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CORPORATE GOVERNANCE IN DEVELOPING WORLD

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ABSTRACT

"*Ethics in business is extremely important; your reputation is all you have in life*." - Sir Freddie Laker

As globalisation continues to accelerate, more and more businesses are broadening their position in international financial markets in order to obtain access to money. Strong corporate governance is now considered to be a critical component of a company's long-term success. When compared to developing nations, the attempts to establish good governance in industrialised countries have been done considerably more quickly than in developing ones. For example, The Malaysian government has made significant steps to ensure that the necessary infrastructure for efficient corporate governance procedures is in place and that these efforts are successful. Lastly, a successful corporate governance plan requires a significant commitment to enforcement, monitoring, and lobbying efforts on the part of all parties involved. Since the financial markets have become more globalised over the past decade, it has become necessary to unify corporate governance standards across borders. This paper gives a brief analysis of the different practices of corporate governance around the world and also explain its importance in the long term sustainability of the company.

Keywords: Corporate Governance, Ethics, Industrial Revolution, Globalization.

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INTRODUCTION

"Corporate governance is a multidisciplinary area of study that encompasses a broad variety of disciplines including accounting, consulting, economics, ethics, finance, law, and management, amongst others."[1] One of the most important functions of corporate governance is to draft agreements that outline the rights and responsibilities of shareholders and the company as a whole. In the event of a dispute arising from a conflict of interest, corporate governance must bring all parties together. The organisation also has the responsibility of establishing standards by which companies' work may be controlled and administered.[2]

In basic terms, corporate governance refers to the collection of procedures, practises, policies, regulations, and institutions that influence the manner in which a corporation is directed, managed, or controlled. Corporate governance also encompasses the connections that exist between the many stakeholders as well as the objectives that the business is striving to achieve. It also involves holding those in power accountable for their decisions by evaluating them on the basis of transparency, inclusivity, equity, and responsibility, among other criteria. "*The World Bank defines governance as the exercise of political power and the use of institutional resources to manage the problems and affairs of a society*." The phrase "corporate governance" first appeared in the business press in July 1997, after the Asian Economic Crisis.[3]

The solution can be found the history of corporate governance there. "Previously, corporate governance philosophy was split into two categories: *Anglo-American* and *Continental European*. Anglo-American characteristics included short-term equity financing, dispersed ownership, strong shareholder rights, active capital control markets, and flexible labour markets, whereas Continental European characteristics included long-term debt financing, concentrated blockholder ownership, weak shareholder rights, inactive capital control markets, and rigid labour markets." No country on the planet can adopt either pure Anglo-American policies or a pure Continental European system in its entirety. It is dependent on a variety of variables such as globalisation, international presence, competition, deregulation, and so on that determines to what extent any given country would adhere to one of the two systems stated above. The purpose of this article is to explain corporate governance from the perspective of

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[1] Ruchi Kulkani and Balasundram Maniam, *Corporate Governance — Indian Perspective,* Vol. 5, International Journal of Trade, Economics and Finance, (Aug. 2014).
[2] Thomas A. Stewart &Anand P. Raman, *Lessons from Toyota's Long Drive*, HARVARD BUSINESS REVIEW, (July-Aug. ,2007), https://hbr.org/2007/07/lessons-from-toyotas-long-drive (last accessed Sep. 28, 2021)
[3] Shafi Mohamad, *The Importance of Effective Corporate Governance*, SSRN Electronic Journal (Sept. 2004).

countries in South Asia. The fact that it is an emerging market means that it has its own set of difficulties and limitations.[4]

CORPORATE GOVERNANCE: MEANING & FACETS

Individuals, mutual/pension funds, banks, financial institutions, and even governments that give financing to businesses want reassurance that their investments are secure and will deliver the desirable results they expect. It is the responsibility of effective corporate governance to provide such guarantees. According to *Millstein*, "The word '*corporate governance'* may be defined in a variety of ways, including both narrowly and widely defined. Millstein defines corporate governance as the connection that exists between managers, directors, and shareholders, in the most condensed form of her concept. This limited definition includes the connection between the company and its stakeholders, as well as the link between the business and society. According to her definition, corporate governance is a combination of laws and regulations, listing rules and voluntary private sector practises that enable a corporation to attract capital, perform efficiently, generate profit and meet both its legal obligations and the expectations of the general public, while also meeting its legal obligations and the expectations of society as a whole." [5]

INDUSTRIAL REVOLUTION 4.0 VIS-À-VIS CORPORATE GOVERNANCE

According to corporate executives, Industry 4.0, also known as the Fourth Industrial Revolution, has brought with it a plethora of opportunities and advantages in areas such as "finance, competitiveness, overall equipment effectiveness, innovative business approaches , resource efficiency and other benefits include time savings, human capital, individualization, data and information." Industry 4.0 is playing a critical role in generating momentum for value creation and sales while also helping in the reduction of different expenses, such as average unit, operational, and human costs, as well as the elimination of waste. To put it another way, industry 4.0 not only has the ability to lower the costs associated with the manufacturing of products and services, but it is also helping businesses in experiencing tremendous increase in their profits.

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[4] Witold J. Henisz & Bannet A. Zelner, *The Hidden Risks in Emerging Markets*, HARVARD BUSINESS REVIEW (April 2010).

[5] OECD, *G20/OECD Principles of Corporate Governance*, OECD Publishing (2015*),* http://dx.doi.org/10.1787/9789264236882-en (last accessed Sep. 28, 2021)

The focus of Industry 4.0 is on the efficient use of equipment in order to increase productivity, machine availability, and the overall strength of the manufacturing process. Furthermore, equipment efficacy may play a critical role in lowering scrap and failure rates, which in turn can reduce production delays and downtimes by a significant margin.Vertical and horizontal connections aid in the reduction of media interruptions within information chains as a result of the implementation of Industry 4.0 technologies. It contributes to improving the transparency of processes, machinery, inventory, and logistics data facilities, as well as the traceability of commodity flows. Smaller information transfers and more effective data exploitation are enabled by smart big data analysis. So it is possible to say without a shred of doubt that Industry 4.0 has the potential to play an important role in boosting information exchange and collaboration among employees.

With Industry 4.0's reduced set-up and lead times, as well as its higher machine speed capabilities, manufacturers can respond to consumer needs in a more flexible manner. Simulation in areas like as engineering and research and development will help to reduce time-to-market by a significant amount. Furthermore, non-value-adding processes or activities would be curtailed as much as possible. Consequently, it may be concluded that the aforementioned critical components of Industry 4.0 (fourth industrial revolution) are consistent with the fundamental principles of corporate governance.

Therefore, To succeed in today's modern world, it is essential for every business organisation not only to meet its stakeholders' expectations, but also to make genuine efforts to provide them with more than they are entitled to or desire, because a business cannot exist in a vacuum if its stakeholders are not satisfied. "The critical elements covered by Industry 4.0, namely, competitiveness, finance, overall equipment effectiveness, data and information, and time, all come together to create corporate governance in the final analysis." For example, if a company tends to function solely inside a certain market and does not strive for development and growth, it may find itself losing competitiveness in the future and eventually being wiped out from the industry. The absence of data integration in an organisation may result in a lack of transparency in the process, which can lead to instability and disputes in the management team in the same way. Consequently, Industry 4.0 pave the way for more effective corporate governance.[6]

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[6] Deloitte, *Industry 4.0 pave the way for more effective corporate governance,* Deloitte AG (2015), https://www2.deloitte.com/content/dam/Deloitte/ch/Documents/manufacturing/ch-en-manufacturing-industry-4-0-24102014.pdf (last accessed Sep. 27, 2021)

NEED FOR CORPORATE GOVERNANCE

The majority of shareholders in today's companies are unorganised and have an apathetic attitude toward corporate activities. A business nowadays has a very big number of shareholders who are dispersed across the country and even around the globe. The concept of shareholders' democracy is still limited to the realm of law and the Articles of Association, and it needs practical application in the form of a code of corporate governance behaviour to be fully realised. “The pattern of corporate ownership has shifted significantly in recent years, with institutional investors (both foreign and Indian) and mutual funds becoming the biggest shareholders in large private companies in the public and private sectors.” These investors have emerged as the most significant threat to corporate management, compelling the latter to adhere to a defined rule of corporate governance in order to improve the company's reputation in society.

Scams (or frauds) perpetrated by corporations in recent years have eroded the public's trust in the management of large corporations. The occurrence of the Harshad Mehta affair, which is considered to be one of the most significant scandals in recent history, remains fresh in the minds and hearts of everyone who is involved in corporate holdings or who is otherwise educated and socially aware. In order to restore investors' trust in the business sector and contribute to the economic growth of society, corporate governance is an absolute need. Society now has higher expectations of the business sector in terms of affordable prices, better quality, pollution control, optimal use of resources, and so on. The corporate sector must meet these expectations and more. For a business to fulfil societal expectations, it is necessary to have a code of corporate governance in place that ensures the most efficient economic and social management.

The hostile takeovers of businesses that have been seen in a number of nations have called into question the effectiveness of the management teams of takeover companies. Additionally, this issue draws attention to the need of corporate governance, which takes the shape of an effective code of conduct for corporate managements. Top-level corporate executives have seen a significant rise in their monetary payouts (compensation packages) in both emerging and established countries, according to recent research. Inappropriate payments to top-ranking executives from company money, which are the property of shareholders and the general public, are not justifiable under any circumstances. This issue requires the establishment of corporate governance in order to control the unethical activities of corporate top management.

Corporate governance is becoming more important as more and more Indian businesses want to be listed on foreign stock markets, which highlights the importance of this practise. In fact, corporate governance has become something of a buzzword in the business world these days. There is little question that only businesses that are well-managed in accordance with established rules of corporate governance are recognised by the worldwide capital market.

CORPORATE GOVERNANCE IN THE SAARC COUNTRIES

- **Corporate Governance in Bangladesh**

"Companies of Bangladesh is incorporated and governed by the Company Act 1994, Bank Company Act 1991, Financial Institution Act 1993, Bangladesh Securities and Exchange Commission Act 1993 (2012 amended) and Bankruptcy Act 1997 which defines the rights and responsibilities of both majority and minority shareholders."[7] The legislation has special measures aimed at safeguarding the interests of minority shareholders who own less than 10% of the company's stock in the company. Furthermore, the legislation mandates that shareholders perform specific supervisory duties, including as attending the annual meeting, appointing and dismissing directors, and collecting financial information prior to the approval of the balance sheet.

Shareholders are allowed to attend the annual general meeting (AGM), which must be conducted at least once a calendar year on the day of the meeting. The approval of the annual report and the audited financial statements of the business are the primary responsibilities of shareholders.

The financial industry has dominated corporate governance standards in Bangladesh, and the banking sector, with its rules and processes for granting and monitoring loans, may serve as a motivator for improved corporate governance in the country. Credit assessment and asset management have not been adequately monitored as a result of the processes in place. The loan market does not exist in Bangladesh, and the insurance market does not constitute a significant factor in the country's financial system. The capital market contributed to effective governance by facilitating the generation and monitoring of information. The basic spokes of an effective capital market wheel are not in place in Bangladesh, according to the World Bank. According to the capital market, corporate performance does not have a major impact on stock valuation, which is greater when accurate and complete disclosure is provided and lower when accurate

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[7] The Companies Act, 1994, No. 18, Acts of Parliament, 1994 (Bangladesh).

and complete disclosure is not provided. A large number of shareholders who do not have a sufficient degree of knowledge, awareness, and sophistication put pressure on a business to alter its conduct and guarantee proper corporate governance practises.[8]

Public companies and private firms in Bangladesh share best practises with the audit committee rather than with other committees. Investor associations, business groups, institutional investors, the media, and civil society organisations may all play a critical role in promoting good corporate governance practises. Each member of the organisation is weak and does not have the political power to compel large-scale reforms in the Bangladeshi business sector to occur. Even the majority of the businesses are not suitable candidates for substantial foreign investment in their operations. As a consequence, the world economic community does not exert any pressure on companies to improve their corporate governance. It is reasonable to conclude that deregulation, fragmentation, and institutionalisation are the primary characteristics of Bangladesh's corporate governance system. However, as a result of the non-constitution of several committees, there have been fast changes in many laws and activities.[9]

- **Corporate Governance in Sri Lanka**

"At present the corporate governance practices of Sri Lankan listed companies are governed by the mandatory corporate governance rules included in the CSE Listing Rules. However, as Listing Rules provide only minimum standards to be complied by the listed companies, ICASL Code of Best Practice (2008) will provide the basis for the development of corporate governance practices that are not covered in these rules. Further, these companies are also required to comply with the provisions of the Companies Act No.07 of 2007 on the appointment and removal of directors and auditors and the listed licensed commercial banks have to comply with Central Bank Direction on Corporate Governance."[10]

This concept is based on the premise that listed firms' ownership and management are separated, resulting in a transfer of power and control from shareholders to management. This necessitates proper management checks and balances. As a result, the shareholders appoint the

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[8] OECD, *Risk Management and Corporate Governance*, Corporate Governance, OECD Publishing (2014), http://dx.doi.org/10.1787/9789264208636-en (last accessed Sep. 28, 2021)

[9] Department of Economic and Social Affairs Office for ECOSOC Support and Coordination, *Achieving Sustainable Development and Promoting Development Cooperation Dialogues at the Economic and Social Council,* United Nations Publications (2008), https://www.un.org/en/ecosoc/docs/pdfs/fina_08-45773.pdf (last accessed Sep. 30, 2021)

[10] Companies Act ,2007, No . 07 (Srilanka).

directors to supervise management on their behalf. The shareholders appoint the directors at the company's Annual General Meeting (AGM) in accordance with the Company Act. Sri Lankan businesses have a unitary board structure with both executive and non-executive directors due to significant historical connections with the British corporate model. Executive directors are business workers, typically senior managers, who assist management in the day-to-day operations of the organisation. "Non-executive directors, on the other hand, are not involved in the company's management. Despite the fact that both executive and non-executive directors have the same fiduciary responsibility to the business, non-executive directors may offer a more objective perspective to the assessment of the company's management since they are not involved in it.As a result, the Listing Rules mandate that listed firms have a suitable balance of executive and non-executive members on their boards, with at least two non-executive directors or one-third of the total number of directors, whichever is greater. Furthermore, the Listing Rules stipulate that these directors must be independent of management and devoid of any commercial or other ties that may compromise their independence."[11]

"*The Central Bank Direction regulates these two elements of listed regulated commercial banks. As the chairman of the board, he or she may play a key role in maintaining the enterprise's effective governance and is accountable for the board's smooth operation. As a result, under the unitary board structure, the separation of the chairman and CEO positions is suggested as a way of establishing an acceptable balance of power, improving responsibility, and increasing the board's capacity for independent decision-making*."[12]In addition to the conduct of business and other operational issues, the directors are responsible for financial reporting, the maintenance of a suitable system of internal controls, and risk management, according to both the ICASL Code and the Central Bank Direction. The Companies Act also states that the directors are responsible for preparing and disseminating a company's financial statements to its shareholders, among other things. Furthermore, these rules compel publicly traded firms to establish board committees to monitor areas where shareholders and management may have a possible conflict of interest. These committees are subgroups of the board that are established to enhance the board's independence and accountability.

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[11] Ibid.

[12] M Kahan, *Jurisprudential and Transactional Developments in Takeovers,* Hopt et al (eds) Comparative Corporate Governance, Clarendon Press, Oxford (1998) 683.

From the discussion above, it is apparent that the current corporate governance laws offer a complete corporate governance model for Sri Lankan listed businesses, which is a combination of obligatory and voluntary corporate governance standards. However, it is too early to speculate on the degree of real compliance of Sri Lankan businesses with this approach.[13]

- **Corporate governance in India**

This new golden word "Corporate Governance" was created in the corporate sector in the late 1990s by the Industry Association on Confederation of Indian Institutes (IACI). It was the first voluntary measure taken by Indian businesses in India and was the first effort of its kind in the world.[14] On the basis of these voluntary recommendations, it has outlined a series of voluntary recommendations for listed companies to incorporate best-in-class practises of corporate governance into their operations. "These recommendations touch on the four cornerstones of fairness, transparency, accountability, and responsibility in the management of the company's affairs. Second, the Security Exchange of India (SEBI) implemented Clause 49 of the Listing Agreement, which was a significant step forward. Three key initiatives were taken by the Naresh Chandra Committee and the Narayana Murthy Committee to effectively introduce corporate governance into the business world. These committees looked at how the corporate governance model worked in companies from the perspectives of shareholders, investors, and other stakeholders of the company. Since 1998, owing to the earnest efforts of various committees established by the Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI), mandatory and voluntary corporate governance standards have been developed."[15]

"The introduction of the 2009 Mandatory Corporate Governance Voluntary Guidelines, which must be followed by companies listed on stock exchanges under Clause 49 of the Listing Agreement and include mandatory codes to be followed by companies pertaining to the board of directors, audit committees, and various disclosures with respect to related party transactions, whistleblower policies, and so on, could be felt in the corporate sector. Finally

[13] Prashanth Perumal, What Caused Srilankan Economic Crisis ?, THE HINDU (Sept. 20, 2021), https://www.thehindu.com/business/explained-what-caused-the-sri-lankan-economic-crisis/article36314148.ece (last accessed Sep. 27, 2021)

[14] PROFESSIONAL PROGRAMME, ETHICS, GOVERNANCE AND SUSTAINABILITY, ICSI (2014), https://www.icsi.edu/media/webmodules/publications/EGAS_04_Sep_14%20pdf.pdf (last accessed Sep. 30, 2021)

[15] *Corporate Governance in India*, LEGAL SERVICE INDIA, https://www.legalserviceindia.com/legal/article-6465-corporate-governance-in-india.html (last accessed Sep. 30, 2021)

giving final assent to Corporate Governance practises in the effective management of a corporation can be viewed as the introduction of new significant provisions introduced in the Companies Act, 2013, such as the appoint of independent directors and women directors to the board of directors, corporate social responsibility, and mandatory compliance with Secretarial Standards issued by the Institute of Company Secretaries, as per Section 118 of the Companies Act, 2013."[16]Section 135 of the companies Act, 2013 deals with the provision of CSR.It is based on the idea of good corporate citizenship, in which corporations make contributions to social development as part of their corporate duty for using the resources of society for their productive use, as defined by the United Nations.[17]

CONCLUSION

In recent years, the corporate governance frameworks in South Asia have experienced a process of thorough modernisation. The modifications are a positive step in the correct direction toward the seamless operation of the management and affairs of the businesses in the best interests of all stakeholders. As a result of the implementation of strong corporate governance norms in a company, which will result in increased economic efficiency and higher ethical standards, the core corporate machinery will be strengthened. The company's management will be inspired to work in the direction of upholding its goals of maximisation of wealth of stakeholders backed by good corporate reputation.

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[16] The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).
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