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# *THE CHANGING PARADIGM OF CORPORATE GOVERNANCE IN INDIA*

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## *ACGA Listed Company Workshop*

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**Character, Competence & Commitment**

# Business Realities of Corporate India

- Concentrated Ownership Structures
  - Currently in the Nifty 50, 45 (92%) of the 49 companies have promoters, and 26 (53%) of the 49 companies have promoter holding over 50%
- The “Owner Mindset”
  - Effective 50% + 1 = Board Control = Control
- Concentration of Power
  - Majority Shareholder + Chairman + MD
- Multiple Hats: The ‘Owner – Manager - Fiduciary’
- Not really limited liability
  - Promoter guarantees are commonplace
  - Promoter liabilities
- Business dependence on Promoter

# The Implications of Concentrated Ownership

- De-jure, De-facto and Shadow Control
- Principal Cost > Agency Cost
- Regulatory Focus to nudge towards the Custodian Model
  - Trustee/Fiduciary Mindset
  - Separation of ownership and management
  - Stakeholder Approach- Fiduciary duties of directors
  - Long Termism

# Key SEBI Committee Recommendations

- A Wholesome Board
  - Minimum six directors + Half to be IDs + One woman ID
  - Separation of the role of chairperson and the CEO/MD
  - Independence “in spirit”
  - Lead ID
  - Disclosure of Skills Matrix
  - Knowledge updation and enhanced interaction of NEDs with senior management
- Commitment to Role
  - Enhanced number of board and committee meetings
  - Increased focus of board on strategy, succession planning, risk management, budget, board evaluation and ESG
  - Enhanced role of board committees

# Key SEBI Committee Recommendations

- Information sharing with controlling promoters / significant shareholders
  - Business Realities vs. Legal Framework
  - Access to Inside Information – “Legitimate Purpose” Exception
  - From “Shadows” to “Sunlight”
  - Access to Information Agreement
  - Eligible Counter-parties + Minimum Principles + Mandatory Disclosures + Opt-in
- Related Party Transactions
  - Promoters and promoter group entities holding 20% or more: Related Parties
  - Shareholders’ approval - Brand usage/ royalty payments of more than 5% of the turnover

# Key SEBI Committee Recommendations

- Audit and Auditor related aspects
  - Enhanced audit and auditor related disclosures
  - Clarity in SEBI's powers to take action against auditors in case of gross negligence (in addition to fraud/connivance)
  - Strengthening the role of the ICAI + independent functioning of the QRB
- Guiding principles for governance of PSEs
  - Transparent mandate + Disclosure of objectives and obligations
  - Independence from administrative ministry
  - Consolidating government stake under holding entity structure
- Capacity building in SEBI

# The Institution of Independent Directors

- Tick the Box vs. True Spirit of Independence
- Appointment Process
  - Criteria: Objective and Subjective Assessment of Independence
  - Who votes? Minority Interests vs. Shareholder Democracy
- Role of an ID
  - Business as Usual
  - Crisis Situation
  - Succession Planning
- Functioning
  - Fiduciary duty (stakeholder interests, minority protection, trade offs)
  - Reliance on management
  - Liabilities, risk and reward imbalance
  - Constructive and not disruptive presence

# Role of Auditors as Gatekeepers

- Expectation Gap
  - Is the auditing professional living up to the expectations?
- Conflicts faced by Auditors
  - Non-audit services
  - Potential employment with the Company
- Auditing the Auditors
  - The monitoring and enforcement of audit profession needs to be revamped
  - Are SEBI Committee Recommendations far-reaching enough?



# The Other Gatekeepers: Hits & Misses

- Statutory Fiduciaries
  - Company Secretary/ Compliance Officer
  - Auditor
- Other Third Parties
  - Credit Rating Agencies
  - Proxy Advisory Firms
  - Analysts
  - Business Journalists
  - Whistle Blowers
- Regulators (SEBI/ Stock Exchanges)
- Promoters/ Large Shareholders

THANK YOU