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ENSURING BETTER CORPORATE GOVERNANCE THROUH E-GOVERNANCE

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ABSTRACT

This paper studies the role of e-governance in ensuring better corporate governance. As a company is a congregation of various stakeholders and should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today's globalized business world where companies are required to access global pools of capital and to live in harmony with the community. Companies need to recognize that their growth requires the cooperation of all the stakeholders; and such cooperation is enhanced by the corporation adhering to the best corporate governance practices. In view of the large number of corporate scams and scandals shocking the nation, e-governance tools have to be employed on a large scale to improve corporate governance. E-governance has a vital role to play in expanding the scope of corporate governance to cover new areas. Corporate e-governance can also check the frauds being committed by companies. The concept of e-governance means electronic support and stimulates good governance, and therefore, the objectives of e-governance are similar to the objectives of good governance. The use of information technology in corporate governance leads to greater transparency and efficiency. This paper highlights the present status of the usage of e-governance in administration of company law and corporate governance.

KEYWORDS: Corporate Governance, E-governance, MCA21, Company Law.

INTRODUCTION

A company is a congregation of various stakeholders, namely, customers, employees, investors, suppliers, government and society. A company should be fair and transparent to its stakeholders in all its transactions. This has become imperative in today's globalized business world where companies are required to access global pools of capital, need to attract and retain the best human capital from various parts of the world, need to partner with vendors on mega collaborations and need to live in harmony with the community. Companies need to recognize that their growth requires the cooperation of all the stakeholders; and such cooperation is enhanced by the corporation adhering to the best corporate governance practices. Unless a company embraces and demonstrates ethical conduct and adopts good governance practices, it will not be able to survive.

In view of the large number of corporate scams and scandals shocking the nation, e-governance tools have to be employed on a large scale to improve corporate governance. E-governance has a vital role to play in expanding the scope of corporate governance to cover new areas. Corporate e-governance can also check the frauds being committed by companies.

CORPORATE GOVERNANCE: MEANING

The simplest and most common definition of corporate governance is that provided by the Cadbury Report (U.K.), which is frequently quoted or paraphrased: “Corporate governance is the system by which businesses are directed and controlled.”

The definition in the preamble of the OECD Principles says “Corporate governance . . . involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”

Corporate Governance has mainly three components:

- Adequate disclosures and effective decision making
- Transparency in business transactions;
- Commitment to values and ethical conduct of business

Corporate governance deals with conducting the affairs of a company such that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. It is about openness, integrity and accountability. Corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that enable the Board, as collegian, to discharge their legal responsibilities in a manner which is beneficial to all stakeholders.

Corporate governance extends beyond corporate law. Its fundamental objective is not mere fulfillment of the requirements of law, but, also ensuring commitment of the Board in managing the company in a transparent manner for maximizing long-term shareholder value. Good corporate governance also helps ensure that corporations take into account the interests of a wide range of constituencies, as well as of the communities within which they operate. For this purpose, the management needs to act as trustees of the shareholders at large and prevent asymmetry of benefits between various sections of shareholders, especially between the owner-managers and the rest of the shareholders. The major issue of corporate governance is assuring the shareholders that the managers and the executive power acts more in the interest of the shareholders than in their own interest (J. Hendry, 2005)

Corporate governance is also about ethical conduct in business. Ethics is concerned with the code of values and principles that enables a person to choose between right and wrong, and therefore, select from alternative courses of action. Further, ethical dilemmas arise from conflicting interests of the parties involved. So, the managers have to make decisions based on a set of principles influenced by the values, context and culture of the organization. Ethical leadership is good for business as the organization is seen to conduct its business in line with the expectations of all stakeholders.

Corporate governance is a key element in improving the economic efficiency of a firm. Further, it ensures that their Boards are accountable to the shareholders. This, in turn, helps assure that corporations operate for the benefit of society as a whole. While large profits can be made taking advantage of the asymmetry between stakeholders in the short run, balancing the interests of all stakeholders alone will ensure survival and growth in the long run.

E-GOVERNANCE: MEANING

Mittal (2004) defined the term of e-governance refers to the process of using information technology for automating both the internal operations of the government and its external interactions with citizens and other business. He describes the e-governance framework as a solution development platform that will lower the cost of developing, deploying, and managing government solutions. The framework provides repositories of solution components such as security handlers, record management components, and user interface components. The solution components are customizable for each solution independently through a wizard like interface.

Relies (2002) stated that e-governance as an opportunity for government to get closer to the citizen and to build a partnership with diverse communities of interest, practice, expertise, conviction, and inter-dependence.

Several dimension and related factors influence the definition of e-Governance. The word “electronic” in the term e-Governance implies technology driven governance. E-Governance is the application of Information and Communication Technology (ICT) for delivering government services, exchange of information communication transactions, integration various stand-one systems and services between Government-to-Citizens (G2C), Government-to-Business(G2B),Government-to-Government(G2G) as well as back office processes and interactions within the entire government frame work. (Saugata,B., and Masud,R,R.,2007).

Through the e-Governance, the government services will be made available to the citizens in a convenient, efficient and transparent manner. The three main target groups that can be distinguished in governance concepts are Government, citizens and businesses/interest groups. In eGovernance there are no distinct boundaries. (Garson, D.G.,2006). The perspective of the e-governance is "the use of the technologies that both help governing and have to be governed". (Rossel, Pierre, and Matthias Finger)

THE ROLE OF E-GOVERNANCE IN GOOD CORPORATE GOVERNANCE

The concept of e-governance means electronic support and stimulates good governance, and therefore, the objectives of e-governance are similar to the objectives of good governance. The use of information technology in corporate governance leads to enhanced efficiency, greater transparency and cost reduction. With the help of e-governance services can be delivered at greater speed and the interests of all stake-holders can be better protected.

With the increase in Internet and mobile connections, the people are learning to exploit their new mode of access in wide ranging ways. E-Governance signifies the shift in interaction between the Government and those who are governed. It aims for improving efficiency and effectiveness of Governance by making the information services available anywhere and anytime. E-Governance is the use of IT in particular Internet, to deliver services in a much more convenient, stakeholder oriented, cost effective and efficient manner.

The information system of corporate governance is a very complex one, which involves a series of actors, decision-making and transactional processes, technologies, procedures and good practice codes. In order to ensure the efficiency and efficacy of corporate governance as a premise for increasing company's performance and position consolidation for the company on the capital market, it is necessary to analyze the way information technology could contribute to this undertaking. (Claudiu Brandas, 2011)

In order to have all the conditions for good corporate governance, it is necessary to ensure information integrity and prevent abusive use of all information by all those involved in the internal or external governance system of the companies (D. Musson, E. Jordan, 2005) In this context, the use of information technology (IT) can be viewed as a real support in order to ensure good corporate governance (T. Lazarides, E. Drimpetas, 2008)

Good corporate governance has five essential elements: fairness, transparency, accountability, responsibility, and independence. It is important that the companies reveal their information punctually, adequately, clearly, accurately and comparably, and it should be easy for the stakeholders to access. Keeping these in view supporting tools for providing this information particular in a decision-making is obviously needed. Therefore, e-governance becomes one of the major factors in order to improve the good corporate governance and its controlling mechanisms.

E-GOVERNANCE HELPS IN BETTER ADMINISTRATION OF COMPANY LAW

Till some years back, the corporate affairs were characterized by large amounts of paper work, time consuming processes and complicated set of controls. But the increasing globalization necessitated creation of a favorable climate for encouraging sustainable economic growth and maintaining a healthy business eco-system. Institutional arrangements and processes necessary to support accelerated growth were needed to be put in place. With the rapidly developing Indian economy and the progress being made by the corporate sector, the existing governmental work transaction structure was not in sync with the times. It was particularly relevant to the country's corporate sector, which has registered a four-fold growth in the number of companies since 1990.

A major factor for the absence of transparency, accountability and effectiveness in company law administration in India was corruption in Registrar of Companies (RoC) offices and in the central bureaucracy in charge of company law, which was further a major setback for the corporate sector in India.

Towards this end the Ministry of Corporate Affairs embarked upon an ambitious e-Governance project called the MCA21 e-Governance Program in 2006. MCA21 is the only authentic information repository on the corporate sector and serves as the registry for all filings / public records. It is a flagship of transformational change in the corporate affairs. MCA21 has utilized the possibilities offered by technology to simplify the interfaces between the Government and the stakeholders. It aims at continuously repositioning MCA as an organization capable of fulfilling the aspirations of its stakeholders in a globally competitive business environment. The comprehensive, end-to-end service oriented solution has helped establish a fine balance between facilitation and compliance.

MCA21 is an outcome-oriented initiative and the objectives of the program are to address the concerns of all the major stakeholders:

Business: enabled to register a company and file statutory documents quickly and easily and in a convenient manner.

Public: to get easy access to corporate records and get their grievances redressed effectively.

Professionals: to be able to offer efficient services to their client companies.

Financial Institutions: to find registration and verification of charges easy;

Government: to ensure proactive and effective compliance of relevant laws, corporate governance and transparency.

MCA Employees: enabled to deliver best of breed services to all the stakeholders in a speedy and transparent manner.

MCA21 has adopted a 'service delivery' model where the project operator would provide the desired service facilitation through a clearly agreed service level agreement. Financial and legal structuring of the project has been carried out with the help of experts. MCA21 is the first project implemented through a Public-Private Partnership (PPP) wherein a consortium led by Tata Consultancy Services Ltd. represents the private sector. The commercial approach involves a Build-Operate-Transfer (BOT) model that is based on the operation of a service driven technology solution.

E-GOVERNANCE HELPS TO MAKE CORPORATE AFFAIRS A PAPERLESS AFFAIR

Considered as a flagship project under the National e-Governance Plan, MCA21 has evolved to prove that how the finite nature of paper based systems could be overcome especially in a country with continental dimensions like India. Recognized as 'a revolutionary step by the Government in the right direction' by 92% of CEO/CFOs surveyed by Ernst & Young / CNBC TV, the project has been conferred numerous recognitions and awards.

MCA21 e-Governance Program has completely transformed the way corporate India interfaces with the Government. It is considered a benchmark among e-governance projects in India, as it has brought about a service transformation through a harmonious blend of facilitation and compliance by involving large-scale deployment of information technology within the shortest possible timeframe. Keeping in pace with the need of the times it is also the first green project that has successfully cut down large scale usage of paper.

SENDING ANNUAL REPORTS THROUGH E-MAIL

As a part of its green initiative, the Ministry of Corporate Affairs vide its circular number 18/2011 dated 29.04.11 has clarified that a company would be in compliance of section 219(1) of the Companies Act, 1956 in case a copy of balance sheet etc. is sent by electronic mail to members of the Companies. This is subject to the condition that:

- the company advances opportunity to the members to register their e-mail addresses with the company or with the concerned depository;

- the website of the company displays full text of these documents;

- company issues advertisement in the prominent newspapers that copies of aforesaid documents are available at the website and for inspection at the registered office during office hours;

- in cases, where any member has not registered his e-mail address for receiving the balance sheet etc., the balance sheet etc. will be sent by other modes of services as provided under section 53 of the Companies Act, 1956;

- in case any member insists for physical copies of above document, the same should be sent to him physically by post free of cost.

PROVISIONS FOR E-GOVERNANCE IN COMPANIES BILL 2011

The Companies Bill, 2011 was introduced in LokSabha on 14th December 2011. Introducing technological advancements and practical realities has been the major attraction of this bill. The Bill proposes E-Governance for various company processes like maintenance and inspection of documents in electronic form, option of keeping of books of accounts in electronic form, financial statements to be placed on company's website, holding of board meetings through video conferencing/other electronic mode; voting through electronic means.

PARTICIPATION AT BOARD MEETINGS THROUGH VIDEO/AUDIO VISUAL MEANS [CLAUSE 173(2)]

Participation of directors at Board Meetings has been permitted by the bill through video-conferencing or other audio visual means, provided such participation is capable of recording and recognizing. Also, the recording and storing of the proceedings of such meetings should be carried out.

GENERAL MEETINGS: VOTE BY THE ELECTRONIC MEANS [CLAUSE 108]

The Bill says that the Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

MAINTENANCE OF BOOKS IN ELECTRONIC FORM [CLAUSE 128]

Keeping in view the technological advancements and practical convenience the Companies Bill proposes that the companies may now maintain their books in electronic form also. Maintenance and allowing inspection of documents by companies in electronic form is being allowed for the first time.

The recent inclusion of e-governance provisions for conduct of the company meetings would ensure that decision-making in the corporates is well-informed. It is indeed a very welcome move for the corporate sector because their shareholders are mostly scattered all over the world. Thus, it would be beneficial to a more inclusive process in corporate democracy that leads to enhanced member participation and consensus decision-making. It will also help in curbing the costs incurred and the time spent by the directors and shareholders in attending board meetings and general meetings of the companies. This leap in the field of e-governance will surely increase transparency and organisational effectiveness.

CONCLUSION

Corporate Governance is basically a means whereby society can be sure that large corporations are well-run institutions to which investors and lenders can confidently commit their funds. In this context, it should be noted that the failure to implement good governance procedures has a cost beyond mere regulatory problems. Companies that do not employ meaningful governance procedures will have to pay a significant risk premium when competing for scarce capital in today's public markets. Corporate governance mainly involves the establishment of structures and processes, with appropriate checks and balances that enable the Board to discharge their legal responsibilities in an efficient manner and e-governance helps them establish and monitor such processes. E-governance is critical to foster good governance practices and to meet the industry compliance standards. It also helps ensure that the financial reporting exercises full disclosure and corporate governance is transacted with full transparency. E-governance also ensures compliant, transparent and accountable information infrastructure throughout the company.

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