BOMBAY CHAMBER
Bombay Chamber
of Commerce & Industry

Bombay Chamber of Commerce & Industry Trust
for Economic & Management Studies

SUSTAINABLE CORPORATE GOVERNANCE

AgriCorp 2022

13th Biennial

AgriCorp

Conference & Buyer Seller Meet

11-12 OCT 2022

CIDCO Exhibition & Convention Centre, Vashi, Navi Mumbai

Creating an Ecosystem for integrating FPOs &
AG-Tech Startups into a value chain.

Organised by
BOMBAY CHAMBER

Jointly with
किसान KISAN

Gold Sponsor
NABARD

Silver Sponsor
Rallis India Ltd.
A TATA Enterprise

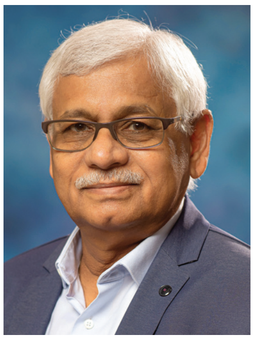
Bronze Sponsor
NeML
Transforming Markets

Media Partner
abp माझा

> Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society
>
> **- Sir Adrian Cadbury,**
> Former Chairman of Cadbury who chaired the Cadbury Committee

Contents

Insights



PREFACE

Corporate governance is an increasingly important issue in the Indian economy. The concept of good governance is very old in India dating back to third century B.C. where Chanakya or Kautilya of Pataliputra elaborated fourfold duties of a king in his epic Arthashastra viz. Raksha (protection), Vriddhi (development), Palana (compliance) and Yogakshema (welfare).

Today, corporate governance has evolved to include sustainability as well. In fact, governance has been referred to as the fourth pillar of sustainable development - together with social, environmental and economic factors. An integrated and inclusive approach to corporate governance is the need of the hour.

Professor Mervyn King who is best known for chairing the King Committee on Corporate Governance has highlighted the important relationship between governance and sustainable development. He explains the benefits for governance to adopt an outcome-based approach. which will steer the way for organisations to understand governance, not just as a mere compliance exercise but as actions that create real results.

In this context, Bombay Chamber of Commerce & Industry organised a Conclave on Better Governance: Sustained Profitability recently. This book is a further dialogue on this topic and includes insights from industry leaders who have the domain expertise. We hope you enjoy the read.

There is no escape from good governance

K.V. Kamath, Chairman, National Bank for Financing Infrastructure and Development in his Keynote address at the Better Governance Conclave reiterated that good governance, proper disclosure, doing things right creates value for the firm and does not take away the value from the firm. Excerpts

K.V. Kamath
Chairman, National Bank for Financing Infrastructure and Development

It is 25 years, since the first time I heard about deemed Cadbury Committee and consequently other committees set up by SEBI. Yet when I look at today, it looks to be like, a long running serial - tough things have evolved but it is running like a serial - in terms of what needs to be done, the evolution that has happened and further things have happened and they go on.

But I would probably like to start, not necessarily 25 years ago, but somewhere in between, which was a big eye opener and human crisis. We tried to look at what caused this crisis, there is an answer that flashes in front of you: Greed. But if you dig deeper, why did the system fail to in a way contain this greed? The board is clearly having ownership of initial responsibility and acting and behaving right is certainly there but then there are a whole lot of systemic elements at play. And to me the Lehman Brothers exercise is a very good case study to look at.

There are a whole lot of intermediaries here who failed to recognise the product for what it was. And I would think the biggest failure here, as an outsider if we look into it, what I call the Boundary Fence, in this case or this product was who facilitated this product going from subprime to prime and then of course it got a license to sell. This was the global rating agency, so it is not very difficult to see where all the mishaps happened and then the consequences of the crisis which almost brought down the global financial system.

To me, good governance, proper disclosure, doing things right creates value for the firm, does not take away the value from the firm. Nor does it take away your personal value. At that point of time the most important structures were set in terms of bringing in Audit committee and so on like the Nomination and Governance committee and so on. To me the effective functioning of these committees along with the functioning of the structures which are at the periphery, whether it is a regulator or rate agency and SWAN, these collectively bring in mindset changes for stakeholders

In the next few years the whole digital pace could be 25 to 30% of our economy - it is going to come in almost like young children who do not like too much of supervision and then how do you make sure that these companies are in line with what we accept as practice?

and constituents, bring in discipline and you lead them to companies which are properly managed and deliver what is expected of them by their shareholders and other constituents. Of course, the set of constituents today has widened as we have got into the concept of ESG and so on.

The steps taken extensively in terms of financial service sector by SEBI, Reserve Bank of India and the insurance regulator. I think these put together brought in the much needed discipline that is required in these areas. One more voice which is being increasingly heard, are the Proxy Advisory firms. I must laud along with the regulatory agencies the work done by the Proxy Advisory and mutual funds in making it probably a little more clear to all constituents that shades of grey won't do, it has to be clearly white and that is what the market expects and what we will proceed with.

The new economy

Quickly moving on to a slightly different phase, which I think we are all today grappling with and will grapple with this for quite some time is the new course and their ethos and the need for these companies also to embrace the Governance standards that we are talking of or pay the price. I don't think there is any escape from good governance and fiduciary responsibility going forward.

To me the answer is very simple: By the very nature of these startup companies, they are nimble and agile, in a way child like in terms of what they do. The child does not like to be supervised, doesn't like to be bounded. So, they have very little patience for what is actually the bedrock of what we need to have, that is proper process, proper adherence to our policy practices as you go along. These companies then, because they cannot adhere to these practices try to seek arbitrage and then this whole issue of private money and public money comes under force. If it is public money then regulators indeed will have a say. So, I would think that in this new economy that the new startup companies bring about, these issues will arise.

In the next few years, the whole digital pace could be 25 to 30% of our economy - it is going to come in almost like young children who do not like too much of supervision and then how do you make sure that these companies are in line with what we accept as practice?

I think we are into very early days and I would like to believe that all these companies will understand the processes, understand the market and then act in an appropriate manner. Finally, I think there is going to be a whole lot of technology, whole lot of regulatory and new thought that is required and it will be fascinating to see how this evolves as we go along.

If I were to put all of this into a single word, the word that comes to my mind is ethics and how do you make sure that you behave in a manner which is ethical, which in a way beholds you as somebody performing your fiduciary responsibility and you do it without spreading on the path of what is grey and you stay to the side which is right and which is the one that is to be followed.

I think enormous progress is being made within companies, within boards and system, boundary players and then indeed the regulators. We have to laud all these people who have made us feel proud of our regulatory context and in particular I want to laud the Indian regulators whether it is SEBI, or Reserve Bank, Insurance Regulators as well as compliment boards which have implemented governance in a professional manner as it should be. ■

REGULATORY BURDEN ON THE AUDIT COMMITTEE

In a Fireside Chat, **M. Damodaran**, Chairperson, Excellence Enablers and former Chairman, SEBI, UTI and IDBI and **Bharat Vasani**, Chairman, Legal Affairs & IPR Committee and Corporate Partner, Cyril Amarchand Mangaldas discussed on the topic: "Are the Regulators having unrealistic expectations from the Audit committees to improve corporate governance of India Inc? Here is an excerpt of the conversation

Bharat Vasani started the conversation by saying that over the last 10 years particularly with the enactment of the 2013 Companies Act, several of the SEBI regulations as well as vast number of the Act provisions have put an increasing burden on the Audit committee to kind of ensure corporate governance of India Inc, (just one SEBI LODR schedule talks of 22 responsibilities of the Audit committee apart from Section 177 of the Act).

Damodaran agreed that there is an overload on the Audit committee. "I think we need to see how this came about. If you look at the SEBI Act and the preamble to the Act, talks about regulation, development and protecting the interest of investors. Protecting the interest of investors is itself a means to an end, the end being bringing in more people with the assurance that you are not getting into a casino and that there is a fair measure of orderly conduct in the marketplace where you choose to invest your money, which is why SEBI has been in existence as a statutory body since 1992. I think it's also important to realise that SEBI has a job to do in terms of its preamble, in terms of expectations from the various stakeholders and these expectations haven't gone down, they are going up. The regulator can choose to ignore the expectations. And I use the word regulator to mean an institution not an individual. The regulator can deviate from its path if it gets influenced or diverted by the kind of criticism that exists, some of

M. Damodaran
Chairperson, Excellence Enablers and former Chairman, SEBI, UTI and IDBI

Bharat Vasani
Chairman, Legal Affairs & IPR Committee and Corporate Partner, Cyril Amarchand Mangaldas

it is criticism arriving from self-preservation by the corporates. If you don't know how to fix your problem, you blame the regulator, all of that has been happening. And therefore, if there is an overload and I agree with you that there is an overload, we must look at why that happened. When there are instances of corporate misconduct, there is an expectation that somebody will try and fix the product. If the corporates themselves don't fix the problem, somebody else will have to do it. In fact, in the US when the Sarbanes-Oxley Act came and everyone said this was enacted in haste, it's unduly prescriptive, it creates problems, the then Chairman of the SEZ posed the question, that you had a problem, you recognised it, you did nothing about it therefore the lawmakers got into that space and decided they would do something about it."

Damodaran said that the real solution to reducing regulatory overload for Audit committees is:

A. For corporates to do the right things.

B. For corporates to communicate that they're doing the right things.

"I compare this to the examination system. All of us know that examination has a large number of faults. Have we found a worthwhile replacement? We haven't . So, it is for Audit committees to figure out how to prioritise, how to ensure that they devise the right kind of procedures, on occasion even procedural shortcuts to see that the large agenda before them is addressed satisfactorily. They can't do all of what they are asked to do but who else will do it and therefore let's hope that we will find better ways to do what they have been tasked to do," he added.

Commenting on a query by Vasani whether we can devise a system where a lead independent director takes the charge and kind of takes a larger load of the issue and goes much granular into various aspects which the Audit committee is supposed to look into, Damodaran said, "I think wherever the Chairman is an Executive Chairman, you need to have an Independent Director. Where the Chairman is non-executive and independent, you perhaps don't need a lead independent director. The Chairman himself or herself should perform that role of a lead independent director. You don't want to create one more position where there is a kind of overlap because the Chairman is himself a self, non-executive, independent director. And I believe that not just the lead independent director, every non-executive director including all independent directors should spend time with the company and its senior management outside of the board meetings to get a better understanding of what's going on."

Vasani pointed out instances where some of the Audit committees have deferred the matter back to the entire board of directors. He questioned, "Do you think it's a good practice to do so if your Audit committee members believe that they don't have adequate information or they are not comfortable with a particular transaction which is put up to them for approval?"

To this, Damodaran opined that he didn't' see much value addition coming from that because the Audit committee is a subset of the board. "Secondly, if you allow that practice to develop, it doesn't prevent the Audit committee from referring every single matter or almost everything to the board saying we think that the non-Audit committee members too should look at it. If there is doubt, if there is dissatisfaction or disquiet about some of the proposals, don't clear them, send them back,

> Now the reason why you want somebody from the management and not necessarily the CEO, but some other person in the Audit committee is this: if all are outsiders, they may not have all the information they need during the discussions. Some items occur to you during the discussions and there must be somebody to clarify that, to enlighten the Audit committee

say that look I need to be satisfied on these or if there is complexity attached to that which the Audit committee cannot understand, seek outside assistance, not from the board; go to professionals and get their assistance, after all the law allows it to go to professionals. The real problem is: if you look at a situation where you airdrop somebody from Mars into corporate India and then ask him or her to decide who runs boards in India. After looking around, the answer they will give is Audit committees and independent directors. You don't need a CEO, CFO, you don't need anybody. So, it is almost as if Audit committees and independent directors are running companies. We should restore a balance, it doesn't happen overnight - recognise the problem, share the problem with the regulators, chip away at it. No magic wand is going to be waived to reduce the workload."

There is a lot of debate amongst the governance experts whether the CEO should be allowed inside the Audit committee. Many believe that it takes away the freedom of the CFO to candidly express his views. Damodaran said, "I think this all started with distrust. When you look at why the Cadbury committee was set up, the fact that the accounts did not present a true and fair picture, some accounts were put out, so the auditing profession, the accounting profession, everything was in question. And as an offshoot of that, it was felt that the senior most management functionary should stay away from the Audit committee. Now the reason why you want somebody from the management and not necessarily the CEO, but some other person in the Audit committee is this: if all are outsiders, they may not have all the information they need during the discussions. Some items occur to you during the discussions and there must be somebody to clarify that, to enlighten the Audit committee. Therefore, you have the CFO present in the room, to explain it. Now, in the corporate governance survey that we recently did, we listed the number of companies where the minutes of the meetings showed that the CEO was a permanent invitee and we have strongly discouraged that. He must be invited if his presence is needed. It cannot be that he or she is a permanent invitee but that's a practice that unfortunately some people follow. Also, I think CFOs will speak what they want to speak, irrespective of whether the CEO is there or not. The real problem is that if we think that the CEO and CFO have divergent views on an issue then there is a problem. That divergence should be addressed before they come to the Audit committee or the board, it shouldn't be expressed in the committee meetings. So, make them invitees on a need basis, not permanent invitees on the board. Get only the functionally relevant people."

First look at whether any existing regulation addresses the task that you are seeking to address. Will that address the task? Then if so, do it quickly, let your enforcement actions happen quickly. Don't delay on the enforcement actions but don't write a new regulation every time there is a crisis

Sharing his thoughts on that one change he would recommend to the SEBI chairman for the Audit committee architecture, Damodaran said, "I think immediately if you ask me what is it that they need to do, I would say get rid of that 1000 crore because you are going to make companies sort of halt in the tracks if you talk in terms of prior approval. The second is, this business that after 75 years, you are relatively unfit for board rooms or for any activity and therefore you should get this special majority. Luckily, they don't say you should get a medical certificate of fitness if you are above 75 to sit in board rooms. I think we need to dispense with some of these and go on. I don't think you need to be very restrictive and you know longevity has gone up these days. There are people who are 90 and very active. So, I think that is the area they need to look at."

Thirdly he recommended not to be generally over prescriptive. "First look at whether any existing regulation addresses the task that you are seeking to address. Will that address the task? Then if so, do it quickly, let your enforcement actions happen quickly. Don't delay on the enforcement actions but don't write a new regulation every time there is a crisis and I also recommended that all regulations should have sunset clauses so that they are revisited for contextual relevance with the passage of time and there should be a regulatory review authority on the line that the RBI has set up to take out all the stock element of the problem, the ones that exist in the book of regulation, it should be removed. And also, to address the flow element, have a body which whenever you write a regulation, questions whether we need a new regulation or is there an existing regulation that addresses this. So, if you can reduce the number of regulations, you will automatically reduce some of the complexity that exists in the regulatory landscape." ■

For full discussion visit Bombay Chamber YouTube channel

> To set aside one's prejudices, one's present needs, and one's own self interest in making a decision as a director for a company is an intellectual exercise that takes constant practice. In short, intellectual honesty is a journey and not a destination
>
> \- **Professor Mervyn King**, who chaired the King Committee on Corporate Governance

ROLE OF INDEPENDENT DIRECTOR

The panel discussion on Role of Independent Director had esteemed industry leaders including **R Mukundan**, MD & CEO, Tata Chemicals; **Anjali Bansal**, Founder, Avaana Capital; **Amit Tandon**, Founder & MD, Institutional Investor Advisory Services and **Ashok Barat**, Mediator, Centre of Mediation and Conciliation & Founder, Merx Business Advisor LLP. The panel was moderated by **Prasad Chandran**, former Chairman and Managing Director, BASF India and Chairman, SEEGOS. Excerpts

Prasad Chandran kickstarted the discussion by raising questions on how do we get really independent, Independent Directors? What is the role of these industry associations like Bombay Chamber to harvest such directors? What could Independent Directors do in these times of huge uncertainties where there is risk at one level and what could be the role of Independent Directors to support long term strategies and vision of the company?

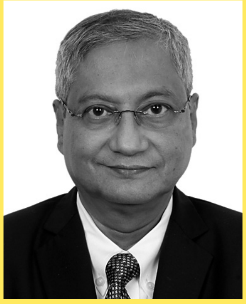
R Mukundan said, "Once you are on the board there is a fiduciary responsibility - whether it is independent, non-independent, executive or non-executive, I think independence is a state of mind and as you mentioned very clearly, it is not defined by the situation or a criteria. You don't become non-independent if you have served let's say 10 years on a board, I don't believe that. Nor have you become independent if you have just stepped into a board or if you have just joined the board. The real issue is: As a director whether you have independence of buying, thinking and courage and capacity to sort of go about the task or work towards company's wellbeing. We need to work on the framework. Whether it is an MNC holding, a large shareholding in a company or it is a government which is a shareholder, these are 3 broad chunks of shareholding. Then there is a role which you have to play in widely held companies and it is not as if the cracks have not developed in widely held companies, they have been developed there too."

He continued, "One of the key things which I do believe, what we do together as a team is to build this whole atmosphere of trust. As a Director, I really think one of the things which all of us would agree is that we should get deep enough to know the dynamics and the smell of the place but stay high enough to put a perspective. I think that is the balancing act one needs to perform, when one is looking at the role of board. And this in my view is really not a role which can be thrust only on a few set of people saying they are independent directors; the board must function as a unified body and certainly the independent Directors need to have independence of mind. It is important that the entire board and all the

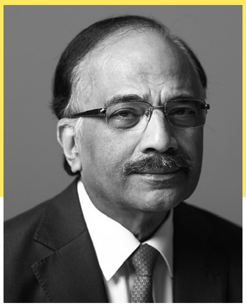
R Mukundan
MD & CEO, Tata Chemicals

Anjali Bansal
Founder, Avaana Capital

Amit Tandon
Founder & MD, Institutional Investor Advisory Services



Ashok Barat
Mediator, Centre of Mediation and Conciliation & Founder, Merx Business Advisor LLP



Prasad Chandran
former Chairman and Managing Director, BASF India and Chairman, SEEGOS

directors come together to work together as one team to build value for the shareholders and stakeholders."

Speaking on the perspectives in terms of the role of regulator, Ashok Barat said, "In the last few years, the narrative about the institution of Independent Directors has almost become a byproduct. So, there is one school of thought which believes that it is an institution which has passed on by itself. And the other one which hopes that it is the last resort for bringing in the ethics, governance and some sort of order to private institutions which are going to be occupying larger and larger parts of the economy. And therefore, will be having at their disposal, large amount of public resources whether it is money, people, tax, control of the environment resources. Now, this has a very serious implication and institutions such as ASSOCHAM and Bombay Chamber, CII and others, I think there is a very big role that they need to play in this. I am not supporting either view, but I think this narrative is very dangerous because it has a number of implications. I think there is a need for us to create a larger dialogue with civil society and others so that there is a greater appreciation of what the internal job that the Independent Directors can do, cannot do, what should be expected of them and what should not be expected of them."

Barat mentioned that whilst the law may be very clear, the main concept of Independent Director is a creation of the Company Act. "But reference to Independent Directors in terms of roles, liabilities and responsibilities find mention in a plethora events. And there is a singular lack of harmony of what should be expected of Independent Directors across various institutions. Now, it is only spreading because this confusion is not only about the union laws but also about state laws. The second dimension of it is that at the operating level, the regulators make no distinction whatsoever between an Executive Director and Independent Director. Their expectations whether it is in conversation, whether it is issuing a showcase notice, whether it is in meetings, is you are a director and therefore you are responsible. The kind of information depth, the accountability that one needs to take as an Independent Director is completely out of place with either the concept of Independent Directorship or even what the letter of regulation requires."

Committing to the role

Sharing his insights on people wanting to join the boards, wanting to look at supporting companies as Independent Directors, Amit Tandon said, "I have got a lot of phone calls from people who have been approached to join a certain board whether they showed or not. They have got all kind of questions about the company and so, I just want to focus a little about some of the questions which people can ask before they join a board. So, first let us be a little thoughtful and some kind of competitive intelligence about the company and its existing board pattern before committing to the role. First of course is that they want to be clear about what is it, why is it that the companies approach you or if you are joining a board, what is it that you bring to the board. Are there specific skills, are there relationships, is there understanding of the sector, so it is kind of very important to understand that and also equally important or linked to that is what is the type of commitment which is expected of you."

Anjali Bansal joined in, "There is a sense of this independent director being this unique person or persons on the board who are the key soul, gate keepers of governance, upholders of good principles, of ethics and good conduct. And I feel somewhere in that discourse we have painted a picture and I am going to put it quite extreme, in an extreme way to make the point. We have painted the picture and suggest these are the good guys. Management are the bad guys and the shareholders don't quite know what is going on. So, why should we assume that enterprises exist in a capitalist system, in a market system? Enterprises exist A: to build business in a sustainable way which means they have to be commercially profitable and successful so there's revenue and profit and also unfortunately we seem to be moving away from that old formula of shareholder first to now seeing stakeholder and community value. Hence enterprises exist to serve communities, create value by conducting business and it is in the enlightened self-interest of everybody involved, whether it is shareholders or management to do so in a way which is ethical because we have seen time and time again, that building business with values actually creates more value. And hence I think the first thing we must think about in the context of board, role of the board and role of Independent Directors is what is the purpose of enterprise itself. Once we think about a holistic purpose of enterprise, a lot of things fall in place. We cannot build long term successful businesses unless they are resting on a foundation of good principles, good ethics and good values. Laws around governance, whether it is the regulator or the ministry, those laws promote good intentions and good practices. So, there is "Niti" which is rules and "Niyati" which is intention and no number of laws can regulate for poor intentionality."

On the role of Independent Directors, she opined that all boards have to work in a cohesive collective fashion. "The best performing, most effective boards are those where you have Executive Directors, Independent Directors, Non-Independent and Non-Executive directors, all acting in concert for the benefit of all stakeholders, shareholders, communities,

> The board must function as a unified body and certainly the independent Directors need to have independence of mind. Build long term values which is really what the focus of the entire board should be

employees, everybody," she said.

Commenting on related party transactions, Barat opined, "A related party transaction regime cannot be such that it should stifle synergy, otherwise you are only going to encourage stand-alone entrepreneurship rather than a scale-based entrepreneurship which has got elements of footprints across various parts of the value chain. So, therefore, it is not something that should be used; I always say that any regime that we do to regulate should be like that of clutch of a car, it should neither be the accelerator so that you won't have an accident nor should it be the brake. So, it has to be a clutch which you can engage and disengage for various purposes."

The purpose of ESOPs

Tandon commented on ESOPs by saying, "There's a disconnect between how companies view ESOPs and how the investors view it. Companies like to view ESOPs as a retention tool and as a way of compensating someone saying that look, market salary is X, we are paying them 90% of X and therefore maybe I can pay a little bit of the difference through ESOPs, etc. So, that is one. The market on the other side and that's a lot of the investors look at it as pay at risk which is to say that look, I have got a share of Rs 100, the employees should also get ESOPs at Rs 100 and only if I make money, should they be making money. So, there is an ideological difference between the two. It seems to be gravitating towards a very handful of people. So, the NRC and the Board need to ensure that it should be a little bit more widespread."

Bansal added her thoughts, "I look at both the sides, at large listed companies and then as an investor, I also look at a lot of startups and unlisted companies. The key question is, what is the purpose of the ESOPs? There are situations where it is seen as a substitute for compensation, so instead of giving a 100 you say 90 in cash and 10 in ESOP and then there are others where you say, okay there's going to be a large value creation here and let there be participation in that value creation, wealth creation. We have seen situations in the West and I think ESOPs are somewhat sort of new to India. We are socially still getting adjusted to the idea of having large amount of value and wealth creation in a short period of time but in the West, we have seen that senior managements of companies can actually create a lot of wealth over a period of time through compounding of the value of their stocks, so along with shareholders they also benefit. Here on the other hand, I find that while companies are more willing to give ESOPs, individuals are less willing to receive ESOPs as a form of compensation. So, the thought tends to be that I want my hundred as an employee, I want the full hundred and then yes, you can sweeten it for me with a little bit. So, there is a problem because if there is not enough value being ascribed to the ESOP then the company is better off saying ok fine, I'll pay you in cash. Because equity is actually expensive and we seem to forget that."

She pointed out that whether it is startup or big companies, the number of people who actually impact the value of the share, it's not everybody in the company. "It is actually a select set of people, so somehow it seems to be fair to have their pay being put at risk for moving the needle on the stock price but I also see companies and particularly some of the better startups, that say, if we are going to create a thousand in value, we want to share that thousand across as many people as possible. So, there's a little bit of this ideological thing going on around what is really an ESOP and does the receiver see value in the ESOP or not. We have not yet had enough years in India of wealth and value creation through the price of a stock or the price of a share. I hope that in the next five years both our public markets and private markets generate enough returns through the ESOP that it actually becomes a desirable form of compensation." ■

For full discussion visit Bombay Chamber YouTube channel

MAKING THE BOARD FUTURE READY

This panel discussion included key industry leaders including **Nilesh Shah**, Group President & MD, Kotak Mahindra AMC; **Ritesh Tiwari**, CFO, Hindustan Unilever and Unilever South Asia and **J. N. Gupta**, Co-Founder & Managing Director, Stakeholders Empowerment Services. The moderator was **Viren H. Mehta**, Partner-Assurance Services, S. R. Batliboi & Co. LLP. Excerpts

Viren Mehta opened the discussion by saying that ever since the formation of joint stock companies and separation of ownership from management, the roles and responsibilities of the boards have increased. The governance failures that we have seen in recent times have threatened to erode the trust in some of the world's largest organisations and have actually deterred top talent from actually seeking board positions. Considering the complex demands on them, how can boards make themselves future ready?

"Boards need to be mindful of the environment that is shaped by emerging trends in governance which includes elevated stakeholder voice from more diverse groups of people demand for more transparent decision making, greater accountability, consequences of mishaps, complex governed business ecosystems that make governance even more challenging. Many boards also have an emerging gap in digital literacy as well as soft skills which are critical in running today's business organisations. And the last challenge I would say, boards are working out how best to meet public and investor expectations on sustainability and long term value. The question is: how do you drive purpose and facilitate alignment of mind?" he put the question to the panelists.

Replying to that, Ritesh Tiwari said, "We all know that the world was in a Buddha Environment; we have moved into a Barney Environment over the last year and a half. In times like these, there are enough number of distractions and disruptions which businesses are going through. And in my mind there are 3 essential elements to any organisation. First is what you call the Purpose of the organisation;

Nilesh Shah
Group President & MD, Kotak Mahindra AMC

Ritesh Tiwari
CFO, Hindustan Unilever and Unilever South Asia

J. N. Gupta
Co-Founder & Managing Director, Stakeholders Empowerment Services

Viren H. Mehta
Partner-Assurance Services, S. R. Batliboi & Co. LLP.

second is Strategy, and third, the Values of the organisation. It is extremely important that the board steers all the elements in the right direction. We all know the amount of value destruction it can lead in case we end up deviating from the stated purpose, stated strategy and stated values of the organisation. There will have to be enough number of activity systems which are established in the organisation which almost has a good amount of online reporting available to the board to ensure that the efforts and the overall operations of the organisation are true to those things."

Conflict of interest

Commenting on investment, Nilesh Shah said, "As an investor, I have 3 expectations from the board of the company in which we have invested. One, they should be capable enough to meet the challenges of the business. We are living in an uncertain world and the board should have necessary experience and capabilities to guide the management on meeting the challenges of the business. The second thing we want from them is Governance, clearly, we are minority shareholders and it is extremely important for us that the governance standards in the company in which we have invested remains above board. There are many businesses which make money for promoter and not the minority shareholder. The third thing on which we focus upon is conflict of interest. Now in some sense conflict of interest is part of governance, we would like to highlight that on a separate basis. There is always a conflict of interest between majority shareholders and minority shareholders. Need of the business vs taking shortcuts. Now how does the board resolve conflict of interest between management, shareholders, external environment and internal needs? A good board will ensure that the conflict of interest is managed in an appropriate manner and therein we have practised this quotient in our business and we expect our investing companies to follow this process."

He talked about the four quotients in life. "One is Ram Quotient, Lord Ram will always have noble objectives and also noble means to achieve it. He will never compromise on the means to achieve the objective. We want majority of our board to be in Lord Ram

Quotient. Now we are in Kalyug, so sometimes you have to take shortcuts and for that there is Krishna Quotient, goals are always noble but means to achieve those goals sometimes is compromised. For example, winning the war is critical. Yet Arjuna had to deceive and kill Karna, we don't want any of our management to fall down like the Duryodhan quotient and finally is the Ravan quotient when goals and objectives both are compromised. So, as long as the mode focuses on the Ram and Krishna Quotient, and avoids the Duryodhan and Ravan Quotient, we are fine," he reiterated.

J N Gupta also talked about the happiness quotient or value creation. He said, "You got to create value for everybody in the chain, whether it is your supplier, customer, society or even the gate keeper, it can be anybody. So, that is the ticket. Now, what is happening is that there will be hardly any people who are really philanthropic. Philanthropy is a forced action because if you do not do philanthropy, if you don't take care of employees or society, probably your happiness quotient is going to be reduced. So, let us see it as a situation where even if I want or not, I got to take care of everybody in the eco system. And that is where there is a conflict issue. When I am on the board, should I listen to the shareholder and maximise his profit or should I ensure that my employees are also paid properly or I create an environment where the people who are outside my business are also happy. So, as a board member I will have to ensure that everything is there. And then I have to take care of myself too, so I got to be compensated."

A fearless organisation

How as an executive member of the board would you drive alignment of values and culture and ensure setting up a framework of managing conduct risk and communicating that with the other members of the board? Especially the independent ones? Commenting on this, Tiwari said, "What are the guard rails that ensure this happens and what are the enablers which ensures that this is happening. Is there a very strong mechanism which creates a climate where the people can speak up in case the conduct is not in line with the expected behaviours of the organisation? This is an extremely important guard rail. I think that climate creation is an extremely important part, that to me is the first element of guardrail. The second element of guardrail is an extremely well thought through succession planning. Succession planning is in my mind an equally important responsibility that boards of today and the future need to ensure."

> There is always a conflict of interest between majority shareholders and minority shareholders. Need of the business vs taking shortcuts. Now how does the board resolve conflict of interest between management, shareholders, external environment and internal needs?

He went on to talk of enablers of two different kinds. First comes psychological safety. "There is enough amount of research which has proved that higher the amount of psychological safety, better chance for us to create a fearless organisation and it creates more value for multiple stakeholders. To me that's one of the key enablers and it's not easy to create psychological safety but people are comfortable to speak up on various topics - where every individual feels comfortable and psychologically safe to express a view which is contrary the expected. To me that is enabler number one and enabler number two which I know many companies are driving unsuccessfully, some not so successfully is the entire embracing of diversity and inclusion. You need to have a diverse and inclusive organisation. And when I talk diversity, I don't only mean gender balance, I mean it in the broader sense, more diversity and inclusion so that every employee, every leader is included in the organisation's culture and behaviour," he added.

Elucidating on the expectations of various stakeholders and how they change and the gap that the boards have to cover up, Shah said, "Boards need to be more consistent and more predictable. At the end of the day, it is an investor expects a reasonable list from my board or a balanced equilibrium from my board. They have to constantly manage conflicts, one side will be growth, other side will be stability. One side could b growth, other side could be sustainability, there will be different interests from employees to management to shareholders to customers. That is the most important thing from the board. They have to be balancing conflicting objectives and yet ensure that the company continues to move further up."

Sharing his thoughts on digital transformation and whether a board should break up existing frameworks and then set up brand new frameworks or should they do a piece meal, Shah continued, "On the digital side, one must remember the objective of going into digital. I am in the business of servicing, if my customers transit from physical to digital, I need to follow them or better still, I need to be ahead of them. Second, remember, the famous soap ad: "Iski shirt meri shirt se safed kaise?" My digital strategy has to be better than my competitors so that I either get cost advantage or servicing advantage or some efficiency advantage. Digital for the sake digital is not going to work because there might be someone who will be better and faster than you and more adoptive than you. The third thing by and large we have seen that younger generations are more adoptive to digital technology and the digital ecosystem. Now, many boards prefer gray hair and they don't necessarily promote younger blood into the board. If you are going to go for a digital battle, you might as well equip yourself with some young blood rather than just gray hair. So, create a team which has a balance of experience and youth."

Gupta opined that the board need not have the knowledge or qualification on each and everything. "The board has to have the intelligence to understand things and that is why even if you may not have somebody who is expert in IT or digital on the board, you got to have people who will advise you, who will guide you. Because all the expertise may not lie within the organisation or within the board because there could be something new which is not there even in India, so you want to keep your eyes and ears open or like in a tortoise and rabbit race, you should not fall asleep so that the tortoise gets ahead of you," he said.

Speaking on what boards should be doing in terms of lifting the ESG quotient, Tiwari pointed out that ESG starts with first, the board articulating the ESG strategy. "In my mind, the strategy is to publicly speak about what are your ESG commitments. That is extremely important, all areas of environment, social commitments and of course the oneness elements which one stands for. It is important to publicly communicate those commitments and then of course with BRSR coming in, the quality and the level and the granularity of reporting against these commitments will only start driving up in corporate India much ahead of where the world is at this point in time," he stated.

Shah cautioned, "We are working in India and many of the social and environmental standards of the Western world may not be blindly applicable in India. For example, when we try to apply social standards of child labour of Western world in India, we may end up creating more damage than benefits like taking away employment. How do you balance this kind of conflict in a manner that Western standards are employed in India for better governance, better social standing and positive contribution to environment but in a more indigenous manner?" ■

For full panel discussion visit Bombay Chamber You Tube channel

Sustainable Corporate Governance: Tackling the `G' in ESG

As the corporate world is moving from unbridled growth to responsible growth, the concept of governance needs to move from regulatory compliance to proactive responsibility

Khurshed Dordi
Managing Director, Group Chief Operating Officer, India, Deutsche Bank

Increasingly, the "G" aspect of ESG has emerged front and center as a panacea to better financial performance/corporate returns. While sustainable investing has become mainstream and is recognised as a mark of prudent investment practice to augment the principle of long-term value creation, it is governance that is fundamental to this achievement.

Governance as a concept is currently overshadowed by monumental E-related tasks such as tackling climate change. However, one should not forget that only effective governance can handle any possible ESG-related misconduct. Tesla serves as a case in point. After its addition in 2020, Tesla is no longer part of the S&P 500 ESG Index (The S&P 500 ESG Index uses ESG data to rank and effectively recommend companies to investors.)

According to S&P, Tesla is now ineligible for index inclusion. In its reasoning, S&P referred to, among other things, Tesla's alleged lack of codes of business conduct, as well as to Tesla's handling of government investigations after multiple deaths and injuries linked to its vehicles' self-driving mode.

Responsible growth

As the corporate world is moving from unbridled growth to responsible growth, the concept of governance needs to move from regulatory compliance to proactive responsibility. Governance today is more about evolving an organisational moral compass which guides all corporate action; it is about cross-functional collaboration that will aid in decision making related to goals, strategy, and operations. In many ways, rapid evolution of governance has become centrestage in the quest for sustainable development.

As the `G,' in ESG, governance covers several aspects, independence of the Board, diversity of people in the organisation, ability to address conflict of interest, having fair policies around remuneration and fostering progressive organisation culture, among

Strong and sustainable governance practices are the bedrock to a new, sustainable, and harmonious corporate. Therefore, the governance of ESG requires a new set of management skills, as well as data governance and controls for success

others. It is about connecting the dots.

Regulations across the world, are moving in tandem, guided by these issues and pushed along by specific interest groups including climate activists, civil society, investor rights organisations, etc. The U.S. Securities and Exchange Commission has proposed several disclosures around how boards and executives should manage climate risk. The premise being, irrespective of how good a company is in terms of ESG reporting, without a strong governance framework, its efforts to achieve ESG goals may fall apart.

A recent discussion paper on Climate Risk and Sustainable Finance by RBI also advises its regulated entities to evolve policies and processes to better understand climate risks and evolve mitigating mechanisms including elements like appropriate governance, strategy to address climate change risks and risk management structures to effectively manage such risks. In addition, RBI advises its regulated entities to explore how forward-looking tools like stress testing and climate scenario analysis can be used to identify and assess vulnerabilities; bring in climate risk related financial disclosure and reporting, capacity building and voluntary initiatives.

Strong governance also means greater transparency and this is where ESG reporting becomes paramount. Reporting on your performance with the same rigour with which you report financial results, will also give boards and executives better information to drive decisions.

Beginning this fiscal, the Securities and Exchange Board's (SEBI) new reporting format - Business Responsibility and Sustainability Report (BRSR) - has come into effect. BRSR will enable the top 1,000 listed entities by market capitalisation to voluntarily disclose their compliance on various ESG metrics for FY22, and on a mandatory basis from FY23. Providing timely, reliable reports with proper controls is essential to driving ESG decisions and related performance. This enables investors to make decisions on comprehensive and comparable information.

Harmonious corporates

Interestingly, preference for ESG compliant companies by investors across the world saw incredible growth in sustainable finance in 2021, with ESG assets under management (AUM) projected to reach US$ 50 trillion by 2025 which will make up one-third of global AUM. Sustainable bonds already are 10% of global debt issued in 2021, with US$ 1 trillion issued for the first time and a 40% increase over 2020. (Link)

Sharing knowledge about best practices in taxonomy development will help to ensure widespread clarity about green financial tools, allowing central banks and financial institutions to become central players in the fight against climate change

The above-mentioned developments are a clear indication we are moving well beyond climate risk management to several other aspects such as voluntary disclosures, financial and qualitative information for shareholders, diversity, CSR, culture, risk management and upskilling of senior staff towards governance aspects.

As such, pressure on boards to shore up their ESG credentials is set to grow as investors demand better accountability from the top amid heightened focus on sustainability. Globally, some boards are tying executive compensation to goals around improving safety, diversifying the workforce, reducing

carbon emissions etc. For instance, companies including Chipotle and McDonalds have tied their executive pay to ESG goals and, as of 2021, a quarter of U.S. companies included an environmental or social metric in executive evaluations.

Strong and sustainable governance practices are the bedrock to a new, sustainable, and harmonious corporate. Therefore, the governance of ESG requires a new set of management skills, as well as data governance and controls for success.

In India too, ESG reporting is being incorporated into forward-looking KPIs. The need of the hour is to create ESG ambassadors within the organisations. This can only be done if employees have access to learning the technical aspects of ESG including climate change concepts, its business implication, material ESG risks and opportunities.

Russia's invasion of Ukraine has significantly impacted ESG trends and performance in the first six months of the year. As nations continue to grapple with the impact of Russian sanctions and energy supply issues in the second half of the year, we expect to see bigger steps taken to develop and use green energy. There is also increasing scrutiny from regulators and authorities and increasing interest in curbing greenwashing.

In this background, a standardised taxonomy will help protect investors from greenwashing, put pressure on companies to become environmentally friendly and steer investment towards more sustainable initiatives. Sharing knowledge about best practices in taxonomy development will help to ensure widespread clarity about green financial tools, allowing central banks and financial institutions to become central players in the fight against climate change.

Going forward, there will be increasing pressure from shareholders and other stakeholders on entities to develop concrete plans and begin to address emissions across the full value chain. India has a tough task ahead. Beyond the established focus on emission reductions, the spotlight will also extend to how entities manage exposure to physical climate risks, adequacy of adaptation and resiliency planning. ■

ESG: A perspective from the boardroom

In the past, ESG issues were not a priority; no board of directors or CEO or business-owner can continue business as in the past if they want to future-proof their business. They can start with a simple agenda item, "ESG", in each board meeting so that the subject remains on the radar

Pradip Shah
Founder, CRISIL and Grow-Trees.com
Non-executive Chairman, BASF India, Kansai Nerolac Paints, Pfizer, Sonata Software

A 2021 PwC Consumer Intelligence Series survey on Environmental, Social and Governance issues - ESG for short - found that 83% of consumers think that companies should be actively shaping ESG practices; 76% said they would discontinue their relationship with companies that treat the environment, employees or the community poorly. In the same survey, 86% of employees said that they prefer to support or work for companies that care about the same issues.

Not only are consumers and employees requiring companies to play a bigger role in accelerating progress on ESG concerns but so are investors: as of December 2021, assets under management at global exchange-traded "sustainable" funds that publicly set environmental, social, and governance (ESG) investment objectives amounted to more than US$ 2.7 trillion.

Flows into ESG funds doubled from 2020 to 2021. That trend is poised to continue in the coming years - a new report from Broadridge Financial Solutions predicts that ESG assets worldwide will cross US$ 30 trillion by 2030, up from US$ 8 trillion currently - almost 4 times today's level in the next 8 years.

> In 2019, when analysts estimated about 34 businesses with annual incomes above US$ 1bn had set a net-zero target, it was an eye-catching goal. Today, it is the bare minimum expected when 35% of the largest 2000 companies have similar goals

Such shareholding can translate into activism as has been visible in 2022. In Amazon, 44% of voting shareholders supported an independent audit of warehouse working conditions; at ExxonMobil's shareholder meeting in May, more than half the votes were cast in favour of a resolution asking for an audit of the company's financial vulnerability to climate change; at Travelers an insurance company, 55% voters supported a resolution asking for a report on measuring and reducing greenhouse gas emissions; Blackrock, the world's largest fund manager, said it voted for a racial-equity audit at Alphabet.

As this is a worldwide trend that is likely to accelerate, it would be prudent for businesses large and small to take cognizance of it and prepare themselves for it. I will touch upon what companies at the board of directors' level can do to prepare for this.

Putting goals into action

It is no longer enough to set a distant goal - we will achieve net-zero emissions in 2050, announce it in your communication materials and expect your constituents - customers, employees, directors and investors - to accept it. In 2019, when analysts estimated about 34 businesses with annual incomes above US$ 1bn had set a net-zero target, it was an eye-catching goal. Today, it is the bare minimum expected when 35% of the largest 2000 companies have similar goals. With greater awareness of climate change, there is pressure on companies to set emissions goals by 2030, which is the time limit set by scientists for reducing global emissions to about half current levels.

> It is not only the risks from this ESG trend that a company must be conscious of; it must be alert to opportunities, too

So you have a company like Dr Reddy's, listed on the exchanges in India and having customers all over the world, announcing its ESG goals recently: aspire to be carbon neutral in direct operations by 2030, water positive by 2025 and at least 35% women in senior leadership by 2030.

It is not only the risks from this ESG trend that a company must be conscious of; it must be alert to opportunities, too. Thus for instance Tata Chemicals Europe will start exporting baking soda called Ekocarb by capturing carbon dioxide emissions from its power generation plant after purifying the gas to food grade. The plant captures 40,000

tonnes of carbon dioxide each year - which will be equivalent to taking more than 20,000 cars off the roads and reducing TCE's carbon emissions by more than 10%. Tata Chemicals has seized an opportunity not only to pursue an ESG goal but also to make money from it.

Microsoft has changed the goalpost itself. Two years ago, the software group said it was going beyond net-zero to be "carbon negative" by 2030, meaning it would remove more carbon than it emits. By 2050, it plans to have removed all the carbon it has produced - either directly or through electricity use - since it was founded in 1975.

Very few companies have set this kind of a goal - to remove their historic carbon emissions from the atmosphere. However, numerous companies are planting trees that absorb carbon and reduce carbon dioxide from the atmosphere and continue doing so for years on end, as a way to offset their carbon. A multinational company, one of the largest companies in the world, has signed in May 2022 with Grow-Trees.com one of the largest non-governmental tree-planting contracts in the world, to plant 36 million trees over the next three years.

Responsible leadership

Spencer Stuart, the firm specialising in Human Resources, suggests that companies consider having a senior person responsible for identifying, mitigating, or seizing the risks and opportunities from climate change; there are also suggestions for having a committee of the board for that purpose. Across the S&P 100, a 2022 study found 93 companies with at least one committee with ESG oversight responsibility. Delegating the job of developing and implementing climate policies to the marketing team or the regulatory affairs team is no longer sufficient. Such teams are usually not in a position to deal with the long-term implications of climate actions which are facing unprecedented regulatory scrutiny.

> Delegating the job of developing and implementing climate policies to the marketing team or the regulatory affairs team is no longer sufficient

As a Chairman or CEO or owner of a company, a simple suggestion is to have an agenda item - "ESG" - in each board meeting so that the subject remains on the radar. This will also allow for capturing the evolving regulatory stance as well as staying current with best practices in measuring, reporting and assessing ESG matters.

So here is my suggestion for directors: The board of directors must, as part of their ESG response:

1. Set goals with timelines for the company in terms of ESG - on carbon emissions, water consumption, diversity in workforce, community outreach and so on
2. Ensure, perhaps through the insistence of an agenda item on ESG in each board meeting, that management has ESG on its radar all the time;
3. Check whether there is a measurement system in place for evaluating the company's actions on ESG
4. Take action from time to time towards incorporating best practices on ESG; at the very least, the company must keep pace with competitors so as not to be at a competitive disadvantage
5. Have oversight over the company's ESG reporting to regulators and shareholders
6. Be sensitive to feedback on the company's ESG actions and to regulatory as well community expectations on ESG matters.

In the past, ESG issues were not a priority; no board of directors or CEO or business-owner can continue business as in the past if they want to future-proof their business and stay relevant amid increasing social, investor, employee and regulatory pressures. ■

Role of Chairperson of Audit Committee

Audit Committee characteristics, key to which is its independence, are essential attributes that would enhance an audit committee's ability to discharge its responsibilities

Asit Bhatia
Managing Director/ Co-head Investment Banking, India, Bank of America

The Audit Committee is a key pillar of the corporate governance mechanism in any company. The committee upholds the integrity of the company's financial reporting, the internal control processes and procedures and the risk management systems.

The Companies Act, 2013 stipulates that the Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. This is to ensure that the majority in the Audit Committee are persons different from those responsible for the day-to-day management of the company.

The majority of members of the Audit Committee including its Chairperson must be persons with the ability to read and understand financial statements.

The Chairperson of the Audit Committee should encourage a free and open discussion at the meetings and ensure the proper flow of information to the Audit Committee. The Chairperson can uphold the standard of the Audit Committee with the following attributes:

- The Chairperson must be ready, willing, and able to dedicate the time to the job. An ideal Chairperson takes the time to develop the agenda and effectively execute meetings. He/she are also available to management and other board members;

All companies are required to establish a vigil mechanism for directors and employees to report genuine concerns and complaints, including from whistle-blowers

- The Chairperson needs to have strong communication and interpersonal skills. He/she should not be afraid to ask difficult questions and have uncomfortable conversations with members of management and the ownership group;
- The Chairperson needs to have a good understanding of the business, its risks, and controls;
- The Chairperson should have an independent point of view and look for additional information when he/she is not satisfied with the answers provided by the management;
- The Chairperson should be able to prioritize the most important items on the agenda, should facilitate discussions and know when to stop non-material discussions.

Balanced and ethical perspective

Culture is an intangible, yet an important aspect of all organisations. The Chairperson of the Audit Committee needs to create a forum where people can discuss all relevant issues openly. The Audit Committee Chairperson must take a balanced and ethical perspective, scrutinise and challenge decisions in accounting and reporting.

Separation of ownership and management in corporate governance involves placing the management of the firm under the responsibility of professionals who are not its owners. Owners of a company may include shareholders, directors, government entities, other corporations and the initial founders. The growth of a company comes with the demand for different skills to manage the operations of the company, meaning the owners of a company may not have all the necessary skills and experience needed for certain managerial roles. Creating a management team separate from the ownership enables the company to be run by professionals with diverse skills and there is a need to ensure the independence of all stakeholders for high governance standards.

Audit Committee characteristics, key to which is its independence, are essential attributes that would enhance an audit committee's ability to discharge its responsibilities. The committee can perform better monitoring mechanisms since it is not constrained by any conflict of interest with ownership, and it makes it able to question the ownership when it considers it to be necessary.

As per the Companies Act, 2013, the Audit Committee has a critical role to play in the appointment of statutory auditors. It also must review and monitor the auditor's independence, performance, and effectiveness of the audit process and examine the financial statements and the Auditors' Report.

The Chairperson plays a key role, starting from the selection of the Auditors and the involvement continues throughout the audit process to ensure that the aforesaid functions are followed both in letter and in spirit.

The Audit Committee Chairperson needs to ensure the independence of an audit committee as this is crucial to the Auditors' work as they would receive the support from the audit committee for any disputes with the management, rather than merely being under the management control. Moreover, it is a well-known fact that the higher the Audit Committee's level of competence and independence, higher will be the quality of the financial reporting.

The Audit Committee Chairperson needs to build a good working relationship with the Head of Internal Audit, while remaining objective and independent. The Head of Internal Audit should sit at the executive committee level, so that he/she has the status and opportunity to challenge the management.

Vigil mechanism

All companies are required to establish a vigil mechanism for directors and employees to report genuine concerns and complaints, including from whistle-blowers. The Companies Act, 2013 mandates that the vigil mechanism shall provide for adequate safeguards against victimisation of persons who use such a mechanism and make provision for direct access to the Chairperson of the Audit Committee. This provision imparts an immense responsibility on the Chairperson to ensure that complaints are duly investigated with appropriate remedial action, if necessary. Further, the Chairperson must ensure that there are in-built mechanisms in the company

> Continuous learning is important for all board members, considering today's pace of change. Education is particularly important to the audit committee given changing accounting and regulatory standards

to safeguard against victimisation of the whistle-blower.

A good Audit Committee will also have members who maintain the respect and trust of their peers and management and understand their role in deterring fraud. If there are allegations of wrongdoing by company personnel, Audit Committees may be tasked with performing an investigation and forming conclusions on behalf of the Board. Committee members should have the integrity and objectivity necessary to deal with such situations.

Investors look to Audit Committees with high expectations to establish and maintain the appropriate tone, capacity, and competence to oversee the quality of the financial reporting system.

Boards typically delegate much of risk oversight responsibilities to the Audit Committee. Also, Audit Committees are charged with oversight of cybersecurity risk, making digital and cyber skills important as well.

The Chairperson should possess the "soft" skills like negotiation, teamwork, problem solving and communication which complements the critical "hard" financial and technical skills that Audit Committees need.

The Audit Committee Chairperson needs to take a lead role in helping get new members up to speed and ready to add value. A structured process is critical to successful onboarding. This can help new members learn the specific responsibilities of sitting on the committee.

Continuous learning is important for all board members, considering today's pace of change. Education is particularly important to the audit committee given changing accounting and regulatory standards. Finding the time can be a challenge for audit committee members. But it is important for the Audit Committee Chairperson to monitor the educational needs of the committee, organize trainings when needed and keep the committee sharp.

Having a strong Audit Committee Chairperson in place is the backbone of an Audit Committee. An effective Chairperson along with the right composition of members ensures that the Audit Committee will be high performing, independent and efficient. ■

Audit Committee Chair: Playing a pivotal role

Stakeholders today, including investors, policymakers, regulators and even customers are increasingly drawn towards organisations with strong and clearly defined sustained corporate governance policies

Puneet Chhatwal
Managing Director & Chief Executive Officer, The Indian Hotels Co.

As businesses become more global, interdependent and technologically advanced, the success of an organisation is increasingly being defined by long term value creation for all its stakeholders. Sustainable corporate governance plays a pivotal role as it marries the company's vision with its strategic direction to achieve its objectives. A robust corporate governance structure helps identify a company's key requirements, set goals, establish reporting processes, maintain overall accountability and cultivate a culture of integrity.

Sustainable corporate governance plays a pivotal role as it marries the company's vision with its strategic direction to achieve its objectives. A robust corporate governance structure helps identify a company's key requirements, set goals

The role of Audit Committee:

- The Audit Committee is responsible for evaluation of internal financial controls, risk management systems, financial reporting process and disclosure of the organisation's financial information.
- The committee, comprising two thirds of independent members, is led by an independent Chairperson, whose leadership sets the tone for the committee. A Chair epitomises strong characteristics such as being informed, probing and capable of undertaking executive decisions.
- It is imperative for the Chair to possess detailed understanding of the business and the organisation's culture and goals, which allows them to steer the functions of the Audit Committee.

Key focus areas of the audit committee chair:

1. RISK MANAGEMENT

- Ensurethattheriskoversightresponsibilities

of the full board and its committees are clear.
- Ensure robust risk communications and policies among the board and standing committees.
- Establish risk oversight processes in line with evolving business environment.

2. AUDIT MANAGEMENT
- Effective oversight of the organisation's auditors – both internal and external.
- Appoint relevant auditors, chart the scope of the audit, influence the appointment of an engagement partner and make formal recommendations to the board.
- The audit committee also reviews areas of risk, accounting policy and judgement estimate.

3. RESOURCE MANAGEMENT
- The Chairperson ascertains that the Audit Committee has the necessary resources and unhindered support to safeguard the interests of the company and all its stakeholders.

Ensure robust risk communications and policies among the board and standing committees. Establish risk oversight processes in line with evolving business environment

4. ETHICS MANAGEMENT
- Led by the Chair, the Audit Committee is responsible for safeguarding the ethical integrity of the company and its initiatives.
- The committee periodically reviews and ensures effective functioning of all ethics related matters such as the whistle blower mechanism.

5. **COMMUNICATION MANAGEMENT**

- Ensure all Audit Committee members are aware of their duties to encourage transparency and open dialogue to address relevant issues in order to maintain efficient corporate governance.
- This comprises engaging with all stakeholders including management, and building strong relations with external stakeholders.

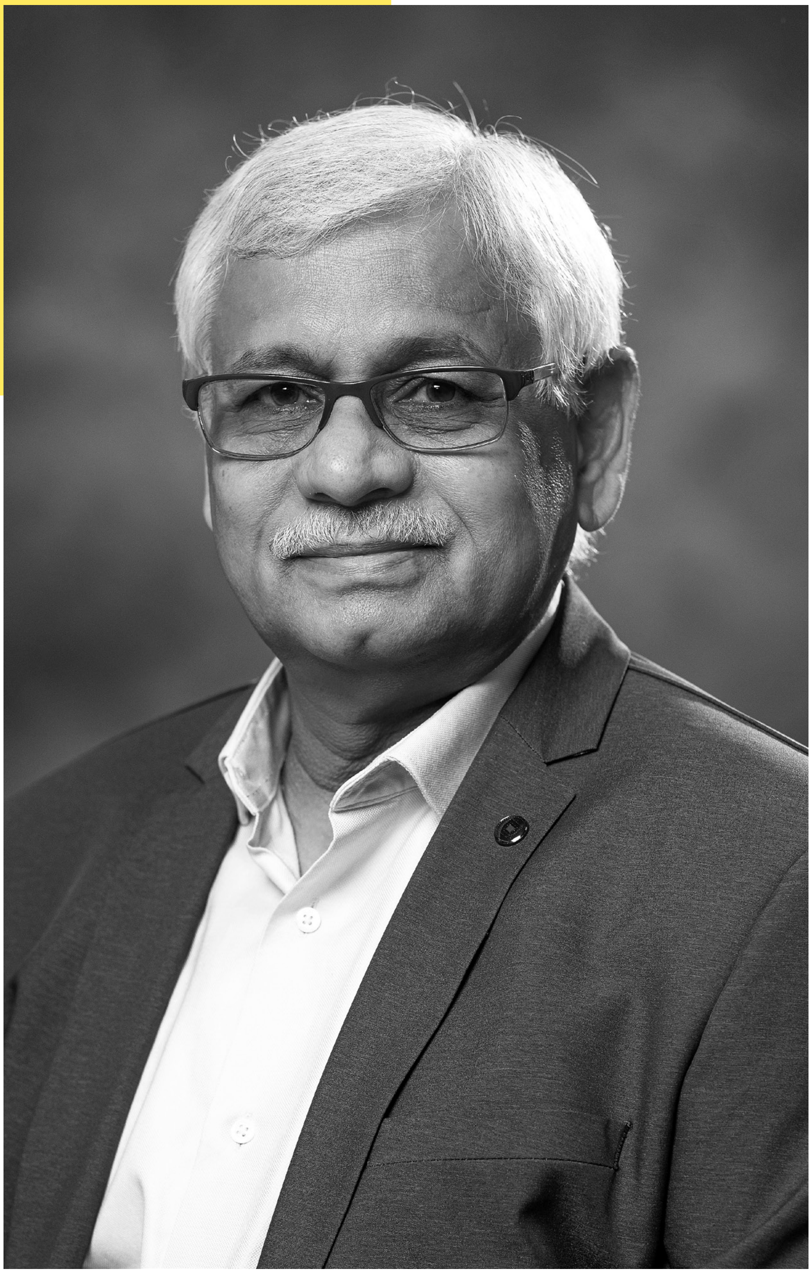
Stakeholders today, including investors, policymakers, regulators and even customers are increasingly drawn towards organisations with strong and clearly defined sustained corporate governance policies

Conclusion

As companies continue to evolve and develop to adapt to an ever-changing business landscape, stakeholders today, including investors, policymakers, regulators and even customers are increasingly drawn towards organisations with strong and clearly defined sustained corporate governance policies.

And while leadership will continue being committed towards maintaining the company's reputation and performance, the Audit Committee, led by its Chairperson, will play a pivotal role in mitigating the organisation's exposure to risks and managing long term stakeholder interests.

Sense of Ownership or Entitlement? The second generation conundrum



The second generation is extremely talented and can add tremendous value if they have a specific role. But if the role and accountability is not articulated well, a sense of entitlement is the outcome. That's neither good for the business nor for the owners and definitely not for the stakeholders

Rajan Raje
Director,
Nichem Solutions

Entrepreneurship is much like Bungee Jumping. You are tied to the leg and you jump into the unknown. There is excitement, thrill and of course, grave risk. If the wire snaps - end of story!

The wire is a metaphor for what the entrepreneur brings to the table - competencies (knowledge, experience), contacts, some funds, a supporting family and above all grit and determination to succeed.

Every economy is full of stories of success of entrepreneurs that created business out of nothing, created employment, charted the course of an industry and in some cases shaped the world.

Narayana Murthy, Dr. Pratap Reddy, Uday Kotak, Dr. Anji Reddy, Dr. B.V. Rao, Sunil Mittal, the list could go on. Each of them is an example of Bungee Jumping.

India has 101 Unicorns at the last count and each of them is an example of entrepreneurship. All these business leaders or the founders of Unicorns have stories of how they surmounted every challenge from getting a telephone connection to government policies and built their businesses brick by brick to reach where they have.

Family businesses in India constitute a significant chunk of the economy, contributing almost 70% of the GDP. Statistics indicate that almost 85% of India Inc companies are family businesses

Contribution of Family Business

Family businesses in India constitute a significant chunk of the economy, contributing almost 70% of the GDP. Statistics indicate that almost 85% of India Inc companies are family businesses. So, it is obvious that every entrepreneur likes to pass on the business to their wards to take the legacy forward.

The first-generation entrepreneur puts in a lot of hard work while setting up a business. Many a times they do not have 'top-class' education but they make up for it through learning on the fly, educating informally and sheer effort and determination. However, they ensure that they prepare the second generation well.

The second generation is usually well educated in good foreign universities in relevant streams. They have a good lifestyle and high standard of living that is much better than what their parents had. It is common knowledge in the organisation that they will succeed the first-generation owner.

Firstly, they have a set business to enter which has assured revenues, infrastructure, customers, supplier ecosystem, business processes and experienced employees. A platform is set to take it to the next level. Therefore they 'occupy' the owner position by sheer family position rather than having 'earned' the position. They do not or rather need not go through the initial struggles of setting the business. Employees respect them, customers give them appointments readily and suppliers are keen to meet and establish credentials. Bankers, financiers, CAs and government officials indulge. With the stage set, life appears simpler for the second generation, but it is not so as it carries a lot of challenges!

> The elements of a strong governance structure that ensures business continuity are structured internal processes that makes the business system role-dependent rather than person- dependent

Challenges of running a Family Business

The owners are overly protective & unwilling to push the ward into the deep end of the pool. They tend to handhold, condone more mistakes than normal and shield them from real world challenges. The second generation therefore take their own sweet time to mature

rather than baptism by fire. As long as this remains a private enterprise, this is a lesser problem. But if this is in listed entities, then the situation is more complex.

Imagine a large listed conglomerate with multiple businesses, operations across many countries, wide set of customers and suppliers, regulators across many jurisdictions, conflicting laws, banking relationships, committed shareholders and a large public profile. An entitled second generation is the worst succession and business continuity plan. The business failure in this case has cascading effects across the stakeholders.

How to avoid Family Business failure

A strong governance structure is the ultimate way forward. The elements of a strong governance structure that ensures business continuity are structured internal processes that makes the business system role-dependent rather than person- dependent; external relationships not linked to an individual but to the organisation; an authority matrix that is well documented and is frequently audited for conformance; regulatory compliances are monitored by an empowered group that does not include the owners; talent management is managed in accordance with set policies and processes that are evaluated by independent group; an independent board that has professionals with rich experience that they can bring value to the table and above all a CEO that in all true sense of the word 'reports' to the board. This does not mean that the owners have no role to play. Their role of monitoring and mentoring is very crucial.

Key strategies for a successful succession

Owners have the highest stake in the success of the organisation due to high financial but more importantly emotional ownership. They need to set the tone in the organisation about the culture - what is ok and what's not. They need to set the strategy - what is the next big business opportunity to bet on. They need to ensure accountability - ask the right questions. They need to display risk appetite - what can we take on to scale to the next level.

The second generation is extremely talented, tech savvy, current and has seen the world. They can add tremendous value if they have a specific role. If the role and accountability is not articulated well, a sense of entitlement is the outcome. That's neither good for the business nor for the owners and definitely not for the stakeholders. ■

Circling to land

Company's and boards must be prepared to face the messy reality of ESG. Regulations, no doubt, will standardise ESG disclosures and provide investors and stakeholders with comparable information. But this will not be the end

Amit Tandon
Founder & MD,
Institutional Investor
Advisory Services

Environment, Social and Governance (ESG) is all a rage today. Boards and companies are rushing to embrace it, investors are showcasing their green credentials, and what's more, governments are committing to meeting ever stringent targets, with a bit more seriousness, I hope, than their promise to be more fiscally prudent in future. But the ducks don't seem to line up. Companies expect regulators to tell them what to do. Investors hope that they will be given digestible data to integrate with their stock selection. And regulators hope that if they mandate targets in line with global commitments, companies will find the secret sauce.

There are of course those who propose that we 'look west,' because they have been doing this for longer. But they fail to acknowledge that these markets, like their Indian counterparts, continue to approach this tentatively. Surprisingly, even after this head-start they offer no clear road map - in fact there is even a lack of agreement regarding what constitutes ESG.

Only 8% say ESG encompasses a generally understood set of issues and can be easily defined by regulators. 61% say it is a subjective term that means different things to different companies and is difficult to define

Lack of clarity

Last summer, the U.S. Chamber of Commerce's Centre for Capital Markets Competitiveness (CCMC), together with NASDAQ and a few others, published the findings of their survey regarding practices and the outlook for climate change and ESG reporting from the public company perspective. In sharp contrast most companies appear cautious about the term ESG. Only 8% say ESG encompasses

a generally understood set of issues and can be easily defined by regulators. 61% say it is a subjective term that means different things to different companies and is difficult to define. And this is when the survey finds that over the last decade most companies have increased the amount of climate change disclosures that they provide.

Compounding this blurriness is that the conventional cost-benefit analysis will not point the way forward. In the context of climate, it extends well 'beyond the traditional horizons of most actors in imposing a cost on future generations that the current generation has no direct incentive to fix.' Mark Carney, when Governor of the Bank of England, fittingly called this the tragedy of the horizons. Social has its own set of challenges, and companies need to move away from matrices that the West wants companies to report on and target what matters to us as a nation – so expect social to have the steepest climb. For most, governance comes first as a company that has strong governance and will be managed well in every way. Thankfully it has bright lines drawn out.

> The right structure, says the report "will depend on factors such as the composition and ESG knowledge base of the board, its existing governance practices, and the maturity of both the company and the board when it comes to addressing ESG topics

This lack of clarity does not mean that boards and companies do nothing till they see the runway. To talk of just two aspects: what is to be done – related to this is who decides, and reporting and communication. Unsurprisingly, both point to the need for boards to chart their own path.

Boards need to ensure that the company has rightly identified the ESG risks and the opportunities (new technologies, product markets etc). This implies a comprehensive review of financial performance, risk management,

supply chains, increased revenue potential and competitive differentiation.

How does the board work on this?

Again, there is no one right way. A recent BCG study regarding board practices finds that the most common approach (31%) for anchoring ESG into board governance is assigning oversight of these issues to the full board. This is followed by having the issues governed by a dedicated ESG committee of the board (20%) or by having just one member of the board - with no separate committee - lead on ESG issues (15%). The right structure, says the report "will depend on factors such as the composition and ESG knowledge base of the board, its existing governance practices, and the maturity of both the company and the board when it comes to addressing ESG topics."

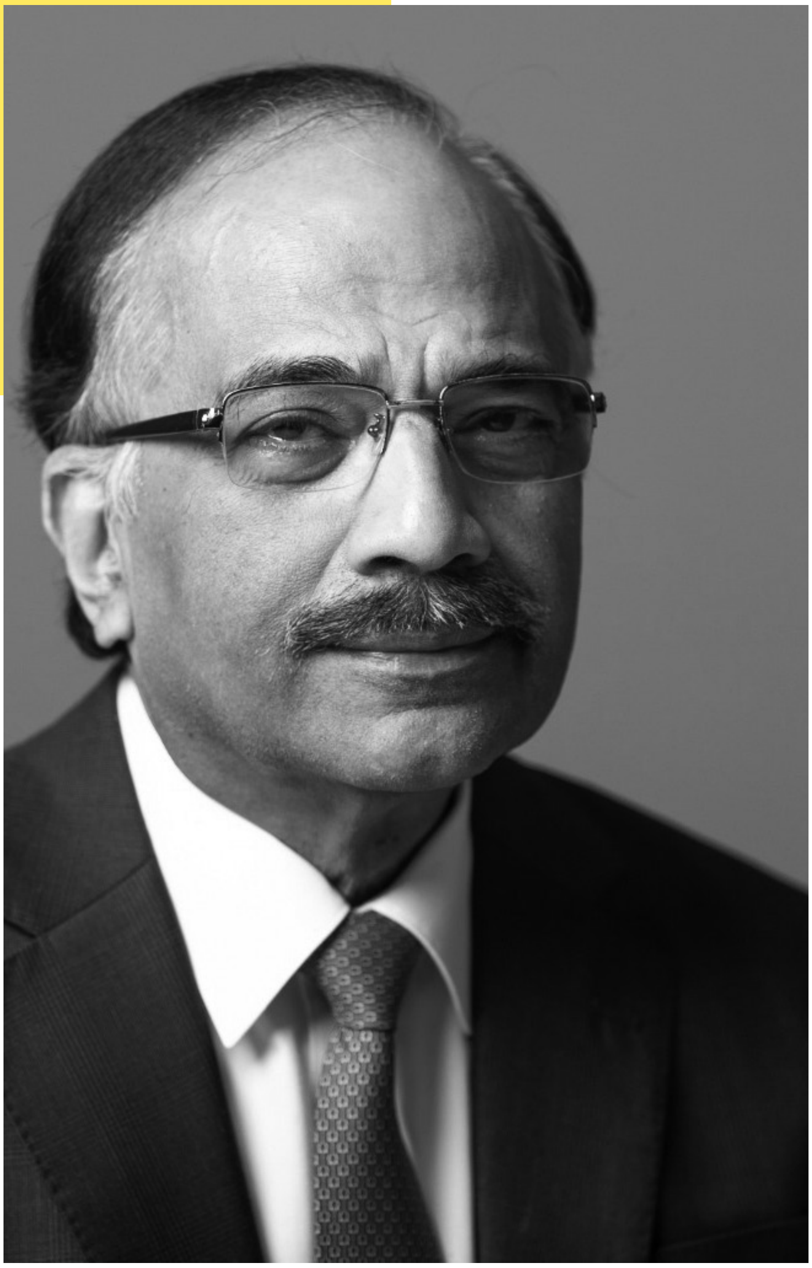
An important part of this exercise is setting both the intermediate goals and final goals; this includes drawing up the transition plans - because having the eventual target stretching out a couple of decades into the future, will mean that these are side stepped. Further, there is the need to tie these in targets to the senior management's compensation.

Having identified the goals, companies need to report their numbers. The CCMC survey cited finds that the basic disclosures are driven by one or more of the standard setting bodies like Sustainability Accounting Standards Board (44%), Global Reporting Initiative (31%), Task Force on Climate-Related Financial Disclosure (29%) and CDP (21%). But "46% of the firms surveyed said that almost as much of the additional disclosure are driven by shareholders asking for more information."

So, while I expect the Business Responsibility and Sustainability Reporting (BRSR) will provide our boards greater clarity, these will need to be bolstered by additional disclosures to conform to global expectations. And there will be the additional need to communicate on ESG matters with stakeholders, other than investors, and specially employees - who will be driving progress towards these ESG goals.

Companies and boards must prepare to face the messy reality of ESG. Regulations, no doubt, will standardise ESG disclosures and provide investors and stakeholders with comparable information. But this will not be the end, as multiple requirements and guidance will continue to flow and expectations build up to step beyond the regulatory ambit. Boards, it appears, must prepare to circle, not land. ■

Selection and appointment of “really” Independent Directors



India’s progress to a US$ 5 Trillion Economy can be hastened by ensuring a transparent process of identifying, selecting and appointing “really” Independent Directors

Prasad Chandran
former Chairman and Managing Director, BASF India and Chairman, SEEGOS

India can be a $5 trillion economy only if Corporate India empowers /enables itself by raising the Governance standards of at least the top 500 listed companies.

One of the biggest contributors to this goal, will be the role of Independent Directors (IDs), who will ensure that all the Board appointed Committees, particularly those that are chaired by IDs like Audit, NRC, Risk & others, perform the expected role of watchdogs for stakeholders of the listed entity.

This article examines the current practices on appointment of IDs & suggests measures to ensure the Directors appointed are "really" independent.

Background

The Companies Act 2013 & Rules thereof define an Independent Director as one who is not the MD, or the Whole-Time Director or a Nominee Director and meets the criteria as laid down in Appointments rules of the Act.

Currently there are about 2200 Independent Directors registered by MCA and a majority will be retired in the next few years, hence the urgency to ensure a pipeline of "Really-Independent " Independent Directors.

Whilst the expectations, roles and powers of the IDs have been well defined, the skill sets, competencies and ethical standards of most of the current IDs need substantial enhancement

Whilst the expectations, roles and powers of the IDs have been well defined, the skill sets, competencies and ethical standards of most of the current IDs need substantial enhancement.

These cannot be done by just framing more rules. It will require the process of identification and selection to be vastly improved.

The MCA has introduced an online self assessment proficiency test, based on which Directors are allotted a DIN number. As of June

2022, a total of 10,577 IDs have taken the self assessment test, of which 523 have failed the simple test.

This online test and various restrictions, of course are a big leap from the days when owners and promoters would nominate their drivers, gardeners and peons as Directors but it falls short of getting the best relevant talents in the country to be attracted to be IDs as a "Nation Building " activity and not just a vocation or a "rubber stamp" of the promoter.

Those who seek or are desperate to be on the Boards may not be the ideal and the most ideal are either not interested or not aware and will have to be motivated to join the Boards

Current scenario

As of now Independent Directors in PSUs are mostly nominees of the concerned parent Ministries playing a limited role in setting Governance standards.

In most listed companies IDs are either known to or have "connections" with the professional CMD or the owner promoter. The Indian Institute of Corporate Affairs under MCA has empanelled a pool of Directors. It also helps in various training and upgradation programs.

Whilst there has been substantial progress in the Board constitution, a truly independent process of identification, selection and appointment of IDs is yet to evolve.

Recommendations

The paradox of IDs on the Board is this - those who seek or are desperate to be on the Boards may not be the ideal and the most ideal are either not interested or not aware and will have to be motivated to join the Boards.

The IDs have to take the onerous responsibilities in the Audit, NRC & Risk committees of the Board to ensure highest standards of Governance, being the watchdog in not only managing risks but ensuring the interest of all stakeholders are taken care of. The challenge will be the ability to withstand pressures of the owner/management in all issues of Related Party transactions, remuneration of the KMPs and supporting the strategic long term sustainable growth of the Enterprise.

Some suggested avenues to harvest high quality IDs are as follows:

1) MD/CMDs of companies who are 3 to 5 years to retirement can be persuaded to take up one or two Boards as per their availability.
2) KMPs of top 25 Indian corporates who are inclined to a change in careers & contribute to corporate growth instead of an individual company growth.
3) IAS /IPS, IA&AS & other allied services personnel on retirement but with proven entrepreneurial, risk taking & Human Resources competencies.
4) Technical & IT Professional NRIs working at senior managerial positions in MNCs across the world and wishing to relocate to India.
5) Academicians/Research scholars from premier Management & Technical institutes who are willing to be on sabbatical or can combine roles in the corporate sector.

Role of Industry Associations

Whilst the above ID harvesting avenues are only indicative, many more can be added as possible sources for IDs.

The process of identifying and nominating plausible candidates must not be with the Government or its agencies. An independent high powered committee comprising of the DGs of Industry Associations which could include BCCI, IGCC, CII , FICCI , NASSCOM amongst others should be constituted by MCA.

This Committee could be chaired by an Individual of high international managerial eminence. This PPP system should set the needed rules & procedures for a transparent process of identification, selection and recommendation for appointment. ■

Role of Auditors in raising Governance Standards

An Auditor should be very trustworthy and un-biased in performing his duties by submitting true and fair reports to raise the Governance Standards of the company

Dr Vinod Chopra
Managing Director,
Sai Industrial Alliances

Auditing provides assurance to investors and creditors that company funds are handled appropriately. An audit protects the public from investing in companies that use corrupt business practices or that attempt to defraud investors with false financial statements. The work of Auditing is performed by Auditors. They work to see that a company's financial records and accounting procedures is in clear compliance with the governing laws. They conduct reviews of the financial statements and records to confirm publicly held companies meet their legal requirements. Auditors help to prevent and spot financial fraud and recommend good financial governance and practices to reduce any financial risk.

Auditors further play an important role in raising the Governance Standards. Governance Standards include a set of core, minimum standards that deal with how businesses are run which includes their processes, activities and relationship. The standards require business houses to remain profitable, operate lawfully, and be run in an accountable and responsible way.

The Auditors should conduct independent reports and not be influenced by anybody. This would protect the interest of the shareholders and stakeholders

The Governance Standards means the standards published by the Government which need to be complied with from time to time as are applicable to the objects and activities of the company. The role of Auditors is indeed very crucial as they help in achieving the objects of Governance standards.

Auditors provide the oversight of the financial reporting process, the Audit process, the company's system of internal controls and compliance with laws and regulations.

An Auditor is responsible for investigating the financial statements for errors and findings, performing Audits on operations and reporting on findings, and providing suggestions and recommendations. The risk involved can be analysed and corrected upon giving true financial data for the company - the true, transparent, clear, concise and real picture of the company's financial affairs. Governance is a balance of the interests of the company's stakeholders which includes shareholders, management, customers, suppliers, financiers, government and the community. Auditors play an important role in curbing scams as well.

An Auditor should be very trustworthy and un-biased in performing his duties by submitting true and fair reports to raise the Governance Standards

Role of Auditors

1. Helps in promoting Accountability: Extend evaluating controls and operations as a role of Auditors to enhance Governance Standards. The Auditors can include various strict norms, measures and new policies which will compel accountability at the workplace. For example, if frauds and manipulation have been done in the figures then penalty fines imposed for any such manipulations can be of good use. The culprit shall be punished on the slightest doubt or suspicion on the legality and integrity of the records. The Auditor is responsible to duly investigate and report any such abnormal happenings to give a true and fair representation.
2. Represent interest of shareholders: The Auditors should conduct independent

reports and not be influenced by anybody. This would protect the interest of the shareholders and stakeholders. The principles used by the company to be in legality, to ensure that the information received by the Board of Directors is accurate and reliable.

3. Management of Crisis: An Auditor can set up a crisis management plan which includes control measures to be used with Media and law-enforcement officials in the event of allegations of corruption and fraud.
4. Risk Assessment and Mitigation Plan: Auditors should perform a period risk assessment to promote and raise the Governance Standards. To access the security measures adopted by the company in order to curb the risk involved of fraudulent activities and corruptions. To ensure the whole of risk tolerance level of the companies and the measures adopted to lessen the risks.
5. To maintain strong relationships with regulators: The Auditors while performing audit need to check that the operations of the company are transparent; this would in turn result in good support from the regulators. Proper compliance by the Auditors if all the legal procedures are followed by the company in regulation of the companies' daily affairs. In addition to the examination of the company's Accounts and Reports, if the Auditors also check the internal control being practised by the company it would raise Governance Standards.

An Auditor should be very trustworthy and un-biased in performing his duties by submitting true and fair reports to raise the Governance Standards. An auditor is highly responsible for filling the gap between the management and the stakeholders with this knowledge thus protecting the interest of the investors. The main function performed by Auditors rests in examining the financial statements and eliminating any kind of manipulation in the accounts and records, thereby playing a crucial role in best financial and governance practices.

Corporate Governance in the era of Sustainability

It is now an accepted fact that robust governance is required to meet the changing stakeholders' expectations, brand management, mitigate risks, and to seize growth opportunities

Sudhir Kapadia
Partner, EY LLP, India

Mansi Agrawal
Director, EY LLP, India

The 'corporation' has been a pioneering innovation to separate ownership and management and enable the transformation of cottage enterprises into large industrial conglomerates during the Industrial Revolution. As was the prevailing norm, throughout the nineteenth century, the main purpose of the corporation was maximising profits and shareholders wealth. For a very long time, this credo was embedded in corporate philosophy and practice. Even as recently as in 1970, Milton Freidman said, ''The Social responsibility of business is to increase its profits'. He believed that the focus of a corporation should be only to maximise shareholder's profit.

During 2000s, the world saw multiple governance and financial lapses, prominent examples being Enron in 2001 and Lehman Brothers in 2008 (ultimately leading to a global financial crisis). These corporate failures alongwith others were an eye opener and expectations from corporations by all stakeholders increased considerably. This

> It has been observed that higher the level of trust stakeholders have in a corporate group, better is their business performance and market capitalisation

financial crisis pushed 'corporate governance' to be the top of the agenda of the Organisation for Economic Co-operation and Development ('OECD'), as well as the United Nations ('UN') and a consensus has emerged on the need for strengthening corporate governance for better investor protection.

In the past, Business Roundtable, an association of highly influential CEOs of major US companies, had issued multiple versions of Principles of Corporate Governance which mainly endorsed the principle of maximising shareholders' interests. However, in a significant shift, in 2019, Business Roundtable

announced the release of a new Statement on the 'Purpose of a Corporation' signed by 181 CEOs who committed to lead their companies for the benefit of all stakeholders - customers, employees, suppliers, communities and shareholders[1].

Ancient legacy

India has a rich history of socio-economic development and sustainability in business since ancient times - from Kautiliya's philosophy (author of Arthasastra) which focussed on interest of larger stakeholders to Mahatma Gandhi's doctrine of Trusteeship which advocated that companies should act as trusteeships valuing social responsibility alongside profits; that business has social and environmental responsibilities and not just financial accountability. Large business houses such as the Tata Group, Birla Group, Bajaj Group and Mahindras, amongst others, are well-known for their socially responsible business conduct, corporate governance and ethics. Interestingly, it has been observed that higher the level of trust stakeholders have in a corporate group, better is their business performance and market capitalisation.

A study done by Institutional Investor Advisory Services (IiAS) shows that 20 companies in the BSE 100 came in the 'Leadership' category in Corporate Governance in 2021

In recent times, investors have been hit hard with lapses in corporate governance by corporations like Satyam, Kingfisher Airlines and DHFL, amongst others. This has prompted far greater scrutiny by regulators and a far greater focus by companies on corporate governance. A study done by

---

[1] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans
[2] https://www.iiasadvisory.com/institutional-eye/corporate-governance-scores-2021-immunity-through-strong-boards

Institutional Investor Advisory Services (IiAS) shows that 20 companies in the BSE 100 came in the 'Leadership' category in Corporate Governance in 2021, against 11 in 2020 and six in 2019.[2] This shows increasing focus of companies on becoming industry leaders in corporate governance.

Overall, it is seen that with the rapidly changing world, increased business complexity, global disruption, ease of data access, decreased trust and greater scrutiny in an age of social media, there is a paradigm shift from a narrower focus on shareholder wealth to focussing on larger stakeholders' interest. This means the expectations from organisations are to have responsible and sustainable businesses and align its wealth and value-creation activities with the interests of the larger group of stakeholders, i.e the employees, the environment, and society at large.

To give a further thrust to make businesses accountable to all stakeholders, regulators in India are bringing changes in the law. For instance, Securities and Exchange Board of India ('SEBI') made it mandatory for top 1000 listed companies to submit Business Responsibility and Sustainability Report, Indian corporate law has a minimum threshold on spending on Corporate Social Responsibility ('CSR'), etc.

Investors increasingly believe having strong and transparent governance leads to risk reduction and hence, creates value for all the stakeholders of the company. It is seen that financial institutions as well as individual investors today are adapting their investment strategy to support sustainable business models, which creates value for all the stakeholders of the company. Also, studies say that over 72% of the workforce will be Millennial and Gen Z generations as compared to 52% in 2019[3] . These generations place greater importance on environmental, social and governance issues. They are driven and motivated to work when they know they can effectively contribute to public causes that they believe in. Therefore, it has become important for businesses to focus on larger and long-term agenda of sustainability to attract capital and talent.

Investors increasingly believe having strong and transparent governance leads to risk reduction and hence, creates value for all the stakeholders of the company. It is seen that financial institutions as well as individual investors today are adapting their investment strategy to support sustainable business models

It is now an accepted fact that robust governance is required to meet the changing stakeholders' expectations, brand management, mitigate risks, and to seize growth opportunities. On one hand businesses are making encouraging progress to drive a long-term strategy keeping in mind multi-stakeholder approach and putting governance frameworks in place and on other hand, regulators are increasing checks and balances to ensure corporate governance and socially responsible conduct. The role of business (and the corporation) has truly evolved from the early buccaneering times of the nineteenth century to the modern era of compassionate and responsible capitalism. It is imperative for corporations and governments to work together in partnership for the greater good of all stakeholders. ■

(The views expressed in this Article are authors' personal views. In no way they should be interpreted to be views of author's employer or any professional service organisation with which authors are associated. Further, it may be noted that this article contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. On any specific matter, reference should be made to the appropriate advisor.)

[3] Marshmclennan.com/insights/publications

Creating a conducive environment for Governance

Within a good governance framework, there is a huge role for the Audit committee and within that, for the Chairman of the Audit committee

V S Parthasarathy
Vice Chairman, Allcargo Logistics Group

The key thing is what role governance has on the board and how important is the board to get the governance right. Earlier, in many cases, there was a saying that the board is a puppet on a chain and as the promoter says there will be a nod and there will be things that will be done. It is not a theoretical concept, was very much in practice in India and may be in practice in some pockets even today. However, life evolved a little bit more as we went forward. Now, with more focus coming in from the listed companies side to start with; the listing requirements, the requirements of the SEBI , the need for minority shareholders to feel secure, all these have bought in many transformations & many changes. This has found favour and has been a good move in the Indian corporate governance space. The atmosphere and ecosystem is conducive for better Governance.

Within a good governance framework, there is a huge role for the Audit committee and within that, for the Chairman of the Audit committee. Before we go to the Chairman of the Audit committee, let us see what are the important things that an Audit committee undertakes. Financial accounts are reviewed in detail and recommended by the Audit committee; all accounting principles, notes, any deviations etc. are reviewed, internal audit is accounted and what issues are being faced, whistle-blower complaints are looked at.

Now, with more focus coming in from the listed companies side to start with; the listing requirements, the requirements of the SEBI , the need for minority shareholders to feel secure, all these have bought in many transformations & many changes

As time has gone on, over & above these, there are some specific functions, which has

been given and become part of the Audit committee; risk has found a place in the Audit committee. Another important thing is that related party has become a big topic in the Audit committee. In a broader sense, the financial discipline, the financial path being followed by a company are looked at and focussed in an Audit committee.

The three Cs

The Audit committee meets for only some time every quarter, so the role of the committee Chairman becomes very important. There are three types of roles that he can play in the Audit committee. The first role is how can the functioning and disclosures be made more efficient in an Audit committee. The second role is to bring expertise to guide the management, the CFO, to be able to do a better and more prepared finance and accounts statements. For example, when the Satyam case happened, then the Audit committee chair could have wanted a plan on how the main objections and main qualification of accounts will be removed, what needs to be

Related party has become a big topic in the Audit committee. In a broader sense, the financial discipline, the financial path being followed by a company are looked at and focussed in an Audit committee

done and how it will be tracked every quarter; therefore it would provide guidance. The third one is, it will work along with the Audit committee and management to identify and isolate any conflict of interest and eliminate conflicts of interest to the extent possible. This is a very important task that has come in and is being done; it is not only approving related party transactions but to identify ways and means of arm's length and ordinary course and to bring it to the forum.

If you were to look at an organisation and see how to get higher Governance, then conceptually there are three things that you

have to tackle – Compliance, Competence and Conflict of interest eradication. Therefore, the Chairman by setting and facilitating can help the company achieve high Governance.

Firstly, focussing on Compliance. The slogan of 100% compliance is a good one for the Chairman to adopt and spend time on this aspect. The 5 + 5 + 5 concept is a great start. At the star, chat with the statutory auditors what are their top 5 issues where they want improvement, similarly, work with internal auditors and lastly with CEO/CFO where their top 5 concerns are addressed. This is an improvement journey towards excellence and works wonders if persisted over a longer period of time. Some 'Deep Dive' will help in the process.

The Audit committee Chairman has a very unique role of interacting deeper with the internal and external auditor, to bring out the first and second level of defence that needs to be there

The second one is Competence and here the Chairman may focus on mentoring/coaching the CFO and making sure that he has competent people in the key roles. Thirdly, it is important to eradicate Conflict of interest, and that comes from dissection, debate and disclosures, the three Ds which is the hallmark of good organisations.

Unique role

To sum it up, the Audit committee Chairman has a very unique role of interacting deeper with the internal and external auditor, to bring out the first and second level of defence that needs to be there, then on top of it very specifically lay down how the related party transactions can get much better and eliminate any conflict of interest that we see and say that what is being done is done fairly and everything is comprehensively done.

Lastly, the Chairman through his expertise as well as his experience brings about a very conducive environment of bringing discipline, wherein the board as well as the management feel that it is helping them do a good job and rather than crying over spilt milk, this is a methodology of putting a stitch in time which will save nine later. Therefore, the Chairman's role has become a pivotal role and no wonder that it is singled out in committee representations.

Settings standards of Integrity & Independence

Managing the responsibilities of the Audit committee is a major challenge for the audit Chair. Despite the new governance requirements, corporate scandals abound, which places even greater emphasis on leadership and competency

Nasser Munjee
Chairman, DCB Bank

Over the past decade, the standards of corporate governance have been redefined and elevated to an entirely different level worldwide. This is now reflected heavily in the law as well the regulatory frameworks applicable especially to listed companies. The responsibilities of a Board Chairman are far more onerous to lead the Board in conformity with these new standards and to provide an overarching framework of integrity and transparency.

The Audit committee is the most important committee overseeing the overall operational and financial mechanisms followed in a company and the adequacy of controls to reflect this process. Managing the responsibilities of the Audit committee is a major challenge for the audit Chair. Despite the new governance requirements, corporate scandals abound, which places even greater emphasis on leadership and competency. Most important, is for the audit Chair to be aware of the culture of an organisation, its key management personnel, the management style prevailing in the company and the leadership of the CEO.

> Candid conversations with key personnel help to build a degree of trust and to provide the opportunity for individuals to discuss issues with the Chairman

Preparation

One of the pre-requisites of conducting an effective Audit committee is the requirement for rigorous preparation before a meeting. It's very easy to be led on by managements with long and sometimes unending powerpoint presentations which seldom tell you what's not on the slides. Pre-preparation allows one to understand better the management's narrative and to go beyond the presentation in order to ask the right questions.

So often, an Audit committee consists of lengthy presentations without adequate time for discussions. It is always preferable for management to be forced to distil the

Freepik.com

key messages and to spend more time on discussion. Pre meetings could be used by the Chair to determine what might require more detail and what might be passed through quickly. It's for the Chair to decide how best to use the time of the Audit committee. I go a step beyond this and require the CEO and CFO to write down in prose key developments in the quarter, what went right, what went wrong, new products and initiatives, and major issues faced in different areas including human resources. This clarifies the context within which presentations are prepared and points to areas that might need more discussion.

Private meetings are an essential part of the role of the Chair. The Chair must hold private meetings with the Statutory Auditor and the Internal Auditor (as well as the head of compliance and the legal counsel) to form a judgement as to what questions ought to be asked. Candid conversations with these key personnel help to build a degree of trust and to provide the opportunity for individuals to discuss issues with the Chairman. These meetings inform the Chair of the areas to dig deeper during the audit meeting and not be simply led on by management presentations.

To have an effective Audit committee, all members must participate actively. Very often it falls to the Chair to conduct the meeting while other members are quiet spectators

Effectiveness of an Audit committee

To have an effective Audit committee, all members must participate actively. Very often it falls to the Chair to conduct the meeting while other members are quiet spectators. An effective Audit committee is one where every member's expertise is used to the full and

they are fully engaged in the proceeding of the meeting. This engagement also forms a major responsibility of the Audit Chair.

A number of possibilities exist to bring this about. The Chair could request members to send questions to the management after they have read the papers on areas they would like greater clarification. The Chair might assign individual members a particular area of responsibility that they could explore with management. Whatever technique is used, it is essential to bring out the collective wisdom of the group in order to ensure that the maximum attention is being applied on the very onerous duties of an Audit committee.

The scope of an Audit committee is under review annually and inevitably new areas are added to their responsibilities. Recent inclusions have been the detailed review of related party transactions, cyber security, compliance and ESG. These added responsibilities make sense from a governance point of view but test the capacity of members of an Audit committee. New expertise might be required at the Board level so that the Audit committee could be strengthened to apply their minds to these new areas with competence. Areas such as compliance may require a separate committee (given the complexity and the pervasiveness of compliance). Many companies are grappling with where they should place the ESG committee or whether to have a separate committee altogether.

The emergence of risk

In a volatile external environment management of risk is a critical function of every management. Companies now have Risk Management Committees that review risks faced by a company and the strategies in place for risk mitigation. Most often the same members of the Audit committee are on the risk management committee. Where should oversite of new and emerging risks reside? There clearly is overlap between the Audit committee, the risk committee and ESG. These are matters that are currently being discussed in corporate board rooms and in time a process will be derived.

Companies now have Risk Management Committees that review risks faced by a company and the strategies in place for risk mitigation. Most often the same members of the Audit committee are on the risk management committee. Where should oversite of new and emerging risks reside? There clearly is overlap between the Audit committee, the risk committee and ESG

Clearly sharing of oversight responsibilities with other committees can alleviate the pressure put on the Audit committee and its Chair. Risk also requires technical competencies such as data analytics and this too will redefine the competency at the Board level for the future.

Conclusions

The leadership role of the Chair of the Audit committee cannot be underestimated. There is a wide variety of characteristics the person has to provide - moral and ethical commitment, an ability to listen and understand, involve other members and a high level of competency in the subject matter that the Chair has to deal with. These are not people easy to find. The manner in which governance norms are evolving is outstripping the availability of the right combination of skills. We will have to re-examine this evolution. Not many competent individuals will be prepared to take on the responsibility and accountability required of the position especially when the legal penalties are so high for failure. Good governance needs exemplary individuals who might have better things to do with their lives. ■

Thank You

The Governance Committee of Bombay Chamber of Commerce & Industry successfully organised the Conclave on Better Governance - Sustained Profitability. To take the dialogue further, we decided to publish this book.

We express our gratitude to the members of the Governance Committee and all the Speakers at the Conclave whose valuable insights in the Panel Discussions are published in this book.

We also thank all the industry leaders who gave their valuable time and effort to author articles on various aspects of Sustainable Corporate Governance which are featured here.

We appreciate Bombay Chamber of Commerce & Industry Trust for Economic Management & Studies for support in bringing out this book.

We look forward to more such projects that will add value to our stewardship role as India's oldest Chambers of Commerce & Industry.

Sandeep Khosla,
Director General,
Bombay Chamber of Commerce & Industry

About Bombay Chamber

The Bombay Chamber of Commerce & Industry is India's premier Chamber of Commerce and Industry situated in Mumbai, the industrial, financial and commercial capital of India. Established in 1836, it is one of the oldest Chambers in the country and has a long and illustrious history of 185 years of continuous service to trade and industry.

The board of the chamber includes top professionals from most industry sectors. Chamber is playing a larger role of Corporate as a Citizen while promoting good Governance and ethical conduct in business and public life towards the greater good of society encompassing promotion of skill training, arts and culture in addition to ensuring equitable and balanced industrial growth of the country in a sustainable manner.

Registered Office
Mackinnon Mackenzie Building,
4, Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400001
Phone No. : +91-22 - 49100200 / 49100213
Email : bcci@bombaychamber.com

Administrative Office
The Ruby;, 4th floor, 29, Senapati Bapat Marg,
Dadar (W), Mumbai – 400028
Phone No. : +91-22 - 61200200 / 61200213
Email : bcci@bombaychamber.com

Project Team:
- R Ganesh, Deputy Director, Bombay Chamber of Commerce & Industry
- Steena Joy, Joint Director, Bombay Chamber of Commerce & Industry
- Aneeha Neeraja Rajan, Manager, Bombay Chamber of Commerce & Industry

MEET, GREET AND CONNECT

Office space for Conferences, Seminars, Arbitrations, Mediations and Board Meetings

VENUE: 'THE RUBY', DADAR (W)

Bombay Chamber provides modern meeting spaces with cutting-edge technology and elegantly designed furnishings. We have a variety of venues ranging from small meeting spaces for one-on-one meetings to enormous full-sized boardrooms.

Office cabins and workstations also available

Attractive discounts for bulk bookings*

COVID-19 PROTOCOLS FOLLOWED

Guest are expected to follow the COVID-19 protocols, which include wearing masks, hand sanitizing on a regular basis and maintaining social distance, among other things'

DO YOU NEED A CONFERENCE ROOM?

digamber.rale@bombaychamber.com | 9969274865
prashant.bais@bombaychamber.com | 9967705312

ALL MEETING ROOMS ARE SERVED BY A DEDICATED SUPPORT TEAM AND INCLUDE:

- LCD projector and screen
- Note pads & pencils
- Flipchart, whiteboard and markers
- Tea/Coffee
- Fully Air-conditioned
- Bottled Water

VIDEO CONFERENCING AND CATERING SERVICES AVAILABLE AS PER REQUIREMENT

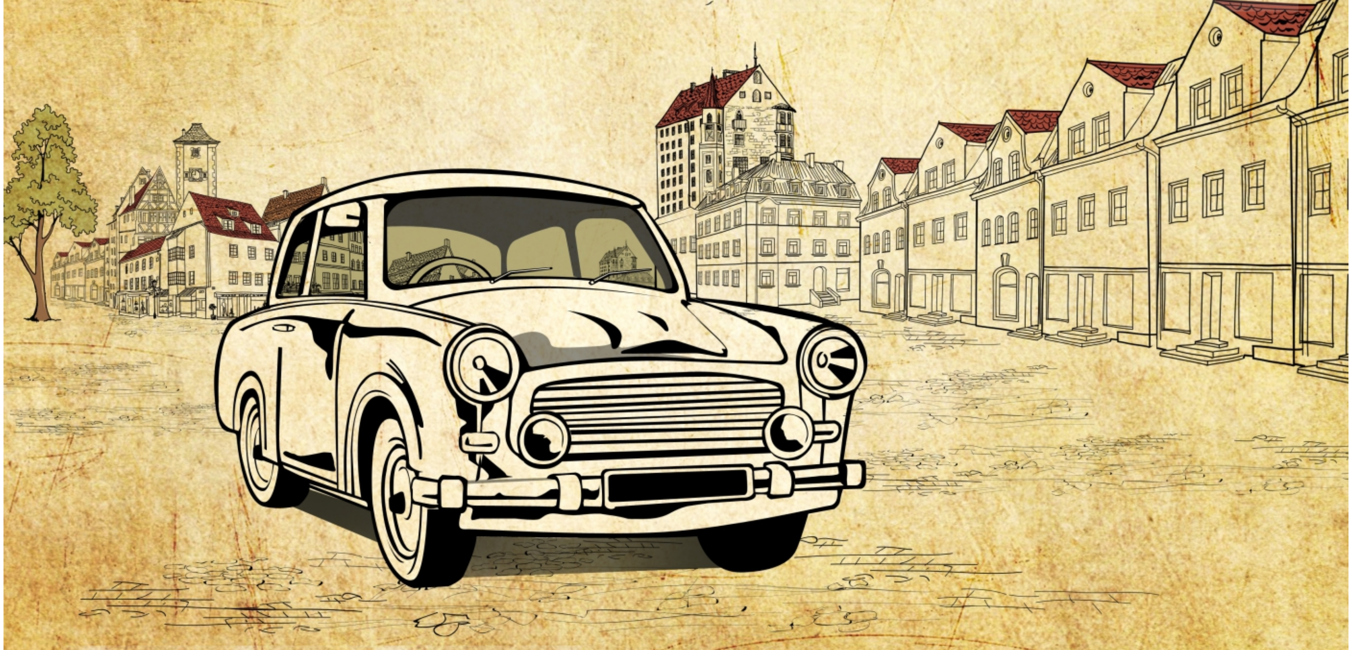
BOMBAY CHAMBER OF COMMERCE AND INDUSTRY
REGISTERED OFFICE: Mackinnon Mackenzie Building, 3rd Floor, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai 400 001. Ph.022-4910 0200
ADMIN OFFICE: 'The Ruby', 4th Floor, NW, 29, Senapati Bapat Marg, Dadar (West), Mumbai 400 028. Ph.022-6120 0240 / 210

FOR MORE DETAILS, KINDLY VISIT OUR WEBSITE
www.bombaychamber.com

*terms and conditions apply

Pragati ka Jashn

A tribute to the75th Anniversary of India's Independence



Coming Soon!

Bombay Chamber's Desk Calendar for the year 2023:

'India @75: Pragati ka Jashn'

A rare collection of sketches that embody the journey of India in various industry sectors like

Infrastructure, Automobile, Iron & Steel, Education, Healthcare, Power & Energy, Technology, Agriculture, Aviation, Shipping, Banking & Finance and Telecommunications.

For partnership opportunities contact:
Mr. Sunil Nair, Joint Director, Bombay Chamber of Commerce and Industry
Mob.: 9819787723 / 022-61200209 Email:sunil.nair@bombaychamber.com