Point of View: Suggestions and Practical insights for added controls for the Companies Act, 2013 & SEBI (LODR) Regulations, 2015

Prologue

It is befitting that the community has reached out to the practicing Directors for obtaining their viewpoints on evolving the regulations. The focus is on ensuring their continued applicability to protect the stakeholders' while promoting organizational growth. The corporate fallouts in the last 18 months have shaken the stakeholder trust - fall from grace of an Education decacorn, and the AI based code builder, indicate a dire need to **relook, redraft, reframe and re-administer these regulations**.

As a part of an earlier paper outlining the Risk Management Framework, submitted to the Institute of Directors, we are happy to state complete synergies with the theme outlined in this outreach. It addressed identification and acting upon 'Lead Indicators' of risks and its probability of occurrence – for better mitigation or to minimize stakeholder losses.

This paper outlines the author's perspectives on the need for continuous improvements to address the risk contours including,
a. volatile tariffs environment,
b. emerging threats related to cross border trade,
c. need for definitive controls on ESG initiatives and their outcomes (becoming relevant with increasing adoption of NextGen in mainstream businesses),
d. questions related to independence of the directors specifically in cross border investment exposure for corporations and startups, specifically from geopolitical adversaries,
e. taxation on such investments,
f. impact of organizations leveraging GenAI / Smart Coding (Nextgen Tools and Practices) initiatives and related LLMs in driving their day-to-day business, and,
g.   increasing geopolitical instability (both physical and virtual threat ecosystem

The paragraphs below based on the risks contours are a practitioner's Point of View on suggestions and practical insights for added controls for the Companies Act, 2013 & SEBI (LODR) Regulations, 2015 - particularly in relation to:
*   Governance compliance and enforcement
*   Role of Independent Directors and Board Committees
*   Key challenges faced by the boardroom community

As a part of these recommendations, we have referred to the **OECD G20/OECD Principles of Corporate Governance** as a global benchmark. Besides, have also gleaned through recent global board practices from entities like **World Economic Forum (WEF)**, **NACD (US)[1]**, and the **FRC (UK)[2].**

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[1] NACD – National Association of Corporate Directors
[2] FRC – Financial Reporting Council

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Recommendations

Having worked with many large global conglomerates, we would like to share these in the form of a Checklist addressing the areas of improvements in the current regulations. These include,

1. **Board Composition and Expertise**
   a. Key considerations
      i. Boards with diverse expertise can better foresee emerging risks.
      ii. Digital fluency is critical for strategic decisions in a tech-driven environment.
      iii. Succession planning enhances leadership continuity and board stability.
   b. Inclusions
      i. Diversity of skills – Does the board include directors with expertise in cyber, ESG, or geopolitical risk?
      ii. Digital Fluency – Are at least 1-2 members digitally fluent (AI, data governance, cyber risk)?
      iii. Succession Planning – Is there a robust succession plan for the board and C-suite roles?

2. **Risk Oversight & Resilience**
   a. Key considerations
      i. Simulation exercises help boards stay ready for high-impact, low-probability events.
      ii. Dedicated risk committees provide focused oversight beyond financial reporting.
      iii. Crisis preparedness ensures operational resilience under volatility.
   b. Inclusions
      i. Scenario Planning – has the board reviewed war-game or simulation scenarios for geopolitical/cyber risks in the last 12 months. In addition, have this been further divided into actionable (for the immediate 30 days) and rolling plans (for the 60-90-180 days)
      ii. Risk Committee – is there a dedicated risk committee, separate from the audit committee?
      iii. Crisis preparedness – are the business continuity plans up to date and have been tested for cross border trade shocks or cyber-attacks?

3. **Governance Practices and Stakeholder Engagement**
   a. Key considerations
      i. Vigilance is critical when dealing with cross-border investments from geo-strategically sensitive nations.
      ii. Tax structuring and exposure should be transparently reviewed to mitigate reputational and regulatory risk.
      iii. Generative AI and smart coding introduce IP, ethical, and compliance challenges — requiring oversight mechanisms.
   b. Inclusions
      i. Stakeholder Mapping – has the Board identified and engaged with key stakeholders beyond shareholders? (regulators, suppliers, communities and clients)

      ii. ESG Integration – is ESG integrated into corporate strategy with goals for reducing emissions, offsetting and community support programs? Is this tracked, reported and overseen by the Board?

      iii. Ethics & Conduct – is there an active whistleblower policy and board-level ethics oversight?

      iv. Cross border investment – are there governance mechanisms to vet investor backgrounds, especially from nations flagged as adversaries or under scrutiny?

      v. Tax Risk Visibility – addressing Board's visibility into tax implications and treaty arbitrage risks related to FDIs? How are such administered keeping in view the domicile rules and repatriation using Foreign Exchange Regulations (FERA)?

      vi. GenAI / LLM Oversight and Explainability – Has the board established policies for ethical, secure, and compliant use of generative AI and coding automation platforms within the organization? How effective are the existing data governance policies and the data labelling / metadata structures to avoid any inadvertent loss of business confidential or Personally Identifiable Information (PII). (Ref: GDPR, PDPA, HIPAA etc...)

4. **Disclosure & Transparency**
   a. Key considerations
      i. Transparent disclosures enhance investor and stakeholder confidence.
      ii. Periodic evaluations promote continuous improvement.
      iii. Clear audit responsibilities ensure financial governance and regulatory compliance.
   b. Inclusions
      i. Cybersecurity and ESG Disclosures – are the disclosures aligned with the global frameworks e.g. TCDF, ISO27001 / ISO31000, SEBI BRSR
      ii. Board Evaluation – has the board undergone an external effectiveness review in the last 3 years?
      iii. Audit Integrity – are the audit committee responsibilities clearly district and aligned with the UK / FRC model?

Keeping relative benchmarking across framework listed (i.e. **WEF** with a focus on Stakeholder Capitalism and Digital Trust; **NACD** for Future Ready Boards with disruption oversight and skill diversity; and **FRC (UK)** related to Risk, Viability and Transparency), the aspects that Indian Boards can adopt include,

1. **Add cyber/geopolitical risk to Board Risk Agendas:** Include dedicated agenda items and expertise to assess these risks.
2. **Schedule annual simulations of crisis scenarios:** Builds preparedness for disruptive events.
3. **External board evaluation every 3 years (FRC standard):** Encourages objectivity and renewal.
4. **Invest in board digital upskilling (NACD recommendation):** Enhances decision-making and innovation oversight.

5. **Align ESG disclosures with SEBI BRSR & TCFD:** Ensures consistency with global sustainability frameworks.
6. **Monitor and disclose foreign ownership patterns:** Ensure transparency and regulatory alignment in capital inflows.
7. **Establish policies for GenAI usage:** Define acceptable use, data privacy, and IP protections.

Besides, as we conclude our viewpoint, there is an imminent need to shift the focus of the Board from compliance to governance. The following factors should drive the board agenda and be included as a policy and guideline in the Companies Act, 2013 & SEBI (LODR) Regulations, 2015,

1. **Board role in preserving trust & resilience:** Proactive governance keeping the long-term value rather than short term rhetorics (Unicorns, Decacorns etc… should be a focus for the Executive) to prevent reoccurrences of Satyam, Kingfisher, Byjus, and Builder.ai.
2. **Build ethics, foresight, and long-termism into decisions**: Shift from reactive to strategic boardroom culture. The need for a more inclusive and future ready Boards with regular evaluation and digital upskilling to ensure that the company is addressing the questions beyond financial sufficiency for addressing disruptive risks.
3. **Stakeholder governance is the new imperative:** Embrace a holistic view of corporate purpose, not just a capitalist approach, but a larger vision addressing all stakeholders – direct and indirect – climate risk, human rights, and cybersecurity.
4. **Governance must evolve for an AI-powered and globally entangled future:** Integrate digital, geopolitical, and regulatory intelligence into oversight.

Conclusion

In summary, the regulations should ensure that every organization has answers to the following questions,

1. How prepared is your board?
2. What's your risk blind spot?
3. Who isn't in the room but should be?
4. Are we ready for digital disruption and AI-driven strategy shifts?
5. Are we crafting a holistic risk ecosystem – existing, implied and emerging?