

Role of Company Secretaries in Capital Market



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INTRODUCTION

One of the engines driving the remarkable growth in India is its large class of talented private entrepreneurs, as many indigenous start-ups are becoming global success stories. Indian business has done exceptionally well in the last decade and a half - largely as a result of more efficient use of resources, men and machines. Today,

many Indian brands are creating their own space in minds of customers in international markets. As Indian companies compete with the global giants - across industry, manufacturing and the services spectrum - they are spreading out to the foreign shores.

Globalisation has indeed fuelled this growth of Indian businesses. Indian corporates continue to invest in acquisitions and joint ventures to gain global presence and increase revenues, add new assets, diversify product portfolio, and exploit the potential of new markets. Indian companies have improved their visibility in global markets by finalising numerous M&A deals. Recently, there have been a slew of big-ticket global acquisitions made by Indian companies, across myriad of sectors and geographies.

The strategic imperatives that have contributed to the globalisation of the Indian businesses and rapid emergence on the global M&A horizon can be attributed to the raising of permissible investment limits, streamlining of processes and positive changes in policy guidelines. While these factors have undoubtedly fuelled Indian MNCs' drive to invest overseas, the rise of entrepreneurial ambitions and the aspirations of Indian companies to seamlessly grow have together been the driving forces behind the unparalleled expansion of Indian companies, both within and beyond national jurisdiction.

INDIAN CAPITAL MARKET

Matching the cross border expansion of Indian Companies, the Indian Capital Markets have also grown exponentially in the last two decades. The growth has been in every sphere - the amount of capital raised through primary issuances, exchange trading turnovers, the market indices and market capitalization, mutual fund assets, access to foreign markets for raising

funds, foreign listing and foreign institutional investment. In fact, none of this would have been possible if the Indian markets had not developed in a world class market and regulatory infrastructure. The efforts in developing an efficient market infrastructure have created a market that has made transactions transparent and settlements safer. The Indian Capital Market has come a long way from trading under the Banyan tree to internet trading.

Now the capital market is well organized, fairly integrated, mature, modernized and demographically well diversified. The Indian equity market is one of the best in the world in terms of technology. Advances in computer and communications technology, coming together on Internet are shattering geographic boundaries and enlarging the investor class across the national boundaries. India's market now features a developed regulatory environment, a modern market infrastructure, a steadily increasing market capitalization and liquidity, better allocation and mobilization of resources, a rapidly developing derivatives market, a robust mutual fund industry, and increased issuer transparency.

Demographic Profile of Investors

The demographic profile of capital market in India has undergone major expansion during the last two decades, both in terms of participation of domestic as well as foreign investors. A snapshot on demographic profile of investors is given below :

Domestic Investors : The expansion of India's middle class continue to drive the growth of the Indian capital market. A report by the McKinsey Global Institute suggests that if India continues its recent growth, average household income will triple over the next two decades, and the country will become the world's fifth largest consumer economy by 2025. In the process, the report says, "almost 300 million people will move out of desperate poverty and India's middle class will balloon from 50 million people to almost 600 million." This picture auger well for the small investors participation in the capital market.

Foreign investors : Reflecting India's improving macroeconomic fundamentals, increasing corporate profitability and competitiveness, and greater integration with the world economy, foreign institutional investors' (FIIs) participation grew steadily over the years. The inflow of portfolio capital continues to test new highs and in recent years has outpaced the inflow of foreign direct investment (FDI). Sustained inflow of capital will not only bring greater liquidity in the market, but further expand the demographic profile of investors.

Foreign Institutional Investors : The modern in market structure, regulation and technology have brought about significant qualitative changes in the Indian securities market, greatly reduced systemic and settlement risks, and helped create more transparent, liquid and efficient securities markets. Increasing confidence in the fairness and efficiency of the market, and the elimination of barriers to foreign institutional investment in 1994, fueled the growth of foreign portfolio investment. Portfolio Investment by Foreign Institutional Investors (FIIs) in India has grown every year since then.

Global Integration

Investments in Indian exchanges as well as plans to develop an International Financial Center in India strengthen the connections with global markets. Recent alliances with foreign stock exchanges bring to India's capital market the extensive resources, experience, and networks of some of the world's preeminent financial market groups, that are strongly positioned in North America, Europe, and Asia.

Corporate Governance in Capital Market

Sir Adrian Cadbury in his Committee Report said that if the company has to make the most of its opportunities, the Board has to be a source of inspiration for the goals it sets. The Board is responsible for the manner in which a company achieves its goals and therefore for the kind of enterprise it is and that which it aspires to become. It is thus the responsibility of the board to provide leadership in advancing the company's vision, values and guiding principles. Being collectively responsible for promoting the success of the company by directing and supervising the company's affairs, the board's role is to provide entrepreneurial leadership within a framework of prudent and effective controls, which enable risk to be assessed and managed, sets the company's strategic aims, ensures that the necessary financial, human resources and infrastructure are in place for the Company to meet its objectives, and to review management performance.

The effective Corporate Governance is a prerequisite to a vigorous capital market. In true, transparency with respect to operating performance and ownership is critical to effective corporate governance. The seeds of good corporate governance in capital market were sown with the implementation of the Report of the Kumar Mangalam Birla which says that "the strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection". Based on the recommendations, SEBI implemented Clause 49 in the listing agreement ushering into a new era of disclosures and transparency. Subsequently, this clause has under gone changes keeping pace with the global development.

Role of Company Secretaries

Simultaneously, with the sharp focus on corporate governance and self regulation the role of professionals like Company Secretaries received recognition in shaping

the entire edifice of corporate governance in capital market.

The role of Company Secretary in corporate governance can be well illustrated from the Corporate Governance Code of United Kingdom which highlights the same as under :

"Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required".

The Company Secretary should be responsible for advising the board through the chairman on all governance matters.

Thus the most effective Company Secretary is one who is regarded by the Board as its trusted adviser and who:

- keeps under review legislative, regulatory and governance developments that may impact the company and ensures that the board is appropriately briefed on them;
- wins the confidence of and acts as a confidential sounding board to the chairman and other directors on issues of concern; and
- provides, where appropriate, a discreet but challenging voice in relation to board deliberations and decision making, drawing in particular on his or her professional experience and historical knowledge of the company.

Company Secretaries are many times the first source of advice on the conduct of business and this spans from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning. The Company Secretary is also responsible for ensuring that board procedures are followed, applicable rules and regulations are complied with and good information flows within the Board, its Committees and between the Non-executive Directors and senior management.

It is the Company Secretary who is entrusted by companies as Investor Relations Officer, responsible for ensuring dissemination of timely and relevant information to the shareholders.

The Company Secretary is the executive to support the board to tailor corporate governance principles and practices to fit the board's needs and expectations of investors. In some companies, the role of the Company Secretary as Corporate Governance Adviser has been formalized, with a title such as Chief Governance Officer added to their existing title.

Expanding Role of Company Secretaries

Along the emerging new business and regulatory paradigm in general, and the capital market in particular, the profession of Company Secretaries move from its role of Secretarial Compliances into one stop professional solutions for corporate compliances and corporate Governance. This new dimension profile of Company

Secretaries have been recognized by SEBI – the Capital Market Regulator in terms of Certification Services, Representation Services, Service relating to Public Issue, Listing, Security Management, Takeover Code and Insider Trading etc.

The Company Secretaries have been authorised to appear before Securities Appellate Tribunal on behalf of a company and other persons. In respect of Public Issue, Listing and Securities Management, they can act as Advisor/consultant in issue of shares and other securities in India and abroad; Drafting of prospectus/ offer for sale/ letter of offer/other documents related to issue of securities and obtaining various approvals in association with lead managers; Listing / delisting of securities; Private placement of securities; Buy-back of shares; Raising of funds from international markets – ADR/GDR/ECB; Acting as compliance officer under listing agreement and Compliance officer for various capital market intermediaries.

In respect of Takeover Code and Insider Trading, the Company Secretaries have been entrusted to ensure compliance of the Takeover Regulations; and SEBI (Prohibition of Insider Trading) Regulation, 1992 including maintenance of various documents.

In respect of Securities Compliances and Certification the Company Secretaries have been authorised to conduct Compliance with rules and regulations in securities market particularly; Internal Audit of Depository

Participants; Stock Brokers/Trading Members/Clearing Members; Portfolio Managers; Credit Rating Agencies. The certification services include Certification in relation to Reconciliation of total issued capital, listed capital and Capital held by depositories in dematerialized forms; Non- Promoters Holding under clause 35 of the equity listing agreement; completion of transfer of shares within stipulated time; under equity listing agreement; compliance of conditions of Corporate Governance under clause 49 of the equity listing agreement; Listing Agreement for Listing of Debt Securities and Listing Agreement for Indian Depository Receipts; and Maintenance of 100% Security cover under Listing Agreement for Listing of Debt Securities including various certifications for trading members of stock exchanges.

Way Forward

In an environment marked by growing numbers of businesses operating in multiple jurisdictions, and rising levels of capital moving across borders, there is much larger role for professionals like Company Secretaries in promoting and ensuring transparency in delivery of reliable, consistent, and comparable information and promoting good corporate governance in capital market. The Company Secretaries by virtue of their knowledge of securities laws and capital market, deserve much larger role in ensuring good governance in various constituents of capital market.

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