

JULY 2020

ISSUE BRIEF

**KNOWLEDGE**

**WEB-SERIES**

**SESSION III**

**CORPORATE  
GOVERNANCE  
& BOARDS  
BEYOND  
COVID-19**

Jointly Organised by



## SUMMARY

On 4 July 2020, Hammurabi & Solomon Partners & the India Strategy Group jointly convened a knowledge web-series (“KWS”) to discuss the impact of COVID-19 on corporate governance and determine the role of the boards during this unprecedented crisis period. This report tries to capture the discussions with the distinguished speakers and to highlight the dos and don’ts in this regard.

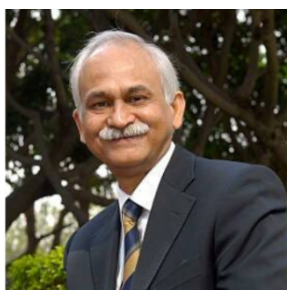
The KWS was convened with the aim to discuss, deliberate, and analyze implications of recent legal developments – legislative, regulatory/policy as well as judicial pronouncements.

## DISTINGUISHED SPEAKERS



**Dr. Manoj Kumar**

Founder & Managing Partner,  
Hammurabi & Solomon Partners



**Mr. Vivek Bharati**

Ex-Executive Director,  
PepsiCo India



**Dr. Amit Kapoor**

Aff-Faculty - Strategy & Competitiveness,  
Harvard Business School



**Mr. Khushro A Bulsara**

Head – Governance, Compliance  
& Legal Regulatory,  
BSE Limited



**Mr. Manish Lamba**

Senior Vice-President - Legal,  
DLF Cyber City Developers Ltd



**Mr. Rajiv Choubey**

Director & Chief Legal Officer,  
ACC Ltd.

## KEY POINTS

### Impact of COVID-19 on Corporate Governance and Boards

There are so many unexpected issues confronting the Boards and particularly because of the crisis which came in an unprecedented and unexpected manner. The Boards are usually required to give leadership to companies under normal circumstances, to always align the short term, mid-term and long-term goals; to always help business stride over intermediate or long-term challenges; to always encourage innovation and competitiveness. The Boards are always supposed to be ready to face crisis and provide leadership to navigate challenges during times of crisis.

The Covid 19 crisis has brought in string of downsides including (a) disruption in supply chain; (b) disruption in capabilities of organization and business to carry on and sustain; and (c) consequential impact on the people across the world. In these times of crisis, the board is expected to be packed with different sets of people with skill sets to support the corporates perform their governance roles in dealing with a myriad of issues including but not limited to challenges emanating from regulatory to compliance to risk strategies; and oftentimes on an immediate and urgent basis.

There have been huge changes to business environments due to the current pandemic. It is clearly an unprecedented time but epidemics are not new to the human kind. There was the Spanish Flu in 1918, though on equal or a lesser magnitude, which the world had seen. The distinguishing feature between the previous pandemics and COVID-19 is that the world is currently connected though it is considered individualistic. Economies around the world are integrated unlike the situation in 1918. However, demographics have changed and people have lost out on a considerable amount of savings. Despite the same, the situation has and is in the process of creating opportunities, though on a smaller scale and slower pace. It is difficult to assess the entire impact of the pandemic at this point.

### Importance of succession plans

COVID-19 has had a serious impact on health and safety of one and all and it has made us realize that succession planning is an essential aspect of corporate governance. Succession has to be looked at from the perspective of rights and obligations. The ultimate objective is to ensure the functioning of the corporate entities despite the impact on the board or the key managerial persons. In terms of good practices, certain leading corporates have set an example of a promoter run company where there exists a wall between shareholders and promoters. Certain other corporates have ensured that as a part of their succession plans, every role has a successor and to ensure that functionality is not compromised, especially in such trying times. The HR & Risk mitigation processes need to play a key role in enabling such continuity. However, incorporates where the promoters are bound in family relations, the situation is completely different.

Importantly, the role of the Independent Director has become extremely critical to ensure the deviations do not happen and the right amount of probity is maintained. Employee sentiments are at the heart of handling any crisis. It is an outlook that all Boards must appreciate and reinvent their thinking processes. The role of the Independent Directors has changed in recent times, a registry has been made, an ecosystem is being created and Independent Directors are being trained and prepared for their roles, so as to enable their inclusion in the Boards.

Companies which have the vision for the future have actually been able to thrive in this pandemic.

On a more practical scale, dealing with the pandemic which is taking disruptions to a new level, it is important for an enterprise to have a succession plan and to the extent to which the plan should envisage the possibility of a disruption. The problem with certain Indian corporates, primarily focusing on the promoters, is that the company is their own and cannot detach themselves from the company. They are not able to dissociate themselves and this is where the problem of succession plans comes into picture. The same scenario can be explained by drawing an analogy from Mahabharat. In comparison to India, in the western world, the promoters usually reduce the stake in the companies as years pass by. Institutional investors become major stakeholders who further elect the CEO. Unfortunately, the Indian corporate world is still at the learning stage in this respect.

For instance, a leading construction company that was formed by the merger of other such companies did have difficult times but came out successfully by appointing a professional board appointed from different walks of life. The issue of control must be reduced and eventually removed. There cannot be corporate governance unless there is public governance (regulators, central and state governments). Though we have increased the ease of doing business, a lot more is required. As a country, this is a perfect opportunity to increase foreign investment with transparency.

As an example, countries like England itself considered that there the UK Foreign Secretary would take over as the successor if anything happened to the current Prime Minister. In India, companies are primarily promoter driven. Typically, people are scared to ask the question of the next successor to the company after the exit of a promoter. Companies should plan their succession arrangements because no one has a clue till when this pandemic would last.

### **Role of boards in evaluating the current crisis**

The board of the company is responsible for the company and the society at large. During these times, there is a need for the board to re-think and make allowance for such situations in the future. The role of the boards doesn't change except that there might be a change in the intensity. Boards can be more into advisory practice but at the same time, they shouldn't let go off their regulatory and compliance practices. Board members must educate themselves on changing scenarios. It is necessary that the work done is evaluated so as to understand if the processes are adequate enough or if there is a need for new processes. Further, within processes, it is imperative that there is an enhancement of information flow. At this hour, transparency, speed and ability to digest within your company is important. The processes are important but at the same time, there is a need for a framework of the assessment and whether any modifications are necessary. Lastly, it is important to evaluate the new regulatory compliances by the Board. All boards should find a way to create a system for entrepreneurs. The speakers acknowledge that the role of the board is threefold.

## To Ensure Transparency and Disclosure

Regulation 30 of SEBI (LODR) states that all listed companies have to publish unpublished price sensitive information. Despite COVID-19, in early May only around 400 companies gave general disclosures but nothing about a detailed impact on the companies. After an advisory from SEBI on 20th May 2020, companies started giving COVID-19 disclosures on how the situation has impacted and affected the business of the companies. Further, with the SEBI's discussion paper on Related party transactions, there has been abysmal disclosure by the listed companies. The companies released such ambiguous information from which the investors or stakeholders cannot really make sense of the same.

## Risk Evaluation and Management Committee

SEBI made it mandatory that every company should have a risk management committee. The Board must disclose the impact of COVID-19 to their business. The issue of cyber security is of vital importance and that same must not be ignored by the Boards as in present times work from home has become the new normal. The speakers expressed concern that where there is data, there are hackers. Pharma companies must be completely aware of such risks and must secure their data.

## Importance of following ethics by the Board

Core values and ethics overlap with each other. Dharma should be followed in each capacity. The facts change in each situation and therefore one must not leave dharma in any of the capacities. The chain is as strong as its weakest link, so there is a need to take care of everybody and everything. Each of the stakeholder should stick to its dharma. Dharma doesn't mean a rule or a law. If SEBI fails to prescribe something that doesn't mean one may derelict from his duties. One should work in a manner in which one is expected at that point. Ultimately companies that act in a holistic manner, such companies will sustain and be remembered as good companies.. Boards should work towards ensuring that the whole management of the company needs to move in a particular direction. Though it is difficult but can certainly be desired in that direction.



## TAKEAWAYS

### Conclusion

It is the duty of the Boards and particularly Independent Directors to keep a check on the ethical awareness of the board and inform the top officials accordingly. Transparency and disclosure are extremely important to be followed. The role of the board is to minimize, mitigate, manage the impact on all stakeholders on all shareholders and help the management. A compromise must never be made on ethics and values because they are all the same and inter-related. To this end, Boards must ensure seamless communication with each stakeholder and use transparency, accountability, inclusive leadership and innovation as measuring metrics during times of crisis.

### Click below to watch the KWS session

<https://www.youtube.com/watch?v=6vI3mEILUVQ>



**KNOWLEDGE WEB-SERIES**

**Corporate Governance & Boards beyond COVID19**

Revisiting the prescriptions for Corporate Governance and the role of Boards in the COVID19 era and beyond

**HAMMURABI & SOLOMON PARTNERS**

**INDIA STRATEGY GROUP**

### Click below to listen to KWS session Podcast

<https://anchor.fm/hammurabi-solomon>



**KNOWLEDGE WEB-SERIES**

Know more at [HammurabiSolomon.in/](https://HammurabiSolomon.in/)

Jointly Organised by

**HAMMURABI & SOLOMON PARTNERS**

**INDIA STRATEGY GROUP**

**PODCAST**

## ABOUT US

**Hammurabi & Solomon Partners** was founded in the early 2001 and is ranked amongst the top #15 law firms in India. Our journey has been marked by stellar growth and recognition over the past 2 decades with over 16 partners handpicked from the top of their fields. Paving our way into the Indian legal landscape we believe in providing complete client satisfaction with a result driven approach.

We have always aimed at being the change-maker for a newer India and the world around us. With our portfolio of services - law, public policy, regulation and justice converge to enable solutions to our client needs within the legal framework to operate in India with ease and predictability.

Our main aim is to provide world-class legal services with a unique client-centric approach. We aim at providing the utmost quality and result-oriented solutions with our out of the box thinking and teamwork. We focus on being very approachable and highly reliable legal advice with a practical and relevant approach, we tailor solutions with each client's needs.

Our firm implements a holistic approach towards client satisfaction by offering higher level of services, in-time solutions and exercising greater insights to understand the clients' sectors.

Visit us at [www.hammurabisolomon.in/](http://www.hammurabisolomon.in/)

**A TRADITION OF  
EXCELLENCE**



### HEAD OFFICE

405A & 405B, Rectangle One - 4th Floor  
Saket District Centre, Saket  
New Delhi - 110017

Visit us at  
[www.hammurabisolomon.in/](http://www.hammurabisolomon.in/)