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Corporate Governance Laws And Regulation In India

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ARTICLE INFO | **ABSTRACT**

Corporate Governance may be construed as a system and processes through which the behaviour of a company is monitored and controlled. Since past few decades Corporate Governance is gaining a lot of importance across the world. It is about promoting corporate fairness, transparency and accountability. In other words, 'good corporate governance' is simply 'good businesses. The establishment of SEBI a regulatory body has played a significant role in establishing nouns for corporate governance in India. There are four more major financial regulatory bodies in India. Among these three are Statutory Bodies created through parliamentary enactments and two are part of the Ministries of the Government of India.
Over the years, SEBI constituted two committees to make recommendations relating to corporate governance in India, under the chairman ship of Kumar Mangalam Birla and Narayana Murthy. Further, the MCA had appointed the J.J. Irani Committee in 2004 to review the international best practices in corporate governance, in light of the growing needs of the Indian economy and corporate. The recommendations of these committees form the bedrock of the legal regime for corporate governance in India. This paper discusses about the rapidly increasing economic growth that corporate India witnessed since 1990s brought to the forefront, the need for Indian companies to adopt corporate governance practices and standards, which are consistent with international principles. This paper attempted to provide a broad overview of the regulatory framework governing corporate governance and the various financial regulatory bodies in India.

Introduction

Good corporate governance is a reflection of quality management with the highest calibre understanding the role that high corporate governance standards plays in maintaining checks and balances within the organisation, increasing transparency and preventing corporate abuse and mismanagement. More over CG describes the structure of rights and responsibilities among the parties that have a stake in the firm. The 2013 Act also intends to improve corporate governance by requiring disclosure of nature of concern or interest of every director, manager, any other key managerial personnel and relatives of such a director, manager or any other key managerial personnel and reduction in threshold of disclosure from 20% to 2%. The term 'key managerial personnel' has now been defined in the 2013 Act and means the chief executive officer, managing director, manager, company secretary, whole-time director, chief financial officer and any such other officer as may be prescribed[1]. The MCA had released the corporate governance voluntary guidelines in 2009, which permitted three tenures for an independent director while as per the clause 49 of the equity listing agreement, an independent director cannot serve for more than nine consecutive years.
The establishment of SEBI[2] a regulatory body has played a significant role in establishing norms for corporate governance in India. There are four more major financial regulatory bodies in India. Among these three are Statutory Bodies created through parliamentary enactments and two are part of the Ministries of the Government of India.

[1] Section 2 (51) of CA, 2013 Act)
[2] The SEBI Act, 1992 empowers SEBI to frame regulations

The recommendations of these committees form the bedrock of the legal as well as regulatory regime for corporate governance in India. The rapidly increasing economic growth that corporate India witnessed since the 1990s brought to the forefront the need for Indian companies to adopt corporate governance practices and standards, which are consistent with international principles. This paper discusses to provide a broad overview of the regulatory framework governing corporate governance and the various financial regulatory bodies in India.

Corporate governance ensures adequate disclosures and effective decision making to achieve corporate objectives transparency in business transactions, statutory and legal compliances, Protection of shareholder interests, commitment to values and ethical conduct of business. Takeover of companies is a well accepted and established strategy for corporate growth. International experience of takeovers and mergers and amalgamations has been varied. An efficient financial system has been regarded as a necessary pre condition for higher growth. Propelled by this ruling paradigm, several developing countries undertook programmes for reforming their financial system.

In India the corporate governance code proposed by the Confederation of Indian Industry in 1997 is modeled on the lines of the Cadbury Committee (Cadbury, 1992) in the United Kingdom. Nonetheless, one of its important lessons is that, its appeal as an instrument of corporate growth has usually been the result of an admixture of corporate ethos of a country, shareholding pattern of companies, existence of cross holdings in companies, cultural conditions and the regulatory environment. Keeping in view Indi & s growing integration with global financial markets, external-sector vulnerabilities have an increasingly large impact on India through the trade and capital account chaimels. It is therefore important that the development of an efficient and healthy financial market should also be accompanied by an effective regulatory mechanism that keeps track of external vulnerabilities[3].

Evolution, Meaning and Concept of Corporate governance

Meaning and Concept The ten-n 'governance' means control i.e. controlling a company, an organization etc., The term can refer to internal factors defined by the officers, stockholders or constitution of a corporation, as well as to external forces such as consumer groups, clients, and government regulations.[4] The concept of 'corporate governance' is not an end; it's just a beginning towards growth of company for long term prosperity. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action pains and internal controls to performance measurement and corporate disclosure. 'Good corporate governance include adequate disclosures and effective decision making to achieve corporate objectives, Transparency in business transactions, Statutory and legal compliances, Protection of shareholder interests.

Evolution: Though, Corporate governance has existed since past but it was in different form. In India during Vedic times kings used to have their ministers but today it is in the form of corporate governance having same rules, laws, ethics, values, and morals etc. which helps in running corporate bodies in the more effective ways in the age of globalization. The modern concept of Corporate governance emerged in India after the second half of 1996 due to economic liberalization and deregulation of industry and business. The report of Cadbury Committee on the financial aspects of corporate Governance in the U.K. has given rise to the debate of Corporate Governance in India.[5]

Importance of Corporate Governance and the Companies Act

The fundamental principles of corporate governance have been enshrined in the Companies Act, according which directors are obliged to act in the best interests of shareholder rights but there have been many instances where we have contradiction to such obligation. In many cases excessive debt financing laced with fraud, disproportionate rise in payments for executives which are less than transparent. In CA, Clause 49 of the listing agreement is the most significant recent development in Indian legal regime relating to corporate governance for disclosure and transparency and Board responsibility. SEBI, being the securities market regulator in India has primary oversight on investor protection and its establishment played a significant role in establishing norms for the corporate governance in India. Ministry of Company Affairs is the executive arm which regulates the functioning of the corporate sector. MCA introduced the Voluntary Guidelines on Corporate Governance in 2009 a set of best practices to develop ethical and responsible standards in the Indian industry. The Guidelines are completely voluntary in nature but are strongly recommended by the government to all public companies and large private companies as well. National Foundation for Corporate Governance, a national apex platform on corporate governance issues was established in 2003 by the MCA to sensitize corporate leaders on the importance of "good corporate governance, self-regulation and directorial responsibilities".

Financial Regulatory Bodies in India: The financial system in India is regulated by independent regulators in the field of banking, insurance, capital market, commodities market, and pension funds.

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[3] India. Ministry of Finance, Economic Survey 2012-2013, p.105.
[4] Nayyer Shamsi, A, January 19, 2012, Corporate Governance in India: Aims and Objectives
[5] Dr. Kapoor G.K., Taxmann's Corporate Laws – 2006.p.16, (1) Cadbury Committee (UK) 1992

However, Government of India plays a significant role in controlling the financial system in India and influences the roles of such regulators.

Financial Regulatory Bodies in UK and US: The Financial Services Act gives the Bank of England responsibility for financial stability, bringing together macro and micro prudential regulation, creates a new regulatory structure i.e., The Financial Conduct Authority which is responsible for regulating and policing the banking system in UK. The Prudential Regulation Authority carries out the prudential regulation of financial firms, including banks, investment banks, building societies and insurance companies. And the United States has a Financial Stability Oversight Council that looks at monitoring risks to the US financial system and being a consultative council to facilitate communication among financial regulators[6]
There are five major financial regulatory bodies in India among these three are;
(A) Statutory Bodies created by parliamentary enactments, they are:
(I) Reserve Bank of India: Reserve Bank of India is the apex monetary Institution of India. It acts as banker to the Government of India as well as the State Governments and acts as banker to all scheduled banks of India.[7]
The Reserve Bank of India was set up on the basis of the recommendations of the Hilton Young Commission. The Reserve Bank of India Act, 1934 (II of 1934) provides the statutory basis of the functioning of the Bank, which commenced operations on April 1, 1935. The Reserve Bank of India was established on April 1, 1935 in accordance with the provisions of the Reserve Bank of India Act, 1934. The Central Office of the Reserve Bank was initially established in Calcutta but was permanently moved to Mumbai in 1937. Though RBI originally owned by private persons, since nationalization in 1949 the Reserve Bank is fully owned by the Government of India. It acts as the apex monetary authority of the country and.
The Reserve Bank was constituted to regulate the issue of banknotes maintain reserves with a view to securing monetary stability and to operate the credit and currency system of the country to its advantage[8] and the government has to deposit all the money with it.
The Bank was also instrumental in institutional development and helped set up institutions like the Deposit Insurance and Credit Guarantee Corporation of India, the Unit Trust of India, the Industrial Development Bank of India, the National Bank of Agriculture and Rural Development, the Discount and Finance House of India etc. to build the financial infrastructure of the country.
II. Securities and Exchange Board of India: SEBI Act, 1992: Securities and Exchange Board of India (SEBI) was first established in the year 1988 as a non- statutory body for regulating the securities market. It became an autonomous body in 1992 and more powers were given through an ordinance. Since then it regulates the market through its independent powers. Securities and Exchange Board of India (SEBI) was first established in the year 1988 as a non-statutory body for regulating the securities market. It became an autonomous body in 1992 and more powers were given through and ordinance.[9]
Establishment of SEBI's Objective is to Promotes Investors Interest to Makes rules and regulations for the securities market and its major Functions[10] are to Regulate Capital Market ,it Checks Trading of securities, the malpractices in securities market and it regulates the stockbrokers and sub-brokers It enhances investor's knowledge on market by providing education. SEBI from time to time have adopted many rules and regulations for enhancing the Indian capital market it has Sole - Control on Brokers under this rule every brokers and sub brokers have to get registration with SEBI and any stock exchange in India.
III. Insurance Regulatory and Development Authority (IRDA): The Insurance Regulatory and Development Authority is a national agency of the Government of India and is based in Hyderabad (Andhra Pradesh). It was formed by an Act of Indian Parliament known as IRDA Act 1999, which was amended in 2002 to incorporate some emerging requirements. Mission of IRDA as stated in the act is 'to protect the interests of the policyholders, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto.[11] To provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalization) Act, 1972.

[6] India. Ministry of Finance, Financial Sector Legislative Reform Commission, Chaired by Justice B.N Srikrishna Vol. 1, p.xxiv,p.4.

[7] India Ministry of Finance, Financial Sector Legislative Reform Commission, Chaired by Justice B.N Srikrishna. Vol. I, P. xxiv, p.4.
[8] www.rbi.org.in...RBI website
[9] www.rbi.org.in...RBI wesite
[10] June 29, 2010* Indian Financial Services Industry. By Economywatch
[11] Section 14, 114A of IRDA Act, 1999

IRDA empowered[12] to control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and .regulated by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938);

(B) Part of the Ministries of the Government of India:

IV. Forward Market Commission India (FMC): Forward Markets Commission (FMC) headquartered at Mumbai, is a regulatory authority which is overseen by the Ministry of Consumer Affairs, Food and Public Distribution, Govt. of India. It is a statutory body established in 1953 under the Forward Contracts (Regulation) Act, 1952. This Commission allows commodity trading in 22 exchanges in India, out of which three are national level. The Forward Market Commissions prescribe following regulatory measures9 Limit on net open position as on the close of an individual operator and at member level to prevent excessive speculation.9 Imposition of margins to prevent defaults by members/ clients Physical delivery of contracts and penalty for default/delivery obligations. Many of the regulator functions/powers of the Central Government have been delegate to the Commission in the year 1960, for eg. Sections 6 (2) (a),6 (3), 8(1), 8(2) (a) and (b),lo(1), 12(1) and 14(c)[13].

Finance Minister Arun Jaitley announced its merger with SEBI in his Budget speech of 2015. The move will be in keeping with the recommendation of the Financial Sector Legislative Refonns Commission (FSLRC) headed by former Justice BN Srikrishna, which called for a Unified Financial Agency in place of the multiple regulators in the financial sector[14].

The Forward Markets Commission (FMC), chief regulator of forwards and futures commodity markets in India, will, henceforth, be overseen by the Ministry of Finance instead of the Department of Consumer Affairs under the Ministry of Food. This decision was taken at the highest level, and notified in the wake of alleged scam in National Spot Exchange Limited (NSEL)[15].

The major functions of FMC are to advise the central government in. respect of the recognition or the withdrawal of recognition from any association .To keep forward markets under observation and to take such actions in relation to them, in exercise of the powers assigned to it by or under the act. It make recommendations generally with a view to improve the organization and working of forward market[16]. To undertake the inspections of the accounts and other documents of registered association or any member of such association whenever it considers is necessary.

V. PFRDA under the Finance Ministry: Pension Fund Regulatory and Development Authority: The Pension Fund Regulatory & Development Authority Act was passed on 19th September, 2013 and the same was notified on 1st February, 2014. PFRDA is regulating NPS, subscribed by employees of Govt. of India, State Governments and by employees of private institutions/organizations & unorganized sectors. The Government of India had, in the year 1999, commissioned a national project titled "OASIS" (an acronym for old age social & income security) to examine policy related to old age income security in India. Based on the recommendations of the OASIS report, Government of India introduced a new Defined Contribution Pension System for the new entrants to Central/State Government service, except to Armed Forces, replacing the existing system of Defined Benefit Pension System. On 23rd August, 2003, Interim Pension Fund Regulatory & Development Authority (PFRDA) was established through a resolution by the Government of India to promote, develop and regulate pension sector in India. The contributory pension system was notified by the Government of India on 22nd December, 2003, now named the National Pension System (NPS) with effect from the 1st January, 2004. The NI'S was subsequently extended to all citizens of the country from 1st May, 2009 including self employed professionals and others in the unorganized sector on a voluntary basis[17].

The Authority have the duty, to regulate, promote and ensure orderly growth of the National Pension System without prejudice to the generality of the provisions contained in sub-section (1), the powers and functions of the Authority shall include— regulating the National Pension System , the terms and conditions for the corpus of the pension funds including investment guidelines under such schemes, registering and regulating intermediaries; issuing/ cancelling to an intermediary a certificate of registration , ensuring that the intermediation and other operational costs under the National Pension System are economical and reasonable, establishing mechanism for redressal of grievances of subscribers to be determined by regulations and adjudication of disputes between intermediaries and between intermediaries and subscribers.[18]

The most important recommendations by FSLRC are: (1) The decision to merge the roles of the Securities and Exchange Board of India, the Forward Markets Commission, Insurance Regulatory and. Development Authority, and Pension Fund Regulatory and Development Authority into a single regulator called the Unified Financial Agency (UFA) on the grounds that all financial activity other than banking and the

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[12] Section 14(2) (i) of the IRDA Act
[13] http://www.fmc.gov.in/show_file.aspx?linkid=FCRA_ACT-88692219-547043779.pdf
[14] Feb. 15, The Hindu
[15] The Hindu, September 9, 2013.
[16] Section 4 of the Forward Contracts (Regulation) Act, 1952
[17] http://india.gov.in/spotlight/national-pension-system-retirement-plan-all
[18] Section 14. (1) of The Pension Fund Regulatory and Development Authority Act.

payments system, which would continue to be regulated by the Reserve Bank of India (RBI), should be brought under a single authority; (2) The continuation of the Financial Stability Development Council (FSDC) with the mandate to monitor and Benchmarking Indian Regulatory Practices to the 020 Financial Reforms Agenda address systemic risk, which is to be led by the finance ministry. (3) The creation of a Resolution Corporation that would identify institutions that are threatened by insolvency and resolve the problem at an early stage. (4). The creation of a Public Debt Management Agency that would take the responsibility of public debt Management away from the RBI. The Commission believes that this proposed financial regulatory architecture is a modest step away from present practice, embeds important improvements, and will serve India well in coming years[19].

Conclusion

Compliance of corporate governance norms by a company is often a matter of subjective analysis and companies routinely have to face various practical constraints in implementing the applicable corporate governance framework globally and even in India, the listing agreement in CA coupled with SEBI's regulatory oversight, continue to serve as the underpinnings of corporate governance in financial regulatory bodies in India. The financial regulation in India is oriented towards product regulation, i.e. each product is separately regulated. For example, fixed deposits and other banking products are regulated by the Reserve Bank of India, Small savings products by the Government of India, Mutual funds and equity markets by the Securities and Exchange Board of India, Insurance by the Insurance Regulatory Development Authority of India and the New Pension Scheme by the Pension Fund Regulatory and Development Authority. All these regulators have a key mandate to protect the interests of customers, these may be investors, policy holders or pension fund subscribers, depending on the product.

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