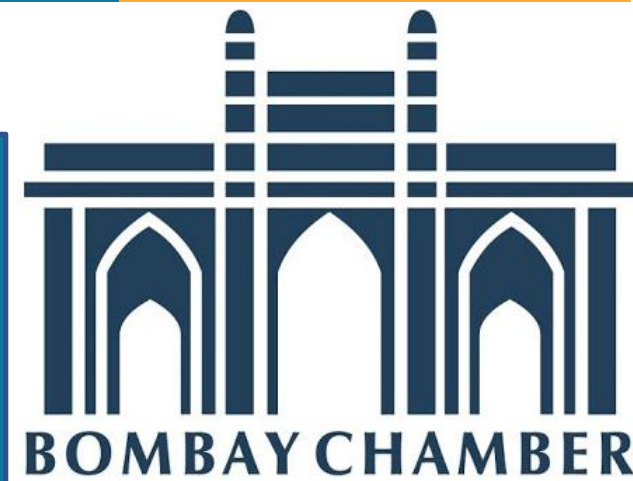


CORPORATE GOVERNANCE IN TIMES OF CORPORATE GRIEF



Board Considerations for 2021

Suhas Tuljapurkar
December 17, 2020

Legasis Partners
Advocates & Solicitors



GRATITUDE: FRONTLINERS



Doctors and other healthcare experts who are working overtime, tirelessly, exposed to extremely vulnerable environment to save lives, keep everyone safe. No words can express our gratitude to such professionals. While the world is indebted to you, we want to simply say: THANK YOU!



Art during the pandemic is keeping all of us positive. A big thank you to all the remarkable artists.



Law and order during the pandemic has been exemplary and remarkable. We are grateful to every police personnel in India.




THANK YOU to all the frontline workers who have helped us stay safe and alive.



Prayers :a Champion of Corp Governance

Sad Demise



Dr. N. Balasubramanian
(Ex. ICI India, Britannia, Wipro, IIM A & B)

Left us
on 31st August, 2020

We are blessed to have had you in our lives.

Rashmi Madhu Kumar
Anannya
B.Madhu Kumar



CAVEATS



This webinar is for **general awareness** of the issues of corporate governance in the current challenging times, and does NOT constitute legal advice or opinion. Please seek formal legal opinion before taking any decisions.



The present pandemic is dynamic, uncertain and unpredictable. The risks identified or unidentified at this point in time may drastically vary, even after a short span of time.



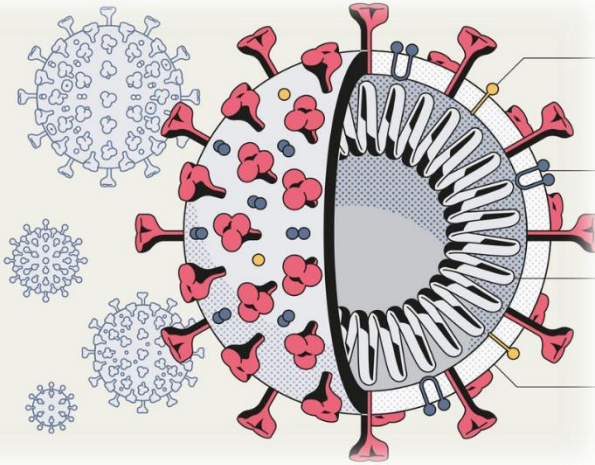
The present pandemic is a major defining moment for global and local economies and we may expect a new set of laws having global and local impact being legislated.



This webinar takes a “Eagle Eye-View Approach” and deals with some of the critical legal issues arising in corporate governance against the backdrop of the pandemic.



Agenda Today



Corporate has to survive to be Governed !!

Pre Coronial & Post Coronial Boards

Redefining Business & Relevancy

Some Challenges

Role of In Di & Committees

Is Digital the New Norm in Post Coronial?

Board Agenda—Considerations for 2021....

Black Elephant



‘The Black Elephant In The Room’:



Environmental **ist Adam Sweidan has called the pandemic a ‘black elephant’** - “[It is] a cross between a ‘black swan’ — a rare, low-probability, unanticipated event with enormous ramifications — and ‘the elephant in the room’: a problem that is widely visible to everyone, yet that no one wants to address, even though we absolutely know that one day it will have vast, black-swan-like consequences.”

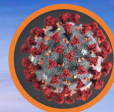


In the biggest crisis of our generation, the responses of leaderships across the world have been prioritized around — health, hygiene, social responsibility (proximate), social responsibility (general) and thereafter came the economic realities.















Corporate Governance has become even more important in the current context of environmental crisis, global pandemic, looming recession and social unrest.

‘Pre-Coronal Era’



‘Post-Coronal Era’

-  Corporate Governance Failures
-  Failure of the Boards & Governance Norms
-  Prosecution; freezing assets and persecution of In Di / St Au / Promoters....
-  Complete Consequentialist Approach: Failure leading to more stringent regulations (like: Resignation Disclosures)
-  “Good Governance”—Subject matter of 5* conferences

-  **VUCA** World
-  Corporate Survival
-  Corporate Governance: Role on Risk & BCP
-  Radical Shift From **We vs Them** to **All Of Us Together.....**
-  No QSQT pressure of Dividends Stress
-  Moved from Shareholders to Stakeholders with focus on Health, Compassion
-  “Good Governance”—Subject matter of Home + Digital

-  **VUCA** Prime
-  Corporate Purpose
-  Leadership Roles Redefined
-  Corporate Governance: Risk & Resilience
-  Sustainability of Business and Ecosystem
-  Radical Shift From **Linearity** to **Circularity**
-  Reigning Unabated Digital explosion due forced adoption
-  Changing Legislative Landscape
-  “Good Governance”—Subject matter of Board Room Discussions

Survival of Corporate



“A Corporate has to survive to be Governed”; When every Corporate Entity is fighting for survival, is Corporate Governance Redundant?

Will Grave Threats to Business Survival, Employee Well Being & Corporate Reputation lead only to Focus on Compliance?

Based on the Governance Standards, Corporates will now be divided into:

Leadership Teams that Acted Responsibly : Donating Funds; Providing Hotel Rooms as Quarantine Centre; IMFL manufacturer producing alcohol based Sanitizer; Opening kitchens to supply food to Migrant Workers

Leadership Teams that will require Stakeholders to revisit them after a long long time

Empirical Evidence Suggests that in the Crisis and Emergencies

Corporate Governance Helps Manage Companies Through Crisis

Corporate Governance Strengthens Critical Rebuilding of Fractured Companies

Corporate Governance Reduces the Risk of Unnecessary Interference




Corporate Governance Paves Way Out for Questionable Practices

Corporate Governance send Powerful Message during Rebuilding

Principles of CG will not change irrevocably, but certain key principles to be substantially altered.

‘RE’ Factors

Redefining Corporate Governance and its relevancy:

-  Corporate boards have a fiduciary responsibility to manage risk, especially against major events that could overwhelm an organization and devastate shareholders’ investments.
-  Every discussion about the role of directors in current context is focusing on the ‘**Re**’ factors: **Re**imagine, **Re**think, **Re**invent, **Re**calibrate, **Re**design, **Re**engineer, **Re**structure, **Re**vive, **Re**pair, **Re**build, **Re**set and **Re**store.
-  The shareholder-centric model, which is based on what academics call “*agency theory*,” appears to be giving way to a richer model of governance that puts the health and resilience of the company at its center.

Resilient Recovery

10 Tenets to become Corporate Resilient-- Dr R A Mashelkar

1. Adaptability
2. Agility
3. Resilience Thinking
4. Scenario Based Planning
5. Purpose-Driven
6. Platformisation
7. Digital Ready
8. Foster Self-Disruption
9. Climate Conscious
10. Autonomous Innovation

 **VUCA** Prime



 **Resilience**





-  Short Termism= Survival During Coronial Era
-  Long Term Sustainability = Unprecedented Growth During Post Coronial Era
-  New Focus Area: Risks
-  SEBI Consultation Paper
-  RBI Corporate Governance in Banks
-  Australian Institute of Company Directors Recommendations re-set relationships and rebuild community standing

Information Asymmetry & Challenges



 Communication Gap Between the Board & Management has widened

 Anxiety Across has reached its peak... resulting in need for Clear Constructive & Credible Communication

-  Boards Need Proactive Communication Strategy
-  Setting up of Communication Channels
-  Discouraging Grapevine
-  Duty of Extra Care since

 **Information Overflow vs Information Asymmetry :**

-  Is Board Expected to “know” everything that’s happening in the Company? E.g.: COVID-19 cases in relation to employee/s & their families
-  What does Board want to “know?
-  What does Board want to inform outside Stakeholders
-  Disclosures to the Regulators such as “**COVID-19 Impact under Regulation 30**”

 **Understanding Fiduciary Duties :** Information & Communications

 **“Silence is Communication”**

Role of Committees



ARC

Nobody was prepared for the COVID-19 Risk

Absence of Business Continuity Plan was a surprise!!!

COVID-19 Impact together with Lockdown consequences becomes subject matter of ARC

ERM becomes Critical

Scenario-based Digitization & Deglobalisation Risks

NRC

Executive Compensation needs innovative approaches

- Universal Basic Income
- Interplay between Fixed & variable pay models
- Furloughs

Shareholders have Sacrificed the Profits & Dividends, Management?

Succession Planning needs focus

Retaining Organisational Muscle for Future

Reskilling Initiatives

Stakeholders' Committee

Anxiety Across the Ecosystem has reached its peak

ESG and Sustainability

S/ESG becomes more remarkable

Information & Communication Custodian

Role of Independent Directors



Heightened Responsibility of the Independent Directors

IDs can play a pivotal role in better Board Engagements

- Peer Group Experiences
- Alienated View becomes very critical during crisis
- Oversight Functions through digital means

Curbing the tendency of “short-changing” during the crisis

- ID’s ability to blow the whistle
- IDs can record the dissent through the Video Conferencing
- IDs are expected to demonstrate their “good faith”

Fiduciary Responsibilities/ Duties Revisited

Duty To Act In the Interest of the Company

Duty To Care

Duty to Oversight

Duty to Extra Care

Liabilities of Ind. Directors March 2, 2020 Clarification by MCA



DEMYSTIFYING CORPORATE GOVERNANCE

Corporate Governance is line item responsibility of the Board.

Fundamentals of Governance, Ethics and Compliance will remain unaltered and the Board's role in strategic decision-making will be irreplaceable.

Corporate Governance will no longer be subject matter of discussions in conferences and workshops:

“Days of Mediocre Management are over!”

“Days of Opaque Companies are numbered”

“Only Leaders who can Lead through uncertainty will survive”

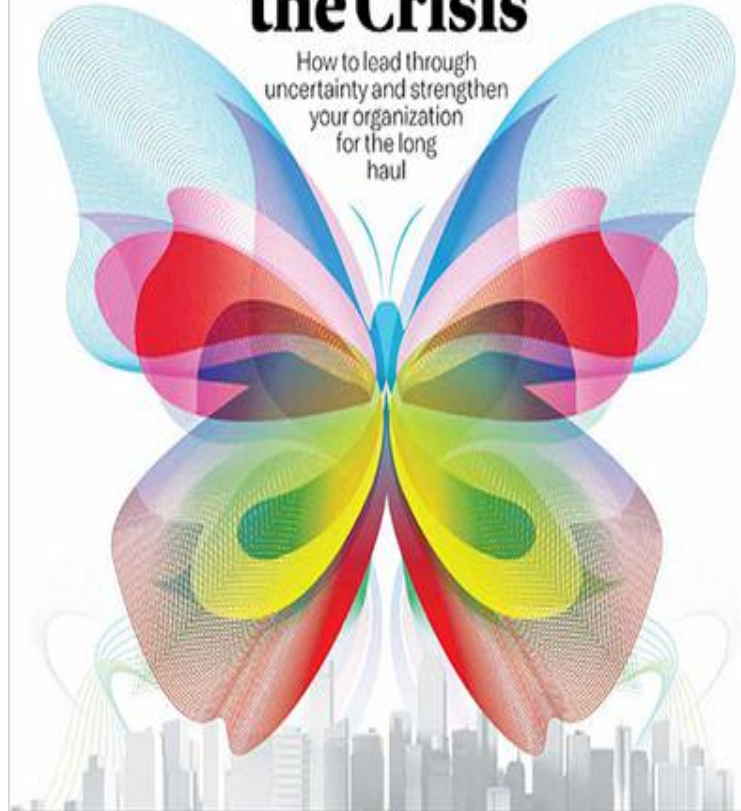
Digital Governance: New Normal?

Oversight functions such as Risk and Compliance would be driven by digitization.

Data based decision making at operational levels may be replaced by ML and AI.

Emerging From the Crisis

How to lead through uncertainty and strengthen your organization for the long haul



IN INDIA, ARE BOARDS EFFECTIVE ? HAS COVID-19 CHANGED THE ANSWER?



Board Considerations-2021

Corporate Purpose and the “S” in ESG

Human capital, workforce, and culture issues.

Strategic planning for long-term sustainable value.

Management delegation, performance, succession, compensation.

Shareholder engagement and activism.

Risk management, crisis preparedness, and compliance.

Board composition and succession planning.

OECD Sees Global GDP Return to Pre-Pandemic Level in 2021

Global GDP projections made in November 2019 and September 2020, Index: Q4 2019=100



Source: OECD



statista

THE PATH TO COMPLIANCE OBLIGATION MANAGEMENT

Organizations are plagued by a flood of compliance-based requirements driven by laws, contracts, standards, and other influencers. By following the path to effective Compliance Obligation Management (COM), the organization and subject matter experts can work in a synergistic way to return the compliance program, mitigate risk, and satisfy regulators, auditors, directors, and other stakeholders.

IDENTIFY AND UNDERSTAND

RISK FACTORS

- Fines & Penalties
- Reputation Risk
- Ineligibility for Contracts
- Insurance Availability
- Event Response Costs
- Business Interruption

INFLUENCERS

- International Mandates
- Fed/State/Local Regulations
- Industry Guidelines
- CSR Initiatives
- NGO Expectations
- HREE Requirements
- Third-Party Relationships

COMMON COM ACTIVITIES

- Policies & Procedures
- Guidelines & References
- Attestations
- Computer-Based Training
- Classroom Training
- Incident Reports
- Escalations
- Awareness & Alerts

Key Elements of an Effective COM System

Cloud-Based Storage & Data
The cloud offers boundless capacity: maintaining security requirements and respecting compliance mandates. Cloud-based storage reduces costs and minimizes the complexity required to deliver services, making organizations more agile and productive.

Dashboards & Reporting
Today's users need the ability to control the visualization and analysis of their data in real-time. Flexible, tailored dashboards and integrated reports allow executives and managers to quickly drill down and assess areas of concern and operational progress.

Alerts & Notifications
Throughout the COM process, various events require the generation of automatic alerts and notifications for submissions, approval and items for review, or critical incidents and other escalations that require immediate attention.

API Connectors
A robust application programming interface (API) is essential for high-performing COM execution. APIs allow for seamless internal and external interoperable applications, data sources, Web services, and legacy systems.

Training & Certification
A robust education and certification solution will support multiple LMS and provide access to irrefutable certification methodology, whether the training was instructor-led, self-paced, or delivered online.

CONTINUOUS REQUIREMENTS TRACKING
Ongoing monitoring of changes in risks, in uencers, and requirements is essential.

1



Enhance investigations and matter management supported by a robust hotline or whistleblower methodology.



Tag all content for easy keyword search to support constant monitoring of COM in uencers and ensure all policies and training requirements are kept current.

Include support for ESIGN or other means to ensure attestation validity.

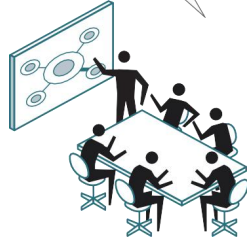
The diversity of COM requirements demands support for multiple learning management systems for employees, vendors, and agents who have COM activities.

Automated reminders and escalations.

MANAGEMENT BENEFIT
Automated assignment of COM requirements ensures that the right training, education, and awareness is provided to every new hire and throughout their lifecycle.



Internal and External Data Integration.
External System Alert Integration.



CROSS-FUNCTIONAL ALIGNMENT

3 EFFECTIVE REPORTING
Report across business or operational units to ensure that business users can design, maintain, and publish reports to improve the organization's ability to make strategic decisions.

BOARD AND CEO BENEFIT
The ability to demonstrate that COM awareness, proactive measures, and constant performance measurement protect the organization.

2 TRANSFORMATIVE WORKFLOW
Dynamic workflows automate routing of requirements and utilize rules, conditions, and permissions to provide greater efficiency and operational performance.

Audit Trail



CONTINUOUS SCORECARDING

4 MANAGED AUDIT PROCESS
Any organization can improve its internal and external systems through audits. Operational history, easily navigated audit trails, and general process understanding can strengthen two-way communication and inspire teamwork based on trust. Whether it is compliance, quality, safety, environment, or data security, audit reports are necessary to improve business operations.



**STAY
SAFE!**