Importance of a Uniform Code of Governance in Building a Robust Corporate Brand

In today's work ecosystem there is a need to balance 'agility' in conduct of business in the backdrop of intensified vigilantism. This brings us to a point of tussle between one hundred percent compliance to regulatory norms, manage businesses in a competitive environment and tightening of governance measures in safeguarding the reputation risk for any organisation. In all this the significance of corporate houses having a Uniform Code of Governance, increases all the more. Read on to know more…

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Why do we need a 'Uniform Code of Governance'?

With the recent incidents of violation of governance code and gaps in financial reporting in public domain, especially in the banking sector and NBFCs, and with the world becoming a global village, exploring the need of and charting a 'Uniform Code of Governance' for corporate houses duly supplemented by a 'Ethics and Governance Taxonomy' becomes a requirement. The Code may act as a reference book, which will enormously benefit in the ease of doing business and will facilitate in building a robust corporate brand.

Such reference book would be of paramount importance for:

(a) Key Managerial Personnel – the CFOs and CEOs in meeting their fiduciary responsibilities.

(b) Training Board Members and Independent Directors.

(c) Officers defined under section 2(60) of the Companies Act, 2013.

(d) Clarifications on interpretation of Statutes governing a business entity.

(e) Understanding the term 'offence' under various regulations and its consequences.

(f) Assurance role of Chief Risk Officer and Chief Internal Audit Executives.

(g) Engagement of management with statutory auditors.

This would provide a structured approach and essential aid to Board Decisions, working of Ethics and Disciplinary Committees, aid in litigation support and strengthening the line of defense for corporate functionaries.

Journey of Indian Corporates to be Global Players

In most Indian corporate houses that have evolved into large businesses, there is a need for a process of consolidation to emulate the brand image of any Global MNC. Each individual business has its own policies on governance, code of ethics and generally operate in 'independent silos'. For any aberrations to governance norms is primarily due to lack of informed decision making or perhaps due to conflicting business policies and information breaks (in technology terms is called noise) as between Directors, Employees, Corporate functionaries faltering in understanding the mechanics of governance. This requires avoidance of ambiguity in interpreting policies in a given situation, addressing ethical dilemma with due explanations, improve upon erroneous words/ grammatical expressions, defending a decision or gauging any form of misinformation, dealing with fake news or distortions.

(a) A uniform code of governance would enable mitigate situations of conflict and tussle between cross section of business policies and regulatory norms.

(b) Ensure credibility of information shared with various agencies including corporate statutory filings as between parent, subsidiary or group companies. In proper managing of 'Principle contractor' and 'contractee entity' dealings; 'shared business relationships', or engagements those impact 'intra-business' and 'inter-businesses' dealings; strengthening the relationships with JV partners, and business associates.

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(c) Working around service level agreements and business arrangements within the entity's functions and amongst the businesses arising out of multiplicity of policies, governance processes and norms.

(d) Fine tuning governance norms to local customs, business practices, country specific risks and regulations.

This narrative is aimed at strengthening the immunity system in dealing with Compliance Risk and Governance Risk for Corporate Houses and its constituent of governing bodies spread across organisations. Having a 'uniform code of governance' does enable a common understanding of its varied elements, thereby creating an awareness of its nuances in driving business interests and enhancing governance premium.

Symptomatic Disorders – Course Corrections

Ignorance of law cannot be an excuse and employees at helm of affairs, need to be aware of the governing policies. The upholding of core values, equity, fairness, truth, honesty and transparency in dealings and working in a responsible manner are inherent and 'a given' to meet the varied expectations of stakeholders.

To avoid situations of undesirable outcomes and as an aftermath of indulging in 'suppression', 'oppression' or 'tampering with' or tweaking the governance systems, processes, lead to deciphering the 'disease' in governance parlance. This results in in distinguishing between 'mistake of facts' and 'mistake of law'. And efforts are directed towards administering an 'antibiotic' to contain the aberrations in system and on 'curing' the disease. Eventually these lead to closure of an entity, mergers, demergers that are a result of such deviations from established governance norms. These are last measure formalities when an organisation exhausts all other options of damage control mechanisms, especially on non-adherence to robust governance norms.

These are another form of disruptions to businesses that cannot operate due to rising compliance costs or stringent regulations or complicated tax structures or 'out-of-date' revenue models that make the business unviable. These factors operate counter to sustaining the business goals and objectives. Hence the 'uniform code of governance' would need to be supplemented by a reference book on Governance Taxonomy that would need to define the various connotations, terms, expressions, usage, illustrations, case studies, selective judicial pronouncements and story-telling as a shared learning from happenings in the corporate world. Like the doctrine of caveat emptor meaning 'buyers beware' (under the sale of goods act) or

'investor beware' (initiatives of the Stock exchanges), 'employees beware' would need to be given prominence.

Experience and Expertise – Building Legacy Systems

In most organisations, especially in Indian Conditions there are external factors and the apprehensions of loss of reputation in the public domain that brings restraint on corporate governing bodies to get into knee-jerk reactions to allegation or suspected misadventure or override of authority. Special care needs to be taken on the immediate impact on the stock prices and mass of investors operating in the stock market. At the outset, often these result in respecting the sentiments of stakeholders with empathy and as a matter of prudence and pragmatism, treating these as procedural aberrations.

This frustrates the governance mechanism and eventually leads to out of court settlements

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to avoid nuisance value and never-ending court battles. A combination of experience with expertise ensures collective wisdom in bringing normalcy to businesses and reinforcing checks and balances for such entities. This would also mean rewarding the loyalty of employees those have served the organisation for long term and work as an incentive to build good governance mechanisms, practiced in most leading Indian corporates. This helps in setting up legacy systems that are built on core values.

Business leaders especially in incubation businesses, startups or new acquisitions would need to be guarded against errant/ disgruntled employees getting into shortcuts in overruling governance norms. These situations also lead to 'match fixing' the authorised signatories or heads of departments as pawns in achieving their ulterior motives of sabotage of operations in extreme conditions of greed and opportunism. Daily work management systems work on the principles of trust and faith between a superior and a subordinate employee, where one must rely on inherent controls to validate each actions/ decision of employees in a live environment. Seen from a legal perspective, often the leaders or persons become scapegoats in not exercising due professional care and eventually succumb to the situations of losing their hard-earned reputations in the organisation.

Role of Audit Committees/ Ethics and Governance Boards/Disciplinary Committees

Audit committees are responsible for mandating an investigation process for any aberration to governance norms. Any forward action depends on the outcome of such investigative assignments on whether a wrongdoing is established or otherwise. Under these circumstances, normally a 'benefit-of-doubt' to the alleged wrong-doing is a pragmatic approach and to move on with building a robust control measures to prevent recurrence of such undesirable events. The single most escape window for these employees is the inability of organisations or investigative agencies in establishing a situation of wrongful gain to the individual or wrongful loss to the organisation. For this reason, corporate houses with matured systems and processes, ensure that these exceptions do not become precedents that emboldens errant employees to move beyond the concept of 'first time right' and unnecessarily dragging the entity towards fighting a legal battle, leaving no room, to challenge these governance norms by exploiting the loopholes, gaps, words, expressions and bias in singling out deficiencies in policies, processes and internal documentation. These are incidents lead to a continuous learning for governing boards,that enable strengthening the governance processes and controls. This is somewhat comparable to deployment of professional hackers in plugging control gaps in developing algorithms or isolating intrusions in operating of ATM processes or testing procedure for a secure website.

Role of Key Managerial Personnel

It is pertinent to note that every key managerial personnel must be aware of the penal provisions of host of regulations applicable to a business entity as differentiated from actions which do not penal consequences and are procedural in nature. While there could be a standard norm of zero tolerance to non-compliances

to regulations, these would need to be backed by a certification by the designated authorities that the requisite mandatory regulations are compiled with due professional care. And any deviation is diligently reported by certification authority to the governing body on priority at the immediate available opportunity for timely resolution. Considering that these are self-declarations, these do not testify legal scrutiny as technically no person can self-incriminate or stand witness for his own actions.

Corporate houses depending upon their risk appetite may need to define a quantum of risk cover including or extending to signing an indemnity bond by such designated authorities who are statutorily responsible for taking due professional care in their assigned roles. Such indemnity bonds could be operating with retrospective effect or during the tenure of the assigned responsibilities solely a decision left to the discretion of the business promoters, investors and stakeholders.

Governance Taxonomy – A Reference Book

A 'governance taxonomy' is a dictionary of terms, case studies, explanatory notes, illustrations, stories that would explicitly and impliedly help in understanding these terms in the same manner by each of the constituents in signing contracts or agreements or in their business dealings. This would enable building cohesive working relationships amongst constituent of a business entity to relate to business associates, joint venture partners, the extended world of customers, vendors, distributors, dealers.

This would be a fundamental document comparable to the nervous system of the human body that connects to the brain (meaning the governing body of the Corporate house) and operates with a specific purpose, energising, controlling and monitoring the functioning of the entire spectrum of businesses across such corporate houses/ business group in a coordinated manner. These could be further scalable at a global, country, industry, business, sector, individual entity, divisions, function and employees. With the target user audience being board members, business partners, KMPs and other designated officials.

A reference guide on code of governance would help employees being aware of what is the meaning of various terms (governance taxonomy) in defending their actions. Whilst each entity within a corporate house, would have their own code of ethics and governance norms suited to the business needs, a reference book on 'governance taxonomy' would enable these businesses to retain their individual federal character and yet relate to the overall ethos of a business group when it comes to defining the various terms of references as one 'global brand'.

These reference guides would need adequate customisation and would vary from corporate business house to another corporate business house and specific characteristics of the Industry. It is desirable to engage the services of leading Indian Chartered Accountancy firms as management consultants, adept in understanding the entire eco-system, nuances of regulatory requirements, borrowing covenants and robust financial management. These require a process of collating a host of compliance requirements, authority-responsibility charts, the fiduciary responsibilities namely under the Companies Act, 2013, the SEBI guidelines, labour laws, environmental laws and industry specific regulatory norms.

Assimilating information is next prerequisite through surveys, interviews and questionnaires and get an understanding of key job roles, responsibilities, authorisations, board resolutions, the Memorandum of Associations, the Articles of Association, the minutes book, banking covenants, patents, trademarks, contracts, arrangements, MoUs, agreements, non-disclosure agreements, drawings, structural designs, location, geography, logistics, country of origin, the local currency and include study of the risk register. Care should be taken to ensure that all these efforts are without access to key strategic plans and projections or any information that is of sensitive nature that is privy to only top management.

Engaging Consultants – to Build on Governance Architecture

The understanding of the governance norms by the authorised personnel is important as these carry a fiduciary responsibility. Despite engaging of consultants, corporate functionaries, risk officers, internal auditors, legal support, none of these consultants, legal counsel in their advisory capacity can take the role of the designated authorities towards a shared responsibility. The measure of what can be delegated and what cannot be, under the legal parlance cannot be explicitly stated in the Code of Ethics document as prevalent in most of the organisation across the corporate world. In the event of a court battle or a notification from a regulator, the decisions and actions by designated official

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would need to be defendable. These documents and terms therein could help in drafting responses to such regulatory notices to be on the right side of legal spectrum.

These concepts on governance framework aid leaders and employees to exercise due professional care and always be on the right side of the legal spectrum. This would be an aid to preserve the fabric of good business ethics, honesty and integrity in dealings amongst the constituents. This would be an enabler to defend employee actions in the eyes of law backed by orderliness and discipline. These would eventually lead to unison of purpose in binding entire Indian corporate houses to enhance the governance premium and further their Business interests and thus being elevated to the status of being amongst the league of globally admired brands. The COSO framework adopted by matured businesses is a good example that cuts across the businesses and would need to be ably backed by governance taxonomy.

Practices for Consulting Assignments – A top down approach

This would require a blend of maturity, wisdom, non-disclosure agreements and access to this information would need to be restricted to authorised officials (in confidentiality) of the entity and not to consultants or external Chartered Accountancy Firms. In other words, these would require an in-house Cross Functional Teams (CFTs) and blend of external and internal domain experts to participate in the process of developing a governance framework and sharing of information only on need to know basis. For this purpose, such projects would need to be broken up into sub-modules and fragmented in a manner that no single individual or firm or authority within the organisation has access to entire governance framework in its development stage. Preferably these efforts would therefore need to be directed under the guidance of the top most authority of the corporate house, namely the chairman of the entity.

Approval of the governing board would be needed in adopting such a 'uniform code of governance', in building global brand and perhaps extended aid in performance evaluation of the Board members once consensus on broad framework of governance is reached representing in one voice what the respective 'Indian corporate brand' signifies to the world.

Scoping of the Consulting Assignments on Building a Governance Code

Scoping of the consulting assignments on developing a governance framework would require a clear understanding of the entities to be covered, the timelines, the fee structure, the extent of business size and geographical operations. These would also depend on the futuristic aspirations and objective of the business promoters in terms of country risk; creating a global brand or for rural market penetration or entering into a 'public-private-partnership' or even participating in 'make in India', start ups or building smart cities, etc. These could also relate to funding arrangements, capital structuring or even acquiring new businesses, mergers or entering into joint venture arrangements or technological collaborations.

Once the objective or scope is identified, the next step would be to carry-out a listing of the roles and responsibilities and mapping of key tasks of the key managerial personnel, statutory auditors, board members, of Chartered Accountant members in industry responsible for financial reporting, experts on tax matters, financial forecasting, project report finalisation, related party certifications, adoption of accounting policies, adherence to auditing standards, Industry specific research on governance norms, feedback from financial analysts, business valuers, mergers and acquisitions guidelines, evaluating the prudence of financial decision making, budgetary norms, internal control manuals, vulnerability assessments, internal audit report findings, Risk alerts by risk officers, information risk management, forensic special audits, insurance claim settlements and many other areas of specialisation.

These consultancy assignments would also need to be regulated by the appropriate governance norms including declaration of any form of confidentiality clause and perhaps a signed indemnity bond in the eventuality of any disclosure that is detrimental to the interest of the organisation. The awareness of conflict of interest in these varied roles are an important step that would require a discussion at the highest levels in building the governance architecture.These would require experienced professionals adept in gauging the undercurrent of businesses, business and financial decisions

independent of the above roles and normally assigned to forensic accounting professionals. These consulting assignments would need to distinguish from the role of being statutory auditors or other designated roles within an organisation.

Exclusions from Scope – and Limitations

The regulations applicable to an entity add an extra dimension to these assignments and are beyond the scope of this narrative in terms of regulatory compliances, the focus being on governance mechanisms. It is a presumption that ignorance of law is no excuse for any official of an organisation and would need to be dealt with in accordance with the due process of law. This cannot be compromised under any given circumstances and no individual or designated authority can interpret the legal provisions to suit the business conditions or events on hand. A legal right is assumed unless proven otherwise under a given set of circumstances. However, there is a need to distinguish between the role of an employee and that of an organisation governance norm, in terms of adherence to such a legal condition.

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Deficiency Costs to be Factored in Consulting Assignments

Such assignments on building governance architectural framework normally would take full-time effort of at least 18-month man-days to take care of qualitative aspects and a 3 years period of statistical records to test the governance modules, inherent checks and balances. Digitalisation would take another 12 to 18 months for a matured governance process. Most organisations do not have a ready list of contracts or arrangements, authority or responsibility charts and even the policy documents are generally outdated without revisions. Considering the dynamics of the businesses most of the policies or agreements, standard operating procedures remain in draft stages or get diluted due to attrition of employees and each new employee bringing their experiences in redefining the processes and controls.

Tuning the business to a digital age is redefining the tasks and job roles in most organisation and with redundant roles these policy measure become outdated. Where there is no manual intervention in the business/ accounting activities and extensive use of technology, the governance norms would need to factor an additional timeline depending upon the extent of activities where technical information security audit clearance is essential in defining the governance norms. Use of robotics/technology does not absolve the key managerial personnel from their fiduciary responsibilities. A coordinated effort would reduce time and cost of the project in the building up on digitalisation processes and system. Use of artificial intelligence is an emerging area for gathering intelligence on governance system and issuing alerts in a proactive manner to appropriate authorities is desirable.

Resources Planning for Consultancy Assignment in Building Governance Model

It would be prudent to study the various governance nuances and sourcing the domain experts from within the organisation and taking help of forensic accountants (Chartered Accountants adept in surfacing financial irregularities and addressing matters related to violation of governance norms). To drive consensus, a CFT team of Champions representing each of the business interests within the entity of the corporate house would help in building on a 'uniform code of governance' and tuning the governance concepts to individual business practices and country specific requirements.

In conclusion, the need of the hour towards sustainable business organisations would require a robust code of governance that would speak a uniform language across the length and breadth of the corporate houses and thereby enable building a global brand image. It is like undertaking a space missions to discover the unknown, where each constituent the orbiter, lander, rover must communicate in unison following a defined path as defined by the 'rule book in taking care of the stakeholder interest'. For this purpose, the governing bodies at the helm of the affairs are required to skillfully manoeuvre through the dependent and independent variables that impact the business dynamics, guided by the torch of uniform code of governance mechanisms. ■