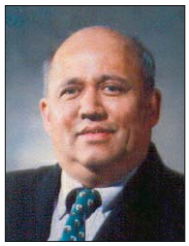
Corporate Governance – International & Indian Practices



—Y.M. Kale

Moves are afoot globally to promote convergence of good corporate governance practices. International Accounting Standards with linkages to International Organisation of Securities Commission, which represents most of the world's regulating stock exchanges, are pulling towards a harmonisation of desirable corporate governance practices. Yet the sober truth is that corporate governance practices in various countries remain divergent. India can be proud of what it has achieved so far in Corporate Governance practices but, of course, much more needs to be done.

Corporate Governance practices diverge as between different jurisdictions, based on Board Structures, Legal Frameworks, Interpretations of the 'Corporate' concept, Prevalence of Competition, Role of Courts, and other factors, which vary according to their evolution in specific cultures and countries. Had this not been so, there would have been insufficient justification in the caption of this article to refer separately to International practices and to Indian practices in corporate governance. In fact, if one considers international Corporate Governance as comprising such dissimilar practices as worker co-determination obtaining in continental Europe, two-tier board structures in Germany (which are acceptable in jurisdictions as far removed as Indonesia but unacceptable to the proponents of Unitary Boards within the EEC), the family domination of listed companies of overseas Chinese groups in East Asia, etc., it would seem courageous even to speak of international practices as one grouping while benchmarking the Indian practices.

Codes on corporate governance issued internationally by OECD, World Bank, Australia (Hilmer 1993), South Africa (King 1995), France (Vienot 1995) and Common Wealth Secretariat are promoting a convergence of good corporate governance practices. International Accounting Standards with linkages to the International Organisation of Securities Commission (IOSCO), which represents most of the World's regulating stock exchanges, are pulling towards a harmonisation of desirable corporate governance practices. Yet the sober truth is that corporate governance practices in various countries remain divergent despite these major initiatives for convergence. To spot these divergences one need not single out India or any Less Developed Country (LDC). Instead one can simply take note of the experience in Japan, which is the world's second largest economy. For years the Japanese Companies resisted the very notion

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of an outside director. Japanese companies are often part of *Keiretsu* networks with interlocking directorships, crossholdings and a Bank or Financial institution at its heart. Boards are large and almost entirely executive. In *Keiretsu*, Directors play a ritualistic role. Aron Viner in a 1993 article has said *"These are masquerade boards in which managers briefly don the masks of directors"*.

A discussion of this nature on corporate governance practices is usefully begun by emphasising that Governance is different from Management. Management runs the enterprise. Governance ensures it is being run in the right *direct*ion. That is why those charged with the governance function are called *direct*ors. Let us consider the important questions in corporate governance practices to enable an understanding of practices Internationally and in India.

Duality

One of the views propounded by the Cadbury report was that the CEO and the chairman of the Board should be two different persons and not the same person. This proposal was seen as breaking new ground not only because it underscored the checks and balances principle and sought to protect minority interest but more importantly because it broke free of the practice in the United States where most listed companies clubbed these two roles into one and appointed a single dominant personality. The source of inspiration for duality may well have been, its advocacy by certain researchers and professors notably Jay Lorsch of Harvard and, the Australian practice where these two roles were distinct in most public companies and manned by two persons.

However, there are many who believe single leadership can produce better performance. In Indian Corporate Governance practice the subtle relationship between chairman and CEO often works well. A variant sometimes seen is for the erstwhile CEO to be appointed chairman after retirement. This makes lot of sense on grounds of knowledge and insight, but purists fear such a chairman may be unable to let go of the managerial ropes, which he held as CEO. According to these scholars the advantage of an outsider is that he can be thoroughly objective and, lacking both detailed knowledge of the company or long-standing relationships with its managers, is less likely to try to interfere with the CEO's job of running the business.

Warren Bennis appears to have encapsulated the pros and cons rather nicely when he said "*The classic argument against the chairman being the former CEO is that the chairman will be a meddler. ..... (but)CEO does need someone to confide in, to talk candidly about changes and other important matters)*". There is need to strike the right balance between the idea of a single powerful individual who may spur decision making and enhance performance, and the idea of shared responsibility which could act as a de-risking mechanism. Even the UK Combined Code did recognise the inevitability of single leadership given necessitating circumstances and balanced it with the idea of a lead director to be the spokesman of a group of strong non-executive directors operating in those circumstances.

Good governance practice requires that chosen strategy must be adequately supported by 'policy making' and guidelines formulated for its implementation. The challenge for good governance *inter alia* is to be able to demonstrate that in making their choices, directors have adequately considered the long-term goals of the business and have not been influenced by only the short-term interests of the business.

The Indian Corporate Governance practice specifies a significant increase in the required minima for the number of independent directors from one-third to one-half of the total board member strength in case the chairman of the Board is an 'executive' chairman instead of a 'non-executive' chairman, in any listed Indian company.

Independence of Non-Executive Directors

Perhaps the most basic tenet of corporate governance is the increasing dominance of non-executive directors who are independent of the management. It means choosing people who have no conflict of interest that could affect the objectivity and neutrality of their judgment. The obvious downside is to exclude from the definition of independence, persons who may have a valuable contribution to make to board deliberations but who are linked to the enterprise or its management by contractual or blood-relationships. Independence is an ineradicable human instinct which anti-dates even our social instinct and is rather difficult to define except as a state of mind.

Prescriptive recipes listing pecuniary or other relationships that supposedly impair independence are apt to produce results quite different to those intended, given human ingenuity, and the difficulty of adequately drafting the recipe to capture such an elusive concept.

In Corporate Governance practices, India can be proud of what it has achieved so far, initially voluntarily and later under guidance of various regulators, while recognising that obviously much more needs to be done. In such a pluralistic democratic country that believes in a consensual process, there are bound to be some hiccups.

In India, the Companies Act does not incorporate the concept of 'independent' director, the requirement being confined to certain *minima* of non-executive directors. So, even a large public limited company in India, if unlisted, can carry on without independent directors on board. This position may well change after the amendments to the Companies Act that is expected. But as of now, it is only the companies listed with Indian stock exchanges that require to satisfy the said minima of independent directors on Board. Listed companies number less than four percent of the total number of limited companies registered in India, albeit accounting for the bulk of the corporate wealth.

The basic question increasingly asked internationally, on which a debate has not so far taken place to the same extent in India is, whether such independent directors can be truly independent when their nomination to the board is frequently sourced in a recommendation by the management, especially the CEO, and is ultimately processed and confirmed by other members of the Board. More importantly can such men continue to be involved in making decisions about issues along with executive directors who they are ultimately supposed to be monitoring. The remedial measure suggested by some is an alternative international practice led by companies in continental Europe, which have a structure of Two Tier Boards with no common members between the two tiers.

The Supervisory board or the Upper level board would comprise non-executive directors who would supervise the Lower tier Executive board responsible for taking all the decisions that actually run the enterprise. The opponents of the two-tier board structure emphasise that the major Corporate Governance function is to give a valid direction to the enterprise. This mainly comprises 'Strategy Formulation' and 'Policy making', which are the critical determinants of performance. So, the exclusion of the Supervisory (or Upper Level) Board from these functions would greatly diminish its value to the company because the functioning of such Supervisory (or Upper Level) Board would then be mostly confined to monitoring and providing accountability. In short, the function of the Supervisory (or Upper Level) Board if truncated to deal only with *conformance* aspects of a Board's work, would shut out from its deliberations the crucial *performance* aspects. This is most undesirable as *performance* and *conformance* should go hand-in-hand and not be artificially divorced. Good performance would be enhanced by sound conformance, but sound conformance cannot undo bad performance.

Nevertheless, it must be recognised that the European Economic Community (EEC) was almost about to adopt the Two Tier Structure and it was mainly the opposition in debate from the proponents of the Unitary Board Structure in UK and some other jurisdictions, that managed to defer the adoption of the Two Tier Board. It may be noted that while India and Bangladesh are on the Unitary Board Structure, Indonesia has adopted a Two Tier Structure.

Another proposal currently gaining advocacy internationally is that institutional investors like insurance companies, pension funds and financial institutions should have a greater clout in impacting Board decisions. There are also suggestions internationally to create a corporate senate, which could be yet one more governance forum for shareholder, representatives.

A possible solution, which is probably well appreciated in India, is to appoint strong non-executive directors who are not only independent but widely seen to be so, and who are required to operate under internal guidelines formulated to maintain board room behaviour as a solemn orderly judicious process instead of its occasional degeneration into an opinionated power play in pursuit of personal agenda. Internal guidelines or codes of ethics howsoever informal must especially urge directors to abjure from the following (illustrative and not exhaustive), which no amount of external regulatory prescription is likely to be able to curb:

(a) **Logrolling:** When two or more directors build alliances for mutual support on matters of interest to those who are part of this alliance network.

(b) **Canvassing:** Arranging a consensus informally outside the boardroom on a sensitive issue so that the item is passed with minimum discussion. Sometimes this is done innocently to save valuable board time but needs to be discouraged.

(c) **Divisive tactics:** Aggravating an issue, say, in the financial accounts, to provoke executive and non-executive directors to argue against each other as subgroups defending conflicting positions, at times involving external and internal auditors, mainly to divert attention or achieve an aim that has nothing to do with the clinical correctitude of the disputation.

(d) **Use of privileged access:** Use of privileged access to information, not for insider trading but to gain power over personnel and resources in other organisations and to extend the individual directors authority over the CEO and other management personnel.

(e) **Selective emphasis**: Presenting one version of a sensitive issue to board colleagues in such a way that while it does not tantamount to a lie, it furthers the pursuit of hidden goals that are not necessarily in the interest of the corporate entity. In rare cases the dissemination of information may go beyond board deliberations to influence communications with stakeholders and external audiences. Some times this is done to bolster personal ego and image without realising the danger that if such communication becomes excessive, it can provoke unwelcome attention and in extreme cases, the intervention of the regulatory authorities.

Another variant of this, which may be innocent but nevertheless undesirable, is that the downside and risk of any investment project or proposal is highlighted with such negativism as to almost ensure it would be turned down.

(f) **Tunnel vision:** The close involvement with a particular specialism within the corporate entity or with a subsidiary company or with a business segment, brings about in some directors a sub-optimal myopia giving unwarranted preferential treatment to a part of the organisation, to the detriment of the corporate entity as a whole. It can also de-moralise senior management by a loss of objectivity on the part of Directors in evaluating the performance of disaggregated results.

(g) **Information deluge:** Non-executive directors can also be at the receiving end of a bad practice, in that, very close to any meeting, they can be snowed under, by the executive directors sending them masses of data which could be difficult to assimilate and may not be particularly relevant. This kind of snowing tactic can at times be used by executive directors as a shield against an inquisitive non-executive director who has been over persistent in his thirst for information.

Role of External Auditors

The major issue under corporate governance practices relating to external auditors appears to be sourced internationally rather than domestically in India. That the external auditors need to be independent of the company and its directors and management was and is well understood by every one since the principal function of the External Auditor is to report to share holders on financial accounts produced by directors and managers. The difficulty has arisen through exponential growth in the sizes of both, the corporate entities audited and their external auditors.

Four global accounting firms perform audits of the overwhelming majority of all global corporates. Although the proportion of non-audit work is slowly and perhaps irreversibly reducing at least in UK and USA, it is interesting to note that as late as 2002, published statistics of the UK FTSE 100 companies showed that, Audit Fees paid represented only a quarter of the Total Fees paid to the big four. The disintegration of Enron and its external auditor firm brought forth a new corporate governance law in the US. Worldcom became the world's largest bankruptcy as a result of governance failure and unreported fraud. Financial scan-

dals were not confined to the US, but included British and Continental companies.

Directors lacking independence, Senior management rewarding themselves richly and even Analysts giving biased advice, were all no doubt to blame, but the most cursory look at the nature of the manipulation underlined a rethinking on the present nature and role of the major firms, and made it difficult to exculpate them.

- ENRON, engineered special purpose entities, which took massive debts off its balance sheet.
- INDEPENDENT INSURANCE COMPANY, an entrepreneurial British insurance company, simply failed to enter huge claims in its accounts.
- WORLDCOM, capitalised $3.8 billion of maintenance costs, which should have been charged against profits.
- ELAN, an Irish pharmaceuticals group, sold the rights to royalties to companies it had created, with the option to buy them back at higher prices.
- SUNBEAM, an American appliances manufacturer, shipped more goods to distributors than they could possibly sell taking credit for the revenue but ignoring returned goods.

Until these and others were formally acknowledged as financial manipulation, the description of such goings on by industry and profession used to be the euphemistic expression "aggressive earnings management".

Anyone who was articled to a British firm in the sixties, or worked post-qualification in one of the major firms auditing very large American and British companies internationally in the early seventies, would agree that both industry and profession were very different in those days. One suspects that the opening of financial markets around the world in the eighties changed the Anglo-American economy. Privatisation of state enterprises may have exacerbated the process. Somewhere along the line, greed became not just acceptable but even respectable. What used to be a value based profession dotted with medium sized firms presided over by partners grown like Elms and Oak trees, became a profit driven business run by partner equivalents whose principal pre-occupation was marketing. One of the then big five came to be recognised essentially as a marketing organisation, which just happened to operate in the realm of public accounting, and was to be regarded as a firm of chartered accountants only for that reason. If this debasement has not occurred to any significant extent in the big four in India, then it is as much a tribute to their local partners as to the Institute of Chartered Accountants of India which did not fail to emphasise the primacy of the CA Act and Regulations framed thereunder in the Report of its Study Team on Foreign Firms and Foreign Bodies issued in the mid-nineties and in subsequent pronouncements.

Internationally many proposals are afoot to deal with the issue of 'over familiarity' between Auditor and Management. These include a periodic rotation of audit partners, which is accepted by the profession, a rotation of auditors that has often been rejected by the profession and most importantly by a process of hiving off non-audit work, which is not liked by the profession either.

Directors' Remuneration

The liberalised provisions of law in India regarding directors' remuneration are too well known to warrant elaboration. So an indication of international concerns on this may be more relevant. Directors' insulating their positions from unwelcome takeovers by devices like white knight, green mail and poison pills was a corporate governance issue in the eighties. More recently there is concern about the rewards directors arrogate to themselves even during years of dismal corporate performance. This along with extraction of golden handshakes or hand cuffs, rolling contracts and over generous share options have earned pejoratives like 'fat cats'.

Formation of a remuneration committee of the board is a corporate governance practice common internationally as well as in India. A curious but unsurprising feature in the wake of this practice is the mushrooming of specialists consultancy firms abroad who advise on appropriate levels of rewards and who are also consulted by large Indian Companies.

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Cross holdings and complex structures

As more Indian corporates begin to have subsidiaries and branches abroad they will begin to encounter the paradigms which businesses already face internationally involving complex networks of subsidiaries and associated companies, special purpose vehicles, off balance sheet items, corporate chains giving leverage powers to the apex corporate, limited partnerships controlling listed companies, joint ventures, strategic alliances and groups with cross holdings of shares and cross directorships. Add to this the dimension of having to deal with multiple forex currencies, diverse employee ethnic groups and having to operate in not so co-operative jurisdictions; and then it would be clear that Indian Corporate Governance practices in future must face, over and above the conventional risks of interest rate, credit, etc. the challenge of managing Exchange Rate Risk and Political Risk on a scale never accepted before. Moreover, the challenge of ensuring these conformances must be met without it becoming an impediment to the voracious appetite for growth, which these complex dynamic organisations would expect to satiate.

Board Styles and Appraisal

When small investors lose money and economic systems are severely embarrassed by the implosion of corporate entities earlier regarded as bastions of good governance, it is but natural that boards and directors would be reviled as 'passive', 'supine', 'dumb' and so on. Indeed there may have been a time in the distant past, when a directorship was a prestigious and profitable position requiring no work, in fact a sort of sinecure. But as those informed on such matters would confirm, the threat of litigation against directors for alleged lapses of fiduciary duties having multiplied in recent years, modern directors are rarely dumb and only occasionally passive or supine, and largely aware of their responsibilities, if not fully up-to-date, on governance matters. What may however be fair criticism is that board styles differ widely and although individual directors may not fall short of their duties, the collective style does inevitably set the tone of corporate governance practices because the way the board is seen to go about its business varies enormously having regard to, whether the preponderant concern is for board level interpersonal relationships or, for a tough minded focus on the work agenda.

The absence of either of these styles can create at the bottom-end a **rubber stamp board** that is the worst offender against corporate governance. Indians and foreigners alike would have heard of such boards for 'letter box' companies registered in offshore tax havens. The boards of some private closely held companies can also turn into rubber stamp boards, but the intention in such cases is usually to economise on time spent in a ritual to be attended by two or three directors who are in close touch any way.

Boards of some very good old established companies tend to hold elaborate ceremonial meetings in exquisite panelled board rooms following long established traditions down to crockery, cutlery and the way beverages are served, but with little relationship to the tasks at hand. **Country Club Board** is the least uncomplimentary description of this governance style.

In stark contrast is the style known as the **representative board**, which is more like a forum to reconcile diverse interests, and since the discussion can easily become adversarial, a wary eye needs to be kept on the balance of power within the board, as much as on the perusal of detailed agenda papers.

However, given the climate of censure that increasingly frowns on bad governance styles, more and more boards are seen to adopt the **professional approach**, which balances the concerns for tasks and relationships.

Given the increasing formalisation of good governance practices, it may not be out of place to list for Indian readers, points raised by certain Harvard professors and others in the early nineties and repeated in various permutations by many books for diagnosing Board weaknesses and gingering up Board evaluations.

1. Discourage directors no longer pulling their weight from seeking re-election.
2. Measures to build trust among directors.
3. Review performance of each director periodically.
4. Link at least some part of director compensation to performance.
5. Let the board, rather than the retiring CEO, select the successor CEO.
6. Involve the board actively in formulating long-range business strategy.
7. Encourage non-executive directors to meet, without executive-directors, on a regular basis.
8. Let the nominating committee rather than the CEO search out new board members when required.
9. Empower non-executive direc-

tors to alter the meeting agenda set by CEO, if required.

10. Insist management send relevant routine information and analysis of key agenda items for perusal well ahead of board and committee meetings.
11. Insist on adequate discussion time in addition to the management monologue or presentation.
12. Empower non-executive directors to formally evaluate CEO and executive directors.
13. The board must annually review all succession plans for senior management.
14. In a Unitary board, take steps to halt the emergence of the executive committee as a second tier of the board.
15. Innovate formulae for CEO compensation based on long-term results, even if these diverge from industry norms.
16. Make the compensation consultants report to the remuneration committee of the board directly and not through an HR officer reporting to the CEO.
17. Audit Committee must routinely review high-risk areas.
18. Authorise the Audit Committee, and not the management, to approve the assignment partner in charge of the statutory audit.
19. All non-executive directors must regularly speak to senior managers not represented on the board.
20. Limit the executive directors on the board to just CEO, COO and CFO.

Skills, Roles and Board Composition

One interesting variation between Indian practice and the practices internationally on an important issue of corporate governance is the somewhat skewed composition of skill sets that obtain on boards. The Hilmer report on code of best practice in Australia published in 1993 and certain later articles and researches have noted the underemphasis on induction of directors with skill sets suited to *performance* roles as distinct from *conformance* roles. To limit the number of directors that may be inducted for purely conformance roles, it is worth noting the internationally recognised conformance roles as follows:

1. **Judgment function** – Objective assessment and at times quantification of large contingent liabilities that companies may face in contractual and taxation matters that turn litigious. This insulates against the possible bias of those who were closely involved with those matters and the natural apprehension of being personally affected by the outcome.
2. **Catalyst function** – This role can only be played by a director with the insight and the moral courage capable of questioning the board's assumptions. What appears to be incontrovertible truth to some board members may be routed in questionable understanding about markets, competitors, etc.
3. **Supervisory functions** – These directors are usually required to Chair Audit Committee, Nominating Committee and Remuneration Committee.
4. **Watchdog function** – This needs to be understood with care, as some directors can become protectors of specific interests or groups of shareholders forgetting the basic requirement of corporate governance that each director has a duty to be concerned with the interest of the corporate entity as a whole.
5. **Counsellor function** – These directors serve as sounding boards for informal communication in times of stress provided they are seen as confidants. A variant of this is popularly knows as a 'safety valve function', where, in a crisis such as the replacement of a CEO or some unexpected catastrophe, such director becomes a rallying point of wisdom and good governance.

Once these *conformance* roles are catered for, it is important to balance the board composition with sufficient induction of those with skill sets catering to the *performance* roles involving 'strategy formulation' and 'policy making' so that these result in what every business ultimately craves for more than anything else – some breakthrough initiative that offers growth and expansion.

Strategy formulation and policy making

Indian boards certainly recognise the primacy of 'strategy formulation' but one is not sure whether this item receives the allocation of time that it deserves for deliberation in a formal board meeting, and more importantly whether the company-centred planning systems in India can adopt the helicopter vision that is needed to formulate strategy, i.e. after seeing the business in the context of its competitors and customers as also of the evolving technological, economic and political environment.

Strategy formulation for the business in the context of external competitive and market situation is the most crucial aspect of good cor-

porate governance because it sets the *direction* for the business and that is why *directors* are so called. It is an iterative process fraught with choices and continual rethinking about plans and projects. Strategy, which was essentially a military term, was applied to business due to the similarity that a strategy is best created only after knowing the strategy pursued or capable of being pursued by a competitor present or potential. 'Strategic alliances' is also a term used internationally as part of corporate governance which extends the military analogy of business as a battle field, searching out allies globally to effectively deal with competition. Several strategic scenarios are developed, evaluated and the directors are required to make a choice.

Good governance practice requires that chosen strategy must be adequately supported by 'policy making' and guidelines formulated for its implementation. The challenge for good governance *inter alia* is to be able to demonstrate that in making their choices, directors have adequately considered the long-term goals of the business and have not been influenced by only the short-term interests of the business.

Unprecedented advances in technology and consequentially the suddenness of strategic challenges has largely transformed the annual corporate planning process associated with budget preparations, etc. into a small part of a larger continual strategy formulation process which responds on a real time basis to new information as soon as it is digested and offers fresh strategic options which in turn need to be discussed at board level. Internationally more and more directors individually, and boards collectively, appear to be devoting specific board time and effort to strategic formulation in special strategy sessions albeit through teleconferences when away from the boardroom, as well as during periodic board meetings. India as a global player needs to take due note of this international practice.

Policies enable strategies to be implemented. Unless these ground rules are laid down, management which has obviously not participated in the decision making process, may implement contrary to the strategic intent. Policymaking is thus a principal element of the performance by a board of good corporate governance. This board effort cannot be avoided, nor can it be delegated. The policies required to be framed in a good company are numerous and include:

Product policies

— Product safety
— Innovation and quality

Financial policies

— To cover credit and debt collection
— Borrowing limits and gearing
— Spending controls and management approval limits
— Inventory control and working capital management

Employment policies

— To lay down the criteria for worker safety
— Pay and conditions
— Company's approach towards trade unions

Other policies

— Social responsibilities i.e. firm's commitment towards minority rights, pollution control or the environment generally.

Corporate Social Responsibility (CSR)

In the first flush of the enthusiasm for corporate governance, there was emphasis throughout the world mainly on protecting shareholder interest and maximising long-term shareholder value, which continues as these embody concerns that are fundamental. However, more and more boards around the world have begun to measure the environmental and social effects of their corporate functioning. CSR, now also known as corporate citizenships, has become such a buzz word with all sorts of lobbyists, Regulators, NGOs and others that the issues sought to be included world wide under this head of corporate governance now include:

- Reduction in global warming emissions
- Labelling genetically engineered food
- Access to affordable pharmaceuticals
- Avoidance of money laundering
- Linkage of board remuneration with social performance.

So overwhelming is this trend calling for broader reporting to wider stake holder interests that many companies abroad have not only started furnishing social and environmental indicators along with the traditional, financial performance measures, but also refer to this as their triple bottom

line. Some similar reporting is seen in India but not on the same scale. The trend is important, in that, while Indian corporate governance has always recognised its linkage with ethics, it may in future need to formally recognise its linkage to the whole concept of 'sustainable development' which is a sort of new orthodoxy of strategic thinking internationally, stemming from radical environmental and other movements of the seventies which offer apocalyptic visions of the future of Mother Earth.

Benchmarking

In Corporate Governance practices, India can be proud of what it has achieved so far, initially voluntarily and later under guidance of various regulators, while recognising that obviously much more needs to be done. In such a pluralistic democratic country, which believes in a consensual process, there are bound to be some hiccups. Witness the recent postponement of revised clause 49 but there is no denying that committees formed by Chambers of Commerce and Regulators over the years have done excellent work.

In this context it may be useful to consider the position in China, as it is a country India is often compared to. It is important to remember in understanding Chinese corporate governance, that even in a modified Marxist philosophy ownership is not the basis of power. Although many state enterprises have been turned in to corporate entities and floated in stock markets in Shanghai and Shenzen, the large majority of around 1200 companies in the 'A' list of Chinese stock market are state owned companies, in which the public have only a minority holding, and about one hundred entities referred to as 'red hats' locally, happen to be collectives which are run like public companies; and only less than a 100 are privately owned companies. The China Securities Regulatory Commission (CSRC) regulates an environment where:

- Only about 1/3rd of the shares are traded, while the remainder are owned by the state.
- Foreigners were barred from holding 'A' list shares until 2002.
- Post 2002 only 'qualified foreign institutional investors' are allowed to buy non-tradable shares to inject foreign capital.

For companies based on Chinese mainland, the boards of these companies have to comply with:

- Guidelines of relevant industry ministry in Beijing.
- Guidelines of Peoples' Bank of China.
- Guidelines of Tax and Regulatory bodies.
- Multiple Instructions from Chinese Central, State and Provincial authorities that may occasionally wish to enquire into unacceptable competition with state enterprises.
- Corporate governance standards of CSRC requiring two independent non-executive directors are presently not enforced, pending availability of suitable personnel.

The system in Hongkong although developed from UK company law features closely controlled family companies, often incorporated in Bermuda or Cayman to sidestep company law.

India may not have received much applause to date for its corporate governance practices and attainments but it is worth seeing how at times the applause and censure received internationally are both equally meaningless. One example may suffice: The explanation offered to explain decades of economic success throughout East Asia was its business and governance practices rooted in a strong work ethic, a commitment to saving and a family-centred culture. Following the financial and economic collapse of countries such as Indonesia, Malaysia, Thailand and South Korea in 1997/98, international press lost no time in suggesting that the economic shocks that hit East Asia in late 1997 were caused by corporate governance based on crony capitalism i.e. close links between directors and members of government, the ruling elite or business associates, rather than on sound business logic. The contrast between this alternative explanation and the earlier explanation of business success based on Asian values says it all. ■

One of the views propounded by the Cadbury report was that the CEO and the chairman of the Board should be two different persons and not the same person. This proposal was seen as breaking new ground not only because it underscored the checks and balances principle and sought to protect minority interest but also more importantly because it broke free of the practice in the United States where most listed companies clubbed these two roles into one and appointed a single dominant personality.