almost to (a creative) death in order to ensure for themselves life that is long and bright. This longevity comes from continuous learning. Learning requires self-cannibalization. That is something which is hard to countenance. But governance leadership of high order must inculcate a hard learning culture in the organisation. It is said that it is the cult of a child to keep learning; men or women may or may not learn. It's the discovery of the fire within and willingness to let it engulf you while you are in your work life. When that attitude gushes forth learning happens.

Flowing

Now, corporates are full of men and women, adults and old. Such people might have lost their learning, childlike innocence. They might have become 'learned' beings. They may be encountering business situations with viewpoints that are already 'formed'. Now life, of which business is only a part, is formless, fluid and fast. How can you approach or understand something which is formless and dynamic with fixated viewpoints? If you try to do that, death is certain, or, at least, a life that is lifeless, muddled and forsaken. Formless flows

continuously; people must develop ability to lead as well as follow the flows. Life cannot sustain without water. Isn't water formless and continuously flowing?

Advancing Culture

It follows that if a corporate wants to avoid an untimely demise or a life that is lifeless, the governance function must see to it that the organization imbibes an open learning (and not open copying and pasting) culture. Governance leadership must carry the belief that organizations can and do learn; but this may not be automatic. Learning culture needs to be consciously inculcated, developed and kept alive and ticking. Advancement without learning may be disastrous; it might be cultureless. Learning organizations live advancing culture.

Flowing Environs

It's like air. You may not feel it; but none can exist without it. It flows through currents and hurricanes. External environment keeps on changing rapidly and sometimes, almost with a speed that is capable of wiping you out. New trends, products, innovations, competitors, technology, et al keep on invading. New businesses emerge. Cultivated markets ripen and fall off. Unforeseen opportunities suddenly sprout. How does an organization tackle and come on top of such changes?

Stoop to Conquer

Corporate leadership has a tough job here. It must ensure that the organization develops suppleness. Organization must become nimble-footed. It's the airy feet and not the fleshy feet that reach the destination. Fleshy feet are hard and gravitated. They cannot keep track of subtleties. Leadership must be able to look out of the window and spot new or emerging trends. Leadership must be able to catch hold of subtleties in the surroundings. It must also be able to decide what new trends or changes organization should initiate on its own. When the organization is large enough (with, say, a net worth of INR (₹) 10,000 million or more), it must develop capabilities to plan products, markets and strategies that will work 25-50-100 years down the line.

Limitless

Learning is not simple; yet, it is exciting. Learning is in fact "L(imitless) earning". Any other income or gain, even in thousands, millions or billions, has limits as well as trappings. Learning doesn't. The organization and its parts or profit-centers must open up to capture limitless learning experience. It's learning through doing. People, led by the internal leaders, must develop tenacity and toughness that organizational learning demands. Governance should inspire them to imbibe learning-in-action. It is beatific. Such learning enables them to take game-changing steps.

Joy Forever

You don't have to depend on artificial aids for enjoyment and relief. Learning requires opening. It is a voyage in to a turbulent sea with only a canoe to ride in. It should be so if the

organization were to succeed in the long run and stand tall amidst adversities. Closed minds mired in rules, dogmas, processes, elaborate social strategies and bureaucratic position-based hierarchies may not remain the learning minds. Learning demands you to tear yourself apart. True learning makes you suffer birth-pangs, not once in a while but, as a continuous process. It is the job of governance leadership to prepare people for this because it is, nevertheless, a beatific experience. True learning is joy forever.

Applied Learning

This is so especially in the organizational context. This is so, again, in the context of markets, customers, competition, R&D, innovation, people, and environment. Here, in this context, learning is applied learning. It is applied creativity. It is application of science and application of technology. It is down-to-earth people orientation. It demands hard talk and tough introspection—individual and collective. In other words, it is leadership in no-man's-land (to use the words of Prof. Ramachandran of the Indian School of Business, when he writes about the gap between owner-managers and hired professional managers).

Stony Mindsets

What is real education? Let us ponder a bit. The education imparted in schools and colleges, management and professional institutions, especially in emerging economies, is not perceived as leading to creativity. Does it open minds? The answer is 'No'. This education feeds information (called "knowledge") from outside through lectures, books, etc. The education, at best, stirs structures and memories that already exist in the mind. Memories are the memories of the past or of the future. The education only sets in hard moulds the mindsets of the students. Psychologists call this learning as "Learning by Assimilation". Such learning generates only reactive mindsets. Such minds are able to calculate, absorb and apply the known. But they may not be able to create the unknown or to travel beyond into unknown territories. These minds may be suitable in bureaucratic or set jobs where followership is more prominent than leadership or where processes and procedures are like demi-Gods.

Fluid Constellations

The world of business is full of fluid, fast, and unstructured constellations. It is an open matrix. Its components and subsets are continually in a state of flux, development, evolution, and revolution. Business is an intellectual aggression, a service to customers delivered with changing stratagems. The aggression cracks open the minds and choices of customers with new products, better products and cutting-edge technologies. Be it FMCG, consumer durables, industrial products, heavy machinery, manufacturing and mining equipment, infrastructure building, shipping, banking, and other services—commercial, professional or personal, — business demands conversion of unknowns into known (conversion of known into known is like copy and pasting activity).

Relational Dynamics

Business involves dealing with relationship dynamics. Relationships are construed as perceptions—people to people; group to group; organization to market; organisation to

regulators; customer to product/service; research scientists to innovations; people to processes; tangibles to intangibles; leaders to followers; governance function to executive function; *et al*, and vice versa. To a set mindset, relationship dynamics may be bewildering. But, to an open and creative mind, this becomes an area of exhilarating learning, change-man-ship, and creativity to succeed. Such a mind, psychologists say, is developed through the learning known as "Learning by Accommodation".

By Accommodation

In learning by accommodation, people and groups in the organization are deliberately exposed, without inhibition, to each other and to the outside world—to competitors, markets, customers, regulators, bankers, and other stakeholders. This sets in processes of accommodating diametrically opposite viewpoints, actions, and decisions. It leads to cross fertilization of ideas. Mutuality or conflicts lead to creativity. It opens minds. People are able to appreciate new trends, new modes of thinking. It violates parochialism and 'fishy' selfishness. Leadership develops at the grass-root level. The organization accepts, generates and accommodates creative tremors. The churning is hard, dynamic and performance-stimulating. Dr Winnicot of the British Tavistock Institute first coined this idea. It revolutionized the concept of education of adults and experienced.

Habitual Myths

One, almost every one, loves to live in myths. Mythology is habitually liked by all even though there may not be an iota of truth in it. Habitually, the truth is disliked; one does not like to live with it. Learning must enable one to explode conceited and complacent notions about one's knowledge and training, state of development and leadership capabilities. Such self-reinvention gives real confidence that organization building requires. That one has learnt enough and right is the greatest myth at any point in time. The sooner organizational mates realize this and keep on unlearning and relearning to enrich organizational development the better it will be.

Change Leadership

Good governance demands cultivation of change leadership skills throughout the organization. Change leadership requires continuous realization that one is hugely ignorant at any moment. That realization has to come from within and yet may be forced from without, delicately but firmly. Leadership is the greatest issue for any organization that craves for longevity of its useful corporate brand.

Annihilate

In order to learn one has to learn first to annihilate one's pampered self and one's pride in it. Corporate leadership must imbibe in people the ability to LET GO. In management literature they give importance to the NIH (Not Invented Here) factor. This encourages feeling of oneness and unity among organization's teams. It helps to spread creativity, the mentality to experiment, and to ferment new ideas. Egocentricity is annihilated; ideational productivity gains. This leads to the organization achieving breakthroughs in various areas. Extensive

and intensive learning starts happening. To lead is to make impossible possible; to create novelty out of nothing; victory out of defeat. Active learning is the foundation of such leadership.

Diversification

Under such leadership, organization opens up. It extroverts; simultaneously introspecting hard and fast about its capabilities. It starts responding to the needs and demands of the society as also generating new needs and demands. See how it happened with a famed Tercentenarian corporation Royal Dutch/Shell. Its former Executive Director Arie de Geus writes in his work *The Living Company*: "Timely reaction to the conditions in society was necessary for the survival of the company and sometimes even of its individual members.

Over the next several centuries, while it [Royal Dutch/Shell] coped with shifting social and political forces, the company continually shifted its business, moving from copper to forest exploitation, to iron smelting to hydro power and eventually to paper, wood pulp and chemicals. Its production technologies also shifted—from steam to internal combustion, then to electricity and ultimately to the microchip."

Passion

Nothing can be achieved without passion, Its absence is an impossibility; yet passion seems rarely to work at work. Omar Khan and Paul B Brown of Sensei Corporation in their book *Liberating Passion—How The World's Best Global Leaders Produce Winning Results* have researched how organizations unwittingly chain the passion that is natural among people and baffle creativity and contribution that would otherwise gush forth with force. As one reads through the book one stands appalled by the thinking that discovers creative passion by simply keeping aside the obstacles that build up. One gets a glimpse as to how corporate leaders produce great results through people.

Omar Khan and Paul B Brown define *Passion* to mean the voluntary will to engage completely the inner energy drive AND desire to deliver, to achieve, and to win.

Usual Mistake

Although much has been written and discussed about how to build passion, there seems to be a mistake. The presence of passion is natural. *Its absence is what is profoundly unnatural.*

The real problem is not how to build passion. The real problem is to understand how organizations *kill* it. Companies tend to become excessive passion *killers*. They are passion castrators in many ways.

Companies lack mentors. Without a mentor or a coach, people try to apply what worked in their last position. They don't gain new skills, aptitudes or different ways of thinking. If they happen to produce results, it is often by compensating for what they haven't developed. They get job done only dysfunctionally. Organizations often stunt collective learning. *This creates a vacuum rather than a living culture.* Though these unmentored and un-coached managers may cultivate a knack of producing some results, the opportunity cost, the human debris and the *collective unfulfilled potential along the way can be devastating.*

About People

Corporate leadership can achieve only through the real Masters—The People. Leadership is fundamentally about how we relate to others, how we engage, mobilize, focus, and unite each other—or how we fail to. Each one of us is full of wonder; bliss; great ability; enthusiasm; and the tranquility to face any amount of hardship for the greater good. Leaders must be able to tap all this.

In real life corporate scenario you always find a conflict between creative people and commercial (business) people. They are respectively called the right brain people and the left brain people. Business people look at the creatives as quirky and arrogant who fail to understand the realities of business. Creatives consider business people to be cynical and overbearing with no appreciation of the creative process. Organizations need innovation; they need creativity; they need to unlock value, as they are creators and deliverers of value. But they need to do so especially when a downturn is expected or when they find themselves in the midst of a crisis. Therefore leadership learns to strike a balance between the right brain functioning and left brain functioning within the organization. You need to create cross-functional teaming that fosters empathy between creatives and non-creatives. Leaders try to achieve this empathy especially during peace time. As they say, when you bleed more during peace time, you sweat less in war time. Khan and Brown prescribe the idea of radical conversation as a way to achieve synergy between the creatives and the commercials.

Radical Conversations

People and groups in the organization must ask themselves—“What radical conversations we haven’t had for long?” There always are many hot issues pertaining to functional and cross-functional areas that haven’t been frankly debated. It is necessary to fix time for such discussions across the table. People must be able to clearly see each other’s side of the issues. Openness brings out many possibilities. When possibilities are considered issues are depersonalized. Creative thinking and ways of addressing the issues emerge. Learning is always mutual, demanding enormous humility.

Realistic

You should not use the concept of learning organization just to fantasize. There is a tendency to coin concepts that are attractive catch-tools: quantum change; breakthrough thinking; revolution; reinvention; audacious goals; and the like. As Ram Charan says, what is important is execution. It is better to work together to take the organization to the “next-level”. That would be more realistic; take one step at a time. Always change for the better and not for the worse. The latter happens when breakthrough thinking breaks down; people do not meet their stretch goals and revolution stops dead in its tracks.

People Power

Personal power is the substratum of a leader. Such power must open a forceful fountain from within. This happens when inner obstacles are removed. These are the obstacles that stem from a closed, lost, egocentric mind. Knowledge and learning stay with the people as also with the organization. In a learning organization think-tanks are consciously nurtured. The thinking must not only be logical; it must also be intensely passionate. Intellects must

delve so deep that an overwhelming convulsion is felt. There is no point merely keeping on scratching the surface. You do not hit jewels and pearls unless you reach unfathomable depths. Such think-tanks build the people power of the organization. In fact, people are the real power. The more you explore and exploit it, the stronger the organization grows.

Personal Brand

Having talked about corporate dynamics or organizational dynamics at length, let us turn back to the concept of innovative professionalism. A professional who cares for innovation, novelty and creative value addition does so by creating her personal brand. Hence let us dwell upon such brand building process as an individual and through a team. There is a process for doing this. The process may be described as follows:

- A professional is a person first.
- Her performance depends on, her professional excellence is driven by, her personal qualities, inborn, acquired and nurtured.
- These qualities are not absolute. They are relational, mostly, if not always.
- For she has to perform in a team; yet the team is not necessarily constant—it is predominantly changing.
- To lead is not always topping the team position-wise. To lead is to create. It is to create value. It is to create solutions that are accepted and implemented willingly.

Specialization

The natural and traditional route to professional brand-building is specialization; that too finer specialization. It could be the legal discipline; tax; international tax; corporate governance; arbitration practice; investigation and forensics; information technology; competition economics; insolvency; finance——.

Newer and finer frontiers keep getting created. A professional must keep herself on her feet. She should develop networking skills to advance professionally.

Investing time and money in renewed education, training and advanced learning is another aspect of personal brand building. A true professional does not shy away or find excuses in doing this.

Seminars, conferences, training programs, paper-writing, reading and research shall become inalienable part of professional life.

Excellence

Speed with which a professional runs up the learning curve and disseminates the benefits of the learning to her organization, colleagues, family and friends determines the excellence of her brand.

Professional should also periodically do personal SWOT analysis and refine her action plan accordingly. With a view to excelling professionally, she should then understand and realize the importance of communication skills. Communication skills will enable the

professional to maximize her own and others' present advantages. Successful communication helps the professional to look at herself and her situation and help others to look at themselves and their respective situation through new lens. This is the inner lens.

A new, clear light then comes forth. Brighter solutions and paths emerge. Personal 'BRAND' then becomes BRiGhtness AND much much more.

Professional looks forward. The organization and the colleagues look forward. 'Going forward' then keeps on going forward. Excellence becomes the mainstay of work-life. Surpassing the excellence BRANDS itself as a team habit.

The professional merges into the team; the team merges into the professional. **Personal brand becomes the TEAM BRAND. Excellence becomes endless.**

Consider the following personal brands:

- **Hellen Keller** turned a colossal handicap of deafness, dumbness and blindness into a sweet hurricane of opportunity to help millions of her kind.
- **Florence Nightingale** discovered amidst an array of grotesquely suffering, bleeding and dying army men the light of service to humanity.
- **Mother Teresa**, weak, feeble and old, Mother was the strongest of help and most positive assurance to the starving poor and wailing patients of the streets and slums of Kolkata.
- **Bill Gates** the energy incarnate who enabled business @ the speed of thought proved that his name and not the brand Microsoft was the icon amongst the IT people.

Well, the list can be prolonged. But the ideas proffered here would enable some of us to build personal brands ourselves. Would they not ?

Downing the Curtain

The theme of this Convention is itself so dynamic and so innovative that unless one gives a 'sudden death' to one's thought processes one may cease to be dynamic and innovative. Both the concepts are like innocently flowing fresh water. Corporate life depends on corporate dynamism. Prof Jagdish Sheth has found in his book *The Self Destructive Habits of Good Companies* that big companies have an average life of merely 10.5 years. The research of Collins and Porras in their book *Built To Last* also corresponds to the finding of Prof Jagdish Sheth. It's only the dynamic corporate that will carry on as light-weight through not only decades but centuries. Dynamism implies repeated self-inflicted creative death. It is only such a self-renewing entity that really lives on because it keeps on learning as an organisation. It continually ceases to be a 'Learned' arrogant organisation. Creative death as a conscious process is the elixir for good life, even of a corporate. As an organisation its Structures, Systems, Strategies, Style, Staff, Skills and Shared Values must continually keep on changing and refreshing. It's governance leadership should therefore be quite learned as well as learning and visionary while being versatile. Innovative professionalism should be its substratum; proactive learning would be its welcome weakness. Let us as true governance professionals make this weakness our great strength. That is true Vision; that is true Virtue.

EMERGING ROLE OF COMPANY SECRETARIES IN PRACTICE : A STUDY

PROFESSOR J P SHARMA* & SONIA THAKKAR VIJ**

INTRODUCTION

Over the years, the status and stature of the company secretaries have grown considerably. There are many quantitative and qualitative changes in the job profile of a company secretary. The company secretaries of today are expected to play the role as a compliance officer, as a coordinator, as an integrator, as a counselor, as a confidant of the Board of Directors and various other roles. The present study is undertaken with a view to analyse the role(s) played by company secretaries and to explore the emerging areas for their practice. For the purpose of the study following hypotheses have been developed:

Hypotheses for Company Secretaries in Practice

- H₀₁ : There is no significant difference on the basis of number of years of experience in case of services rendered by the company secretaries.
- H₀₂ : There is no significant difference on the basis of age in case of services rendered by the company secretaries.
- H₀₃ : There is no significant difference on the basis of income in respect of services rendered by the company secretaries.
- H₀₄ : There is no significant difference on the basis of qualification in case of services rendered by the company secretaries.
- H₀₅ : There is no significant difference on the basis of number of years of experience in case of functions performed by the company secretaries.
- H₀₆ : There is no significant difference on the basis of age in case of functions performed by the company secretaries.
- H₀₇ : There is no significant difference on the basis of income in respect of functions performed by the company secretaries.
- H₀₈ : There is no significant difference on the basis of qualification in case of functions performed by the company secretaries.

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BACKGROUNDER

Theoretical Background

The Profession of company secretaries owes its origin to the managing agency system in India. The origin of the managing agency system can be traced to the social and economic conditions that prevailed in India at the time when the monopoly of trade was lost by the East India Company. In the beginning of the nineteenth century, India had offered plenty of opportunities to the enterprising businessmen. However, there were certain obstacles in the way of exploitation of these business opportunities such as shortage of entrepreneurial ability; shortage of venture capital; and lack of technical and managerial know-how. The managing agency system was evolved to meet these challenges. The managing agents acted as the promoters, financiers and managers of the companies and thus contributed in a significant way in the industrial development of India. Important industries such as jute, cotton, textiles, tea, coal, iron and steel, sugar and cement owe their promotion and development to the managing agency system. However, later on the system was degenerated into a device for concentration and improper use of economic power. Due to several shortcomings and increasing malpractices in the system, it was finally abolished on April 03, 1970. The discontinuance of the system paved the way for the recognition and development of the profession of company secretaries in India. The Companies Amendment Act of 1988 brought in the country the concept of 'Practicing Company Secretary'.

Data Source and Methodology

The study relies on the survey method to explore the various issues and generate empirical evidence on the basis of accepting or rejecting the hypotheses chosen for the study. Hence, the primary design of the present study is exploratory. The empirical edifice of the study rests on the researcher designed survey instrument targeted at the company secretaries in practice. In-depth interviews of company secretaries in practice and pilot survey responses have been the base of the structured questionnaire. Finally the responses of 129 company secretaries in practice have been included and analysed.

MAJOR FINDINGS

The study reveals the following facts and findings in respect of company secretaries in practice:

- (i) Classified on the basis of gender, a large majority (86 percent) of the respondents are males.
- (ii) The distribution of the sample respondents on the basis of age shows that a relatively large number of respondents (38 percent) are in the age group of 45 to 55 years as against 21.7 percent in the age group of 35-45 years and 20.2 percent each in the age groups of up to 35 years and above 55 years.
- (iii) The experience-wise distribution revealed that more than half (52 percent) of the respondents have experience up to 15 years and the rest have more than 15 years of experience.
- (iv) The distribution of sample respondents by qualification revealed that a large majority of the respondents possess other qualifications besides company secretary

BACKGROUNDER

qualification. More than half (56.6 percent) of the respondents are bachelors of law (LLB), very few (7 percent) are qualified Chartered Accountants (CA), 17(13 percent) are qualified Cost and Works Accountants (CWA) and 13 (10.1 percent) are Masters of Business Administration (MBA).

- (v) The distribution of respondents by monthly income from practice indicates that more than half of the respondents (62.8 percent) earned more than Rs.50000 per month and the rest (37.2 percent) earned up to Rs. 50000.
- (vi) An overwhelming majority (93 percent) of the respondents are appearing before the Registrar of Companies. A large majority of the respondents are appearing before Ministry of Corporate Affairs (84.5 percent) and Company Law Board (87.6 percent). Majority of the respondents (79.1 percent) are making representations before the Regional Director on behalf of their clients. More than half of the respondents are representing their clients before Securities and Exchange Board of India (56 percent) and Reserve Bank of India (65 percent). 33.3 percent, 47.3 percent and 34.1 percent of the respondents are appearing before different tax authorities such as income tax, service tax and VAT authorities. 25.6 percent and 31 percent of the respondents appear before BIFR/AAIFR and FIPB. 29.5 percent represent their clients in the Consumer Redressal Forums. 31 percent respondents represent their clients before DGFT. Only 18.6 percent of the respondents appear before TRAI. This shows that, company secretaries being well qualified, are capable of representing their clients before various regulatory authorities.
- (vii) Company secretaries in practice are rendering services in a wide variety of areas. A large majority (86 percent) of the respondents are rendering services in the manufacturing sector. More than half of the respondents are serving banking sector (56.6 percent), pharmaceuticals sector (56.6 percent) and real estate sector (65.9 percent). 75.2 percent are working for the trading sector. A little less than half are catering to the power sector (48.8 percent), tourism sector (43.4 percent), stock broking sector (46.5 percent) and media and entertainment sector (45 percent). 38.8 percent each are serving health and education sectors.
- (viii) Services Rendered on the Basis of Experience are shown in Table 1. It is clear from the table that experience is an important factor in rendering of services such as other Corporate Law Advisory Services; Project Planning; Project Financing; Loan Syndication; Human Resource Management; Listing; IPOs; Corporate Restructuring; Mergers and Amalgamations; Takeover; Joint-Ventures/ Foreign Collaboration; Direct Taxes; Indirect Taxes; International Trade; Accounting and Financial Services; Banking Compliances; Internal Audit; Arbitration and Reconciliation; Environmental Laws; Depositories; Labour and Industrial Laws; and Securities and Commodities Market. Whereas experience does not matter in rendering of services such as Company Law Advisory Services, Secretarial Audit and Certification Services, Online Filing Services, Corporate Secretarial Services and Due Diligence. Thus, on the basis of the above empirical evidence, the null hypothesis that, "there is no significant difference on the basis of number of years of experience in case of services rendered by the company

secretaries" is partially accepted. This makes it clear that experience is a necessary pre-requisite for some of the services and not all the services. Services such as Company Law Advisory Services, Secretarial Audit and Certification Services, Online Filing Services, Corporate Secretarial Services and Due Diligence are rendered by all the company secretaries in the beginning of their careers in practice as these services do not require any experience.

Table 1

Type of Services Rendered by the Respondents: Experience-wise Analysis

Name of Service	Experience		Total (N=129)	Chi-Square
	Upto 15 years (N = 67)	More than 15 years (N = 62)		
Company Law Advisory Services	59 (88.1)	59 (95.2)	118 (91.5)	2.08 NS
Secretarial Audit and Certification Services	57 (85.1)	58 (93.5)	115 (89.1)	2.39 NS
Online Filing Services	56 (83.6)	52 (83.9)	108 (83.7)	0.002 NS
Corporate Secretarial Services	59 (88.1)	54 (87.1)	113 (87.6)	0.03 NS
Other Corporate Law Advisory Services	43 (64.2)	55 (88.7)	98 (76.0)	10.61**
Due Diligence	49 (73.1)	52 (83.9)	101 (78.3)	2.18 NS
Project Planning	14 (20.9)	32 (51.6)	46 (35.6)	13.24**
Project Financing	13 (19.4)	35 (56.5)	48 (37.2)	18.92**
Loan Syndication	13 (19.4)	32 (51.6)	45 (34.9)	14.70**
Human Resource Management	5 (7.5)	18 (29.0)	23 (17.8)	20.22**
Listing	26 (38.8)	36 (58.1)	62 (48.1)	4.78*
IPOs	23 (34.3)	34 (54.8)	57 (44.2)	5.50*
Corporate Restructuring	28 (41.8)	41 (66.1)	69 (53.5)	7.67**
Mergers and Amalgamations	36 (53.7)	45 (72.6)	81 (62.8)	4.90 *

BACKGROUNDER

Name of Service	Experience		Total (N=129)	Chi-Square
	Upto 15 years (N = 67)	More than 15 years (N = 62)		
Takeover	30 (44.8)	43 (69.4)	73 (56.6)	7.92 **
Joint-Ventures/ Foreign Collaboration	26 (38.8)	40 (64.5)	66 (51.2)	8.52 **
Direct Taxes	19 (28.4)	34 (54.8)	53 (41.1)	9.33 **
Indirect Taxes	19 (28.4)	33 (53.2)	52 (40.3)	8.28 **
International Trade	2 (3.0)	11 (17.7)	13 (10.1)	7.74 **
Accounting and Financial Services	17 (25.4)	36 (58.1)	53 (41.1)	14.22 **
Banking Compliances	16 (23.9)	35 (56.5)	51 (39.5)	14.29 **
Internal Audit	15 (22.4)	33 (53.2)	48 (37.2)	13.11 **
Arbitration and Reconciliation	6 (9.0)	20 (32.3)	26 (20.2)	10.87 **
Environmental Laws	16 (23.9)	32 (51.6)	48 (37.2)	10.60 **
Depositories	11 (16.4)	29 (46.8)	40 (31.0)	13.87 **
Labour and Industrial Laws	21 (31.3)	36 (58.1)	57 (44.2)	9.32 **
Securities and Commodities Market	19 (28.4)	30 (48.4)	49 (38.0)	5.48 *
Any Other	1 (1.5)	2 (3.2)	3 (2.3)	0.005 NS

* : Significant at .05 level ** : Significant at .01 level NS :Not Significant

Note : Figures in parenthesis are the percentages.

- (ix) The findings of the survey in relation to functions performed by the respondents on the basis of experience are shown in **Table 2**. It is evident from the table that no significant difference on the basis of experience exists in performing of different functions. Hence, the hypothesis that, "there is no significant difference on the basis of experience in respect of functions performed by the company secretaries" is

BACKGROUNDER

accepted as in all the cases, the difference is not found to be significant. Thus, it can be inferred that experience does not matter in performing of these functions.

Table 2

Functions Performed by the Respondents: Experience-wise Analysis

<i>Function Performed</i>	<i>Experience</i>		<i>Total (N = 129)</i>	<i>Chi-Square</i>
	<i>Upto 15 years (N = 67)</i>	<i>More than 15 years (N = 62)</i>		
Compliances	60 (89.6)	54 (87.1)	114 (88.4)	0.19 NS
Due Diligence	52 (77.6)	54 (87.1)	106 (82.2)	1.98 NS
Representation	53 (79.1)	49 (79.0)	102 (79.1)	.0001 NS
Advisory	59 (88.1)	54 (87.1)	113 (87.6)	.03 NS
Secretarial Administration	50 (74.6)	44 (71.0)	94 (72.9)	0.22 NS

NS : *Not Significant*

Note : *Figures in parenthesis are the percentages*

- (x) As shown in Table 3, significant difference on the basis of age exists in rendering of services such as Other Corporate Law Advisory Services, Project Financing, Loan Syndication, Takeover, Joint-Venture/ Foreign Collaboration, Accounting and Financial Services, Banking Compliances, Arbitration and Reconciliation and Depositories. However, the difference on the basis of age is not found to be significant in respect of services such as Due Diligence, Project Planning, Listing, IPOs, Corporate Restructuring, Mergers and Amalgamations, Direct Taxes, Indirect Taxes, Internal Audit, Environmental Laws, Labour and Industrial Laws, Securities and Commodities Market. Hence the hypothesis that, "there is no significant difference on the basis of age in case of services rendered by the company secretaries" is partially accepted. Further, it may be seen from the table that the number of company secretaries rendering services such as Other Corporate Law Advisory Services, Project Financing, Loan Syndication, Takeover, Joint-Ventures/Foreign Collaboration Services are more in the age group of 35 to 55 years. This may be because of the reason that company secretaries in this age group have the necessary experience as well as expertise required for such services and are also more willing to venture into challenging areas. Further, services such as Accounting and Financial Services, Banking Compliances, Arbitration and Reconciliation, and Depositories are being rendered more by company secretaries above 45 years of age. This may be because for specialized services like

BACKGROUNDER

these, experience is an essential pre-requisite. That is why company secretaries in higher age groups are preferred for such services.

Table 3

Type of Services Rendered by the Respondents: Age-wise Analysis

Name of Service	Age				Total (N=129)	Chi- Square
	Upto 35 yrs (N= 26)	35-45yrs (N = 28)	45-55 yrs (N = 49)	Above 55yrs (N = 26)		
Company Law Advisory Services	24 (92.3)	25 (89.3)	49 (100.0)	20 (76.9)	118 (91.5)	@
Secretarial Audit and Certification Services	21 (80.8)	26 (92.9)	46 (93.9)	22 (84.6)	115 (89.1)	@
Online Filing Services	21 (80.8)	23 (82.1)	45 (91.8)	19 (73.1)	108 (83.7)	@
Corporate Secretarial Services	22 (84.6)	26 (92.9)	46 (93.9)	19 (73.1)	113 (87.6)	@
Other Corporate Law Advisory Services	17 (65.4)	23 (82.1)	44 (89.8)	14 (53.8)	98 (76.0)	14.28**
Due Diligence	18 (69.2)	23 (82.1)	43 (87.8)	17 (65.4)	101 (78.3)	6.63 NS
Project Planning	4 (15.4)	10 (35.7)	23 (46.9)	9 (34.6)	46 (35.7)	7.39 NS
Project Financing	3 (11.5)	11 (39.3)	24 (49.0)	10 (38.5)	48 (37.2)	10.31*
Loan Syndication	2 (7.7)	12 (42.9)	22 (44.9)	9 (34.6)	45 (34.9)	11.41**
Human Resource Management	1 (3.8)	5 (17.9)	10 (20.4)	7 (26.9)	23 (17.8)	@
Listing	9 (34.6)	16 (57.1)	24 (49.0)	13 (50.0)	62 (48.1)	2.86 NS
IPOs	7 (26.9)	16 (57.1)	24 (49.0)	10 (38.5)	57 (44.2)	5.85 NS
Corporate Restructuring	10 (38.5)	16 (57.1)	30 (61.2)	13 (50.0)	69 (53.5)	3.82 NS
Mergers and Amalgamations	14 (53.8)	17 (60.7)	35 (71.4)	15 (57.7)	81 (62.8)	2.80 NS
Takeover	12 (46.2)	17 (60.7)	34 (69.4)	10 (38.5)	73 (56.6)	8.09*
Joint-Ventures/ Foreign Collaboration	8 (30.8)	16 (57.1)	31 (63.3)	11 (42.3)	66 (51.2)	8.42*

BACKGROUNDER

Name of Service	Age				Total (N= 129)	Chi- Square
	Upto 35 yrs (N= 26)	35-45yrs (N = 28)	45-55 yrs (N = 49)	Above 55yrs (N = 26)		
Direct Taxes	6 (23.1)	12 (42.9)	26 (53.1)	9 (34.6)	53 (41.1)	6.87 NS
Indirect Taxes	6 (23.1)	10 (35.7)	26 (53.1)	10 (38.5)	52 (40.3)	6.80 NS
International Trade	2 (7.7)	–	5 (10.2)	6 (23.1)	13 (10.1)	@
Accounting and Financial Services	4 (15.4)	9 (32.1)	29 (59.2)	11 (42.3)	53 (41.1)	14.67**
Banking Compliances	6 (23.1)	8 (28.6)	28 (57.1)	9 (34.6)	51 (39.5)	10.97**
Internal Audit	5 (19.2)	10 (35.7)	23 (46.9)	10 (38.5)	48 (37.2)	5.63 NS
Arbitration and Reconciliation	2 (7.7)	3 (10.7)	16 (32.7)	5 (19.2)	26 (20.2)	8.83*
Environmental Laws	6 (23.1)	10 (35.7)	23 (46.9)	9 (34.6)	48 (37.2)	4.31 NS
Depositories	2 (7.7)	7 (25.0)	22 (44.9)	9 (34.6)	40 (31.0)	11.66**
Labour and Industrial Laws	9 (34.6)	10 (35.7)	28 (57.1)	10 (38.5)	57 (44.2)	5.46 NS
Securities and Commodities Market	5 (19.2)	11 (39.3)	23 (46.9)	10 (38.5)	49 (38.0)	5.57 NS
Any Other	–	–	1 (2.0)	2 (7.7)	3 (2.3)	@

* : Significant at .05 level

** : Significant at .01 level

NS : Not Significant

@ : Chi-Square cannot be computed as in some cells, the expected frequency is less than 5.

Note : Figures in parenthesis are the percentages

- (xi) It is noticeable from Table 4 that there is a significant difference on the basis of age in performing of the Representation function. However, no significant difference on the basis of age is there in performing of Secretarial Administration function. Hence, in view of these facts, the null hypothesis that, "there is no significant difference on the basis of age in respect of functions performed by the company secretaries" is partially accepted. It can be noticed from the table, that the number of respondents performing Representation function is more in the age group of 35-45 and 45-55 years than in

BACKGROUND

the other two age groups. This may be because people in these age groups are experienced and aggressive enough to perform this function in an efficient manner.

Table 4

Functions Performed by the Respondents: Age-wise Analysis

Functions Performed	Age				Total (N=129)	Chi-Square
	Upto 35 yrs (N= 26)	35-45yrs (N = 28)	45-55 yrs (N = 49)	Above 55yrs (N = 26)		
Compliances	22 (84.6)	25 (89.3)	45 (91.8)	22 (84.6)	114 (88.4)	@
Due Diligence	20 (76.9)	23 (82.1)	45 (91.8)	18 (69.2)	106 (82.2)	@
Representation	21 (80.8)	24 (85.7)	42 (85.7)	15 (57.7)	102 (79.1)	9.28 *
Advisory	23 (88.5)	23 (82.1)	46 (93.9)	21 (80.8)	113 (87.6)	@
Secretarial Administration	20 (76.9)	17 (60.7)	37 (75.5)	20 (76.9)	94 (72.9)	2.70 NS

* : Significant at .05 level

** : Significant at .01 level

NS : Not Significant

@ : Chi-Square cannot be computed as in some cells, the expected frequency is less than 5.

Note : Figures in parenthesis are the percentages

- (xii) It can be noticed from Table 5 that significant difference in income is there in rendering of services such as Company Law Advisory Services, Other Corporate Law Advisory Services, Due Diligence, Project Financing, Project Planning, Human Resource Management, Listing, IPOs, Corporate Restructuring, Mergers and Amalgamations, Takeover, Joint-Venture/ Foreign Collaboration, Indirect Taxes, International Trade, Banking Compliances, Internal Audit, Arbitration and Reconciliation, Environmental Laws, Depositories, Securities and Commodities Market. This may be because of the reason that these services require specialized knowledge and skills and that is why, the fees for these services is higher than those of other services. However, no significant difference in income is found in rendering of services such as Secretarial Audit and Certification Services, On-Line Filing Services, Corporate Secretarial Services, Loan Syndication, Direct Taxes, Accounting and Financial Services, Labour and Industrial Laws. This may be because these are the basic services and the fee for providing these services is comparatively lesser than other services. Hence, the findings documented in the above table may be seen as an affirmation of the partial acceptance of the null hypothesis that, "there is no significant difference on the basis of income in respect of services rendered".

BACKGROUND

Table 5**Type of Services Rendered by the Respondents: Income-wise Analysis**

<i>Name of Service</i>	<i>Income</i>		<i>Total (N = 129)</i>	<i>Chi-Square</i>
	<i>Upto Rs. 50000 (N = 48)</i>	<i>Above Rs. 50000 (N = 81)</i>		
Company Law Advisory Services	40 (83.3)	78 (96.3)	118 (91.5)	4.94 *
Secretarial Audit and Certification Services	42 (87.5)	73 (90.1)	115 (89.1)	0.21 NS
On-Line filing Services	42 (87.5)	66 (81.5)	108 (83.7)	0.80 NS
Corporate Secre- tarial Services	42 (87.5)	71 (87.7)	113 (87.6)	0.00 NS
Other Corporate Law Advisory Services	31 (64.6)	67 (82.7)	98 (76.0)	5.43 *
Due Diligence	32 (66.7)	69 (85.2)	101 (78.3)	6.08 **
Project Planning	10 (20.8)	36 (44.4)	46 (35.7)	7.32 **
Project Financing	10 (20.8)	38 (46.9)	48 (37.2)	8.77 **
Loan Syndication	12 (25.0)	33 (40.7)	45 (34.9)	3.29 NS
Human Resource Management	4 (8.3)	19 (23.5)	23 (17.8)	4.71 *
Listing	11 (22.9)	51 (63.0)	62 (48.1)	19.36 **
IPOs	12 (25.0)	45 (55.6)	57 (44.2)	11.41 **
Corporate Restructuring	14 (29.2)	55 (67.9)	69 (53.5)	18.18 **
Mergers and Amalgamations	21 (43.8)	60 (74.1)	81 (62.8)	11.86 **

BACKGROUNDER

Name of Service	Income		Total (N = 129)	Chi-Square
	Upto Rs. 50000 (N = 48)	Above Rs. 50000 (N = 81)		
Takeovers	17 (35.4)	56 (69.1)	73 (56.6)	13.95 **
Joint-Venture/ Foreign Collaboration	12 (25.0)	54 (66.7)	66 (51.2)	20.94 **
Direct Taxes	16 (33.3)	37 (45.7)	53 (41.1)	1.90 NS
Indirect Taxes	14 (29.2)	38 (46.9)	52 (40.3)	3.95 *
International Trade	1 (2.1)	12 (14.8)	13 (10.1)	4.08 *
Accounting and Financial Services	16 (33.3)	37 (45.7)	53 (41.1)	1.90 NS
Banking Compliances	13 (27.1)	38 (46.9)	51 (39.5)	4.96 *
Internal Audit	10 (20.8)	38 (46.9)	48 (37.2)	8.77 **
Arbitration and Reconciliation	4 (8.3)	22 (27.2)	26 (20.2)	6.64 **
Environmental Laws	9 (18.8)	39 (48.1)	48 (37.2)	11.15 **
Depositories	6 (12.5)	34 (42.0)	40 (31.0)	12.24 **
Labour and Industrial Laws	16 (33.3)	41 (50.6)	57 (44.2)	3.65 NS
Securities and Commodities Market	12 (25.0)	37 (45.7)	49 (38.0)	5.47 *
Any Other	2 (4.2)	1 (1.2)	3 (2.3)	0.22 NS

* : Significant at .05 level

** : Significant at .01 level

NS : Not Significant

Note : Figures in parenthesis are the percentages

BACKGROUNDER

- (xiii) Functions performed by the respondents on the basis of income are shown in Table 6. Significant difference in income is found in respect of Due Diligence, Representation and Advisory functions whereas no significant difference in income exists in case of Compliances and Secretarial Administration functions. Hence, the hypothesis that, "there is no significant difference in the income of company secretaries in respect of functions performed", is partially accepted. Thus, it can be inferred that a company secretary performing Due Diligence, Representation and Advisory functions makes more money, as performance of these functions require more experience and knowledge and therefore the fees charged for these services is also higher.

Table 6**Functions Performed by the Respondents : Income-wise Analysis**

Function Performed	Income		Total	Chi-Square (N = 129)
	Upto Rs. 50000 (N = 48)	Above Rs. 50000 (N = 81)		
Compliances	44 (91.7)	70 (86.4)	114 (88.4)	0.81 NS
Due Diligence	35 (72.9)	71 (87.7)	106 (82.2)	4.47 *
Representation	33 (68.8)	69 (85.2)	102 (79.1)	4.92 *
Advisory	38 (79.2)	75 (92.6)	113 (87.6)	5.0 *
Secretarial Administration	35 (72.9)	59 (72.8)	94 (72.9)	.00009 NS

* : Significant at .05 level

** : Significant at .01 level

NS : Not Significant

Note : Figures in parenthesis are the percentages

- (xiv) Table 7 shows that there is a significant difference on the basis of qualification in rendering of services such as On-Line Filing Services, Loan Syndication, Takeover, Indirect Taxes, Accounting and Financial Services, Internal Audit, Securities and Commodities Market. However, no significant difference on the basis of qualification is there in respect of services such as Company Law Advisory Services, Secretarial Audit and Certification services, Corporate Secretarial Services, Other Corporate Law Advisory Services, Due Diligence, Project Planning, Project Financing, Human resource Management, Listing, IPOs, Corporate Restructuring, Mergers and Amalgamations, Joint-Ventures/ Foreign Collaboration, Direct Taxes, International Trade, Banking

BACKGROUNDER

Compliances, Arbitration and Reconciliation, Environmental Laws, Depositories, Labour and Industrial Law. From the above empirical evidence, the null hypothesis that, "there is no significant difference on the basis of qualification in respect of services rendered" is partially accepted. Further, it may be observed from the table that the number of company secretaries rendering services such as On line Filing services, Loan Syndication, Takeover, Indirect Taxes, Accounting and Financial services, Internal Audit, and Securities and Commodities Market are more with other qualifications than with LLB qualification. This may be because the company secretaries with LLB prefer rendering services in the areas of different laws and related areas that require legal expertise.

Table 7**Type of Services Rendered by the Respondents : Qualification-wise Analysis**

Name of Service	Qualification		Total (N=129)	Chi-Square
	CS+LLB (N=73)	CS+Others (N=56)		
Company Law Advisory Services	67 (91.8)	51 (91.1)	118 (91.5)	.000NS
Secretarial Audit and Certification Services	63 (86.3)	52 (92.9)	115 (89.1)	1.41NS
Online Filing Services	56 (76.7)	52 (92.9)	108 (83.7)	6.06**
Corporate Secretarial Services	63 (86.3)	50 (89.3)	113 (87.6)	0.26NS
Other Corporate Law Advisory Services	55 (75.3)	43 (76.8)	98 (76.0)	0.04NS
Due Diligence	58 (79.5)	43 (76.8)	101 (78.3)	0.13NS
Project Planning	25 (34.2)	21 (37.5)	46 (35.7)	0.15NS
Project Financing	22 (30.1)	26 (46.4)	48 (37.2)	3.60NS
Loan Syndication	20 (27.4)	25 (44.6)	45 (34.9)	4.15*
Human Resource Management	13 (17.8)	10 (17.9)	23 (17.8)	.000NS
Listing	37 (50.7)	25 (44.6)	62 (48.1)	0.46NS
IPOs	34 (46.6)	23 (41.1)	57 (44.2)	0.39NS

BACKGROUNDER

Name of Service	Qualification		Total (N=129)	Chi-Square
	CS+LLB (N=73)	CS+Others (N=56)		
Corporate Restructuring	43 (58.9)	26 (46.4)	69 (53.5)	1.98NS
Mergers and Amalgamations	51 (69.9)	30 (53.6)	81 (62.8)	3.6NS
Takeover	47 (64.4)	26 (46.4)	73 (56.6)	4.16*
Joint-Ventures/ Foreign Collaboration	39 (53.4)	27 (48.2)	66 (51.2)	0.34NS
Direct Taxes	25 (34.2)	28 (50.0)	53 (41.1)	3.25NS
Indirect Taxes	24 (32.9)	28 (50.0)	52 (40.3)	3.86*
International Trade	8 (11.0)	5 (8.9)	13 (10.1)	0.14NS
Accounting and Financial Services	23 (31.5)	30 (53.6)	53 (41.1)	6.37**
Banking Compliances	25 (34.2)	26 (46.4)	51 (39.5)	1.97NS
Internal Audit	21 (28.8)	27 (48.2)	48 (37.2)	5.13*
Arbitration and Reconciliation	17 (23.3)	9 (16.1)	26 (20.2)	1.03NS
Environmental Laws	22 (30.1)	26 (46.4)	48 (37.2)	3.60NS
Depositories	20 (27.4)	20 (35.7)	40 (31.0)	1.02NS
Labour and Industrial Laws	29 (39.7)	28 (50.0)	57 (44.2)	1.36NS
Securities and Commodities Market	22 (30.1)	27 (48.2)	49 (38.0)	4.40*
Any Other	1 (1.4)	2 (3.6)	3 (2.3)	0.05NS

* : Significant at .05 level

** : Significant at .01 level

NS : Not Significant

Note : Figures in parenthesis are the percentages

BACKGROUNDER

- (xv) From Table 8, it is clear that there is no significant difference on the basis of qualification in performing of any of the functions. Hence, the null hypothesis that, "there is no significant difference on the basis of qualification in respect of functions performed by the company secretaries", fails to be rejected. Thus, it can be inferred that LLB qualification does not matter in performing of these functions.

Table 8**Functions Performed by the Respondents: Qualification-wise Analysis**

<i>Functions Performed</i>	<i>Qualification</i>		<i>Total (N=129)</i>	<i>Chi-Square</i>
	<i>CS+LLB (N=73)</i>	<i>CS+Others (N=56)</i>		
Compliances	65 (89.0)	49 (87.5)	114 (88.4)	.07NS
Due Diligence	60 (82.2)	46 (82.1)	106 (82.2)	.000NS
Representation	59 (80.8)	43 (76.8)	102 (79.1)	0.31NS
Advisory	65 (89.0)	48 (85.7)	113 (87.6)	0.32NS
Secretarial Administration	49 (67.1)	45 (80.4)	94 (72.9)	2.81NS

NS : *Not Significant*

Note : *Figures in parenthesis are the percentages*

- (xvi) More than half (52.7 percent) of the respondents feel that the profession has been duly supported by the Government agencies. According to the respondents, introduction of Section 383A in the Companies Act, 1956, Compliance Certificate under provisions of Section 383A, Diligence Report by RBI, Compliance Officer by SEBI, Audit Report by Stock Exchanges and last but not the least designation of the Company Secretary as the "Key Managerial Personnel" shows the support and the attitude of the Government Authorities towards the profession. However, 27.9 percent respondents feel that the present support is not enough and much more needs to be done by the Government Authorities such as the introduction of Secretarial Audit, segregation of areas for CAs, CSs and CWAs, exclusive recognition to the CSs in respect of certain services and branding of the Company Secretary profession.
- (xvii) Majority of the respondents' (64.3 percent) feel that the Company Secretary qualification needs to be supplemented with other related qualification as it extends the horizon of the person discharging functions and also helps one in the growth of career. Moreover, Company Secretary as a standalone qualification on the bio-data does not get much favour with the employers at the time of recruitment and medium-

sized companies take the services of a Company Secretary only when he has added qualification of either Law or Accounts. However, nearly 38 percent respondents are of the view that the curriculum of Company Secretary Course is very comprehensive. A Company Secretary during his studentship and subsequent training acquires both theoretical as well as practical exposure which helps in performing his duties well be it employment or practice.

- (xviii) A large majority (70.5 percent) of the respondents are satisfied with the role played by the Institute of Companies Secretary of India in the promotion and development of the profession whereas only 12.4 percent of the respondents are not satisfied and expect the Institute to be more aggressive and active in getting the recognition for the profession.
- (xix) An overwhelming majority (85 percent) of the respondents are of the view that the Institute of Companies Secretary of India does not have power to play a role in the case of harassment of a company secretary. Members are bound by the code of conduct and the role of the Institute is only to the extent of violation of the code of conduct by the members. Very few of the respondents (14.7 percent) feel that the Institute plays a role in such cases. However, the Institute must stand by its members if they are not guilty and are harassed by their clients for wrong reasons. The Institute should try to obtain the necessary powers from the Government in this regard.
- (xx) As can be seen from Table 9, 12 practicing company secretaries (9.3 percent) are acting as independent director in one company, 11(8.5 percent) are acting as independent director in two companies, very few (3.9 percent) are acting as independent director in three companies, only 1 each (0.8 percent) are acting as independent director in five or more than five companies. It may be observed from the table, that the number of PCS acting as independent directors in companies is only 23.3 percent, which is very insignificant. Company secretaries with adequate experience, exposure and expertise are very well equipped to act as independent directors in companies. The Institute (ICSI) needs to take adequate measures in this regard.

Table 9
Independent Directors
(N = 129)

<i>No. of Companies</i>	<i>Frequency</i>	<i>Percent</i>
1	12	9.3
2	11	8.5
3	5	3.9
4	-	-
5	1	0.8
More than 5	1	0.8
Total	30	23.3

BACKGROUNDER

Emerging Areas for Company Secretaries in Practice

Globalisation has offered many challenges to the practicing company secretaries and at the same time opened up many avenues for practice. The areas highlighted by the practicing company secretaries as the emerging areas for practice are as follows:

- Auditing in relation to Labour Laws
- Auditing in relation to IT Laws (Cyber Laws)
- Management Audit
- Corporate Governance Audit
- Banking and Insurance Laws
- International Trade Laws
- Competition Law
- FEMA
- Arbitration, Conciliation and Mediation
- Internal Audit of Stock Brokers
- Advisory in IPRs (Patent, Trademark)
- Due Diligence
- Corporate Insolvency and Restructuring
- Joint Ventures, Takeovers, Mergers and Amalgamations
- Carbon Credit Registration and related environmental Laws
- Service Tax/ Indirect Taxation
- LLPs
- SEZ
- Co-operative/ NGO/ Public Trust sectors
- E- Stamping
- NCLT
- Class action suits

Qualities/ Skills Required for Company Secretaries in Practice

Certain Qualities and skills are essential for a company secretary to excel in this global competitive environment. Company secretaries in practice feel that the following qualities/ skills are necessary to excel in practice:

- Good knowledge of all the relevant laws, rules, regulations, and any amendment thereto.
- Good communication skills and art of rendering any advice, as liaisoning is an integral part of this.
- Fine drafting skills that are necessary to draft resolutions, minutes of meetings, petitions, notices, agenda etc.

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- Presentation skills
 - Good hold on all aspects of IT and Management Information System.
 - Analytical ability and application of knowledge.
 - Good marketing skills
 - Problem solving attitude
 - Understanding and appreciating what your client requires
 - Zeal towards client satisfaction
 - Practical approach, committed and professional way of rendering services
 - Do not mislead/ misguide the clients
 - Dynamic, confident, socialite and an expert of the chosen emerging area
 - Continuous reading and analyzing laws, court judgment etc.
 - Up to date knowledge
 - Vision to excel

CONCLUSIONS AND SUGGESTIONS

Company Secretaries in Practice are rendering services in a wide variety of areas and are no longer confined to certification work only. They are also performing functions of representation and advisory for companies that may not be requiring a whole-time secretary. However, different services rendered and functions performed by the company secretaries for different companies vary according to their experience, age and qualification. Further, the income from practice also depends on the kinds of services rendered and functions performed for different companies.

The recommendations emanating from the study are as follows:

- A Company Secretary in Practice should give more emphasis and attention to the quality of service and adopt a professional approach rather than quantum of service and try to maintain the trust and confidence of his clients. He should strive and attain core competency to handle upcoming areas such as corporate planning and control, international trade, arbitration, joint ventures, strategic alliances, foreign collaborations, IPRs, cyber laws, etc.
- The number of company secretaries rendering services in areas such as international trade, human resource management, arbitration and reconciliation is not significant. Therefore, the Institute of Company Secretaries of India should conduct necessary training sessions to impart necessary knowledge and skills to its members in the upcoming areas.
- The Institute needs to establish good lobbying capacity by networking with the various regulatory authorities and the Government on a regular basis to place its point of

BACKGROUNDER

view, suggestions and recommendations and get them accepted to protect and safeguard the rights and interests of its members in practice.

- The Institute should try and secure recognition from the Government for its members in practice to undertake extensive "Secretarial Audit" by making suitable amendments to the Companies Act, 1956 for big as well as small and medium sized companies.
- The Institute should take necessary steps to ensure systematic induction of senior members of the profession as independent directors on the board of different companies.
- The future of any profession depends on the quality of the professionals churned out by the Institute of Company Secretaries of India. Therefore, the Institute must make special efforts in developing good communication and effective presentation skills among company secretaries that is vital for the profession. Moreover, a periodic review of the syllabus is essential to incorporate the changes emerging in today's globalised economy so as to keep pace with the changes and imparting necessary skills to the members to survive in this competitive environment.
- The government should clearly demarcate the areas for the three professions i.e. Chartered Accountants, Cost and Works Accountants, and Company Secretaries. There should be no overlapping of areas for providing service. As chartered accountants are known for financial audit, cost & works accountants for cost audits, a company secretary should be known for 'Secretarial Audit'. Therefore, the profession of Company Secretary requires "BRANDING".

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DISCUSSION PAPER

CORPORATE DYNAMISM AND INNOVATIVE PROFESSIONALISM

CS SUTANU SINHA* & DR. S K DIXIT*

CORPORATE DYNAMISM

Globalisation is here to stay, connecting everything and everyone and allowing the best ideas, talent and investments to flow where they can create the most value. This is best done through engagement, not exclusion. It is not a question of winners and losers, but of identifying and building on competitive advantages.

India has a rich history of enterprise, dating back to the early civilizations. At the time of Independence, India inherited a nascent industrial economy, beset with poverty, illiteracy and low incomes and the early decades of independence saw the new structure of the Indian economy into place. Public sector enterprises straddled the 'commanding heights' of industry, new infrastructure was created, new laws were enacted to create the necessary operating environment for business; and new technology and education centres were established to meet the needs of a modern industry. An institutional framework was put in place to support Indian enterprises in finance, professional services and other areas.

The advent of the reform era in 1991 saw an entirely new paradigm for industrial and economic development, driven by open market policies, enabling private sector to take a greater economic role. As a consequence, this new policy regime facilitated jump in its average GDP growth to unprecedented levels on a sustained basis. Today, following the massive upheaval of the global economic crisis, the Indian economy has proved itself to be self-driven and inherently stable. The growth rate, which was close to 9 per cent during the five years before the global turmoil, has recovered and is set to attain 8.5 per cent in 2011-12.

Leveraging the new market oriented policy environment, the private sector took a lead role in growth and development and emerged as a vital global player. Its contributions to employment, wealth and income, investment, profits, tax revenue and the community as a whole are significant. On the global stage, Indian companies are being recognized for their driving aspirations, unique management style, creativity, innovation and investments. Small and medium enterprises are also emerging as vibrant entities, in cluster format or industrial hubs, in self-help groups or individual operations, or as conglomerates of cooperatives.

* Director (Academics), The ICSI. The views expressed are personal views of the authors and do not necessarily reflect those of the Institute.

BACKGROUNDER

Governance remains a predominant preoccupation to impart stability and continuity to the growth process. The Government's role has become more important as new dimensions emerge in India's economic environment. Accordingly, the role profile of professionals like Company Secretaries undergone metamorphosis. They are being called upon to play a starring role as the advisors innovators, change agents and governance professionals. It is this paradigm that requires the professionals to expand their horizon and perspective to guide businessman to conform global standards to have transparent sustainable business environment thereby assisting the human society by creating absolute value through prosperity and services.

Advent of Knowledge Era

The world is moving at a breakneck speed and the advancement in communication and information technology is the striking feature of contemporary society. The transfer and transmission of large volumes of data and information to remote corners of the world has brought about a qualitative change in economic, social and political thinking. Capital markets have been practically interconnected. As news spreads all over the world within moments, distance loses its importance. The violation of human rights and destruction of environment become equally important, whether they occur in a neighbouring country or at the other end of the world. Similarly, as a consequence of increasing interconnectedness and interdependence, the structures of national governance are all for change in the course of globalisation. The quest for more mobility and efficiency has compelled the nations to open up their borders and allow globalisation to expand and grow, however, within the national governance system.

Hence, the concept of universality as envisaged by our elders that the entire universe is one, has become a virtual reality now. Thanks to mind boggling scientific technological advancements pronouncing the death of distance and speeding up communication, people contacts have become instantaneous across the nations. Knowledge constantly makes itself obsolete – with the result that today's advanced knowledge is tomorrow's ignorance. In such a paradigm one has to be on the learning curve and continuously move up. All the knowledge workers have to leverage intellectual capital for growth, that is sustainable.

Looking at the information age related consequences in the social and economic milieu, one is forced not only to acknowledge each one of the following information age driven developments, but also to devise actions to deal with each one of them:

- Interconnected stock exchanges across the world;
- Border-less capital markets;
- Increasing rationalization of business on a global basis;
- Growing importance of supranational institutions like the WTO;
- Information networks making transborder transactions instant.
- Video and tele conferencing.

BACKGROUNDER

- Virtual data room for due diligence operations.
- Dematerialisation of shares.
- On-line shopping
- Internet banking
- Revolution in the automobile industry
- On line Supply-chain management

It is evident that in the information age, countless ways and multiple channels of information access have bid a gradual farewell to the era of secrecy. Progressive legislations, demands of competitive parity and indeed the imperative to seek and join the global main stream have made information not only a requirement for corporate stakeholders but also a right to be demanded and exercised.

From a manager of confidentiality and secrecy to a hub of disseminable and sharable requisite information, there is a paradigm shift in the role of the Company Secretary as a governance professionals. Understanding the imperative to change and rising to the occasion by becoming a stakeholder friendly, reliable and readily available information resource for sharable information is the role profile that the Company Secretaries would have to adopt and master. Each of these developments translates into an enlargement of the role and responsibility of the Company Secretary in dealing with the portends of good governance in the information age, in managing information and disclosure flows with literally the speed matched by the requirements of an interconnected world and dealing with both conventional and modern corporate structures.

New Business Operations

In their quest of sustainable competitive advantage and faster speed of response, organizations both public and private, are downsizing, outsourcing, networking or simply relying on more decentralized, flatter, leaner structures to enable themselves to have higher levels of market responsiveness and client focus as well as to retain advantages of flexibility to remain in sync with a world of changes bringing in unexpected opportunities as well as the challenge of getting their competitive advantages wiped out.

Being an important functionary in corporate decision making, the Company Secretary is ideally placed to emerge as the repositor of all the validation and legal requirements regarding company operations in multiple locations, varying time zones and constantly shifting structural forms.

When firms operate in markets other than their own domestic market, they often need to recreate their competitive advantage. One of the sources of competitive advantage under such scenario could be the level of professionalisation of the various services available in the host countries. The contention here is that, to an upcoming corporate in India, a key resource base should be the availability of quality innovative and creative professional services.

Market Oriented Regulatory Ambience

The process of Legislative Reforms initiated by the Government in July 1991 to suit the changing policy orientation has resulted in the enactment of various new laws and amendments to existing legislations. The new concepts like Limited Liability Partnerships, One Person Company, MCA-21, e-governance initiatives, IFRS, XBRL will continue to dominate regulatory reform process to keep pace with policy orientation and demands of corporate dynamism.

A look at the emerging regulatory regime, makes it clear that the Government is committed to provide an environment which facilitates entrepreneurship and at the same time meet the expectations of all stakeholders. The legislative reforms process will continue to address the demands of changing paradigm. It is, therefore, imperative for Company Secretaries not only to sharpen their core competencies but also to diversify in new and emerging areas, thrown open by market oriented regulatory ambience.

Regulatory convergence

Though there is no universal definition of convergence, it has been defined as "the ability of different networks to carry similar services," and also as "the ability of one network to carry different services. Policymakers and regulators around the world are already responding to the challenges posed by convergence, with varying degrees of success, depending on the scope and depth of changes. In India the regulatory convergence with technological advancements is being effected to ensure transparency, speed and procedural simplification.

Sustainability

Recent years have witnessed a growing range of sustainability issues push into the mainstream of business and professional thought process challenging very edifice of human success and prosperity. While most sustainability challenges are not new, the globalisation has directly or indirectly exacerbated many issues to a degree where many of these issues are now dealt with as matters of global and national security.

World Economic Forum (WEF) India Economic Summit 2007, called on India to focus on skills development, improving governance, upgrading of education, forging public private partnerships in infrastructure and addressing environmental degradation and water scarcity to sustain the high growth. WEF, 2008 Annual Meeting at Davos, closed with a call by business, government and civil society leaders for a new brand of collaborative and innovative leaders to address the challenges of globalisation, particularly the pressing problems of conflict, terrorism, climate change and water conservation.

While India has achieved high GDP growth rates in the last decade, the growing inequity in sharing the fruits of success indeed impedes the nation's true potential. India faces a multi-dimensional challenge to chart a growth path that is inclusive and broad based.

Globalisation of Professional Services

The splintering of services from goods and increasing use of external contracting to obtain service inputs into the production of goods have created new explicit markets for services.

In the light of the above the trade in services has been included in the WTO framework. General Agreement on Trade in Services (GATS) applies in principle to all service sectors except "services supplied in the exercise of governmental authority".

The Institute embarked upon spreading the wings programme in the year 2004 and the efforts in this direction have brought to the profession more focus, visibility and acceptability among the global community of Company Secretaries. Regular interaction with professional bodies of Company Secretaries abroad, setting up of Company Secretaries International Association, International Federation of Company Secretaries and organisation of International Professional Development Fellowship Programmes have been driving force behind the recognition of Company Secretaries as governance professionals not only among the corporates and regulatory authorities but also the multilateral bodies like World Bank, OECD, GCGF, ICGN etc.

With the expansion of services sector in India, it becomes important for the growth of the profession of the Company Secretaries that its members are able to render their services in other jurisdictions. As the profession of Company Secretaries does not figure under the Services Sectoral classification list of WTO the Institute is constantly pursuing with the Ministry of Commerce and Industry, Government of India to create a separate head "Corporate Governance, Compliances and Secretarial Advisory Services under the Services Sectoral classification list of WTO.

Simultaneously, the Institute is also pursuing with the Company Secretaries Institutes in other jurisdictions to enter into bilateral Mutual Recognition Agreement/Memorandum of Understanding for Mutual Recognition of Qualifications and to provide market access for its members for rendering their services in other jurisdictions.

Presently the Institute is pursuing with the Company Secretaries Institutes in Singapore and Malaysia for MRA and proposing the similar arrangement with its counter parts in New Zealand, Canada, Thailand, Australia, Fiji and some other countries. Such initiatives auger well for the profession of Company Secretaries to have market access for their services in other jurisdictions.

Business Risk –Perspective and Challenges

The rapidly changing global economy has created an expanding array of risks to be managed to ensure the viability and success of an enterprise. Historically, the practice of risk management has been confined to the traditionally insurable risks such as loss from fire, earthquakes, wind, flood, legal liability and other relatively straightforward potential causes of loss. Solutions involving the purchase of insurance were emphasized, with focus on type of coverage, adequacy of limits and cost of risk transfer.

Over the last thirty years, most major corporations have evolved a much more sophisticated view of risk management, encompassing traditional risk management concerns and adding new issues arising from the changing internal and external environments within which they work. Now, it is understood that every aspect of a company's operational and financial activity contains the potential for risk that can negatively and meaningfully affect the success and viability of the organization.

BACKGROUND

Accenture Global Risk Management Study, 2011

One of the largest risk management surveys of its kind, the Accenture 2011 Global Risk Management Study conducted with almost 400 executives across 10 major industries and all major geographies, finds that advanced risk management capabilities are high on the executive agenda and now seen as a critical business driver and source of sustained growth and long-term competitive advantage. The following are some of the major findings of the study :

- Risk Management – A Proactive affair, not a reactive one.
- Risk management is a source of competitive advantage.
- Increasing volatility and growing complexity make risk management central and strategic to all industries.
- Executives see their risk management capabilities as important to future profitability and long-term growth.
- Companies are implementing comprehensive enterprise risk management programs.
- One of the big challenges of risk management is to comply with rapid and continuously changing regulatory requirements.
- Cost reduction and alignment of risk management with overall business strategy are ongoing executive concerns.
- Integrate risk management capabilities across the organization.
- Dedicated risk executive with oversight and visibility across the business.
- Infuse risk awareness across the organizational culture.

Risk Management

Risk management, commonly known in the business community as enterprise risk management (ERM), can provide for the structured and explicit consideration of all forms of uncertainty in making any decision. The overarching principle of ERM is that it must produce value for the organization. It is the culture, processes and structures that is directed towards taking advantage of potential opportunities while managing potential adverse effects.

ISO 31000 published as a standard on the 13th of November 2009, provides a standard on the implementation of risk management. The purpose of ISO 31000:2009 is to be applicable and adaptable for “any public, private or community enterprise, association, group or individual.” It provides generic guidelines for the design, implementation and maintenance of risk management processes throughout an organization. The scope of this approach to risk management is to enable all strategic, management and operational tasks of an organization throughout projects, functions, and processes to be aligned to a common set of risk management objectives.

INNOVATIVE PROFESSIONALISM

The study of knowledge-intensive service activities (KISA) is a case study in innovation that forms part of the OECD’s continuing work on national innovation systems. The project

BACKGROUNDER

examines the value of KISA in facilitating the growth of innovation capacity within recipient organisations by focusing not on service sector industries per se, but on the role of knowledge-intensive services as carriers and sources of knowledge that influence the performance of individual organisations, value chains and clusters across industries. From this perspective, the impact of services on innovation performance is understood through their specific functional role rather than as a set of distinct industry sectors.

The study confirms that knowledge-intensive service activities play several important roles in innovation processes. They serve as sources of innovation when they play a role in initiating and developing innovation activities in client organisations. They serve as facilitators of innovation when they support an organisation in the innovation process.

With the sharp focus on maintenance of good governance, as the key to standing tall in the dynamic business environment, it is incumbent upon the profession of Company Secretaries to unflinchingly demonstrate in the ensuing scenario that the profession is eminently suited in its capacity of being the principal driver of corporate governance. All challenges brought about by change embody opportunities sometimes appearing as problems to scare away the unprepared and which can only be seized by those prepared to ride courageously on the winds of change.

CONCLUSION

Building future of a profession would need an unclouded commitment on the part of the professionals. This should move beyond motivation to generating personal volition to building up the future. Such volition suppresses any doubts, receptiveness to distractions and provides force to deal with any setbacks or obstacles. As professionals, Company Secretaries need to discover and identify choices they have which might have been insufficiently exploited and pursued. As strategic managers, they should be more aware of their choices and make conscious use of them in order to extend their freedom to act. The need of the hour is to be responsive and innovative in providing creative solutions to corporates meeting the aspirations of dynamic environment

HARMONISATION OF COMPANIES BILL VIS-A-VIS CORPORATE LAWS

CS ALKA KAPOOR* & CS DEEPA KHATRI**

Globalization is influencing legal systems in Asia as elsewhere in the world. Legal change and globalization are integral to the development of market-based societies. This has been recognized in many Asian legal systems where law reforms have been major governmental priorities. The corporate law reform process should remain committed in ensuring that corporate vehicles in the country will not only continue to generate profits for economic advancement but at the same time, promotes transparency and accountability that protects shareholders' interests, as rightly stated by the Cadbury Report, *"The country's economy depends on the drive and efficiency of its companies. Thus effectiveness with which their boards discharge their responsibilities determines the country's competitive position"*.

In India, the Companies Act, 1956 primarily regulate the range of activities from formation to liquidation and winding up of companies. Since the Companies Act, 1956 came into force, it has been amended number of times. Since the amendments were on a "piece meal basis", it lacked a systematic and coherent review on current corporate law and practice.

The need was felt to revise the Act as sweeping changes occurred in global economic environment. Number of companies increased in India (from 30,000 in 1956 to approximately 8.20 lakhs functioning companies). Many Indian companies have become global and expanded their operations beyond Indian borders.

This paper is an attempt to discuss the company law reform process in India particularly the Companies Bill, 2009 and the report of the Parliamentary standing committee on the Companies Bill. Further, it would also discuss some of the international best practices which can be studied to ensure that the reform be done in tandem with the global scene and enable Indian businesses to compete internationally.

INTRODUCTION OF COMPANIES BILL, 2009

In the year 2003, the decision was taken by the Cabinet to take up comprehensive revision of existing Act. A concept paper on new Company Law was prepared and disseminated. An expert Committee headed by Dr. J.J. Irani was set up in 2004. The Companies Bill, 2009

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BACKGROUND

introduced in the Lok Sabha. The Bill was referred to Hon'ble Standing Committee on Finance. The Guiding principles behind review of the existing Act as specified in the report of Hon'ble Committee are:

- To enable a compact statute, amenable to easy understanding and interpretation;
- To encourage setting up of businesses while enabling measures to protect the interests of stakeholders / investors, including small investors;
- To provide a framework for responsible and accountable self-regulation obviating the need for a regime based on Govt. approvals;
- To provide for more effective and speedy winding up process based on international practices;
- To strengthen enforcement powers and enhance penalties for offences; and
- To segregate substantive law from the procedures which are proposed to be prescribed as rules.

Growth and development can be made sustainable over a long period of time only when businesses are supported by appropriate policy regimes that encourage a systematic movement towards responsible thinking, decision-making and sustainability. The Companies Bill, 2009, as referred to the Hon'ble Committee, proposes to introduce various new aspects.

- It incorporates a number of investor protection measures and it will encourage responsible corporate behaviour through innovative provisions of law.
- Tabled in the backdrop of the Rs 14,000-crore Satyam fraud, the new Companies Bill promises greater shareholder democracy and stricter corporate governance norms and mandatory CSR disclosure.
- The Bill proposes to introduce the concept of class action suits for the first time in India, which would empower investors to sue a company for "oppression and mismanagement" and claim damages.
- It provides for formation of a new entity in the form of One Person Company.
- It proposes to enable the company processes to be in electronic mode.
- It codifies duties of directors;
- It proposes to give statutory recognition to various committees like Audit committee, shareholders grievances committee, remuneration committee etc.
- The concept of dormant company is also proposed.
- Among other things, it also proposes to tighten the laws for raising money from the public and seeks to prohibit insider trading by company directors or key managerial personnel by treating such activities as a criminal offence.

IMPORTANT SUGGESTIONS TO HON'BLE COMMITTEE

It was observed from the report of Hon'ble Committee, that a detailed process was

BACKGROUNDER

undertaken before coming up with the report on the draft Companies Bill. Suggestions were invited from regulatory authorities, professional bodies, chambers of trade and commerce, investors association, trade unions, corporate lawyers, eminent individuals. All the suggestions were considered while framing the report.

Hon'ble Committee also took oral evidence of the MCA and also heard other Regulators, Chambers of Commerce, Professional Institutes namely Institute of Company Secretaries of India, Institute of Chartered Accountants of India and Institute of Costs and Works Accountants of India, Experts etc. in the year 2009. During deliberations before Hon'ble Committee a number of important matters/ suggestions were discussed.

The important suggestions which were submitted by the MCA to the Hon'ble committee to be incorporated in the Bill are as follows:

- Minimum capitalization norms (Rs. 1 lakh and 5 Lakh for private companies and public companies respectively) to be included in the Bill.
- Section 9 of the Act (Overriding Effect of the provisions over Memorandum/ Articles etc) to be included in the Bill.
- Definition of the term 'fraud' to be included in the Bill.
- The term 'promoter' to be included in the list of the 'Officers who are in default.
- Relative – clarity on the term 'relative'. (Spouse's side relatives to be covered specifically).
- Subsidiary Companies not to have further subsidiaries.
- Source of promoters' contribution to be disclosed in prospectus.
- Main objects for raising public offer to be mentioned in the prospectus on first page.
- Company to vary terms of the contracts or objects mentioned in Prospectus subject to shareholders approval and public notice
- Bigger and solvent companies (having net worth beyond 500 crores and turnover beyond 1000 crores) to continue to accept deposits from public subject to certain safeguards.
- A Return to be filed with registrar in case promoters'/ top ten shareholders' stake changes beyond a limit (To ensure audit trail of ownership)
- Investor Education and Protection Fund to be utilized for re-distribution of disgorged amount to identifiable victims.
- Board's report to disclose Corporate Social Responsibility (CSR) initiatives.
- Format of financial statements to be included as part of the Act.
- Internal audit to be made mandatory for bigger companies.
- Rotation of individual auditor and audit firm to be mandated in the Bill
- Audit firm, besides audit partner, to be also liable in case of non compliance by the audit partner

- Companies may have maximum 15 directors – Beyond 15, approval of members through special resolution as well as approval of Central Government must.
 - Tenure of Independent Directors to be provided in law
 - Safeguards/immunity to independent directors in case they have acted honestly/diligently
 - Number of maximum directorships to be held by an individual to be restricted to 20 for all companies.
 - Role of Audit Committee to include determination of remuneration and terms of engagement of auditor, evaluation of auditors' independence, functioning etc.
 - Role and Functions of Nomination and Remuneration Committee regarding nomination or selection of directors etc to be incorporated more specifically.
 - Remuneration of managerial personnel. – Provisions of the existing Act to be included in the Bill
 - Separation of office of chairman and MD/ CEO
 - Registrar/inspector during inspection of books to have powers of civil court to order discovery and production of books of account etc
 - Definition of the term 'SFIO' to be included in the Bill.
 - Keeping into consideration the nature and expertise of officers of SFIO, the SFIO investigation report should be treated in a manner similar to police report by the Court.
 - Inspector conducting investigation (being an officer of the Government) to also have the power of civil court for summoning and enforcing attendance of persons
 - Mergers and amalgamation – Specific disclosure regarding effect of merger on minority shareholders to be provided.
 - Compounding of certain offences – Tribunal to be allowed to compound offences which do not mandatorily involve imprisonment.
 - Class Actions Suits:
 - A minimum limit of members or creditors to be specified for being eligible for approaching Tribunal.
 - Tribunal to ensure that interests of shareholders are protected and wrongdoers (including auditors and audit firms) are required to compensate the victims on suitable orders by Tribunal.
 - Delegated Legislation – Schedule of format of financial statements to be annexed to the Bill alongwith power to modify such Schedule from time to time.
 - Provisions in respect of Part IXA of the Act (Producer companies) to be included in the Bill as a separate Part.
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BACKGROUND

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- Provisions for Convergence of Indian Accounting Standards with IFRS to be modified/ included in the Bill.

Report of the Hon'ble Committee on Finance:

In August 2010, the Parliamentary Standing Committee on Finance gave its report after examining the provisions of the law. It, *inter-alia*, recommended for incorporation of the following provisions in the Companies Bill, 2009:

- new code for independent directors;
- mandatory rotation of audit firms and partners;
- allow public deposits;
- differential voting rights shares
- significant and substantive matters to be included in the Corporate Governance voluntary Guidelines issued by MCA be made part of the Bill itself,;
- provisions relating to independent directors should be distinguished from other directors in the Bill;
- appointment process of independent directors to be made independent of the Company management, a panel/ data bank under MCA to be setup for independent directors,
- tenure of Independent Director;
- Separation of office of chairman and MD/ CEO
- whistle blowing mechanism
- system of proxy be discontinued;
- National Advisory Committee on Accounting Standards would be given sufficient mandate not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit undertaken across the corporate sector;
- the need for an internal watchdog mechanism in the company.

'Comply or Explain' principle suggested by the Hon'ble Committee (in line with international practice as well as being practiced by other regulators in India)

The principles –based approach to regulation has been gaining ground internationally over the last two decades. The approach was pioneered by the UK in the early 1990s when UK listed companies were required to report on whether they have complied (or to explain non-compliance) with the recommendations of the Cadbury Report. This approach has been finding increasing favour amongst policymakers and regulators internationally since it is been as being less costly and more flexible than a purely prescriptive legislative model.

In the Companies Bill, also this approach is being proposed in certain provisions. According to the draft Companies Bill, every company having (net worth of Rs 500 crore or

more, or turnover of Rs 1,000 crore or more) or (a net profit of Rs. 5 crore or more during a year) shall be required to formulate a CSR Policy. In case any such company does not have adequate profits or is not in a position to spend prescribed amount on CSR activities, the directors would be required to give suitable disclosure/reasons in their report to the members. It means that the CSR requirement would be introduced in the nature of a disclosure obligation (by way of "comply-or-explain) rather than a mandatory requirement.

In one of the seminar, it was pointed out that the Government is not in favour of imposing its views on the corporate sector. The government would act as facilitators for companies to adopt social, environmental and economic responsibilities. It was also told that a new national policy on CSR, with participation of all stakeholders, should be put together.

Inclusion of CSR provision in the Companies Bill is also in harmony with the guidelines issued by regulator of banks and banking operations i.e. The Reserve Bank of India (RBI). RBI being the regulator of banks, issued a circular in December 2007 which was addressed to the scheduled commercial banks on CSR, sustainable development and the non-financing reporting role of banks. Considering the lack of adequate awareness about CSR among the financial institutions, RBI issued the said circular, *inter alia*, suggesting the following to banks and financial institutions in regards CSR policy:

- frame a plan of action towards helping the cause of sustainable development with the approval of their boards;
- banks/financial institutions should keep themselves abreast of developments in CSR and modify their strategies/plans in light of such developments; and
- publish in a public domain their annual accounts and the progress they have made with CSR policies

SUMMARY OF DELIBERATIONS WITH REFERENCE TO HARMONIZATION

Harmonisation with the International Financial Reporting Standards (IFRSs)

The International Financial Reporting Standards (IFRSs) issued by the International Accounting Standards Board (IASB) are increasingly being recognized as Global Reporting Standards. More than 100 countries including countries of European Union, Australia, New Zealand, China and Russia currently require or permit the use of IFRSs in their countries.

The Committee found that there are several matters included in the Bill, which need modification with a view to harmonizing them with the International Financial Reporting Standards (IFRS). The Committee, therefore, recommended that all such matters requiring harmonization with IFRS should be considered and appropriate amendments may be made in the relevant proposals contained in the Bill.

Harmonization between Laws/regulatory overlap

The need for ensuring harmonization has been emphasized between the Companies Act and other legislations. Provisions on corporate governance, definition of independent directors, their tenure, rotation period, composition of Board Committees like nomination and

BACKGROUNDER

remuneration committee, audit committee etc. should not have any inconsistency vis-à-vis SEBI regulations.

Various clauses of the Bill are not in harmony with clauses of Listing Agreement. Under clause 49 of the listing agreement composition of Board is not same as provided in the Bill. Furthermore, the definition of independent directors also varies with that provided under the Bill. Since SEBI norms do not define what a material relationship is (and the bill does), the provisions in the bill may well prevail. The provisions on composition of Audit Committee in the Bill and in the listing agreement are not same.

The definition of 'Control' or 'Controlling interest', 'promoter' in the Bill should be aligned with the definition as used in Regulation 2 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The Bill includes the provision relating to insider trading in the Bill, for which SEBI had enacted separate regulations. The punishment prescribed by the Bill differs from that provided by the SEBI Regulations. The Bill under section 173 provides for punishment upto 5 years or a fine upto Rs 1 crore or both. As against this, insider trading under the SEBI Regulations attracts punishment of imprisonment upto 10 years or fine upto Rs 25 crores or both.

The Hon'ble Committee on finance, in its report on the Companies Bill, 2009, has recommended that where such issues of turf occur, the norms of sector-specific regulators such as SEBI should prevail.

Companies Bill vis-à-vis Accounting standards

Section 2(1)(zzy) defines "related party". However, the said definition is at variance with the definition of "related party" as provided in AS-18 in the Companies (Accounting Standards) Rules, 2006. A different definition may cause a lot of confusion since transactions with related parties as defined under the Companies Act would require separate disclosure. It was suggested that the two definitions may be harmonized.

Companies Bill vis-à-vis Competition Act, 2002

Matters relating to mergers and amalgamations in the new Companies Bill should also take into account the compliances required under other laws such as the Competition Act. The provisions on Mergers and Amalgamations are silent on the interface with the Competition Act, 2002 and the Competition Commission's role in clearing merger proposals. Whilst there seems to be a speedier mechanism for effectuating mergers, the uncertainties with respect to compliance with other laws including Competition Act needs to be addressed.

INTERNATIONAL BEST GOVERNANCE PRACTICES

These are some of the prevailing best corporate governance practices which may also form part of Indian corporate governance system.

Policy on Diversity

Diversity is an economic driver of competitiveness for companies. Research has shown

that increased gender diversity on boards is associated with better financial performance, and that improved workforce participation at all levels positively impacts on the economy. The promotion of gender diversity broadens the pool for recruitment of high quality employees, enhances employee retention, encourages greater innovation, and improves corporate image and reputation. Therefore, the Companies should establish a policy concerning diversity and disclose the policy or a summary of that policy. Diversity includes, but is not limited to, gender, age, ethnicity and cultural background. Where companies establish a diversity policy, they should also introduce appropriate procedures to ensure that the policy is implemented properly. Companies should disclose in each annual report the proportion of women employees in the whole organization, women in senior executive positions and women on the board.

Respect the rights of shareholders

Companies should respect the rights of shareholders and facilitate the effective exercise of those rights. Companies should empower their shareholders by communicating effectively with them; giving them ready access to balanced and understandable information about the company and corporate proposals; making it easy for them to participate in general meetings.

Companies should design a communications policy for promoting effective communication with shareholders and encouraging their participation at general meetings and disclose their policy or a summary of that policy. Publishing the company's policy on shareholder communication will help investors understand how to obtain access to relevant information about the company and its corporate proposals

Risk Management

The central governing body at least once every year identify the most important business risks associated with the realisation of the company's strategy and overall goals as well as the risks associated with financial reporting.

The board should ensure continual risk monitoring by management. The board should ensure that effective and continual monitoring of risk management takes place. The responsibility for monitoring should be defined in the risk management plan.

Directors Development

The induction of and ongoing training and development of directors should be conducted through formal processes. The board should ensure that a formal induction programme is established for new directors; inexperienced directors are developed through mentorship programmes; continuing professional development programmes are implemented; and directors receive regular briefings on changes in risks, laws and the environment.

Shareholders engagement

It is being discussed under the reformatory processes around the Asian countries that the provisions with regard to proxy and electronic voting should be liberalized to promote the effective shareholder engagement. Also, the integrity of the voting process should be

strengthened. More and more use of technology for both the dissemination of meeting materials and to facilitate voting should be encouraged.

In some Asian economies, there are still impediments that prevent or impede effective Shareholder participation and the exercise of shareholders rights in shareholder meetings. These include: (i) inadequate or inconveniently located facilities; (ii) insufficient notice of meetings; (iii) inadequate information concerning agenda items; (iv) fixing a record date that precedes the date the meeting is announced; (v) unclear restrictions on persons who may serve as proxies; (vi) prohibitions or high barriers to voting in absentia; (vii) unclear restrictions on the ability of shareholders to place issues or initiatives on the agenda and to ask questions of the board; (viii) voting by a show of hands; (ix) failure to record the conduct and outcome of meetings in ways that are verifiable.

Where the above practices can be corrected through simple changes in laws, regulations or listing requirements, Asian policy-makers and regulators should effect these changes without delay. In addition, company executives and board members should be directly responsible to shareholders for fully and faithfully respecting the rules governing meetings. Where it is consistent with their

'Champion Institution'

The role of Institutions investors be strengthened. A few countries have identified a 'champion institution' to lead corporate governance reforms and initiatives in the market. These institutions have sufficient authority to potentially shape the culture and behaviour of the industry players, with close cooperation from institutes of directors, professional bodies and investors.

Non- financial reporting

Sustainable development through non-financial reporting besides financial reporting is assuming extraordinary importance for company directors. The National Voluntary Guidelines, 2009 also provide a reporting framework for non-financial disclosures. The guidelines should come in the law.

The Global Reporting Initiative have developed Guidelines for Sustainability Reporting, G 3.1 and are in the process of coming out with the next generation Guidelines – the G 4 Guidelines.

Integrated Reporting

The future trend is towards an integrated reporting framework. Integrated Reporting demonstrates the linkages between an organization's strategy, governance and financial performance and the social, environmental and economic context within which it operates. It is in fact an integration of both financial and non-financial disclosures.

While addressing the material issues for an organization, an Integrated Report should demonstrate in a clear and concise manner an organization's ability to create and sustain value in the short, medium and longer term.

Strengthening the Board Processes

For the Board of Directors to meet up to the challenge of the times to come, they need to strengthen their systems and processes.

These include –

- o To adopt a board charter/ Code of Corporate Governance
- o Introduction of a formal process for evaluation of performance.
- o Nominating an independent director as lead independent director
- o Have a formal policy for training of directors.

Effective enforcement

While framing the law, it must be kept in mind that the credibility of a well drafted framework rests on its enforceability. Enforcement problems often arise because regulators and courts face monetary and human resource constraints, or lack the requisite legal authority to investigate wrongdoing or to develop a suitable remedy or deterrent. Improving regulatory enforcement also depends on leadership from the upper reaches of government in support of integrity, independence and professionalism. It also depends on better understanding of the benefits of improved corporate governance frameworks and practices.

To build this credibility, regulators and courts needs to be developed with the investigative tools and resources to articulate and enforce standards. In Asia, much progress has been made in each of these areas.

Effective implementation and enforcement can be underpinned by periodic and systematic reviews of the corporate law frameworks that need to be developed and strengthened. It is suggested that regulator regularly review whether their supervisory, regulatory and enforcement authorities are sufficiently resourced, independent and empowered to deal with corporate law weaknesses.

Further, in many jurisdictions new and improved corporate law policies and practices are emerging and these should be identified and incorporated into good norms, recognizing that flexibility is required in corporate law as 'one size does not fit all'. Such analysis should be viewed as an important tool in the process of developing an effective corporate governance framework.

Mediation and Arbitration

Law must provide for the legal framework to promote the use of mediation and arbitration in providing redress for external stakeholders. Timely recourse to these redressal mechanism can build confidence and goodwill among employees and avoid lawsuits that can damage the company's finances and reputation.

There has been some progress in Asia to establish internal redress procedures and governmental or non-governmental redress mechanisms through new legislation or a code (e.g China, Thailand, Chinese Taipei, Vietnam, Korea) and creating specific bodies to address these issues (e.g. Philippines, Thailand).

"Shadow" board members

The legal and regulatory framework should impose duties and liabilities on "shadow" board members as a way to discourage their existence.

In Asia, board appointees can include persons who lack the experience or capacity to be fully informed, such as low-level employees or inexperienced relatives of controlling shareholders who serve as a cover-up for the "shadow" directors. Such shadow directors do not occupy board seats themselves but are the real decision-makers. In other cases, a simple scarcity of suitable candidates leads to the appointment of the clearly unqualified.

Korea, Chinese Taipei, Thailand, Malaysia and Pakistan reported plans to introduce or have already introduced provisions imposing liabilities on shadow board members into their legal framework, i.e. securities or company laws. Other jurisdictions such as Indonesia, China and Bangladesh reported having guidelines issued by regulatory bodies and stock exchanges, detailing provisions related to the appropriate conduct of board members. Other Asian jurisdictions should be encouraged to follow suit.

Way Forward

The "modernization" of company law has been characterized by numerous measures that have a common goal in "facilitating the imperatives of the new global economy".

It is vital that the authorities and regulators adopt a systematic approach to corporate law reforms. A "principled" development of the law is preferable rather than wholesale adoption or even a form of piecemeal reform. The latter approach will not succeed in reducing the amount and complexity of existing legislation. Moreover the current trends of law reform that are centered on the principles of accountability, transparency, fairness and responsible corporate behaviour may change in the not too distant future. There appears to be a shift towards self-regulation. Perhaps, a more business-friendly approach with a laissez-faire spirit and a more internationally competitive company law will gradually evolve. Perhaps, aspects such as democracy and citizenship may become more important in the future reform of company law.

It is hoped that Companies Bill would be revised in the light of issues addressed in the report of the Hon'ble Parliamentary Standing Committee and a brilliant piece of legislation would be brought out to usher in a new era of best governance practices.

The Companies Bill 2009, which has been pending for passage for quite some time now is expected to be tabled in the Parliament soon which would then be discussed, debated and considered for approval and would replace the Companies Act of 1956. The new bill is hoped to fulfil the expectations of its having greater shareholder democracy and stricter corporate governance norms.

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HARMONIZATION OF FINANCIAL REGULATIONS : A CAPITAL MARKET PERSPECTIVE

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INTRODUCTION

Over the last 20 years, India has taken several steps to streamline and strengthen financial market regulations. The Reserve Bank of India exercises regulatory jurisdiction over the government securities markets and the related derivatives segments, the money market and foreign exchange markets. The Reserve Bank derives its regulatory powers from various legislations, viz., the RBI Act, 1934, the Securities Contract (Regulation) Act 1956, the Foreign Exchange Management Act 1999 and the Government Securities Act, 2006. With regard to government securities market, regulatory powers are shared between the Reserve Bank, Ministry of Finance and the Ministry of Corporate Affairs.

SEBI regulates securities market having distinct responsibilities for regulation of the conduct of intermediaries, capital market and interaction between entities seeking to raise and invest in capital. It regulates securities market institutions such as the stock exchanges, depositories, mutual funds and asset management companies, market intermediaries-brokers, merchant bankers, credit rating agencies and venture capital funds etc. In the light of the enactment of several legislations and presence of multiple regulators, there emerged some overlapping in exercise of powers over a period of time which necessitates streamlining to achieve the defined objectives.

CAPITAL MARKET PERSPECTIVE

Capital is essential for a business to conduct its operations and to grow. In a competitive and fast changing business environment, it is critical for business to raise capital of the right amount, in the right form, at the right time and at the right price. There is a need, therefore, for flexibility to manage capital dynamically and to enable reallocation of capital between businesses. In order to enable speedier access to capital and effective capital management, there is a need to enable use of a wide array of capital instruments in the backdrop of streamlined statutory and regulatory framework. Such a framework should allow greater flexibility for issuers meeting defined criteria and a well functioning market for acquisition

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BACKGROUNDER

of corporate control. However, matters relating to management and maintenance of capital are equally important.

The law should, therefore, address ownership rights effectively by enabling proper registration of ownership, transfer of shares, exercise of voting rights, equitable sharing in the profits of the company and participation in decision making on the basis of reporting requirements that enable transparency of financial operations by the corporate. At the same time, it should facilitate disclosure of actual control structures and prohibition of insider trading as well as management entrenchment. It is felt that international best practices be adapted to the Indian situation providing an enabling a framework that ensures credibility of corporate operations in the minds of the stakeholders.

THE NEED FOR HARMONIZATION

While it would be essential to provide legislative basis for the core governance principles relating to maintenance and management of capital by the corporate keeping in view the interests of the shareholders and creditors, the processes in the public domain subsequent to a company making a public issue of capital are complex and require to be regulated in context of the ever changing and growing capital market. The emergence of corporate governance, ICDR regulations and amendments in the listing agreement also made it essential to mitigate the gap and overlaps in the various legislations, rules and regulation.

STREAMLINING THE COMPANIES ACT WITH SEBI REGULATIONS

In existing law there are anomalies which need to be taken care of. Enumerated below are some issues which need to be addressed:

Amount Payable on Application of Shares

Section 69(3) of the Companies Act, 1956 indicates that amount payable on application on each share shall not be less than five percent of nominal amount of share. This needs to be harmonized with regulation 49 (3) of SEBI (ICDR) regulations 2009, which stipulates that the minimum sum payable on application shall not be less than twenty five percent of the issue price. Thus, the amended version of Section 69(3) of the Companies Act may read as 'The amount payable on application on each share shall not be less than twenty five percent of the issue price of the share.

Effective Date in Case of Reduction in Capital

According to Section 103 (2) of the Companies Act, 1956 the effective date is on the registration of the order and minute, and not before the resolution for reducing share capital as confirmed by the order. The effective date in case of reduction in capital u/s 100 should be the date of filing of order with ROC instead of the date of registration. The Court Order should be the date of reference. This should be harmonized.

Unclaimed Shares

As per clause 5A II of the listing agreement, for shares issued in physical form pursuant

BACKGROUNDER

to a public issue or any other issue, which remain unclaimed, the issuer company agrees to comply with the following procedure

1. The registrar to the issue shall send at least three reminders at the address given in the application form as well as captured in depository's database asking for the correct particulars. If no response is received, the issuer company shall transfer all the shares into one folio in the name of "Unclaimed Suspense Account".
2. The issuer company shall dematerialize the shares held in the Unclaimed Suspense Account with one of the Depository Participants.
3. All corporate benefits in terms of securities accruing on such shares viz. Bonus shares, split etc. shall also be credited to such Unclaimed Suspense Account.
4. The voting rights on such shares shall remain frozen till the rightful owner claims the shares.
5. The Unclaimed Suspense Account shall be held by the issuer company purely on behalf of the allottees who are entitled for the shares and the shares held in such suspense account shall not be transferred in any manner whatsoever except for the purpose of allotting the shares to the allottee as and when he/she approaches the issuer company.
6. The issuer company shall maintain details of shareholding of each individual allottee whose shares are credited to such Unclaimed Suspense Account.
7. As and when an allottee approaches the issuer company, the issuer company shall, after proper verification, either credit the shares lying in the Unclaimed Suspense Account to the demat account of the allottee to the extent of the allottee's entitlement, or deliver the physical certificates after re-materialising the same, depending on what has been opted for by the allottee.
8. The issuer company shall also disclose the following details in its Annual Report till the time the shares are in the Unclaimed Suspense Account:-
 - I. Aggregate number of shareholders and the outstanding shares lying in the Unclaimed Suspense Account at the beginning of the year;
 - II. Number of shareholders who approached the issuer for transfer of shares from the Unclaimed Suspense Account during the year;
 - III. Number of shareholders to whom shares were transferred from the Unclaimed Suspense Account during the year;
 - IV. Aggregate number of shareholders and the outstanding shares lying in the Unclaimed Suspense Account at the end of the year.

Few Suggested points need synchronization are:

1. This provision seems to have been introduced with the intention to prevent misuse of unclaimed share certificates arising out of issues made by listed companies.
2. Sub-clause (c) requires the company to dematerialise the unclaimed shares standing

in the names of various shareholders. In the Register of Members of a company, "Dematerialisation" is nothing but transfer of the shares from the shareholder to the Depository viz. NSDL/ CDSL. The Company as such is not the owner of such shares. Hence permitting the company to dematerialise the said shares may be construed as a violation of Section 108 of the Act.

3. Sub-clause (d) prescribes freezing of the voting rights on the shares represented by the unclaimed share certificates. This seems to go against the provisions of Section 87 of the Act, which gives voting rights to every member holding equity share capital. Further, when shares are dematerialised and credited into an "Unclaimed Suspense Account", the following practical issues also arise:

- The "Unclaimed Suspense Account" will appear in the "Register and Index of Beneficial Owners" maintained by a depository.
- This register will be deemed to be an "Index of Members" in terms of Section 152A of the Act.
- "Unclaimed Suspense Account" will be treated as a "Member" in terms of Section 41(3) of the Act.
- Since the "member" is entitled to dividend, the dividend warrant on such shares is likely to be generated in the name of "Unclaimed Suspense Account".
- Further, Balance Sheets will also be sent to "Unclaimed Suspense Account" in terms of Section 219 of the Act.

There is also the basic issue of denying a shareholder his rights under the Act merely because he has not claimed his share certificate.

Share Certificates or Demat

Under Section 84 (1) of the Companies Act, a certificate, under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to such shares. Section 68 B depicts that notwithstanding anything contained in any other provisions of this Act, every listed public company, making initial public offer of any security for a sum of rupees ten crores or more, shall issue the same only in dematerialized form by complying with the requisite provisions of the Depositories Act, 1996 and the regulations made thereunder.

According to Section 8 (1) of Depositories Act, 1996, every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository. It is felt that this is a complementarity issue which can be addressed under single statute.

Time-Limit For Issue of Share Certificates on Transfer of Shares

Under Section 113 (1) of the Companies Act, 1956 every company, unless prohibited by any provision of law or of any order of any court, tribunal or other authority, shall, within three months after the allotment of any of its shares, debentures or debenture stock, and

BACKGROUND

within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in Section 53, the certificates of all shares, debentures and certificates of debenture stocks allotted or transferred.

Under Clause 3(c) of Listing Agreement the Issuer agrees to issue certificates within one month of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies or to issue within fifteen days of such lodgement for transfer, pucca transfer receipts in denominations corresponding to the market units of trading autographically signed by a responsible official of the Issuer and bearing an endorsement that the transfer has been duly approved by the directors or that no such approval is necessary.

There is clear gap between the Companies Act and the listing agreement regarding the time limit which needs to be addressed.

Notice for closure

Section 154 of the Companies Act, requires a previous notice of not less than seven days for close of the register of members or the register of debenture holders for any period or periods not exceeding in the aggregate forty-five in each year, but not exceeding thirty days at any one time.

Clause 16 of Listing Agreement at the same time requires to give to the Exchange, the notice in advance of at least seven working days or of as many days as the Exchange may from time to time reasonably prescribe, stating the dates of closure of its Transfer Books.

There is need to bring uniformity in the notice period between the Companies Act and clause 16 of Listing Agreement.

Frequency of Board Meetings

Under Section 285 of the Companies Act, 1956 in the case of every company, a meeting of its Board of directors shall be held at least once in every three months and at least four such meetings shall be held in every year. The clause 49 of the listing agreement requires the board to meet at least four times a year, with a maximum time gap of four months between any two meetings. This gap between the provisions of the Companies Act and Listing Agreement needs to be filled in order to ensure uniformity of laws.

Under Section 292A of the Companies Act provides that every public company having paid-up capital of not less than five crores of rupees shall constitute a committee of the Board known as "Audit Committee" which shall consist of not less than three directors and such number of other directors as the Board may determine of which two-thirds of the total number of members shall be directors, other than managing or whole-time directors, The section further provides that:

- Every Audit Committee constituted under Sub-Section (1) shall act in accordance with terms of reference to be specified in writing by the Board.

- The members of the Audit Committee shall elect a chairman from amongst themselves.
- The annual report of the company shall disclose the composition of the Audit Committee.
- The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee but shall not have the right to vote.
- The Audit Committee should have discussions with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review the half-yearly and annual financial statements before submission to the Board and also ensure compliance of internal control systems.
- The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this Section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary.
- The recommendations of the Audit Committee on any matter relating to financial management including the audit report, shall be binding on the Board.
- If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders.
- The chairman of the Audit Committee shall attend the annual general meetings of the company to provide any clarification on matters relating to audit.

Clause 49 II of Listing Agreement provides that a qualified and independent audit committee shall be set up, giving the terms of reference. It further provides that

- The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
- All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- The Chairman of the Audit Committee shall be an independent director;
- The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
- The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.

Audit Committee is an important component of Corporate Governance architect; therefore there is need for harmonization of the provision relating to the Audit Committee in the Act with Clause 49 of Listing Agreement.

BACKGROUND

FILING OF DRHP, RHP AND FINAL PROSPECTUS WITH ROC

Under Section 60B of the Companies Act, 1956 a public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus. A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer. The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.

Upon the closing of the offer of securities, a final prospectus stating therein the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar, and in any other case with the Registrar only.

Issuer has to file the Draft Red Herring Prospectus, Red Herring Prospectus and final Prospectus (after price discover) with SEBI. While bringing out an Initial Public Offer or Follow-on Public Offer, the Issuer has to follow the SEBI ICDR Regulations as well as provisions of Companies Act, 1956. While the Issuer has to file the Draft Red Herring Prospectus, Red Herring Prospectus and final Prospectus (after price discover) with SEBI, it has also to additionally file the same with ROC through the MCA Portal, which is a very cumbersome process. It is felt that issuer be required to file only the RHP, addendum and Prospectus (final) with ROC for registration in case of pricing by Book Building and only the Prospectus (final) in case of fixed price issue.

STREAMLINING WITH BANKING AND INSURANCE REGULATION

Remuneration of Chairman in Banking & Insurance Company

In terms of Banking Regulation Act, 1949 appointment and remuneration of Managing Director of Banking Company is regulated by RBI and provisions of the Companies Act, 1956 are not applicable to it. Appointment and payment of remuneration to Chairman is also regulated by RBI. As per RBI Policy, there is separation of the Office of the Chairman and Managing Director. Similarly in terms of Insurance Act and IRDA Regulations, appointment and remuneration of Managing Director (CEO) of Insurance Company is regulated by IRDA and provisions of the Companies Act, 1956 are not applicable to it.

IRDA regulations provide for payment of remuneration to directors within the policy laid down by it from the shareholders funds or owners of the Company.

With RBI's policy of separating the Office of Chairman and Managing Director, the office of Chairman is part time in nature and does not fall within the definition of Managing or Whole-time Director under the Companies Act, 1956. While appointment and payment of remuneration to Chairman is regulated by RBI, as he is non-executive director, the payment of remuneration comes under remuneration provisions of Section 309 of the Companies Act.

The Banking Company is required to make application to MCA in this regard. While RBI approves the tenure and payment of remuneration to the part time Chairman, sometimes the MCA either approves a reduced payment or approves the amount approved by RBI but for a reduced period.

With IRDA clearly specifying roles of Chairman and CEO, the office of Chairman is part time in nature and does not fall within the definition of Managing or Whole time Director under the Companies Act, 1956. IRDA regulations provide for payment of remuneration to directors within the policy laid down by it from the shareholders funds or owners of the Company. As payment of remuneration attracts the provisions of Section 309 of the Companies Act, 1956 specific applications need to be made to MCA in this regard.

This overlapping of authority between three regulators need to be taken care of as a good governance initiative. It is, therefore, felt that the approval of remuneration by respective regulatory bodies be deemed to have been approved under Companies Act and the MCA should act as registering authority.

Banking Company : Change of Object Clause

Section 18 of the Companies Act requires a company to file with the Registrar a special resolution passed by a company in relation to clauses (a) to (g) of Sub-Section (1) of Section 17 (change in object clause), within one month from the date of such resolution together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such documents. The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and henceforth the memorandum as so altered shall be the memorandum of the company.

After obtaining RBI approval for change in object clause, the application for registration is to be filed by the banking company / Insurance Company with ROC.

As RBI is the Regulator for Banking Companies and IRDA is the Regulator for Insurance Companies, when any banking / insurance company wants to change its status, the approval of RBI or IRDA should be deemed to be sufficient and MCA should be informed for issuing necessary certificate.

CONCLUSION

Financial regulation serves the public interest and ensures the integrity of financial markets as well as meets the financial needs of the economy. Financial regulations enforcing transparency, disclosure of price sensitive information and conflicts of interest, and encouraging organizational forms that reduce, or offer protection from these hazards is a must for financial inclusion. It becomes more significant for the system to adopt some of the international best practices, so as to facilitate its integration with the global economy. The Investors, both domestic and foreign needs to perceive the Indian system as fair, safe, transparent and investor friendly. Therefore the financial Regulation should be so harmonized which protects investors with a focus on oversight of compliance, enforcing relevant laws, prosecuting any market misconduct, and investigating client complaints.

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LEVERAGING GLOBALISATION FOR TRADE IN PROFESSIONAL SERVICES

ARCHANA KAUL*

INTRODUCTION

Globalisation has become a dominant feature of the world economy over the last two decades, as more and more nations are becoming integrated into the global economy through trade and capital flows. Multinational companies manufacture products across many countries and sell to consumers across the globe. Money, technology and raw materials have broken the International barriers. Not only products and finances, but also ideas and cultures have breached the national boundaries.

Whether we like it or not, we are living in a technology-based and trade-driven world. Technology has radically changed the way in which we produce goods and services. The expansion of global value chains reflects the new dynamism of the world economy. In today's world, a considerable share of production is organized into value chains, substantially altering the geopolitics of trade in the knowledge society. This phenomenon is becoming a powerful development tool for countries, opening up new opportunities to share the benefits of international trade.

IMPORTANCE OF SERVICE SECTOR

Globalization has affected all facets of the world economy. This includes services sector as well. Services have become the backbone of the global economy, contributing more to economic growth and job creation worldwide than any other sector. Besides, services are an important driving force in economic development, competitiveness and productivity.

The global trade in services has increased from \$1.3 trillion in 1998 to \$3.8 trillion in 2008. As per the WTO Press Release (April 2011), in 2010 growth in the dollar value of world trade in 2010 was greater than the increase in volume terms. World merchandise exports were up 22%, rising from \$12.5 trillion to \$15.2 trillion in a single year, while world exports of commercial services rose 8%, from \$3.4 trillion to \$3.7. The service industries also account for a significant portion of the growth of the domestic economy and of job creation. Producers and exporters cannot be competitive without access to efficient banking, insurance, accountancy, telecom or transport system. In the EU, services constitute the single

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BACKGROUNDER

most dynamic economic activity accounting for at least two thirds of GDP and employment. Furthermore, the *EU is the biggest world exporter and importer of services*, with 24% of world trade in services (while it covers 19% of world trade in goods).

THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

One of the key accomplishments of the last round of multilateral trade negotiations at the WTO was the negotiation of the General Agreement on Trade in Services (GATS). The General Agreement on Trade in Services (GATS), negotiated during the Uruguay Round of multilateral negotiations, is a multilateral, comprehensive framework of rules governing trade in services.

It applies to all service sectors and all forms of trade in services, including investment. It comprises three parts: (i) the general framework of rules and obligations; (ii) individual schedules of commitments for each WTO Member, which specify, on a sector-by-sector basis, the conditions under which foreigners may supply services; and (iii) annexes and ministerial decisions. The main object of GATS is to create a credible and reliable system of international trade rules to ensure fair and equitable trade in services.

The multilateral trading system, under which the GATS was negotiated, has existed for fifty years. Among the outcomes of the last round (Uruguay Round) of negotiations was the establishment of the World Trade Organization (WTO). This organization is responsible for overseeing the implementation of the various multilateral trade agreements and their dispute settlement mechanisms.

While the GATS is a government-to-government agreement, it is of direct relevance to firms because it lays down the framework of international rules within which firms operate around the globe. The GATS establishes a basic set of rules for world trade in services, a clear set of obligations for each Member country, and a legal structure (Schedule of Specific commitments) for ensuring that those obligations are observed. This allows firms to identify which markets are open to Foreign Service providers and to be sure that these markets will remain open in the future. In the event of a disagreement, the Agreement contains a dispute settlement mechanism through which Member countries can attempt to obtain the treatment to which they are entitled.

Services Covered

The GATS covers virtually every aspect of services trade, including:

- The majority of services which include 160 sub-sectors under 11 categories of services sectors as classified in the document no MTN.GNS/W/120 of the WTO. These eleven categories are as follows :

(i) *Business services (Professional Services like Legal Services, Accounting, Auditing and Book-keeping Services, Taxation Services, Architectural Services, Engineering Services, Integrated Engineering Services, Medical and Dental Services, Veterinary Services, Urban Planning and Landscape Architectural Services.*

(ii) *Communication Services*

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- (iii) *Construction and Engineering Services*
 - (iv) *Distribution Services*
 - (v) *Education Services*
 - (vi) *Finance (including Insurance and Banking Services)*
 - (vii) *Health Services*
 - (viii) *Tourism and Travel Services*
 - (ix) *Recreation, Cultural and Sporting Services*
 - (x) *Transportation Services*
 - (xi) *Other Services not elsewhere classified.*
- Almost all the major world markets of 153 WTO members;
 - The different means [various modes of supply of services – (Mode 1- cross border supply, Mode 2 -consumption abroad, Mode 3 – Commercial presence and Mode 4- Movement of Natural persons)] by which a service can be supplied to a foreign market customer. Definitions of various Modes of services supplies are as follows:
 - Cross-border supply (Mode 1)* - Trade takes place from the territory of one Member into that of another without movement of the service provider, e.g. legal plans sent by internet or wire or satellite etc.
 - Consumption abroad (Mode 2)* - Services consumed or purchased by nationals of a Member in the territory of another Member where these services are supplied, e.g. tourism, where the consumer travels to another country to consume the service.
 - Commercial presence (Mode 3)* - Any type of business or professional establishment, including branches and representative offices, e.g. direct investment in the host country.
 - Movement of a natural person (Mode 4)* - Temporary presence of natural persons in a market for the purpose of supplying services, e.g. a professional or employee of a service provider.

The GATS has become one of the key reference texts used by corporate planners seeking to exploit foreign opportunities.

Important Obligations of the GATS

The most important obligations of the GATS include the following:

Most-Favoured-Nation (MFN) Treatment : A WTO Member cannot discriminate among foreign service providers by offering more favourable treatment to service providers of any one country. Members are permitted to maintain existing measures which contravene the MFN obligation, but any exceptions must be clearly stated in the Member's MFN exemption list.

National Treatment : In the services sectors listed in a Member's schedule of commitments, the Member cannot take measures to discriminate between domestic and foreign service providers; in other words, foreign firms must be treated as favourably as domestic firms. Any measure which violates the national treatment obligation must be clearly inscribed in the Member's schedule of commitments.

Market Access : In the sectors listed in a Member's schedule of commitments, the Member cannot take measures which are defined in the GATS as restricting market access. Examples of measures which would restrict market access include: quotas, economic needs tests, requirements for certain types of legal entities, and maximum foreign shareholding limits. Any measure which violates the market access obligation must be clearly inscribed in the Member's schedule of commitments.

Domestic Regulation : Member's regulations must be administered in a reasonable, objective and impartial manner. Qualifications and licensing requirements and technical standards must be based on objective and transparent criteria, and not more burdensome than necessary to ensure the quality of the service.

Transparency : Members shall make public all measures which pertain to the GATS. The WTO must be notified of any relevant changes to government policies, regulations or administrative guidelines which significantly affect trade in services covered by the specific commitments under the Agreement. As well, Members must establish enquiry point and respond promptly to requests for information on their regulatory regimes.

GROWTH OF SERVICE SECTOR IN INDIA

In India, services sector has become a dominant contributor, such that the success in this regard has been called as 'India's services revolution'. Being one of the fastest growing sectors in the country, the services sector has become the most important segment of economy accounting for about 57 per cent of India's gross domestic product (GDP) and forms the backbone for social and economic development. The sector entails industries like banking & financial services, education, healthcare, information technology (IT), telecom, media & entertainment, management, security, transportation and many more.

According to the *HSBC Market Business Activity Index* — which measures service sector activity, services sector rose to 58.2 in July 2011 from 56.1 in June 2011, supported by confidence among service providers regarding future business prospects.

As per the *Central Statistical Organisation (CSO)*, Ministry of Statistics and Programme Implementation:

- Trade, hotels, transport and communication grew 12.8 per cent in first quarter (April-June) of 2011-12 over the corresponding quarter of 2010-11.
- Similarly, financing, insurance, real estate and business services grew at 9.1 per cent in the first quarter of 2011-12.
- Community, social & personal services is estimated at 5.6 per cent for the reported period.

Exports : India emerged as the 10th biggest exporter of services worldwide for the year 2010, up from 12th position in 2009, according to recently released *World Trade Report 2011*. In terms of value in 2010, India exported services worth US\$ 110 billion. India's service exports stood at US\$ 34.34 billion for April-June 2011. The service exports receipts for the month of June 2011 were US\$ 11.04 billion. The services sector (financial and non-financial) attracted cumulative foreign direct investments (FDI) worth US\$ 27,807 million between April 2000 and May 2011, accounting for 20 per cent of the total FDI inflows, according to data released by the Department of Industrial Policy and Promotion (DIPP). The Government has taken incredible steps in several aspects of service industry to give an impetus to the economy as a whole.

Professional Services

As per WTO classification of service, sectors, professional services fall under the broad category of 'Business Services'. Before discussing professional services, it seems pertinent to mention the four main characteristics of a 'profession' as given by Rupert M. Jackson and John L Powell. These are as follows:

- (i) the nature of the work which is skilled and specialized and a substantial part is mental rather than manual;
- (ii) commitment to moral principles which go beyond the general duty of honesty and a wider duty to community which may transcend the duty to a particular client or patient;
- (iii) professional association which regulates admission and seeks to uphold the standards of the profession through professional codes on matters of conduct, the ethics and
- (iv) high status in the community.

Professional services are expertise from skilled professional, technical and managerial personnel. Out of the wide-range of professional services some like medical and legal requires accrediting, whereas others like software and management consultancy are open to all. Freedom in movement of professionals and trade in professional services brings in new expertise and technologies that promotes employment and economic growth.

If the various occupations seeking to graduate into professions, in the Indian context, are to be tested on the touchstone of the above stipulations, we would find that, among others, the medical practitioners, advocates, chartered accountants, company secretaries, cost and works accountants, dentists and pharmacists fall within the ambit of professionals. Some of the legislations which regulate their registration, practice and conduct are the Indian Medical Council Act, the Chartered Accountants Act, 1949; The Cost and Works Accountants Act, 1959, the Advocates Act, 1961 and the Company Secretaries Act, 1980. Thus, in our country, the professional services sector has traditionally been a highly regulated one. The various institutes and councils created under these regulations, by and large, regulate the entry into the profession and exercise control over their members by prescribing and enforcing code of conduct and ethics.

Almost all the professional services categorised under the WTO classification of services

sectors are significant from India's services exports point of view. In fact, there may be some other equally important professional services which do not figure in the WTO classification list. As for instances the services of Company Secretaries. A study of the UN Central Product Classification (CPC) that is adopted by the WTO was carried out with specific emphasis on Service heads that covered services of Practising Company Secretaries as enunciated in the Company Secretaries Act, 1980 it was found that WTO does not recognize the services of Company Secretaries.

WTO Services Sectoral classification contains Accounting, Auditing and Book Keeping Services (CPC 862), while the Corporate Secretarial Services do not find place in classification of Professional Services. This led the Council of the Institute to take necessary steps to persuade separate head for corporate governance, compliances and secretarial advisory services under WTO Services Sectoral Classification. This was followed by making representation to the Government and also mobilising the CS profession in other countries like Australia, Canada, Hong Kong, UK, Malaysia, Singapore, South Africa, Sri Lanka, Zimbabwe, Pakistan, Bangladesh, Kenya, etc., and Member Institute of the International Federation of Company Secretaries besides taking bilateral steps for market access and setting up of CSIA as multi lateral forum to enhance recognition and visibility of corporate secretarial profession. The global fold and presence that CSIA will command, it is felt, will enable it through its member Institutes, well wishers and the respective governments of respective countries to move the fora not only at the WTO but also at the UN in order to seek inclusion of the proposed Services, Sectoral Head and the explanations thereunder in the SSC of WTO and the UNCPC.

CONCLUSION

Professional expertise or competency is earned out of continuous strenuous endeavours and experience. This hard earned professional knowledge of an individual should not be confined to one particular region. The professional service must be made available to the entire universe. The objective of globalization of professional services is fulfilled only when a service seeker (service taker), wherever he may be, is able to obtain that type of services he requires, from a professional of any region of the globe. This calls for constant updation of subject matter, professionalism, dynamism, wide contracts, broader perspective, uncompromising quality service and above all self-evaluation. Professionals have to be ever vigilant so as to respond to the challenges in a more positive and proactive way.

Indian professionals have been contributing their valuable services significantly both in India and abroad. Innumerable professionals, skilled and specialized, technocrats and technologists working abroad bear testimony to these facts. The present competitive world has, in fact, forced the professionals not only to widen their knowledge in varied fields, but also to widen their practice.

The opening of professional services under GATS provides opportunities as well as challenges to professionals worldwide. This is indeed, opportunity for proactive and forward looking professionals. Company Secretaries know their identity; they know what they can do; they know that they can achieve.

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DYNAMIC BUSINESS ENVIRONMENT AND RISK MANAGEMENT

CS BANU DANDONA*

To win without risk is to triumph without glory

- Pierre Corneille

Risk is the probability or threat of a damage, injury, liability, loss, or other negative occurrence that is caused by external or internal vulnerabilities, and that may be neutralized through pre-emptive action. Risk is inevitable. At the same time risk has negative connotations and creates anxieties. It must be managed in order to achieve desired goals and to sustain the growth process.

Risk management, in the business context, covers the processes and activities undertaken by an organization to identify, analyse, assess, control and mitigate potential risks and its impact.

The challenges and demands of contemporary markets, customer expectations, new regulatory prescriptions, employees and shareholders present organizations with an interesting paradox. It is the intelligent assumption of risk, not its avoidance, that gives competitive advantage to a business.

N Balasubramanian in his book titled 'Corporate Governance and Stewardship' states that the objective of an efficient risk management system is not to walk away from all risky activities but to take well informed and calculated decisions that would on the one hand minimize the adverse impact on business, and on the other, provide a return that is commensurate with the level of risk undertaken. While businesses have always been conscious of risk involved and managed them with varying degrees of success, the more modern approach to risk management focuses on treating risks as an integral part of corporate strategy, contributing to the successful achievement of business objectives. Towards this end, businesses have to establish their risk appetite and align their strategy through objective evaluations of strategic alternatives so as to achieve value protection, creation and optimization.

The traditional approach towards risk management has been to assign the risk oversight responsibility to different functional departments such as legal, human resources, IT etc. This kind of approach does not take into consideration the interactions and impact of the

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BACKGROUNDER

decisions of one function on the other functions and on the enterprise as a whole. Therefore a need for an integrated framework for risk management was felt and committee of sponsoring organisation of the Treadway Commission published the 'Enterprise Risk Management – Integrated Framework' in 2004.

Enterprise risk management has been defined for this purpose as :

"A process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives."

The key elements brought out by this definition are the close relationship between corporate strategy and risk management across the entity, the involvement of the board and executive management at all levels, and the recognition of entity-wide coverage of risk management to take into account the inter-functional and intra-entity impact of risk management decisions at various levels and locations in the organizational hierarchy.

Norcco and Srulz refer to the dramatic change in the role of risk management in corporations as follows :

"Twenty years ago, risk management often denoted the tasks associated with the purchase of insurance. Treasurers also performed risk management tasks, but they focused mostly on hedging interest rate and foreign exchange risks. Over the last ten years, corporations have taken into account additional types of risk. In particular, they started to lay much attention to operational risk and reputation risk. Most recently, strategic risks have been added to the panoply of risks considered. More and more, the risk management functions are directed by a senior executive with the title of chief risk officer (CRO) and the role of the board in monitoring risk measures and setting limits for these measures has increased at many corporations".

KPMG RISK MANAGEMENT SURVEY

The KPMG Risk Management Survey titled 'Risk Management - A Driver of Enterprise Value in the Emerging Environment' cites that increasing pressure from corporate boards and senior leadership, investors, shareholders and regulators has elevated Enterprise Risk Management (ERM) to a 'corporate imperative' status. The consequences of failing to see through systemic issues and test the long term viabilities of corporate strategies is now well understood.

Some of the interesting findings of the Survey are as under:

- Nearly half of the respondents consider regulations as being important to drive Risk Management forward.
 - Both CEOs and Board members consider Risk Management to be equally important. CEOs/business leaders would like to see more focus on reputation risk, political risk and the impact of corporate restructuring and M & A on business performance. CEOs view Risk Management through an opportunity lens, whereas others view it with a "keep us out of trouble" lens.
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BACKGROUND

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- Only around a third of the respondents indicate that risk oversight is actually treated as a “full Board” responsibility. Boards express the view that companies lack definitive processes to share risk information with them and there is less confidence in the Board’s ability to monitor adherence to the established appetite.
 - The softer and more fundamental issue of embedding risk into the organization’s culture and making it an integral part of the business is not getting the attention it deserves. Inadequate sponsorship at the top, inability to commit adequate resources and lack of adequate training in the use of Risk Management tools and techniques are proving to be impediments.
 - Over 80 percent of the organizations surveyed do not consider more than a three year horizon in their risk assessment and of these nearly 40 percent do not look beyond a year. Issues such as sustainability and climate change seldom feature in the risk assessments. 76 percent of the respondents do not consider sustainability and climate change issues while identifying/assessing risks.
 - Nearly two thirds of the respondents indicated that their organizations developed risk responses at an individual risk/ process level rather than at a portfolio level i.e. Organizations do not fully understand interdependencies between the various risks they face. Risk management is not entirely integrated into management decision making: A significant proportion (42 percent) of the respondents are not satisfied with the quality of integration of Risk Management (strategic planning, project assessment, capital allocation, budgeting, etc.) into day-to-day management decision making.
 - Non-financial companies are beginning to embrace the concept of appointing Chief Risk Officers. Two-third of the respondents believe that having a CRO will bring about a perceptible change to the quality of Risk Management practices prevalent in their organizations. CROs have tended to focus on known risks and on the process and operational aspects of the business.
 - In India, a majority (64 percent) of the non-financial company respondents have indicated that the Risk Management roles and responsibilities have not been formalized
 - Only 20 percent of the Indian respondents have suggested that their company has formally articulated a risk appetite that is approved by the CEO and the Board covering all business units and functions

CONTEMPORARY DEVELOPMENT - ISO 31000

International Organization for Standardization has codified standards relating to risk management in 2009 – ISO 31000. The purpose of ISO 31000:2009 is to provide principles and generic guidelines on risk management. ISO 31000 seeks to provide a universally recognised paradigm for practitioners and companies employing risk management processes. Accordingly, the general scope of ISO 31000 - as a family of risk management standards - is not developed for a particular industry group, management system or subject matter field

in mind, rather to provide best practice structure and guidance to all operations concerned with risk management.

ISO 31000 contains 11 key principles that position risk management as a fundamental process in the success of the organization.

ISO 31000 is designed to help organizations:

- Increase the likelihood of achieving objectives
- Encourage proactive management
- Be aware of the need to identify and treat risk throughout the organization
- Improve the identification of opportunities and threats
- Comply with relevant legal and regulatory requirements and international norms
- Improve financial reporting
- Improve governance
- Improve stakeholder confidence and trust
- Establish a reliable basis for decision making and planning
- Improve controls
- Effectively allocate and use resources for risk treatment
- Improve operational effectiveness and efficiency
- Enhance health and safety performance, as well as environmental protection
- Improve loss prevention and incident management
- Minimize losses
- Improve organizational learning
- Improve organizational resilience.

ISO 31000 provides that Risk oversight is a key duty of the board, as failure to manage risk can threaten the existence of the entity being governed. Countries are exploring how to improve the overall risk management framework including examining the responsibilities of different board committees.

This is in line with the international practices with regard to the oversight risk responsibilities of the Board.

SOUTH AFRICA (KING III)

Principle 1.7: The board should be responsible for the process of risk management

The board's role is to set a risk appetite or risk tolerance level for the company. This should be determined according to the strategy adopted by the company and should take into account sustainability, ethics and compliance risks.

The board should oversee the identification of the key risk areas of the company and ensure that the management directs its mind to pertinent risks. These identified risks should be assessed for likelihood and magnitude of potential effect.

The board should be actively involved in identifying and monitoring the key risks emanating from this process. Where appropriate, a risk committee should be established.

The board's ultimate responsibility for the process of risk management should be expressed in its board charter and supported by training and induction processes.

The board has an obligation to demonstrate that it has dealt comprehensively with the issues of risk management. This requires appropriate disclosure on matters such as risk tolerance and the risk management process in the integrated report.

UK CORPORATE GOVERNANCE CODE

Main Principle : The board is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.

Code Provision : C.2.1 The board should, at least annually, conduct a review of the effectiveness of the company's risk management and internal control systems and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls.

Non-executive Directors (NEDs) should satisfy themselves on the integrity of financial information and that financial controls and systems of Risk Management are robust and defensible.

INDIA (COMPANIES BILL, 2009)

The Board to affirm and disclose in its report to members about critical Risk Management policy for the company.

Board of Directors report should include a statement indicating development and implementation of a Risk Management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company.

RISK CULTURE

Establishing a proper tone at the top regarding risk can shift an organization from a culture of compliance to a culture of confidence — that is, from an exclusive focus on controls to an atmosphere in which employees can confidently choose, based on thoughtful analysis and strong corporate values, which strategic risks to take, mitigate or avoid.

Some key issues with regard to risk culture from an article '*What's Your Company's Risk Culture?*' by John Michael Farrell and Angela Hoon in the Business week are highlighted below :

In more than half (58 percent) of corporate Board members and internal auditors surveyed by KPMG said that their company's employees had little or no understanding of how risk exposures should be assessed for likelihood and impact. One-third of the respondents also

said that key leaders in their organization had no formal risk management training or guidance, with only 16 percent receiving at least annual training.

Ethical behavior is a key component of a strong risk culture. A Code of Conduct can help a company effectively communicate its expectations of ethics and compliance. A Code of Conduct should set forth the organization's core values, ethical standards and expectations for its employees

In another KPMG survey of more than 5,000 U.S. workers , it was found that 55 percent of the employees whose companies had ethics and compliance programs reported witnessing wrongful activity. By comparison, 72 percent of respondents whose companies had no formal ethics and compliance program witnessed wrongful activity.

When companies reward reckless conduct, or results gained through any means, the risk management message becomes diluted. The evaluations of CEOs, CFOs and other senior management must include their ability to promote appropriate risk behavior throughout the organization and make appropriate risk-based decisions.

Companies need to put in place oversight of strategic partners, vendors and service providers to ensure that those support organizations are meeting their own risk standards. A company should share its risk management guiding principles with third-party suppliers or partners to influence their decision-making process. Risks and controls should be a consideration when choosing new partners, and they should be re-evaluated on a regular basis to help avoid the potential of vicarious liability by the poor decisions of an alliance partner.

King III Report recommends that the board should ensure that an ethics risk profile is compiled, reflecting the company's negative ethics risks (threats) as well as its positive ethics risks (opportunities).

CONCLUSION

There is a growing recognition that companies have an opportunity to derive competitive advantage from their risk management capabilities, enabling long-term profitable growth and sustained future profitability. Risk management at the top-performing companies is now more closely integrated with strategic planning and is conducted proactively, with an eye on how such capabilities might help a company move into new markets faster or pursue other evolving growth strategies.

How an organization conceives of risk management will in large part determine how effectively innovation is pursued. Risk that is not managed is detrimental to entrepreneurship and innovation. Risk taking fuels innovation.

The main risk to a firm is not to innovate or, more precisely, not to manage innovation risk effectively. Managing the tension between risk taking and innovation is a powerful process that results in competitive advantage.

Risk management should be intrusive and should not be viewed only as a reporting

BACKGROUND

process to satisfy governance expectations. The rigours of risk management should seek to provide interventions that optimise the balance between risk and reward within the company.

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COMPLIANCES TO CREATIVE SOLUTIONS – VISION 2020 CHALLENGES

CS SAURABH JAIN*

*A wise man adapts himself to circumstances as water shapes
itself to the vessel that contains it.*

– W R Inge

THE ENVIRONMENT

The global economy is predominantly driven by innovation and knowledge. Innovation in terms of innovative products, services and business models. The knowledge in terms of knowledge capital, knowledge professionals and knowledge enterprises. Accordingly, products and technology based services are increasingly being commoditized and specialist expertise is becoming more valuable. A truly world class professional is no more bound by geographical boundaries in the sphere of services. Global collaborations culminating from knowledge based relationships are what make such professional expertise valuable. In short, the future of global economy will increasingly be focused on professional services, not in the narrow sense of secretarial, legal, accounting, auditing, consulting and so on, but in the broader sense of deep specialist expertise applied to create value.

A knowledge based global economy in the context of professional services requires grasping of knowledge by the professionals and then providing such knowledge to the trade and industry in encapsulated form termed as specialist professional services. The standardization of corporate professional services has resulted in such services becoming commodities over time. The key to selling a commodity lies in its being differentiated from the similar commodities being offered by other.

2020 is not a distant reality. It is knocking at the doors of the professionals like Company Secretaries much ahead of the time than expected. The growth in Information and Communications technologies (ICT) has raised the expectations of the stakeholders beyond imagination. Be they the multinational firms, small and medium enterprises, small time traders and service providers, government, regulators or individual clients.

This article is an attempt to analyse and explain the trends in clients' expectations, and response and strategies of professional firms towards meeting those expectations.

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BACKGROUND

SINGLE WINDOW SOLUTION

The single window system being followed across the board at various service platforms has worked wonders for the clients. At the same time, it has raised new challenges before the service providers. The person servicing the window has to be a multifaceted personality, having knowledge of virtually all the services provided by the organization. Similar is the case with firms, providing professional services.

Gone are the days when practising professionals dealt with only one or two aspects of business governance. Now-a-days the mega firms of professionals are providing one stop solutions to their clients on all aspects of business governance. The clients don't mind paying service charges as long as they are relieved of the risk of non-compliance.

For example, a small enterprise needing service tax registration may also expect the half-yearly service tax returns to be filed by the same professional, the various e-forms under MCA21 may be taken care of, and such enterprise may also expect the professionals to advise and guide on business finance and future expansion in the ever changing regulatory regime without having to run from pillar to post.

CLIENT SATISFACTION

Today, the time is precious and nobody likes to waste time waiting to be served. For example, a person visiting a restaurant would start losing patience if he is made to wait for the meal for more than 15-20 minutes or say if the first waiter tells that he would be served by somebody else and the second and the third waiter tell the same thing.

Let us now apply this to a firm of professionals. Say, there are three partners in a firm, one looking after direct taxes, the second taking care of indirect tax solutions to clients and the third partner expertising in filings under MCA21. A client makes a call at 10:00 AM in the office of the firm and enquires about the filing status of his income tax return. He is told that the partner who looks after income tax matters has not reached office yet and is expected to be in office any moment. The client rings back at around 10:30 AM to check the status and he is told the same status that the person is expected to reach office any moment. The anxious client once again makes an attempt to reach the person at 11:00 AM only to be told that the person has still not reached office.

Certainly the client would be frustrated and perceive the professional firm as irresponsible, grossly mis-managed and very unprofessional. The reply received by the client from the receptionist who took all his calls seems to be a pre-recorded one and very indifferent to the clients needs. It does not matter that the income tax return had already been filed well before the client called up to check the status.

Now let's have the same scenario in a much better painted picture format. The firm has three partners, each one looking after different aspects of business governance. The client calls up to check the status of his income tax return. The partner looking after income tax return filings is not in office. The receptionist transfers the call to concerned person who has all the data relating to the client's query readily available before him on his computer screen.

BACKGROUNDER

The client's query is answered satisfactorily and the situation is harmonious. These two scenarios present the picture about expectations of clients from professionals and professional firms.

REAL TIME SERVICE

Let us now look at what the clients actually expect from the professional firm in terms of service delivery. The client must be informed about the approaching date for filing of income tax returns. He must be advised about how to arrange his financial transactions so as to take the best advantage of the prevalent tax laws for tax saving. The client should be provided with a pre-filled tax return for his signature. The tax return should be filed well before the last date and the client should receive an intimation about the job done on real time basis either through SMS or through an email.

The challenge before professionals today is to leverage technology and provide professional services to their clients on real time basis much beyond the clients' expectations. To start with professional firms need to put in a system of knowledge sharing where the pertinent details related to a client are recorded in a database on the computer system. The lead partner should never be wasting his valuable time in attending to phone calls of the clients and answering routine queries which can be handled by second level staff.

GO BEYOND

Each client of the professional firm is unique, having its peculiar needs under the circumstances in which the client is placed. What may seem to be routine service request may not be so. The advice prepared for a client in a particular situation may not serve the purpose of another client howsoever similarly, he may be placed. If the same advice is frequently copied and sent to subsequent clients without in any way being tailored to the needs of the client, the very purpose of the client approaching the professional gets defeated. Professionals need to be more innovative providing creative solutions to the client's needs. The professional should be more forward looking and anticipate the next need of the client and suggest possible solutions to the same even before the client asks for the same.

KNOWLEDGE CENTRE

Today, businesses are not isolated, nor geographically limited. They are constantly facing the challenges of dynamic regulatory environment wherein a slight shift in compliance requirements in one jurisdiction has an impact on its bottom line in some other jurisdiction. The businesses owing to their limited professional acumen and knowledge of corporate culture and compliance requirements are always on the verge of stepping on a landmine of unintended non-compliance with the local laws. In fact, the corporate clients today look forward to updation on regulatory regimes, impact of various policy changes on the businesses or the way business is done, reduction in dispute resolution and litigation costs.

It is high time that professional firms invest in setting up of private knowledge centres for knowledge dissemination among their present and future clients and peers on real time basis. The knowledge centres should be equipped with facilities for collecting and collating data on client satisfaction and analyzing the areas for improvement. The mechanism used

BACKGROUNDER

should be such that the clients feel free and frank while providing their views in the client satisfaction surveys conducted by the professional firm.

MEGA FIRMS

World over the idea of mega professional firms through networking has been mooted for almost a decade now. In today's dynamic environment, winners are those who are well networked. Well networked here is not to be interpreted in the narrow sense of the term i.e. networking among peers. The broader sense of the term connotes networking through social events such as corporate launch, game of golf, client referrals, advertising on the social networks such as Facebook and Twitter. Moreover, the mantra being "what we see is what we buy", the clients should not be looked upon as a one off assignment. The clients need to be interwoven as part of a family. Sending reminders to clients about approaching dead lines for compliance under various laws is a thing of the past. The buzz word today is corporate updates on real time basis which present insight into the direction of the economy in which the clients business operates, impact of regulatory changes on the businesses, case studies of innovative business models or novel ideas in business governance implemented elsewhere.

CLIENT'S LOYALTY

The client loyalty to the professional firm cannot be taken for granted. Mr. X a client today may not be a guaranteed client say the day after. Now the question arises that with the increase in competition, how does one ensure that his clients stay with him?

The key is in creating personal relationships with the clients, providing creative solutions to everyday business needs, offering value added services which result in "customer delight", gaining an edge over competitors, so much so that the client does not only stay but also refers the firm to other potential clients.

Clients rarely tell in advance they are about to leave. Usually, they stop doing business with the firm, or the amount of business with the firm slowly declines over time. Loss of a client to competition should never be ignored.

Damage control needs to be undertaken on a war footing. Attempt should be made to immediately restore and improve the relationship with such clients. The professional firms need to be more creative and innovative in service delivery to retain a significant client base. A healthy relationship with the clients enable the firms to conceive the reasons for client dissatisfaction and subsequent reduction in business.

Researches reveal that in most industries, less than stellar client service behaviour would quickly be driven out by competition, yet in professional services it sometimes seems endemic. With ever-increasing revenues, the effect of client dissatisfaction is masked – those who deliver poor client service still earn great money, tending to become complacent and disagreeable to admitting own faults.

SWOT

SWOT analysis of the professional firm is a rarely conducted exercise. Professional firms fail to make an internal assessment of their strengths, weaknesses, opportunities and threats, thereby raising questions on their credibility and sustainability. Typical questions that every

BACKGROUNDER

professional firm should answer for itself include – What percentage of the firm’s total revenues come from the firm’s 50 largest clients; How much additional time, effort and other resources would need to be devoted to recoup the revenues if there is loss of any of such clients; Trend analysis of the growth in business and revenues of the clients and their contribution to the professional firm in the form of various professional assignments; Percentage of total share in the professional fees budget allocation of such clients towards the firm; Formal client feed back received by the firm and the action taken thereon, especially if it is a negative one; Establishment of dedicated client service teams akin to client relationship managers in large corporate. The professional firms need to rework their strategies for service delivery before they become outdated to keep ahead of the competition.

CLIENT PROFILE

Analysis needs to be done also on the profile of the clients. Clients may be classified on the criteria – clients who have the capacity to give future work; clients who will enhance the reputation of the firm simply by being associated with them; clients who have the kind of work which helps in continuously learning and acquiring newer skills; clients who are in industries in which the firm enjoys a competitive edge; clients who do not mind paying extra for the value added services offered by the firm; clients who are too difficult to deal with; and clients with whom the firm likes to do business. Such analysis would enable the firms to remain sustainable in the long run by devising different strategies for different categories of clients.

SOFT SKILLS

The successful professionals always emphasize on the need for developing soft skills, communication and relationship skills and strategic skills for winning over clients in a competitive environment. A country which is a sub-continent in itself, the cultures are diverse, the client expectations from the professionals change with the change in language, food and dressing habits of the clients. Essentially they all need to satisfy their basic business requirements, but the same is to be tailor made to their tastes. Similarly, global service delivery requires understanding of cultures across borders, their business needs and mannerisms and most essentially their language which is a common medium to communicate with the clients. Although English is the global language for doing business, its accent differs from one state to another. Expecting a professional to learn each and every language which the clients speak would be demanding too much from the professional. Still it would be a good idea if the professional could ensure that he is fairly good in written as well as spoken English. Basic knowledge of the language spoken by the client is always an added advantage. Learning a new language may seem to be herculean task yet it is not an impossible one.

CONCLUSION

The paradigm for businesses and professionals is ever evolving, A challenge once conquered is a beginning towards conquering successive challenges and to polish a professional’s skills to face newer challenges of dynamic environment. The ideas presented above may be considered to be the minimum to be tackled in the first instance by a professional to maintain efficiency, performance and sustained growth.

DYNAMIC BUSINESS ENVIRONMENT, REGULATORY CONVERGENCE & INNOVATIVE PROFESSIONALISM

CS LAKSHMI ARUN*

Strength lies in differences, not in similarities

— Stephen Covey

In the global economy, the prevalence of dynamism in corporates has become a routine and continuous trait that corporate managers must not only be aware of conceptually but also understand in order to be able to strategize and position for organizational viability. As a growing competitive advantage for organizations, adoption of corporate dynamism is a necessity in today's market place. In order to succeed, the organization must set a vision that encourages growth, rewards risk taking and leverage innovation by adapting to the very changing global economy and ultimately by being different from that of the competitors. Such dynamism does not happen overnight. It is an on-going collaborative initiative of corporate executives, professionals, regulators, society etc.

This article is an attempt to examine as to how innovative professionalism may be achieved in an environment of Corporate Dynamism and regulatory convergence.

BUSINESS ENVIRONMENT

Business and Environment – The Nexus

There is a close and continuous nexus between the business and its environment. Understanding of this nexus helps in strengthening the business and using its resources more effectively. The business environment is multifaceted, complex, and dynamic in nature and has a far-reaching impact on the survival and growth of the business.

Identification of Opportunities and Threats : The nexus between the business and its environment would identify opportunities for and threats to the business. It helps the business enterprises for meeting the challenges successfully.

Growth : The nexus with the environment leads to opening up new frontiers of growth for the businesses. It enables the business to identify the areas for growth and expansion of their activities.

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BACKGROUNDER

Continuous Learning : The nexus between the business and business environments leads to continuous learning in terms of technology advancement, people skills, strategy development etc.,

Innovation : The increased number of products and services in the market necessitated the business to be more innovative in their processes, products and services.

Risk appetite : The closer nexus to the business and the environment increases the risk appetite of the organization.

Mapping with the competitors : Clear understanding of business environment helps the organizations to map themselves with that of competitors and formulation of strategies accordingly.

WHAT IS A DYNAMIC ENTERPRISE ?

The Dynamic Enterprise is a future-driven enterprise, capable of rapid and successful response to a dynamic environment. It enables its people to navigate the challenges of continual change; to turn chaos into shared strategic direction and clarity; and to transform complex change into momentum for moving towards the desired future.

Let us examine few general but very important anxieties :

1. *Why some companies are being admired most?*
2. *Why some companies are more successful with the same platform for success?*
3. *Why some companies are preferred employers?*

Let us examine these questions through the following facts

World's most admired companies survey 2011.

Since 1997, Hay Group has partnered with FORTUNE magazine to identify and rank the World's Most Admired Companies. The study reveals how they win their strong reputations. In 2011 the top ranked companies were Apple , Google, Berkshire Hathaway and so on.

The World's Most Admired Companies study examines the following nine attributes of reputations:

- Innovation
 - People management
 - Use of corporate assets
 - Social responsibility
 - Quality of management
 - Financial soundness
 - Long-term investment
 - Quality of products/services
 - Global competitiveness
-

Traits identified in the study

- 88% of World's Most Admired Companies prioritize innovation vs 79% of peers
- Emerging markets are key for 79% of World's Most Admired Companies. Only 59% of peer firms think so.
- 94% of World's Most Admired Companies are prepared to take risks to increase effectiveness vs 77% of peers.
- Reward links effectively to performance at 89% of World's Most Admired Companies, compared to 77% of peer firms.
- 91% of World's Most Admired Companies ask employees for ideas on improving efficiency. Only 76% of peers do so.

"INDIA'S BEST COMPANIES TO WORK FOR" STUDY 2010

"India's Best Companies to Work For" Study, conducted by Great Place to Work® Institute India, in collaboration with The Economic Times, is by far the largest workplace study in India.

Traits identified in the study 2010

- In the best workplaces you will find a clear understanding of how their people are linked to their business.
- Fair share of profits.
- Flexibility & work life balance.
- Management action match with the words.
- Equipment in terms of soft and technical skills etc.

Built to Last

Jim Collins in his book 'Built to Last' deals with Twenty visionary organizations which were established before 1950 and performed under all circumstances. Twenty Comparable companies were also identified which has been established at the same time and were producing the similar products. Comparable companies were not found to be total failures as it is easy to identify the difference between total success and total failure.

The corporate dynamism is the art of adding an innovative notch to the business activities that makes an enterprise a total success. Such an innovative notch comes from pragmatic idealism.

- *How did Motorola, the visionary company successfully move from a humble battery repair business into car radios, television, semi conductors, integrated circuits, cellular communications while Zenith, the Comparable Company started at the same time with similar resources never became a major player in anything other than TVs?*
- *Why did Walt Disney Company become an American icon, surviving and prospering*

through hostile takeover attempts, while Columbia Pictures slowly lost ground, never become an icon and eventually sold out to a Japanese Company ?

Throughout this book Yig/Yang symbol from Chinese Philosophy has been used to represent the key aspects of visionary companies. The 'Tyranny of the OR' pushes people to believe that things must be either A OR B, but not both. Instead of being oppressed by the 'Tyranny of the OR', highly visionary companies liberate themselves with the 'Genius of the AND' - the ability to embrace both extremes of a number of dimensions at the same time.

For example, the purpose of visionary companies is beyond profit, but has pragmatic pursuit to profit. They have clear vision and sense of direction and yet open to opportunistic grouping and experimentation. They invest for long term, while demanding short term performance. They adopt conservatism around the core, while taking bold, committing and risky moves.

Motorola founder Paul Galvin viewed profitability as a necessary means to pursue the Company's objectives, but not the ultimate aim. He believed in pragmatic idealism. Motorola does not see profit as a choice between their values or being pragmatic. They see as a challenge to find pragmatic solutions and behave consistent with their core values.

REGULATORY CONVERGENCE

The regulatory landscape has experienced dramatic changes in recent years due to diversity in the business. Historically, specific industries such as energy, utilities, manufacturing, health care and aviation had stringent compliance requirements for legal management with respect to their respective sectoral obligations. As the world has shrunk into one single flat platform, the regulations across borders influence one another. For example regulatory requirements relating to cross border mergers, principle based regulatory actions like sustainability reporting, non-financial disclosures etc.

The current business environment is interconnected through market, customers, regulators and more obviously through technology. This has necessitated the businesses and regulators to be in line with the updated technology, as the stakeholders being across borders.

From the above three reasons it can be derived that the convergence of regulations is mainly through the following interlinked factors:

- Changing Business Environment and regulatory convergence
- Technology advancement across the world and its impact on regulatory front
- Network of Multiple regulations and regulators.

INNOVATIVE PROFESSIONALISM

A variety of forces shape the professional services industry – from fierce competition and globalization to the modularization of business processes and technology. Professional services firms are expected to deliver cost-effective diversified services under one roof that saves time and money of the corporates that avail their services. To succeed in this environment,

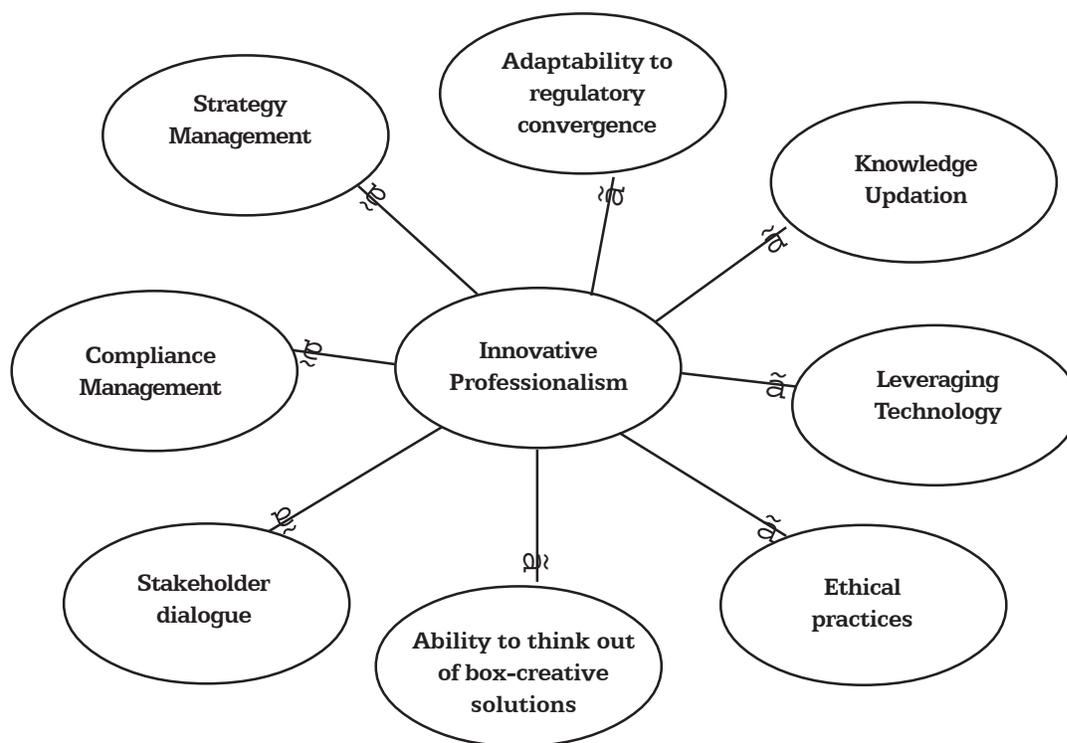
BACKGROUND

professionals must continually improve their service delivery methods. Innovative professionals can differentiate themselves in a crowded marketplace, get effective clientele and use internal and external resources more profitably and so on.

In an environment of increasingly sophisticated clients, market globalization, and evolving technology, professionals must evaluate their business models to ensure that they can deliver the greatest value to every client on every project. This can be achieved only through innovative professionalism, ie performing business functions beyond the usual way and through providing creative solutions.

ROLE OF COMPANY SECRETARY

Innovative professionalism in the context of professionals like company secretaries, lies in identifying right strategies, effective compliance management, good governance norms and ethical practices, providing creative solutions, and implementing effective board room practices etc.,



For example, the e-Governance initiatives of regulators are not solely a computerisation exercise, it is all about business process reengineering. The focus of e-Governance process is business transformation. It is only possible with technology to transform business processes. Leveraging technology, information communication or any other technology, in the business process, it is necessary to follow certain discipline, and that discipline would come with some standards. So there evolved certain standards to be followed to derive

BACKGROUNDER

maximum benefit, such as E-filings, XBRL reporting, IFRS Standards, e-forms with MCA, pre-scrutiny of e-forms etc.,

The world be flat, every change that takes place in any part of the global has an international ramifications. Accordingly, the regulatory platform has also to be in accordance with international standards as business actions are not restricted within borders such as Cross border mergers, cross border insolvency, issue of global/American depository receipts, investment by foreign institutional investors etc., Likewise, now India being a member of Financial Action Task Force(FATF), the professionals like Company Secretaries has to follow FATF standards.

As regulations have grown in number, scope and complexity, the expectations from the company secretaries as professionals have also grown in scope and complexity. Two decades before one could not have even imagined a Company Secretary conducting System Audit, Environment Audit etc. As the technology, communication, economies and businesses operates on a converged platform, the professionals like Company Secretaries have no choice but to remain innovative, to become a guiding force.

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RECENT DEVELOPMENTS IN COMPANY LAW

CS KRISHAN PAUL DUTT* & CS SONU LAKHANI*

INTRODUCTION

The Companies Act, 1956 was enacted with the object to amend and consolidate the law relating to companies. Till date it is the principle legislation governing the corporate sector in India. However, several changes have taken place in the national and international economic environment after the enactment of the existing Act during the last two to three decades. Thus, modernization of company law governing setting up and functioning of enterprises, structures for sharing risk and reward, governance and accountability to the investors and other stakeholders and structural changes in the law commensurate with global standards have become critical for facilitating a vibrant corporate sector and business environment.

In view of recommendations made by Dr. JJ Irani Committee, a draft Bill was prepared in consultation with various stakeholders and accordingly, Companies Bill 2009 was introduced in Lok Sabha on August 3, 2009. The Bill gave greater emphasis on self regulation and minimization of regulatory approvals in managing the affairs of the company. The Bill promises greater shareholder democracy, vests the shareholders with greater powers, contains stricter corporate governance norms and requires greater disclosures.

The objectives of the Bill were:

- (i) Revising and modifying the Act in consonance with the changes in the National and International economy,
- (ii) Bringing about compactness of company law by deleting the provisions that had become redundant and by re-grouping the scattered provisions,
- (iii) Re-writing of various provisions of the Act to facilitate easy interpretation,
- (iv) Delinking the procedural aspects from the substantive law and provide greater flexibility in rule making to enable adoption to the changing economic and technical environment.
- (v) Enabling the corporate sector to operate in a regulatory environment of best international practices that fosters entrepreneurship, investment and growth.

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BACKGROUNDER

PARLIAMENTARY STANDING COMMITTEE ON FINANCE

The Companies Bill, 2009 after introduction in Parliament was referred to the Parliamentary Standing Committee on Finance for examination.

Some of the important recommendations are highlighted below:

- The Supremacy of the provisions of the Company Law over Memorandum and Articles of Association or any shareholder agreement, etc. to be reinstated in the Bill.
 - The ability of companies to raise funds through public deposit relaxed. The relaxation is available to only large public companies, subject to conditions.
 - Public company may be permitted to issue secured debentures.
 - Source of promoters' contribution to be disclosed in prospectus.
 - Role and responsibilities of CFO to be defined.
 - The concept of rotation of auditors or audit firm may be included. Mandatory rotation of audit firms may be made every five years and of audit partners every three years. It is also suggested to incorporate joint and individual liability of audit partners and audit firms. Internal audit may be made mandatory for prescribed companies.
 - All matters requiring harmonization with IFRS (International Financial Reporting Standards) should be considered and appropriate amendments may be made.
 - The provisions of Serious Fraud Investigation Office may be incorporated in the statute itself. The term fraud may be defined.
 - Subsidiary companies not to have further subsidiaries. Every company to have only one investment company.
 - Independent director not to have any kind of pecuniary relationship at all with the company. Code for Independent directors and their tenure of office to be provided. .
 - Ceiling on managerial remuneration proposed. In case of inadequacy of profits, the payment of remuneration to be subject to conditions prescribed.
 - MD or WTD in a listed company may not be appointed as a Non Executive Director in more than 10 companies including more than 2 listed companies.
 - Directors may participate in a board meeting through video conferencing.
 - Mandatory Secretarial Audit for unlisted companies having paid up capital of rupees five crore or more or such other higher amount as may be prescribed and also for listed companies. Functions of the Company Secretary may be provided. Companies to provide every assistance to the Company Secretary in whole time practice to enable him to verify any record or information etc. in connection with certification of annual return. Any adverse remarks made by the Company Secretary in practice while certifying the annual return to be commented upon in the Directors report. Secretarial Standards may also be defined.
 - Firms or bodies corporate having professionals such as chartered accountants, company secretaries etc. may also be registered as a valuer for carrying out valuation.
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BACKGROUNDER

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- Companies above a certain size to be required to ensure that 2% of average net profits during the three immediately preceding financial years are invested in corporate social responsibility every year.

PROCEDURE SIMPLIFICATION- RECENT MCA INITIATIVES

The Ministry of Corporate Affairs has recently issued several circulars to enable corporate sector to do business in speedy and efficient manner. Out of these circulars some are summarized below:

PROTECTION OF NON EXECUTIVE/INDEPENDENT DIRECTORS

The Ministry of Corporate Affairs has issued a master circular no. 1/2011 dated July 29, 2011 to give protection to non executive/independent directors from prosecution. The circular relates primarily to independent directors and nominee directors, who are not in charge of the day-to-day affairs of the company and states that penal actions are often initiated against certain Directors who are not charged with the responsibility, particularly Independent Director's, Government nominee directors in public sector undertakings, directors nominated by public sector financial institutions and directors nominated by the Government under section 408 of the Companies Act, 1956.

Registrar of Companies have been placed under obligation to take extra care in examining the cases where above Directors are also identified as Officer in default and also provides that no such Directors shall be held liable for any act of omission or commission by the company or by any officers of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the Board process. The Board process includes meeting of any committee of the Board and any information which the Director was authorised to receive as Director of the Board as per the decision of the Board.

Further before taking penal action under the Companies Act, 1956 against the Directors the following compliances should be verified by Registrar of Companies:-

- (a) A director resigns and the company does not file Form 32 as required in terms of Section 302(2) of the Act. In case, the director concerned has informed/endorsed a copy of his resignation to the Registrar of Companies, the Registrar should enquire into such cases and try to find out whether such director has actually resigned or not;
- (b) In case the status of a director, i.e. whether he is a nominee director or not, is not reflected in the Annual Return or other documents of the company, available with Registrar, the same should be cross checked with the Annual Report filed by the company;
- (c) The timing of the commission of offence is also material to identify the director's responsibility; and Form 1AB should also be checked in case any person has been charged by the Board under Section 5(f) with the responsibility of complying with some particular provision or in case any director has been specified by the Board under Section 5(g) of the Act;

- (d) Special Directors appointed by BIFR under section 16(6)(b) of SICA 1985, shall not incur any obligation or liability for anything done or omitted to be done in good faith and in discharge of duties and shall be excluded in the list of officers in default.

The said circular stipulates that for default under the provisions of 209(5), 209(6), 211 and 212 of the Companies Act, the following persons shall be the officers in default for the purpose of prosecution under these provisions:-

- (a) Managing Director or Manager or Company Secretary.
- (b) Where there is no Managing Director or Manager, every director and the Company Secretary appointed under section 383A of the Act .
- (c) Any persons amongst officers and employees other than Managing Director/Manager/ Directors who has been charged by the Managing Director/Manger or Board of Directors with specific responsibility of complying with aforesaid provisions, in addition to Managing Director/ Manager/Board of Directors as the case may be.

Directors including Non-Executive Directors, officers and employees not connected with responsibility with the above provisions should not be arrayed as delinquent directors. While considering the non-executive directors for including in the list of officers in default for a particular violation of the Companies Act, it should be examined whether the violation has taken place with his knowledge attributable through board process, with his consent or connivance and whether he acted diligently or not. Where prosecution is required to be filed against any Government company, its directors/officers and Member of Parliament and Member of Legislator under the Companies Act, 1956, Registrar of Companies should seek prior authorization of Central Government in terms of Section 621 of the Act.

The master circular further directs Registrar of Companies to exercise proper application of mind in deciding whether a person to be implicated is an 'officer in default' by examining the Annual Return, Form 32(s) and DIN-3 database available in the Registry and avoid wrongful prosecution. Wherever the Registrar of Companies has doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to Regional Director.

FAST TRACK EXIT MODE FOR DEFUNCT COMPANIES

The Ministry of Corporate Affairs has issued a general circular no. 36/2011 dated June 07, 2011 prescribing the new guidelines called "Guidelines for Fast Track Exit Mode for defunct Companies under Section 560 of the Companies Act, 1956" (FTE Guidelines). The FTE Guidelines is an improvement over the previous Easy Exit Scheme (EES) and provide an opportunity to the defunct companies to get fast track exit with minimal compliance. The Salient features of Guidelines are as under:

1. Any company will be classified as a "defunct company", if it has nil assets and liability and it has not commenced any business activity or operations since incorporation; or it is not carrying over any business activity or operation for last one year before making application under FTE.
2. Any defunct company which has active status or has been identified as dormant by the MCA may apply for getting its name stricken from the Register of Companies.

3. Any defunct company which is a Government Company shall submit a No Objection Certificate issued by the concerned Administrative Ministry or Department or State Government along with the application.
4. The decision of the Registrar of Companies in respect of striking off the name of company shall be final.
5. Any defunct company desirous of getting its name strike off the Register under section 560 of the Companies Act, 1956 shall make an application in the Form FTE, electronically on the MCA portal along with the filing fee of Rs. 5,000.
6. In case the application in FTE Form is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically.
7. In all cases, the FTE Form shall be certified by a PCA, PCS, PCWA. In case, the applicant name is not available in the database of directors maintained by the Ministry, the application shall be accompanied by certificate from a PCA, PCS, PCWA. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.
8. The company shall disclose pending litigations if any, involving the company while applying under FTE. If the pending prosecutions are only for non-filing of Annual Returns under section 159 and Balance Sheet under section 220 of the Companies Act, 1956, such application may be accepted provided the applicants have already filed the compounding application.
9. The FTE Form shall be accompanied by an affidavit and Indemnity Bond in the prescribed form to be given by the directors.
10. The Company shall also file a Statement of Account in the prescribed form as on date not prior to more than one month preceding the date of filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice.
11. In the case of 100 percent Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details on the FTE Form and other annexure in place of name and other details of the directors and also to sign the said documents before filing.

The above guidelines are not applicable to listed companies, companies registered under Section 25 of the Companies Act, 1956, vanishing companies, companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court; companies against which prosecution for a non-compoundable offence is pending in court; companies which is in default in repayment of the deposit; a company having secured loans & management dispute; a company having dues towards statutory payment or banks and financial institutions etc.

COMPANY LAW SETTLEMENT SCHEME (CLSS) 2011

The Ministry of Corporate Affairs has vide general circular no. 59 dated August 05, 2011 introduced the Company Law Settlement Scheme (CLSS) 2011. This scheme proposes to condone the delay in filing documents with the Registrar, grant immunity from prosecution and charge additional fee of 25% of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under. The key highlights of the CLSS 2011 are as under:

1. The CLSS 2011, allows the defaulting companies to file the belated documents which are due for filing till 30.06.2011. Further the scheme applies to only following documents which are not filed in time namely:
 - *Form 20 B* – Form for Filing annual return by a Company having Share Capital.
 - *Form 21 A* – Particulars of Annual Return for the Company not having share capital.
 - *Form 23 AC & 23 ACA* – Form for Filing Balance Sheet & Profit & Loss Account.
 - *Form 66* – Form for Submission of Compliance Certificate with the Registrar.
 - *Form 52*- Form for filing of annual accounts by a foreign company.

However this scheme shall not apply to companies against which action under sub-section (5) of section 560 of the Act has been initiated by the Registrar of Companies.

2. The defaulting company has to pay normal fee plus 25% of actual additional fee.
3. Defaulting company has to withdraw appeal filed by it against prosecution launched for the offences and furnish proof of such withdrawal.
4. Defaulting company has to apply for issue of Immunity certificate after filling of documents under CLSS 2011.
5. The Registrar shall consider the application & upon being satisfied shall grant the immunity certificate in respect of the documents.
6. After granting the immunity, the Registrar shall withdraw the prosecutions, if any, with the competent courts. At the conclusion of the scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this scheme and are in default in filing of documents in a timely manner.

REGISTRATION OF A COMPANY WITHIN 24-48 HOURS

The Ministry of Corporate Affairs vide general circular no. 49/2011 dated July 23, 2011, has simplified, fastened and modified incorporation procedures under MCA-21 to enable incorporation of companies online within 24-48 hours with effect from August 11, 2011. The main highlights of the circular are as under:

- E-forms 1, 18, 32 and e-form for MOA and AOA to be certified by the PCA/PCS/PCWA. Thereafter ROC shall electronically process the application and issue the

BACKGROUNDER

digital certificate of incorporation to the applicant.

- The ministry has already introduced online approval of DIN w.e.f. June 12, 2011. DIN is allotted online on the basis of verification certificate given by the practicing professional.
- The new "Name Guidelines, 2011" have been issued whereby the name can be obtained online from the MCA 21 system if the application is certified by the practicing professionals.
- Application and payment of fees is made online.
- If any information or declaration given by the company or the certificate given by the professional in the e-form and its attachments is wrong, false or illegal, then the subscribers, declarants and professionals shall be liable for penalties under sections 628 and 629 in addition to the penal action provided for in the respective professional institutes.
- With immediate online approvals of DIN, availability of name and registration of e-forms-1, 18, 32 and MOA and AOA, it is expected that the complete process of incorporation of a company can be completed within 24 hours. Once all the necessary forms have been certified and declarations given, applications will be processed electronically and digital certificates of incorporation will be instantly issued by the Registrar of Companies.
- The above facility is optional and the companies are free to follow the traditional method of incorporation.
- There are inbuilt checks in the system such as checking of given particulars with PAN database to prevent fake promoters from obtaining the DIN.

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IMPORTANCE OF INNOVATIONS IN MAINTAINING COMPETITIVE EDGE : A PROFESSIONAL PERSPECTIVE

CHITTRANJAN PAL* & CS NANDINI RAJ GUPTA*

"I am always willing to accept change, just as long as it isn't a change for the sake of change. If that change will result in a better way of doing things, then I am all for it."

- James K Van Fleet

Innovation is nothing but change, change for efficiency in management, governance, delivery of product and services. Change for new and unique applications to develop new products and services, new processes and structures. Change for improving performance in diverse areas, change for organizational betterment. Innovation is being seen as a means of creating sustainable and cost effective competitive edge and is being viewed as one of the prerequisites for professional efficiency and delivering creative solutions.

Innovation Led Growth, Innovation Led Recovery, Innovation Led Competitiveness are not mere slogans, these are hard realities. The power of innovation to create transformation has been well recognized in all spheres around. Profession is no exception. Over the last two decades, there has been an increased focus on innovation in many businesses, and thereafter, the same focus has gradually been influencing the professionals too. Most of the innovation can be attributed to an important factor i.e., prominence of web based knowledge, web enabled services and web enabled networks. The emerging trends suggest that innovation would be a dominant factor in sustaining professional efficiency.

INNOVATION, INVENTION AND CREATIVITY

Innovation is distinct from invention and creativity. It is the successful exploitation of a new idea. Invention is just the successful demonstration of a new idea; while creativity is a thought process of an idea or an invention. "Exploitation," is about "making a difference. "Successful" denotes three 'S':

- (1) Speed (timing)
- (2) Scale
- (3) Sustainability

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“Thought process” is about conceiving the difference to turn it into a success. Thus, to be innovative, a new idea would have to be developed and applied to make a difference.

Too often, the obsession is with ‘inventing’ something totally unique, rather than extracting value from the creative understanding of what is already known. At this stage, it is important to understand as to what exactly is the difference between the two core words, i.e., invention and innovation. Invention is the process of coming up with something new. Innovation is taking that something new and successfully bringing it to market in a way people want. A famous quote states it well, **“Invention is turning money into ideas. Innovation is turning ideas into money.”**

For instance, Microsoft didn’t invent the graphical user interface or the web browser. What they did, was to create an innovative business model based on a software platform. This is exactly what is required of the professional like Company Secretaries in the context of innovative professionalism. They need innovations and not inventions in service delivery in providing business solutions to maintain competitive edge.

In today’s era, Innovation, Invention and Creativity are three terminologies used by the world interchangeably while there lay a huge difference in the understanding of not only the meaning of three but what they result into.

INVENTION + APPLICATION = INNOVATION

CREATIVITY is the path

The figure here clearly articulates the difference between the three terms. Creativity is a process, while invention and innovation both are states. Both inventions and innovations are milestones of the creativity process.

INNOVATION AND COMPETITIVE ADVANTAGE

Creativity and Innovation are intricately linked to competitive advantage. Innovation, technology advances, and competitive advantage are connected by complex and multidimensional relationships. There is a positive correlation between the two. Leading professionals create a competitive advantage through innovation. Company Secretaries across the country view innovation as a key driver for growth on two scales: as an individual Company Secretary and for the profession as a whole. For them innovation means more than creating just new ways of doing things. To them it is to -

- become versatile and strategic resource to industry and emerge as ‘Corporate Advisors’ and ‘Corporate Managers’;
- be involved in frontline activities of fund management, wealth creation and business management and to exhibit business attitude;
- develop executive skills like decision making, leadership, team work and inter personal relationships;

BACKGROUNDER

- carve out new areas of expertise like indirect taxation, governance of unlisted companies, risk management, SME sector;
- carve out the USP of the profession as a whole.

In short, it means capturing new opportunities, clients with new requirements, taking risks by developing and entering newer areas where a Company Secretary can excel in; by accommodating himself to the changes of the profession and not by simply resisting to it.

INNOVATION VIS-À-VIS PROFESSIONAL SERVICES

Professionalism is an art of innovation. Ross Dawson's, *Seven Innovative Trends of Professional Services in maintaining competitive edge* are explained below, in the context of professional services of a Company Secretary.

1. *Client Sophistication* : Ross Dawson says, what do you prefer? A sophisticated client or an unsophisticated one? It's an interesting issue to debate with professionals. Some say they like unsophisticated clients, because, as they usually express a little more euphemistically, they can take advantage of them (for a little while, anyway). Others prefer sophisticated clients, as they know what to expect, they know how to work effectively with professionals, the professionals can learn from their clients (as they must to keep ahead!), and usually the opportunities are far larger. Irrespective of what professionals want, the reality is that professional services clients are becoming increasingly sophisticated.

This change is the result of the shifts in business environment. Across the industry, clients are very particular in hiring the best professionals as they have become increasingly aware of what they are buying and at what costs. Thus, the downside of increasing client sophistication is that you can't survive your whole career on what you learned in initial stages. The learning has to remain a continuous process. On the other hand, the upside is that sophisticated clients help you to develop your own capabilities, they understand what rewards they need to provide to get the best, and they know how to work with you so you can do your best.

2. *Governance* : In the space of a couple of years at the beginning of the century, the business world shifted dramatically. The rise of governance as a key driver in business impacts professional services firms and their delivery system. The first driver is in how clients deal with their professional services providers. Clause 49 of the Listing agreement specifically legislates, how governance module is to be followed by listed companies and the onus of seeking the compliance lies on the shoulders on a Company Secretary. This has emerged in the light of recurring incidences of scandals and erosion of public trust in businesses. This is where the role of governance is of foremost importance and thereby that of the Company Secretaries as governance professional and compliance officer to cater to the need of the corporate world.

For many years, the tide has most definitely turned. Company Secretaries have been expanding the ambit of their profile of services into multi disciplinary areas. They are not confined to their knitting, rather diversifying.

3. **Connectivity** : The next significant trend in professional services is connectivity. Company Secretary being the knowledge worker, most of his work can be zipped in seconds; this is indeed a different world from when phone, letter, and fax were the primary ways of communicating needs to deliver services, but it goes far beyond this. Certainly the first implication is clients' expectation of faster responses. These new forms of interaction start to change the entire client-professional relationship. With the innovation that has led to vast application of technology in delivering professional services, connectivity is the by product of the same. According to an informal study, most of the professional claim that they believe in instant messaging system to their client through which the latter feel, they are part of the process.
4. **Transparency** : Transparency to clients, to market, to regulators, and often even to competitors is the new age criteria. Transparency is in fact one of the most powerful trends across all of business and society, hardly just professional services. The innovation leading to shifts to digital communication means that clients are increasingly inclined to ask to see what is happening while their professionals are at work. The challenge for Company Secretary is to acknowledge the trend of Transparency, and to respond in ways that will build value and relationships because in an era of transparency, previous practices of unwarranted secrecy no longer have a place.
5. **Modularization** : One of the most important, yet least visible, implications of the current phase of innovation in the form of information technology is the ability to break down services into their components. This allows clients to pick and choose which of these elements they prefer to do themselves, if they have the resources and expertise available, and which of these they would outsource to a professional. The implications of these on a Company Secretary are profound.

The profession of Company Secretaries is swiftly becoming modular. Companies can choose to locate these modules inside or outside their enterprise, and seek the services of Company Secretary and can reconfigure easily as needs change. The rapid and continued modularization of the services of Company Secretary means that the focus must be to redefine the role of Company Secretary in a world class module that creates a competitive advantage.

6. **Globalization** : It is no longer possible to ignore the fact that the economy is global. Over 40% of the services are in cross borders supply mode. Competition is not only intense, it is global.

National boundaries have become irrelevant to global business as suppliers, clients, information, and ideas easily flow across borders. Following this trend, Company Secretaries are also finding themselves largely location-independent. There has been a trend of cross border acquisitions, mergers, cross border investments which are the arena of a Company Secretary. Clients expect Company Secretary to provide support around the world and source from the locations that provide the greatest expertise – and best value. Company Secretary must be able to deliver both custom and packaged services globally, yet deliver each project configured for the local market. For the

trend of Globalization, Company Secretaries needs to achieve a mix of latest technology, and management innovation.

7. *Commoditization* : A Company Secretary should be able to recognize which of his services are commoditized and which are of high value – and then price his offerings accordingly, his services are nothing but a commodity for which customers sees only one significant difference between what’s on offer: the price. The drive towards commoditization is perhaps the most powerful force in business today.

COMPETITIVE ADVANTAGES - KEY ACTIONS

The first imperative for our professionals is to recognize the reality of these trends. The basic requirement is to lead the clients into knowledge-based relationships instead of following a black box theory where what is done goes without notice into an opaque processing and thereby letting the market copy the same without understanding the process. It leads to difficulties in building meaningful relationships and meaningful innovation. In contrast, “knowledge-based” relationships are founded on deep mutual knowledge of core expertise where the outcome is that clients develop capabilities and learn what the process is. This kind of relationship cannot be copied or replicated, and enables the creation of value far beyond that is possible with the black-box services.

CONCLUSION

Whether the company secretaries as professional would like to just build a culture of learning first in order to invent so that innovation can take place; or introduce new methods, policies straight away, to enable the culture of learning which enables invention. To continue to be effective, Company Secretaries, no longer can rely only on their professionalism but must strive to be more innovative.

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COMPLIANCES TO CREATIVE SOLUTIONS – VISION 2020

CHALLENGES : TAX LAW PERSPECTIVE

CA APARNA CHAUHAN* & CA NIKHIL AGARWAL*

"The mission of the service is to encourage and achieve the highest possible degree of voluntary compliance".
Donald C. Alexander

In general term, Compliance means conforming to a rule, specification, policy, established guidelines or legislation. In the legal terms, compliance usually refers to the behaviour of corporations or public agencies to act in accordance with the relevant laws and regulations. Due to the increasing number of regulations and need for operational transparency, organizations are increasingly dependent on the creative solutions provided by the professionals. This approach is used to ensure that all necessary governance requirements are met without unnecessary duplication of efforts and activity from resources. The aim of a professional should be to make the compliance obligations for a business easier. The professionals should encourage the industry to voluntarily comply with legislations without waiting for the government intervention. This helps industry to face the challenges particularly regulatory challenges with more strength.

This article discusses the role of professionals specially the Company Secretaries in advising businesses, industries, and organisations in India and outside India on taxation aspects. The Company Secretaries, having the expert knowledge, are best placed to assist and guide the trade and industry in compliance with the various enactments. In addition, with their creative thinking and pro-active planning and management of existing and the upcoming obligations, Company Secretaries can add value in decision making. Every business decision whether raising finance or making investment, restructuring or takeover, or any other corporate action, has legal and tax implications. The Company Secretaries not only protect the business from non-compliances but can enhance stakeholders' wealth by providing creative solutions to business issues.

TAXATION LAWS IN INDIA

In view of the regulatory focus being on the self-regulation and e-governance, the role, responsibilities and scope for Company Secretaries have enhanced. The Company Secretary, being a law expert having vast knowledge of various laws is considered as compliance manager.

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BACKGROUNDER

Company Secretaries are recognised for providing various services under direct and indirect tax laws in India.

1. Direct taxes

1.1 *Income Tax Act, 1961* : The profession of Company Secretaries have been recognised under the Income Tax Act to act as authorised Representative vide Section 288(2)(v) read with Rule 50(2A) of the Income Tax Rules, 1962. Company Secretaries are also providing various other services in income tax like business restructuring, Corporate Tax Advisory and Regulatory Compliance.

1.2 *Wealth Tax Act, 1956* : Company Secretary are recognised to act as authorised representative vide Wealth Tax Rules – Rule 8A(7). Company Secretaries are also providing advisory services in the field of wealth tax.

2. Indirect Taxes

Indirect tax is an area with vast opportunities but untapped potential by the Company Secretaries. The recognition accorded to Company Secretaries under various legislations dealing with indirect taxation are enumerated below:

2.1 *Central Excise Act, 1944*

Company Secretaries are recognised to act as authorised representative before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) under the Customs Act, 1962 and The Central Excise Act, 1944 read with Central Excise (Appeals) Rules, 2001[Rule 12(c)]. The Company Secretary is also been recognised as principle officer of the company in the act. Company Secretaries are advising the industry about various compliances in central excise act and about tax planning.

2.2 *Customs Act, 1962*

In customs, the Company Secretaries are recognised as principle officer of the company. The company secretaries are advising on the procedure of import and export, about tax planning and legal compliances.

2.3 *Service Tax (Finance Act, 1944)*

It is a growing field of taxation with vast scope for the Company Secretaries. The Company Secretaries in Practice have been recognized to act as Authorized Representative in Service Tax vide Authority for Advance Ruling (Procedures) Rules, 2003-Rule 2(d)(i), and under section 83 of Chapter V of Finance Act, 1994. The company secretaries also give advisory services to the clients in the field of tax planning and legal compliances.

2.4 *Value Added Tax*

At present the Company Secretaries are recognised in the following state VAT Acts to act directly as authorised representatives in West Bengal Value Added

Tax Rules, 2005 – Rule 2(1)(a)(iv), Bihar VAT Act, 2005 – Section 87(d), Goa VAT Act, 2005 – Section 82(1)(b), Karnataka VAT Rules, 2005 – Rule 168(1), Kerala VAT Act, 2003 – Section 86(e) and Daman & Diu VAT Act, 2005 – Section 82. In Gujarat, Karnataka and Arunchal Pradesh the company secretaries are recognised indirectly in the form of tax practitioner to act as authorised representative. Further, the Company Secretaries in Practice have been recognized to conduct VAT Audit in Jharkhand VAT Act, 2005 – section 2(i), in Karnataka VAT Rules, 2005 as a Tax Practitioner under Rule 34(1) and in Gujarat VAT Act, 2005 as a Tax Practitioner under Rule 59(1)(a).

CERTIFIED FACILITATION CENTRE (CFCs)

A Certified Facilitation Centre (CFC) under ACES project is a facility, other than the physical front offices or Facilitation Centres of CBEC, which may be set-up and operated by a Company Secretary in practice. The assesseees of Central Excise and Service Tax can avail the facility to file their returns and other documents electronically on payment of specified fees. Setting up of CFCs is a new area of practice in Indirect Taxes. The work with the CFCs is increased with new amendments such as mandatory filing of Excise & Service Tax return in electronic mode, reduction in the limit of e-payment etc.

VISION 2020 OPPORTUNITIES

The system of taxation is going to change drastically in the country in near future. As every change has opportunities and challenges, the area of taxation is not an exception. So it is very important for the Company Secretaries to equip themselves to reap the benefits of new tax regime in India.

The new decade is going to witness the following changes in taxation:

1. Direct Taxes Code

The Direct Taxes Code Bill, 2010 (Bill) was placed before the Parliament on August 30, 2010. The revised Bill will again be placed before the Parliament and upon debate and passing of the Bill, and receiving the assent of the President of India, the new Direct Taxes Code (DTC 2010) will be enacted. This will replace the existing Income Tax Act, 1961 (ITA) and Wealth-tax Act, 1957. With the introduction of Direct Taxes Code, the present system of direct taxation is going to change. As it is expected to be implemented with effect from 1 April 2012, the Company Secretaries must gear themselves up to chart out their future action plan.

The challenges before the professionals like Company Secretaries will be to understand, appreciate and advise the businesses on compliance of DTC.

2. Goods & Services Tax

The GST is a comprehensive value added tax on goods and services. The aim of GST is to have one uniform indirect tax regime and to do away with multiple taxes like

Central excise duty, Additional excise duties and Excise duty levied under Medical and Toiletries preparation Act, Service Tax, Additional Customs Duty (Countervailing Duty) and Special Additional duties of Customs, All surcharges and cesses, Value Added Tax, Central Sales Tax, Entry Tax, whether in lieu of octroi or otherwise, Luxury Tax, Taxes on lottery, betting and gambling, Entertainment Tax unless it is levied by the local bodies, all state cesses and surcharges.

Tax professionals will have to understand the compliance requirement of the new tax system, and make them understandable to the corporate world. The professionals should remain one step forward. The real test of professionals is at the time of change in the system which was working since long. GST implementation will lead to immense scope for professionals like Company Secretaries who with their good knowledge on manufacturing, costing and pricing can educate the suppliers/vendors about GST, ensure input tax credit is availed correctly, help in arriving at the cost of the product correctly by considering/availing input tax credit as per the provisions of GST, ensure tax compliance, monthly returns, e-filing, availing of credit and payment of taxes, ensure tax planning and interpretation of the Act correctly and educating the various departments like strategic sourcing, payables, supply chain management, marketing etc.

3. International Taxation

Globalization has popularized the idea of free trade and commerce, a common market and of multiculturalism. The impact of globalization has witnessed the growth in huge international investments and business transactions all over the world. The globalization has a great impact on the legal systems in general and on tax laws in particular. Because of globalization there is likelihood of increase in taxation litigation resulting into greater demand for expert tax practitioners.

Company Secretaries can help companies in achieving tax efficiency in their international operations, and with their experience and technical skills can advise clients on many aspects of international taxation from both inbound and outbound transaction perspectives. The understanding of rapidly changing cross-border business practices and extensive knowledge of tax law and general business conditions in jurisdictions around the world allow the Company Secretaries to provide specialized services to assist clients with current issues and achieving business objectives. Company Secretaries may provide a broad range of tax consulting services to clients in establishing new operations, including joint ventures, organizing or modifying distribution networks through foreign affiliates, planning low-cost financing structures, integrating global operations based on business needs, and complying with foreign tax regime, tax accounting, and international trade requirements. To provide the information of the applicability of DTAA, the Company Secretaries need to be conversant with the provisions of DTAA and the various agreements entered by government of India with the other countries under DTAA. The Company Secretary can also provide their valuable advice in determination of the method for Arm's length Price.

CONCLUSION

Increasing complexity of today's society, business transactions, rapid technological changes and emerging new regulatory regime demand professionals to continuously refine their skills and expand their substantive knowledge of law, particularly tax laws of other countries and their impact on economy. As the Creativity helps in finding new ways, creative professional solutions help businesses in moving on the path of sustained growth and performances.

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HARMONIZATION OF COMPANIES BILL WITH INFORMATION TECHNOLOGY ACT

SHRUTI B GUPTA* & SUDHIR KUMAR SAKLANI*

The law must be stable, but it must not stand still.

- Roscoe Pound

INTRODUCTION

Admittedly, the idea of harmonization and standardization of laws is as old as the science of law itself. Cicero while defining natural law stated that, "there is a law which is the same in Rome and in Athens, it will be the same today and tomorrow, eternal and immutable, unique law, for all the nations and all times." The prevailing vision of the law has been superseded by the positive approaches only during the 20th century. Presently many of the rules have the same content in US, Japan or France, not because of the common nature of human beings or their common submission to the Almighty but because of ever increasing interdependence exacerbated by the globalization. This has led to standardization i.e. rendering uniform the legal responses to the same facts or situation irrespective of the place they occur or of the national background. This has brought about legal convergence. This trend has been quite pronounced in international trade, arbitration, norms of corporate governance, carriage of goods, etc.

The term harmonization has been applied to both international and national legislations. The central idea of the exercise is to ensure that these do not contain contradictions. In the international sphere, the comparativists (i.e. specialist in comparative law) employ the term- "reception" i.e. adoption by a country of a foreign legislation. It is based on free choice of national legislatures to borrow from existing law abroad instead of creating new rules. Many nations have accomplished unification of law i.e. substitution of multiple rule by unique legislation.

The trend towards standardization and harmonization has arisen due to many factors such as spread of democratization, emergence of new states, constitution of WTO, focus on good corporate governance, European integration, development of new technologies, the need to pursue human rights etc. All these have contributed to legal harmonization or even unification as well as reception.

* Assistant Education Officers, The ICSI. The views expressed are personal views of the authors and do not necessarily reflect those of the Institute.

BACKGROUNDER

In the current national and international context, there is a trend towards simplifying corporate laws so that they are amenable to clear interpretation and provide a framework that facilitates faster economic growth. Similarly, in the competitive and technology driven business environment, there is a need to bring about transparency through better disclosures and greater accountability on the part of corporate owners and managers for improved compliance. Therefore, harmonization of laws is a prerequisite for encouraging good corporate governance and to enable protection of the interests of the investors and other stakeholders.

A fair, modern and effective framework of company law is crucial to performance as an economy, and as a society. With the growing complexities in modern business world, the Companies Act, 1956 is fast becoming obsolete.¹

Nothing stays constant but change and laws are not exceptions to it. It keeps on changing with the changing times and the need for such changes is brought about by the changes in social and economic conditions. Laws are an instrument of service which aims to regulate the conduct of the activities of those who are engaged in it. The changes in laws are also necessitated because of technological advancements the world over.

This article focuses on the aspects of provisions in the proposed Companies Bill which needs to be harmonized with other related enactments, specifically the Information Technology Act, 2000.

CONGRUENCE OF EXISTING COMPANY LAW WITH THE PROPOSED COMPANIES BILL

One of the major changes in the offing relates to the New Companies Bill which is a re-codification of the Companies Act, 1956. The Companies Act, 1956 is considered as the bulkiest piece of legislation to come on a statute book, and it is amalgam of both substantive and procedural laws. Frequent amendments to this statute, numbering 24 since its inception has rendered it complex and complicated. The coverage of statute extends to all types of companies and to all facets of functioning of the companies from incorporation to winding up. Complexity craves for simplification and harmonization of the company law with commercial laws in the context of globalization of national economy. It will provide a level playing field both to the domestic as well as foreign entrepreneurs.

The Companies Act, 1956 which has been on statute book for over five decades, was enacted with the object to amend and consolidate the law relating to companies and certain other associations. The present Act came into being w.e.f. 1st April, 1956 by repealing the Indian Companies Act, 1913 following the recommendations of the Company Law Committee (Bhabha Committee).

In August, 1977, the Government appointed a Committee under the Chairmanship of Justice Rajinder Sachar to review the Companies Act, 1956. Some of the recommendations of the Sachar Committee led to the amendments in the Companies Act.

In the wake of economic reforms process initiated from 1991, the Government recognized that many provisions of the Companies Act were not conducive to the growth of the Indian corporate sector in the changing environment. The year 2000, witnessed another bouquet

of amendments in the form of Companies (Amendment) Act, 2000 in order to provide certain measures of good corporate governance and for ensuring meaningful shareholders' democracy in the working of companies. These changes included many landmarks in the direction of decontrol, de-regulation, simplification and rationalization. The corporate sector was given more freedom and flexibility to decide its affairs and self-regulation subject to certain conditions. The emphasis was on shareholders' democracy by passing required resolutions in General Meetings rather than seeking Government approval on major decisions on the working of companies.

Corporations today are not bound by geography. A lot of changes have taken place in economic environment of the country and the corporate sector in particular, due to market oriented policies introduced by the Government since 1991 and emergence of new multilateral trading system under the aegis of World Trade Organisation. The modern economy is witnessing a dominant role being played by companies as important vehicle to accelerate the process of development.

The changes brought out by globalization and digital technology have already reached far and wide, compelling companies to re-engineer and re-script all aspects of their activities, leading to emergence of complex corporate structures and consequently the new concepts. Moreover, growing demand for good corporate governance, corporate social responsibility and good corporate citizenship are predominantly influencing company law reforms the world over.

Notwithstanding the major amendments having been made in the Companies Act during past years, there have been areas, which required further rationalization in order to ensure smooth and efficient functioning of companies. For example, there are still number of items on which companies have to take prior approval of the Government. This not only delays decision making process of companies but sometimes also adversely affects their business relations internationally besides it dissuades the initiative and drive to make changes for the better. These issues have been debated and considered for rectification at the time of drafting the Companies Bill, keeping in view the changes already made in the Bill in order to identify further changes which are required to be made in the Act. It is with this objective in view, that a committee under the Chairmanship of Dr. JJ Irani was mandated to put together a draft of the new look company legislation. The Committee had submitted its report in 2005 and suggested some changes in existing Act. The Government agrees with the Committee that many benefits can flow from increased harmonization between different statutes.

Accordingly, Companies Bill, 2009 was introduced in Parliament and later referred to Parliamentary Standing Committee on Finance. The Companies Bill, 2009 proposes to make companies working simpler, easier, cleaner and user friendly. This Bill contains many new features, including the duties of directors, board meetings through video conferencing, valuation of shares and other assets of a company by a registered valuer, setting up of special courts for speedy trial of offences and also constitution of special court outside India to address the grievances of foreign investors, identification of key managerial personnel, fresh

look at the independent directors, incorporation of one person company, adjudication of procedural non-compliance by the officers of the Ministry of Corporate Affairs etc. These new features are expected to project the Indian Company Law in a better perspective to the foreign investors and also increase foreign participation thus leading to economic development of India. Further, the NCLT (National Company Law Tribunal) would exercise enlarged powers including winding up of companies which are presently being handled by various High Courts and the rehabilitation of sick industrial companies. An appeal will lie against the orders of NCLT to the Appellate Tribunal except in the case of consent orders.

As it seeks to enable the corporate sector in India to operate in a regulatory environment of best international practices that fosters entrepreneurship, investment and growth, the Companies Bill is intended to modernize the structure for corporate regulations in India and represent a major reform statement by the Government to promote the development of the Indian corporate sector through enlightened regulations.²

The Bill through its Objects and Reasons reinforces shareholders democracy, recognizes the liability of Boards, directors and senior management personnel of companies, provides for a new scheme for penalties and punishment for non compliance or violation of the law, harmonizes corporate regulation with action by sectoral regulators, application of the successful e-governance initiative of the MCA to all the processes involved in meeting compliance obligations through electronic mode and to speed up the incorporation process, with detailed disclosures about the promoters, directors etc., incorporates a new framework for mergers and amalgamations of companies and provides an extensive Insolvency Code based on the principles recommended by the United Nations Commission on International Trade Law (UNCITRAL).

Harmonization of Companies Bill *vis-a-vis* Information Technology Act, 2000

The Information Technology Act (IT Act), 2000 has provided legal recognition to transactions carried out by adoption of means like electronic data interchange and other means of electronic communication referred to as electronic commerce. The IT Act has recognized the communication in digital/electronic form and the concept of digital signature to authenticate and conclusively attribute the contents of such communication has also been introduced.³

Application of provision of Information Technology Act, 2000

All the provisions of Information Technology Act, 2000 relating to electronic records including the manner and format in which the electronic records shall be filled, in so far as they are not inconsistent with this Act are applicable.

The technology driven world being the main stream for economic growth has impacted each and every corner of life, be it individual or business. The effect of information technology on the regulation of Companies Act is enumerated below :

— Use of Digital signatures

The Companies Bill provides for the verification and authentication of different e-forms through digital signature. The information technology driven business reporting

is at boost. The new Companies Bill has been framed keeping in view the changes taken place in the technological front. This modality would prevent any tempering of e-documents subsequent to filing.

— *Board Meeting by Video Conferencing*

The directors are required to be present physically in Board meetings. This is pursuant to section 285 of the Act which mandates holding of board meetings for deliberating and deciding on major policy matters of the company.

The Companies Bill under Clause 154 allows that the participation of directors in a board meeting may be in person or through video conferencing or other electronic means as may be prescribed. Such a system should be capable of recording and recognizing the participation of directors and storing the proceedings of such meetings. However, the items of business listed in Section 292 of the Act (Clause 159 of the Bill) will come handy for exclusion from video conferencing.⁴

— *Notice of Meeting*

Companies Bill provides that a meeting may be called by giving notice through electronic mode. It also provides for giving a shorter notice, but, the consent must be taken from more than ninety-five percent of the members entitled to vote.

— *Service of documents*

Section 53 of the Companies Act, 1956 provides service of documents on members by a company. Clause 19 of the Bill allows such servicing through electronic mode.

— *Proxies*

Clause 94 of the Bill provides that any member of the company entitled to attend and vote at a meeting shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf in electronic form also.

— *Voting by electronic mode*

The Companies Bill under Clause 97 provides that a member may exercise his vote at a meeting by electronic means in a manner as may be prescribed.

— *Books of Account to be kept by company in electronic form*

Companies Bill under Clause 116 allows companies to keep their books of accounts in electronic forms.

— *Admissibility of certain document as evidence*

In terms of Clause 359 of the Bill the company may file any document in electronic form with the registrar, it shall be deemed to be a document for the purpose of the Act and have evidentiary value.

CONCLUSION

Modern information and communication technology have a profound impact on our society. Law should adapt to this, in that, on the one hand, it should ensure that legal norms and values are also applied in a digital or virtual environment, and, on the other hand, it should facilitate the new possibilities modern technology offers. In the area of company law basic

BACKGROUNDER

concepts and goals may not necessarily change as a result of modern technology, however, may certainly offer new and more efficient means to achieve these concepts and goals.⁵

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PROFESSIONAL COMPETENCE IN TECHNOLOGY DRIVEN REGULATORY REGIME

CS DISHA KANT* & CS RAKESH KUMAR*

THE CONCEPT OF PROFESSIONAL COMPETENCE

Competence generally refers to the knowledge and skills required to carry out activities. Today it is increasingly being associated with an individual's capacity to integrate into a workplace, mobility and performance.

Competence so defined serves as the basis for the exercise of professional judgement. Together with the knowledge and skills associated with a field, professionals must demonstrate the capacity to integrate and apply them in varied and complex situations and in such a manner as to prevent such persons from sustaining prejudice.

Importance of Competence : An Underlying Value of the Professional System

Competence is the ability of an individual to perform a job with the best of his abilities. Competence is the fundamental value of the professional system. It is the essential qualification required of a person intending to practice regulated activities.

A profession arises when any trade or occupation transforms itself through "*the development of formal qualifications based upon education, apprenticeship, and examinations, the emergence of regulatory bodies with powers to admit and discipline members, and some degree of monopoly rights.*" A professional is an expert who is master in a specific field.

Few essential traits of profession:

1. Expert and specialized knowledge in field which one is practicing professionally.
2. Excellent manual/practical and literary skills in relation to profession.
3. Most professionals are subject to strict codes of conduct enshrining rigorous ethical and moral obligations.

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Colette Bowe said that

"No letters after your name are ever going to be a total guarantee of competence any more than they are a guarantee against fraud. Improving competence involves continuing professional development ... That is the really crucial thing, not just passing an examination."

TECHNOLOGY DRIVEN REGULATORY REGIME

The United Nations General Assembly by resolution A/RES/51/162, dated the 30th January 1997 adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. This is referred to as the UNCITRAL Model Law on E-Commerce.

Following the UN Resolution, the Government enacted Information Technology Act 2000, w.e.f. October 17, 2000. The Information technology Act 2000 has been substantially amended through the Information Technology Amendment Act 2008.

Information Technology Act, 2000 has its preamble as follow:

An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

Information Technology Act 2000 addresses the following issues pertaining to:

1. Legal Recognition of Electronic Documents
2. Legal Recognition of Digital Signatures
3. Offenses and Contraventions
4. Justice Dispensation Systems for Cybercrimes

The first two are of utmost importance for a Company Secretary as they are directly involved in filing of documents on MCA portal and paperless compliance of Corporate laws.

Compliances Under Technology Driven Regulatory Regime

Over the years compliance of statutory provisions becomes easy due to the introduction of electronic system.

MCA21

As part of the Government's commitment to governance reforms, MCA21 programme has been designated as the flagship e-Governance initiative of the Government of India under the National e-Governance Plan (NeGP). This outcome-based programme from the

Ministry of Corporate Affairs (MCA) aims at fulfilling the aspirations of its stakeholders in the 21st century through adoption of a service-centric approach. The bottom-line of this unique initiative is the improved speed and certainty in the delivery of MCA services. This improvement is primarily enabled through the mechanism of secure electronic Filing (e-Filing) for all the services provided by the Registrar of Companies (ROC) including incorporation of a company, annual filing, registration of charges and other event based filings.

As filing and registration of documents is a statutory requirement under the Companies Act, 1956 the Central Government has notified various forms for the purpose of e-filing under MCA-21 system. The e-filing facility includes incorporation of new companies, filing annual and other statutory returns, registration and verification of charges and applying for various approvals/ clearances. Besides, inspection of company documents, request for certified copies and reporting investor grievances can be carried out through the MCA21 portal.

Digital Signatures

Digital Signature Certificates (DSC) are the digital equivalent (that is electronic format) of physical or paper certificates. Certificates serve as proof of identity of an individual for a certain purpose. Likewise, a digital certificate can be presented electronically to prove ones identity, to access information or services on the Internet or to sign certain documents digitally.

Digital Signatures is a mandatory requirement for filing of e-forms, application etc on MCA portal. The Digital Signature is used to authenticate the correctness of a document while filing it online on MCA portal. It ensures that no alterations are made to the data once the document has been digitally signed.

A Digital Signature is a method of verifying the authenticity of an electronic document. A licensed Certifying Authority (CA) issues the digital signature. Digital Signatures are legally admissible in a Court of Law, as provided under the provisions of Information Technology Act, 2000. Digital Signature is normally valid for 1 or 2 years, after which it can be renewed further.

Who needs a Digital Signature Certificate ?

Under MCA21 every person who is required to sign manual documents and returns filed with ROC is required to obtain a Digital Signature Certificate (DSC). Accordingly, following have to obtain Digital Signature Certificate:

- Directors
- Auditors
- Company Secretary - Whether in practice or in employment
- Other Practicing professionals & Authorized Signatories
- Bank Officials - for Registration and Satisfaction of Charges.

Electronic Voting

Experience of several decades has shown that most of the shareholders of listed Companies are scattered at different locations, as a result it is not possible for them to attend AGMs/EGMs and vote thereon, which shows the importance of alternative voting system. The Central Government vide general circular no. 27/2011 dated 20.05.2011 and circular no. 21/2011 dated 02.05.2011 allowed shareholders participation in general meetings through electronic mode and electronic voting in general meetings. Further, Central Government has authorized National Security Depository Ltd. and Central Depository Services (India) Ltd. as agency for providing and supervising electronic platforms for electronic voting subject to the conditions that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and Information Technology, Government of India, New Delhi.

Section 192A of the Companies Act, 1956 recognizes voting by electronic mode for postal ballot. Accordingly, Central Government has also introduced Companies (Passing of the Resolution by Postal Ballot) Rules, 2011 (in supersession of earlier rules) which contains rules for e-voting under postal ballot and provides that the company shall follow the procedure for e-voting as recommended by the agency.

Further, the Companies Bill, 2009 also includes electronic voting, not only for Postal Ballot but also for General Meeting. It has given considerable scope of e-voting. In order to facilitate the companies to enable electronic voting CDSL Ventures Limited has developed an internet based e-voting platform, which enables shareholders to vote on resolution through electronic form.

Benefits of e-voting are as follows:

For the Companies:

1. The voting process will be faster and cost efficient;
2. Counting of votes will be accurate;
3. The result of voting can be declared faster;

For the Shareholders:

1. Access to the decision making process made easier;
2. Simple to vote;
3. Cost saving in terms of travel and other expenses.

Meeting through Electronic Mode

According to a research conducted by Cable & Wireless Worldwide (2011), Indians are most bullish on prospects of video conferencing (VC) becoming a 'way of doing everyday business' with more than 70 per cent saying it will become a regular practice at workplaces. Currently, video conferencing (57 per cent) is the third most preferred method for

communicating with clients, after face-to-face meetings (82 per cent) and email conversations (60 per cent) at Indian workplaces.

The emphasis on face-to-face communications appears stronger in Asia as compared to Europe. As high as 98 per cent respondents in India agreed that seeing a business contact is important while carrying out a significant business deal. Indians also believe that a face-to-face or a video conference would have more impact than an email or a telephone conversation.

In India, Ministry of Corporate Affairs (MCA), vide circular no. 28/2011 dt. 20.05.2011 and circular no. 27/2011 dt. 20.05.2011 permitted board members and members of the companies to participate in Board Meeting/General Meeting respectively through electronic mode facility and a large amount of responsibility has been put on the shoulders of Chairman/Company Secretary for conducting meeting through the electronic mode in accordance with the specified procedure by the government. Electronic mode for the circular means video conference facility i.e. audio- video communication facility which enables all persons participating in that meeting to communicate concurrently with each other without any intermediary, and to participate effectively in the meeting.

MCA requires that listed companies “must provide video conferencing connectivity during such meetings at atleast five places in India” to ensure that the shareholders need not travel across cities to attend general meetings, especially when meetings are held in interior locations that are not easily accessible.

While shareholders may participate electronically, the quorum required for the meeting will have to be present physically at the place of the meeting. As far as quorum is concerned, there seems to be a distinction between board meeting and shareholders’ meeting. This may introduce some practical difficulties in closely-held companies with a small number of shareholders where a minimum number of shareholders required to constitute quorum will still have to physically congregate at the location of the meeting.

SERVING THE STAKEHOLDERS – MCA GREEN INITIATIVES

Section 13 of the Information Technology Act, 2000, *inter-alia* provides time and place of dispatch of notices in electronic mode, which may be applicable for the purpose of notice period provided in the Companies Act, 1956 or in the Article of Association of the company.

Over the last few months, the MCA, has announced a series of “Green initiatives” to convert various processes under the Companies Act from paper to electronic form, and has been welcomed by the Indian industry and professionals.

The key Go Green Initiatives

Issue of Certificates : Various certificates to be issued by the Registrar of Companies (ROC) to companies and other stakeholders under the Companies Act will now be issued in electronic form under digital signature of the ROC.

Service of Documents : Section 53 of the Companies Act provides for the method by which a company may effect service of documents. Under the new initiative, a company

may comply with this section “if the services of document has been made through electronic mode provided the company has obtained –email addresses of its members for sending the notice/documents through e-mail by giving an advance opportunity to every shareholders to register their e-mail address and changes therein from time to time with the company”.

This is a useful change as it now eases the burden of sending bulky documents such as the annual report to shareholders in physical form, particularly because it is unlikely that many small shareholders would review these in any detail at all.

Board Meetings : As discussed earlier, meetings of the board of directors may now be conducted using video conference facility. However, each director must physically attend at least one meeting each financial year. More importantly, the participation of a director through video conference facility will be counted towards quorum. There are a number of other checks and balances introduced in the arrangement to ensure authenticity and credibility of the proceedings.

Shareholder Meetings : Similar to board meetings, shareholder meetings too can be held using video conferencing subject to inbuilt safeguards.

XBRL (eXtensible Business Reporting Language)

XBRL stands for e-Xtensible Business Reporting Language. It is a new emerging concept in India which becomes mandatory for the Indian Corporate. XBRL is set to become the standard way of recording, storing and transmitting business financial information. The Central Government has mandated the following class of companies to file balance sheet and Profit and Loss Account along with Director’s and Auditor’s Report in XBRL form only from the year 2010-11:

- All listed companies and their Indian subsidiaries,
- All companies with paid capital of Rs. 5 Crore and above
- All companies with turnover of Rs. 100 Crore or above.

However banking Companies, insurance companies, power companies and Non Banking Financial Companies (NBFCs) are exempted.

XBRL - Generally

It is a language for the electronic communication of business and financial data which is revolutionising business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

All types of entities can experience cost benefits and process efficiencies with the use of XBRL. Extensibility being one of the underlying principles of XBRL, it can be easily adapted to a wide variety of different requirements. All the stakeholders of the financial information supply chain can benefit.

India is now an established jurisdiction of XBRL International. A separate company, under section 25 has been created, to manage the operations of XBRL India. The main objectives of XBRL India are:

- To promote and encourage the adoption of XBRL in India as the standard for electronic business reporting in India
- To facilitate education and marketing of XBRL
- To develop and manage XBRL taxonomies
- To keep the developed XBRL taxonomies updated with regard to international developments
- To represent Indian interests within XBRL International
- To contribute to the international development of XBRL

TECHNOLOGY DRIVEN COMPETENCY

At the professional front as a Company Secretary, e-filing, on-line payments of fees, e-stamping, video-conferencing etc. are some important examples of technological development which are requiring new competency structure for professionals.

In this technology driven regime no one wishes to be left behind, even the companies are adjusting their working environment to better understand the efficiency and competent tools. Recently Bharti Airtel India's largest mobile telephony services provider presented Apple iPads to all its 16 directors, its financial secretary and company secretary. In the process, it did away with the tradition of presenting Chamois leather-bound agenda files that contained its quarterly and annual report statements running into several hundred pages. The company now allows only iPads on the table during board meetings.

In view of latest development and use of technology in Board Meeting/General Meeting a Company Secretary need to be well versed with technological advancement and to derive the desired competency to perform its duties and align itself with the expectation of the management/client.

Social networking is another area which can be utilized positively as a competence tool by Company Secretaries. It is proving to be an efficient way to build professional connections without face to face meetings. Such networks allow professionals to find like-minded individuals and build a huge network so that they can discuss matters of professional interests, stay informed and share knowledge and experiences.

CONCLUSION

In this technological driven regulatory regime, professionals must have the competency to deliver services meeting the expectations of regulators, corporates and clients. Being professionally qualified, the Company Secretaries need to match their proficiency with the technological developments.

BACKGROUNDER

Now, it is the need of time that professionals do not limit only to knowledge of computer or software etc but to get an edge with technological advancement in delivering services to the client/organisation in a fast and reliable manner.

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PROFESSIONALISM IN THE DYNAMIC BUSINESS ENVIRONMENT

CS KHUSHBU MOHANTY* & CS NISHITA SINGHAL*

INTRODUCTION

"The only thing we know about the future is that it is going to be different."

Peter F. Drucker

Recent waves of globalization have created new markets and business opportunities that few could visualize earlier. These however, come with challenges and risks even fewer managers are familiar with. Companies today have to prove that they are, and will continue to remain, globally competitive if they are to be able to carry their clients, investors and talented high performing employees with them into the future. This translates into the ability of managers to have a global mindset, address global markets, and manage globally distributed human resources and global financial contexts. These have to be achieved while following basic principles which underpin a company's vision and strategy that need to be interpreted in different settings globally. So the notion of business, its strategy, products, customers etc. is changing from determinism to dynamism.

Change is the law of nature, everything except law of change changes itself. Every step into the future should also be a transformational move. This transformation is known as dynamism and a professional must have to follow it. Professionalism is very highly prized in the work place because of its inherent value. It is an attitude that, once adopted, can transform a person of any age or experience level into a highly respected and valued asset. In today's dynamic environment creativity, reinvention and self enhancement become essential for professional development.

FACTORS WHICH LED TO CORPORATE DYNAMISM

Global Integration of Economies

The phenomenon of "Globalization" is not new. It is just that it has been so visibly impactful in recent years. The effects of globalization have advanced rapidly with the development of

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BACKGROUNDER

third world countries and other emerging markets, establishment of free trade, creation of the Internet and other technology/communications improvements, growing multi-national footprint of business, as well as increased liquidity and efficient capital markets.

The entire world has become one market and global environment has impact on the functioning of business enterprises. It is not at all important that only multinational enterprises are affected by global developments and changes. Factors like petroleum prices, equity markets, housing crisis, flow of funds, trade deficit, consumer demand, cost of living, new products and services, legislations, government policies, political developments, etc in some or other way has effect on all the economies which ultimately affects the functioning of business enterprises. So we can say that the business environment is continuously evolving in today's global world.

Technological revolution

Technological changes are occurring not at a constant pace, but at an exponential pace affecting the economy and society to a great extent. The technological revolution has accelerated the change in business environment. Advent of new technologies like production methods, communication means, new products, continuous upgradation of technology has changed the business dynamics. It is estimated that the 21st century will experience nearly one thousand times more technological change than did the 20th century. Thus technological revolution will have major role in changing dynamics of the corporate environment.

RISK IN DYNAMIC BUSINESS ENVIRONMENT

"Risk is like fire: If controlled it will help you; if uncontrolled it will rise up and destroy you."

- Theodore Roosevelt

There are different types of risks faced by enterprises in a dynamic business environment.

- *Business risk* : It refers to the possibility of the firm being unable to generate the revenues and operating cash flows it would ideally target.
- *Financial risk* : It refers to the uncertainty associated with changes in interest rates, foreign exchange rates, defaults, etc.
- *Hazard risk* is related to natural hazards, accidents, fire, etc.
- *Operational risk* is associated with systems, processes and people and deals with areas like succession planning, human resources, information technology, control systems and regulatory compliance.
- *Strategic risk* stems from an inability to adjust to changes in the environment such as changes in customer priorities, competitive conditions and geopolitical developments.
- *Technology risk* is the risk of being obsolete because of rapid innovation.
- *Political risks* relate to change in government's policies that may intervene in the company's operations.
- *Legal risks* relate to dynamic laws of the country which affects functioning of business.
- *Marketing risks* occurs when consumer needs change and the companies find themselves to respond to those demands.

- *Environmental risks* arise from the ever environmental degradation and ecological imbalance.
- *Human resources risks* occur if the enterprise is not able to retain the human talent it has because of their changing expectations.

These risks must be managed effectively for a company to do well. A professional must have good knowledge and understanding of internal environmental factors such as their own strategies, internal processes and controls, systems, policies, compliance and culture etc. as these factors are sometimes more important than the external factors in controlling risks. Moreover, a good professional must develop strategies to manage risk arising from external environmental factors. This includes:

- Monitoring new case law, regulations, and pending legislation to predict the readiness of the organization to meet new requirements.
- Monitoring countries that the organization has operations in or does business with to determine events that could have a positive or negative impact on the business. This includes civil unrest, terrorism, new laws, and business dealings.
- Monitoring environmental threats around natural or man-made events that could impact the organization, such as tornados, hurricanes, earthquakes, volcanoes, or disease.
- Monitoring individuals, organizations, and governments that may be hostile to the organization, and looking for vulnerabilities and exposure to threats.
- Monitoring capital markets and conditions such as foreign exchange rates and commodities, so the organization can capture return and opportunity while mitigating and controlling loss.
- Monitoring competitors to evaluate their strategies, products, services, marketing, sales, financial condition, and partnering performance.

IMPORTANCE OF PROFESSIONALISM IN THE DYNAMIC BUSINESS ENVIRONMENT

“Professionalism is knowing how to do it, when to do it, and doing it.” - Frank Tyger

In the dynamic business environment the role and responsibilities of the professionals have expanded to a great extent. The pace of technology revolution has exceeded all expectations. New fast paced competitive economy requires professionals to be agile to suit changing conditions in markets as well as in technology.

Professionalism suggests great service isn't about grand acts; it is about common courtesy, artfully delivered. Professionalism isn't just a set of appearances - neatness, good grooming, “shop talk” and the like. Nor is it just technical skill; many technically skilled people are not really professional.

- A professional learns every aspect of the job.
- A professional carefully discovers what is needed and wanted.

BACKGROUNDER

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- A professional looks, speaks and dresses like a professional.
 - A professional keeps his or her work area clean and orderly.
 - A professional is focused and clear-headed.
 - A professional does not let mistakes slide by.
 - A professional jumps into difficult assignments.
 - A professional completes projects as soon as possible.
 - A professional remains level-headed and optimistic.
 - A professional handles money and accounts very carefully.
 - A professional faces up to other people's upsets and problems.
 - A professional uses higher emotional tones: Enthusiasm, cheerfulness, interest, contentment.
 - A professional persists until the objective is achieved.
 - A professional produces more than expected.
 - A professional produces a high-quality product or service.
 - A professional has a promising future.
 - A professional send the matter to the authority in case of conflicting of interest.

Corporates require professionals who exhibit true professionalism. Professionalism is performing a task in a methodical fashion, with conviction, dedication and passion to achieve better results each time. Professionalism is NOT the job you DO, It's HOW you DO the job. Mere intelligence, talent or ability isn't enough. A professional must practice professionalism to succeed and take his organisation to newer heights. They have to perform multifarious jobs so as to gain a competitive edge and achieve excellence in the profession.

CASE STUDIES

Spectacular Turnaround of JPMorgan Chase

Jamie Dimon currently the Chairman and CEO of US-based banking major JPMorgan Chase is also referred to as a Wall Street legend. He is an aggressive banker, savage cost-cutter, effective leader and philanthropist. In 2007, he was ranked 15 on the 25 most powerful people in business by Fortune. He had worked with Citigroup for 16 years. Dimon was credited in the financial services industry for turning around several beleaguered companies including Baltimore-based consumer lending company, Commercial Credit Corp., Chicago-based retail banking and credit card major Bank One Corporation (Bank One). He negotiated the acquisition of Bank One by JPMorgan Chase & Company. This merger was the third largest acquisition at the time in the US history. After the merger, Dimon was appointed President and Chief Operating Officer of JPMorgan Chase.

Dimon, since then has been aggressively involved with JPMorgan and has been successful to a great extent to turn the bank into one of the biggest and best banking group in the U.S. He was accredited with steering JPMorgan Chase through turbulent times in the financial services industry. The bank under his leadership has emerged as one of the most successful navigators of the credit crunch. Over the last few years, he has focused strongly on cutting

costs, improving technology and integrating JPMorgan's disparate operations. He had also been preparing the company for an economic downturn. His decision to exit the then booming sub-prime mortgages business helped JPMorgan Chase trudge through the financial downturn, while its competitors suffered damages due to the credit crunch.

While other investment banks were struggling, Dimon had managed several accomplishments one after the other. He persuaded former Prime Minister Tony Blair to sign on as an adviser and ambassador for JPMorgan. Another big achievement was acquisition of JPMorgan with Bear Stearns to avoid banking crisis. Sensing an opportunity in the prevailing adversity, Dimon went ahead with acquisition of Bear Stearns. He played a major role in the negotiation of the deal with Bear Sterns and government officials. This merger has strengthened bank's capabilities across a broad range of businesses, including prime brokerage, cash clearing and energy trading globally. Jamie Dimon also acquired the deposits, assets and certain liabilities of Washington Mutual's banking operations to expand consumer branch network. In 2010, J.P. Morgan acquired full ownership of its U.K. joint venture, J.P. Morgan Cazenove, one of Britain's premier investment banks. Today under the leadership of Jamie, the bank is a leading global financial services firm.

Takeaways

It is clearly evident from the above case study that a true professional plays a major role in the success of any business organisation in the dynamic environment.

Following are few traits of Jamie Dimon from the case study which every professional must have in today's dynamic corporate environment to succeed.

- Managerial qualities
- Effective leadership
- Aggression
- Far-sightedness
- Ability to understand the present environment and predict future
- Timely action
- Negotiation and persuasion skills
- Ability to work hard
- Decision making in tough times
- Taking the road less traveled
- Courage to do new things
- Strategizing and innovation

Innovative management in District of Columbia

"Innovation and Creativity is the trait of True Professionalism"

Vivek Kundra who became the first ever Federal CIO of the US in March 2009 had also worked as the CTO at District of Columbia (DC) for less than two years. In this short period

BACKGROUNDER

he had overcome many challenges and fostered innovation in the DC. He had ushered a new era of experimentation by democratizing data and providing an open, participatory government wherein citizens could access government data and hold the government accountable for its operations. He incorporated technology in all of the government's operations in order to develop a user friendly e-government infrastructure and to provide public safety and educational and economic growth opportunities for the citizens, businesses, and visitors in the district.

He introduced several information technology (IT) initiatives in the district so that citizens could access government services easily. In doing so, he made good use of emerging media such as social media and other consumer technologies. Costs and time frames for introducing services were drastically reduced through the use of open source technology and user-generated applications. For instance, in 2008, a contest called "Apps for Democracy" was introduced wherein software developers used the open data technology to create useful applications for the citizens of the district. He also put in place a stock market-like model for evaluating IT projects that attracted the attention of analysts.

Kundra's initiatives received recognition from several quarters - both he and his office won a number of prestigious awards. While his detractors felt that democratizing data would contravene data security, lead to misuse of information, and contribute to the 'digital divide', others felt that Kundra had negotiated the challenges of fostering innovation in a government organization quite well and had demonstrated good leadership in the process.

Takeaways

Mr. Kundra has changed the system with new initiatives and ideas by showing his ability to handle the challenges in a professional manner.

Thus it can be said that Professionalism is, rather, a set of internalized character, strengths and values directed towards high quality services. Whatever it may be, real professionals show the inner strengths and attitudes — sound judgment, know-how, business savvy, mature responsibility, problem-solving perseverance and ingenuity, along with what people call "class".

COMPANY SECRETARIES IN DYNAMIC BUSINESS ENVIRONMENT

A Company Secretary plays a key role in the effective management of a Company by advising the management on Legal and Secretarial issues, finance, accounts, legal, personnel and administration. The role of the Company Secretary, particularly in a large company can be influential in determining the course and success of the Company. The task of a 'Company Secretary', therefore, is not easy in dynamic environment. The Company Secretary will have to play a more proactive and creative role, rather than sitting back and merely reporting on the success or failure of the board.

Value creation

Achieving excellence in professional career will not be an easy task particularly in the changing global scenario where changes are taking place at a rapid pace and the boundaries

of the professions are blurring. A Company Secretary who would aim for excellence and a continuous improvement towards perfectionism will have to recognize the preciousness of the process of value creation. A creative approach to various kinds of business issues will be essential. To understand business problems from the point of view of the customer and to create value by finding out the best and cost effective creative solutions to those problems will require a high quality of knowledgeable interactive skills, positive attitude, cheer and energy.

Leveraging technology

It is being speculated that the next twenty years will see huge changes in technology, and hence in the business and working environment in which the professionals would have to work. They will have to leverage developments in technology for growth and development.

Innovative thinking

A Company Secretary will have to work on innovative thinking, competence and knowledge to positively respond to the challenges that lie ahead in terms of quality of service and professional excellence.

Fast Adaptive

Quality to adapt quickly to new developments and be able to learn new things and unlearn obsolete will be essential for the success of a Company Secretary in new decade.

CONCLUSION

"Growth is the only evidence of life"

The corporate sector look to the professionals for their skills, knowledge and technical know-how etc. to meet the demands of dynamic business environment. To sustain in the global competitive environment professionals have to keep themselves updated, continuously enhance their potential and skills and adhere to true professionalism to be able to render creative business solutions.

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