CORPORATE GOVERNANCE IN TIMES OF COVID

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ABSTRACT:

Corporate Governance is an essential part of the daily working of a company. A sound and effective corporate governance system helps to nurture a company-culture of integrity, positive performance, and a sustainable business overall. In essence, it helps to increase the accountability of the individuals of the company and the teams within it, who are working to avoid mistakes before they even occur.

When a company has a strong corporate governance, it signals to the market that the organization is well-managed and that the interests of the management are aligned with external stakeholders. As a result, it provides the company with a strong competitive advantage.

The aim of this article is to explain the meaning of Corporate Governance and what could be the possible problems which could be faced by the leaders of an organisation and steps which could be taken by these leaders to maintain the code in these times of a pandemic.

WHAT IS CORPORATE GOVERNANCE?

Corporate governance is a system of rules, practices, and processes by which a firm is directed and controlled. It essentially involves balancing the interests of the company's stakeholders, such as shareholders, senior management executives, customers, suppliers, financiers, the government, and the community. Since corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls, from performance measurement to corporate disclosure.[1]

A company's corporate governance is important for an investor since it shows the company's direction and business integrity. It helps built the trust of a company with its investors and the community. Thus, a long-term investment opportunity for market participants is created when good corporate governance is practised, thus helping the financial viability of the company.

[1] James Chen, What is Corporate Governance?, Corporate Governance Definition (April 12, 2020), https://www.investopedia.com/terms/c/corporategovernance.asp.

POSSIBLE PROBLEMS AND SOLUTIONS FACED DURING COVID-19:

1. Risk Identification and its Assessment:

The Board of Directors ("Board") must maintain a close contact with the Chief Executive Officer and the Chief Financial Officer of the company so that the management can ensure the safety and security as well as the well-being of the company's workforce and other stakeholders.

There should be frequent monitoring of the emerging risks during the pandemic with the executive management and come out with strategies for the minimisation of the consequences which may be caused by the pandemic to the business activities. Frequent monitoring is mainly required during a pandemic since they are unprecedented times and there cannot be any predictions made for the future and thus keeping a close of the business activities may reduce the risk and it could also help identify the forthcoming risks.

The Board must consider a two-pronged approach of risk analysis. Firstly, the Board, with the management, should take into consideration the supply chain manufacturing operations, intermediary processes, pricing and costs, and the liquidity. Secondly, the legal impact of the disruption caused by the pandemic on the abovementioned processes should be dynamically examined and considered.

2. Meetings and Communication:

In such a unique and rapidly changing business environment, it becomes increasingly important to secure effective communication to ensure that business decisions are taken efficiently. The Board should be equipped with the instruments needed for a virtual meeting and in this digital age every member of the Board should be made aware of the importance of the use of technology.

The Board must be in constant communication with the sectorial regulators and the government agencies for the timely procurement of their guidance for facilitating the company's business.

The Board must also be fully engaged in communication by the major shareholders of the company to share their vision and strategies for the growth and running of the company.

3. Monitoring and Oversight Responsibilities of Directors:

A director in a company is an important individual since its him who runs the company and therefore, he must incorporate a proper system of corporate governance in the company which is air-tight and has as less loopholes as possible. Therefore, to ensure this, following are some of the important oversight policies which a director could implement:

- Enhancing the company's current reporting and oversight system:

Enhancing the company's reporting system would prove to be beneficial since the Board will be able to better receive relevant information and would be able to manage the COVID-19 issues more systematically. Also, once the system is activated the Board should constantly monitor all the significant issues and be informed about all the material businesses in the company.

- Formation of a Task Force:

The formation of a task force[2] can be a tool which can be used by the Board to monitor the key matters of the company. The main aim of the task force can be to evaluate the major issues which could be or are being faced by the company and the also possible provide them with the power to take possible measures to get pass such issues.

- Evaluation of the possible disruptions and business relationships:

In this evaluation, the management shall include impact of COVID-19 on key consumers, supplier and the main service providers. It shall also evaluate the ability of the company to access any emergency government funds and the adequacy of the company's insurance coverage.

- Reassessing Long Term Corporate Strategy:

Once all the impacts of the pandemic towards the company are evaluated, a long-term corporate strategy should be formulated. It should include forming new alliances, developing more innovation and Research and Development, grow more through acquisitions or selling off the NPAs, conducting a cost-benefit analysis, developing a new employee benefit program.

4. Administration:

The day-to-day administration must be kept in mind during these times since they will be the most affected and also the companies should make policies on how the administrative tasks

[2] Task Force: A task force essentially means a unit established to work on a single defined task or activity.

will be completed going forward in these pandemic times. The Board must come up with new policies to enable the subordinates to complete their day to day tasks in an effective way and in a way by which by aren't overburdened.

5. Disclosures:

In these unprecedented times, it is the most important to make prompt and measured disclosures as it helps in risk mitigation and also is a more conservative approach, which is necessary in a pandemic. Disclosure of the efforts taken by the Board to mitigate the problems and resolve them would be appreciated and respected by the stakeholders. The Board must seek timely legal counsel for a thorough commercial and legal risk analysis to understand the actual risk from the potential risks and carve out a plan to disclose them under the expert guidance. The Board should keep a safeguard for themselves against the limited and selective disclosures. They must provide for full and fair disclosure to ensure protection of investors' interest.

6. Data Protection:

Every company has sensitive data which can be fatal if it gets leaked in any way. Therefore, the company should implement certain policies and protocols for safeguarding the same. The company can maintain a list and allow access to only certain person for data sharing. There should be a restriction on the usage of social media for company communications and sharing of sensitive data. It is also recommended that in this tech-savvy world the employees are provided with adequate IT support and there are anti-viruses and VPNs used by them in their daily operators to reasonably ensure that there cannot be any cyber-attacks and data phishing. The shareholder's data should also be protected and should not be subjected to any leaks, since it may lead to heavy law suits to the company in the event of eminent data leaks as the shareholders data also include their personal information, which they might not intend to share with the world at large.

7. Takeover Defences and Preparedness:

It may sometime happen that the stock price of a company falls drastically in the light of the day and they face a risk to be taken-over by another company. Thus it is absolutely important for the Board of Directors to be ready with takeover defences when the company is vulnerable to these hostile activities caused due to depleting stock price.

The Board can consider the help of an outside advisor in these situations, for instance, an investment bank who can provide them with useful market intelligence, views on the likelihood that the company could be a takeover target, and some other particular insights into the changes in the market through which the companies can make policies to survive in the market.

One specific takeover defence that a board may consider under these circumstances is a shareholder's rights plan, also known as a "poison pill." While many public companies have a "pill on the shelf" so that they are prepared to quickly implement a rights plan if the situation warrants, the COVID-19 crisis has resulted in a recent uptick in public companies putting shareholder rights plans in place both to protect against hostile activity as well as to, in certain cases, protect tax assets that could be impacted by shifts in ownership resulting from volatility in the companies' stock. As there are various issues for a Board to consider in determining whether to put a shareholder rights plan on place (and if so, the terms of such plan), a board would typically enlist the assistance of an investment bank and outside counsel to assist with this analysis. One particular issue for a board to consider is the duration of the rights plan, with shorter duration plans (e.g., one year) designed to address only the current crisis likely to draw less scrutiny from shareholders and proxy advisors than longer duration plans.[3]

Even if the company is not a potential target to be taken over, yet these measures would be helpful to them to survive in these unprecedented times.

CONCLUSION:

As quoted by Mervyn King, *"Global market forces will sort out those companies that do not have sound Corporate Governance"*. Therefore, in a company corporate governance plays an important role in the working machinery of a company and it cannot survive without these policies. These policies should be changed from time to time for its efficient working. As mentioned above, these were some of the measures which could be taken by the company in these times of COVID-19. In these staggering times every company should surely adopt to the

[3] William Kucera, Jodi Simala, and Andrew Noreuil, Takeover Defences and Preparedness, COVID-19 and Corporate Governance: Key Issues for Public Company Directors (April 29, 2020), https://corpgov.law.harvard.edu/2020/04/29/covid-19-and-corporate-governance-key-issues-for-public-company-directors/.

changes in the economy and make reasonable changes in their corporate policies for the better and smooth functioning of the company.