TOPIC: CORPORATE GOVERNANCE

 THESIS STATEMENT: In general, the board, by means of the practice of corporate governance, aims to provide assurance to the direct external stakeholders whom it represents, that the business operates in the interests of risk-mitigated, long term value creation:

* Risk-mitigated: That the business has identified and mitigated the risks that may result in the organization not achieving its objectives
* Long term: That the business is sustainable and that it is not going to collapse tomorrow
* Value creation: That the business performs according to the expectations of its direct external stakeholders, which may include a combination of financial, social and environmental performance measures

BODY

The word governance comes from the Latin word gubanare which means to steer. The ordinary meaning of governance is the manner of directing and controlling the actions and affairs of an entity, therefore Corporate governance is an internal system encompassing policies, processes and people, which serves the need of shareholders and other stakeholders, by directing and controlling. Management activities, with good business savvy, objectivity, accountability and. Integrity. Sound corporate governance is reliant on external market place.

Reduced to basics, governance is the exercise of powers and actions to achieve goals of an organizational entity. A company or organisational entity, be it private or public, or a statutory body, is a legal fiction. It is a person defined as such by law. Once formed, a company becomes a corporate citizen and enjoys independent existence from its owners. Persons who direct and govern the business of a company are called directors and are generally elected by its owners called shareholders for private and public companies or the Government or line Minister for parastatal bodies.

Organisational entities include schools, charities clubs, sporting bodies, state owned enterprises, trust associations of persons and incorporated entities such as companies, through to multinational organizations such as United Nations, World Bank and International Monetary Fund. In a democratic country, a government is the system through which powers are exercised and shared by the Legislature, Executive and the Judiciary with the goal of improving the quality of life for all citizens.

Corporate governance is A system through which powers are exercised and shared by different stakeholders and groups to ensure the achievement of the entity’s goals.

There are three sources of corporate governance law – common and legislation, best Practice Codes, books. The core concepts of corporate governance include

Accountability, Fairness, Transparency, Independence, Sustainability, Good board practices, Control environment, board commitment, Openness, Reputation, stakeholder interface.

CORPORATE GOVERNANCE PARTIES

The company or entity – an artificial person created by law with perpetual succession and a common seal but operating through the medium of directors. Directors – guardians of the company assets for the shareholders. Managers – those who use the company’s assets. Shareholders – those that own the company for private or public entities or the line Ministers representing the Governments. Stakeholders – various, A Company is an artificial person created by law, having separate entity, with a perpetual succession and common seal. Chief Justice Marshall: A corporation is an artificial being, invisible, intangible, existing only in contemplation of the Law. Company as an Artificial Person a company has an entity of its own, an existence which is entirely distinct from that of its individual shareholders.In legal terminology, a company is an artificial person with perpetual succession, it comprises a number of persons known as members or shareholders or stockholders is a legal person which can sue others and be sued by others. A shareholder can enter into any contract with his/her company and can sue or be sued by it, shareholders are members of a company and not its agents People who enter into contracts with a company do not derive any right of action against the shareholders of the company, Liability of each shareholder is limited to the face value of his/her shares. Shares in a company can be freely traded without restriction.

Company Management

Being an artificial person, a company cannot manage the business itself, Due to large number, divergence and wide geographical distribution of its members, shareholders of a public limited company cannot practically manage their company. A Company shareholders elect a suitable number of competent persons as directors to manage the affairs of the company.

Directors need not be drawn from existing shareholders. If owning a few shares is a precondition for appointment as directors this can be done at the time of joining the board.

Directors- A director is any person occupying the position of director by whatever name it is called and discharging functions specified by the country’s company’s act, a director has to be an individual person.Types of Directors, Broadly there are two types – Executive from the inside and non-Executive from the outside directors, an Executive directors deal with the day to day management of the company. One special executive director is one who owns, manages and directs entities – this has been a recipe for disaster and has caused many corporate collapses. Non-Executive directors, who are not part of management. Discharge oversight functions and are expected to bring a wider perceptive and robust independence to the Board’s deliberations and decision making processes. There are four types of non-Executive directors, Independent, Non-Independent, Lead or Senior Independent, Professional non-executive director, an independent non-executive director is one with no material relationship with the company. A non-executive director who is not independent does have a material relationship with the company, e.g. a director who doubles as a supplier of goods and services, consultant and professional advisor. A lead or senior independent non-executive director is not part of management Is appointed where a CEO doubles as Chairperson of the Board, acts as a link between the Chairman and outside directors including shareholders and stakeholders has a say on agenda management issues especially where the CEO doubles as Chairman of the Board.Performs other independent enhancing functions. The Professional non-executive director is one who is Appointed for the special professional skills he or she brings to the board, Is relied on for professional guidance on issues falling within the ambit of his skills Must be independent in the true sense of the word. Other special types of directors:The multiple director – is one who holds multiple board positions in various entities.CEOs who trade board positions with other CEOs on the principle of you scratch my back and I scratch yours, is discouraged as it is a recipe for disaster riding as it does on collusive relationships. Shadow director – one who is not on the board of directors but is able to give instructions and directions to directors which directors will comply with. No academic or professional qualifications are prescribed for directors in the Companies Act.The act does not impose share qualification for directors.

Disqualification of a Director

A person found by a court of law to be of unsound mind, an undischarged insolvent, A person who has applied to be adjudged an insolvent, A person who has applied to be adjudged an insolvent.

Legal Position of Directors

At law directors have been invariably described as agents, trustees and managing partners, Directors are neither owners nor employees of the company, the directors may incur personal liability under the following circumstances: When they contract in own names, When they use company’s name incorrectly, When status of signatory is clear (e.g. principal or agent) and When they exceed their authority or borrowing limits. Appointment of directors can be effected by the following, depending on the companies act and provisions of relevant codes’ draw resolution of shareholders at an AGM; The Board; Central government, third parties, central Bank, Small/minority shareholders

Removal of directors can be effected by Shareholders, Central government and Tribunal, director him/herself through resignation

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