ABSTRACT

Both Hong Kong and India have many large businesses and corporations run by families. Family run companies (FRCs) face many issues regarding the efficient corporate governance of their businesses. Though corporate governance is the process by which the directors of the company manage the business on behalf of the owners/shareholders, in FRCs, this distinction of management and ownership gets blurred.

This paper would compare the corporate governance situation of FRCs in Hong Kong and India and highlight some of the challenges such businesses are facing. One of the challenges is to balance the interest of the owners with the stakeholders. Also, there is a need to manage the relationship between the professional managers and owners of the company. The paper would examine the socio-economic environment in these two jurisdictions, and the legal reforms they have undergone. The paper would then try to suggest how a balance might be achieved through certain corporate governance policies, both at government and corporate level.
INTRODUCTION

Corporate governance, as the phrase suggests, is the process by which a corporation is governed. The governance process includes managers/directors and the shareholders/owners of the company. In the process of such governance, the purpose is to act for the best interest of the company as well as its members. Good corporate governance not only requires efficiency, it also requires independence, transparency and accountability, at the same time.

The family run companies (FRCs) raise some interesting issues as regards to corporate governance. The initial management of a FRC usually remains in the hands of the owners. Therefore, the interest of the company, its members and the management run hand in hand. However, with time, as the business and the family grows, not all the family members may make to the board, which may give rise to resentment. Also, a growing company needs external and additional expertise, for which the management duties may be delegated to professional managers, non-executive directors, etc.

The agency theory argues that salaried directors may not share the same goals as the owners. In FRCs, directors would like to be independent and make professional business decisions, keeping in mind the interest of the company as a whole. At the same time, the owners would like to keep the control over the business and would like the management to act within the powers provided to the board by the articles of association. This may lead to mismanagement and loss of investors’ trust. Therefore, FRCs’ corporate governance needs a very efficient and sustainable system in place.

As Tricker rightly puts: Throughout the life cycle of the family company…it is vital that the corporate governance framework is appropriate to the stage of development. The corporate governance policies and board-level practices need to reflect the scale and complexity of the company’s activities, determining the relationships between shareholders, directors and management. The structure and composition of the board should reflect the stage of the maturity of the company and its business. Similarly, board-level information, board appraisal and director development need to be appropriate. (Tricker, 2012)

Corporate governance took a centre stage in the later part of the last century, especially after the failure of some big corporations, a few of them involved with fraud. These raised not only a call for corporate responsibility but also accountability, and as a result, in the UK a committee was created under the chairmanship of Sir Adrian Cadbury in the year 1992. The Report of the Committee on the Financial Aspects of Corporate Governance (Cadbury Report) was the first major report on corporate governance and received international attention.

The Cadbury report was published more than two decades ago and it only dealt with financial aspects, however some of the issues raised in it still hold good. Its opening paragraph says: ‘The country’s economy depends on the drive and efficiency of its companies. Thus the effectiveness with which their boards discharge their responsibilities determines Britain’s competitive position.
They must be free to drive their companies forward, but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance.’ (para 1.1) Since the Cadbury report there have been many developments, research and amendments of various rules and regulations all over the world.

At the international level, the Organisation for Economic Co-operation and Development (OECD) also suggested five principles which may be followed by various institutions around the world. These principles are discussed in detail in the later part of the paper. However, it would be apt to mention here that these principles influenced many corporate governance codes around the world, including that of Hong Kong and India. To date, the OECD principles constitute the only internationally accepted body of governance principles that address the entire corporate governance framework: the legal, institutional and regulatory practices that create the context within which companies operate. (Jones, 2012)

Some of the developments in Hong Kong and India were very much influenced by the Cadbury report and the OECD Principles. This paper would first discuss the corporate governance environment in Hong Kong and India, highlighting some of the reforms undertaken in the recent past. As FRCs give rise to unique corporate governance issues and challenges, the paper would describe some of the common challenges both the countries are facing, with a couple of recent examples. In the last part of the paper, the author would suggest some of the steps which may be taken to overcome these challenges.

CORPORATE GOVERNANCE IN HK

Family controlled businesses are a norm in Hong Kong. Most of the major businesses are owned and controlled by families. The Corporate Governance Working Group of the Hong Kong Society of Accountants has published two reports on the topic (in 1995 and 1997). The findings showed that family businesses are the predominant form of listed companies in Hong Kong. It was noted that almost 90 per cent of listed companies have a major shareholder who by himself or with family members owns 25 per cent or more of the share capital. In such a business set-up there is less of agency cost as ownership and control remains in the same hands.

Hong Kong’s history as a former British dependent territory, the concentration of its company ownership at the family level, the long tradition of laissez-faire government policy, and the region’s strong desire to maintain its status as a major financial centre in Asia, have shaped the environment of corporate governance today, and will continue to impact its evolution in the future (Standard & Poor’s 2002).

The primary legislation dealing with companies and corporate governance is the Companies Ordinance. This law was first enacted in 1865 and was based on the UK’s Companies Act 1862. The Ordinance was continuously revised, updated and changed in the past. However, despite the
revisions, it became necessary to bring a major reform in the law and thus, in 2014 a new Companies Ordinance was adopted. This Ordinance provides the basic regulatory framework under which all companies in Hong Kong, both private and public, function. Also, there are certain regulatory bodies dealing with corporate governance, such as, the Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Limited (HKEx), Hong Kong Monetary Authority (HKMA), Stock Exchange of Hong Kong (SEHK), Hong Kong Society of Accountants (HKSA), etc.

Also, the government here mostly adopts the ‘positive non-intervention’ policy, which in turn has supported the progress of commercial enterprises. The economy is based on free enterprise, free trade, and a free market. This kind of free business environment and ownership and control of companies remaining in the same hands, has given rise to much criticism of FRCs’ corporate governance. Thus, in the past couple of decades, corporate governance has been in focus and many developments have taken place in this area. These developments are discussed as follows.

- **Corporate Governance review:** A comprehensive review of corporate governance was undertaken in the year 2000 to identify and plug any gaps in Hong Kong’s corporate governance regime. The Standing Committee on Company Law Reform (SCCLR) was given the task to undertake an overall review of corporate governance. Three sub-committees were established under the SCCLR to consider the specific areas of directors, shareholders and corporate reporting to take the review forward. One of the issues to be considered was ‘…in the case of many companies listed on the SEHK, a single dominant shareholder or single group of persons controls the company. This may be the significant shareholder or a person connected with the “controlling” shareholder…’. The sub-committees produced two reports in the year 2001 and 2013 and the implementation of their recommendations necessitated the participation of different bodies, including the Government, the SFC, HKEx and the HKSA.

- **Recommendations of SCCLR:** SCCLR issued its Final Recommendations in January 2014, arising from the Corporate Governance Review Phase II.
  - On proposals relating to directors: a set of ‘Non-statutory Guidelines on Directors' Duties’ were drawn to help company directors to better understand their roles. It included the general legal position on self-dealing by directors, as well as proposals on shareholders' approval for significant transactions involving directors. To address the increasing public concern over the directors' remuneration, SCCLR recommended that listed companies should disclose individual director's remuneration packages by name in their annual financial statements. The Code of Best Practice (of the Listing Rules) should contain a requirement that a listed company should disclose the arrangements made to train its directors in view of the importance of directors’ qualifications and training.
o On proposals relating to Shareholders: SCCLR adopted in its Final Recommendations the proposals on self-dealing by controlling shareholders in the Consultation Paper and that ‘controlling shareholders’ should be defined for the purpose of connected transactions using the same criterion as that under the Listing Rules for ‘substantial shareholder’, ie, a person controlling 10% or more of the voting power at any general meeting of the company. SCCLR also adopted the proposals in the Consultation Paper to enhance the effectiveness and transparency of company general meetings.

- **Corporate Governance Code:** The principal regulator of Hong Kong’s securities and futures markets is the SFC, which is an independent statutory body established in 1989 by the Securities and Futures Commission Ordinance (SFCO). The SFCO and nine other securities and futures related ordinances were consolidated into the Securities and Futures Ordinance (SFO), which came into operation on 1 April 2003. HKEx is a recognised exchange controller under the SFO. It owns and operates the only stock exchange and futures exchange in Hong Kong and their related clearing houses, namely Hong Kong Securities Clearing Company Limited (HKSCC), HKFE Clearing Corporation Limited (HKCC) and The SEHK Options Clearing House Limited (SEOCH). The Corporate Governance Code is a non-statutory document under the Listing Rules of the HKEx (Appendix 14). This Code sets out the principles of good corporate governance, and two levels of recommendations: (a) code provisions; and (b) recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only. Issuers may also devise their own code on corporate governance on the terms they consider appropriate. On the principle of Board Composition, it provides: The board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer’s business. It should ensure that changes to its composition can be managed without undue disruption. It should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. Non-executive directors should be of sufficient caliber and number for their views to carry weight.

- **Companies Ordinance (Cap 622):** Part 10 of the new Companies Ordinance deals with directors and company secretaries, and it is in this part mainly that certain provisions have been made to accommodate corporate governance principles. For example, it lays down specific restrictions on number of directors and their qualifications, etc. Section 465 lays down the duty to exercise reasonable care, skill and diligence for the director, a breach of which may result in civil liability. Further, section 478 provides that if a director appoints an alternate director, to act on his behalf, then that director is vicariously liable for acts of the alternate. These are some of the provisions in the law that is a step towards integrating the law with the principles of corporate governance.
Despite the regulation on business and FRCs, corporate governance in these companies have posed various challenges, which are discussed later.

CORPORATE GOVERNANCE IN INDIA

Indian corporate environment is also influenced by the British rule in India. The establishment of the East India Company and its trading in India for over a century laid down the foundation of the modern company law. Once the East India Company ceased business in India, British merchants who wanted to set up operations in India appointed managing agents who, in turn, not only provided capital, managerial labour and share ownership, but also technical, social and other benefits. (Malla, 2010)

Starting as simple commission agents, the agency houses over the years began offering many other services, such as banking, bill broking, ship owning, freight, insurance, etc. With the strengthening of colonial rule, the agency houses evolved into the managing-agency system that in a way pioneered the growth of modern corporations of India. This was helped by the passing of the Joint Stock Companies Act in 1850 and its subsequent amendment in 1857 to provide for limited liability. (Bhaumik, 2015)

That lead to the growth of large businesses and as these agencies were mostly owned and managed by families, thus, begun the establishment of the FRCs in India. Most of the large businesses were managed by families and there was hardly any government regulation. In fact, some of these large businesses had helped the government in financing the pre and post-independence activities and thus, the linkage helped the businesses bargain for certain privileges. This lead to economic concentration in limited hands and also abuse of managerial power over shareholders. That lead to the need to regulate the private sector. The first law regulating corporations in India was the Companies Act, passed in 1956. This law was passed to consolidate and amend the law relating to companies and certain other associations.

However, even with the passing of the law and other guidelines, corporate governance was never referred to as an independent issue. In fact, most of the large businesses were managed at the whims and will of the owners of the company, with a lot of political and other support from outside, leading to corruption and malpractices. That resulted in poor management and also failure of some large corporations, as well as frauds on lot of investors. Therefore, with the growing need for regulatory checks and better corporate governance environment, it became necessary to enact a new regulatory framework.

The government has realized that markets and investors take notice of well-managed companies, respond positively to them, and reward such companies, with higher valuations. A common feature of such companies is that they have systems in place, which allow sufficient freedom to the boards and management to take decisions towards the progress of their companies and to
innovate, while remaining within a framework of effective accountability. Keeping this in mind and getting influenced by some of the recent developments on international level, such as the Commonwealth Association for Corporate Governance Guidelines 1999, OECD Principles on Corporate Governance 1999, The Euroshareholders Corporate Governance Guidelines 2000, etc., the Indian government was encouraged to develop its own corporate governance principles.

The first institutional initiative on corporate governance in India was taken by the Confederation of Indian Industries in 1996 when it set up a national task force to develop and promote a code for corporate governance for Indian companies. Later, in the year 2013, the new Companies Act received the assent of the President and became the present law governing companies in India. These changes and some of the other regulatory bodies including the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), the Company Law Board, the Reserve Bank of India, etc. changed the way corporate governance is dealt with in India now. Some of the other developments are discussed as follows.

- **Report of the Kumar Mangalam Birla Committee on Corporate Governance (Birla Report)**: SEBI appointed the Committee on Corporate Governance in 1999 under the Chairmanship of Shri Kumar Mangalam Birla, member SEBI Board, to promote and raise the standards of Corporate Governance. The Committee identified the three key constituents of corporate governance as the Shareholders, the Board of Directors and the Management and attempted to identify in respect of each of these constituents, their roles and responsibilities as also their rights in the context of good corporate governance. Fundamental to this examination and permeating throughout this exercise was the recognition of the three key aspects of corporate governance, namely; accountability, transparency and equality of treatment for all stakeholders. The Committee recommended that the board of a company have an optimum combination of executive and non-executive directors with not less than fifty percent of the board comprising the non-executive directors. The number of independent directors (independence being as defined in the foregoing paragraph) would depend on the nature of the chairman of the board. In case a company has a non-executive chairman, at least one-third of board should comprise of independent directors and in case a company has an executive chairman, at least half of board should be independent. This is a mandatory recommendation.

- **Clause 49**: In the year 2000, SEBI adopted the recommendation of the Birla Report in its Listing Agreement. Accordingly, a new clause 49 of corporate governance was inserted into the listing agreement of the Stock Exchange to ensure the compliance with corporate governance codes by Indian Companies. This clause has been revised and amended time and again, and more recently in 2014. This listing agreement is for all listed companies to agree to make provisions for corporate governance. It provides for special composition of Board, with not less than fifty percent of the board of directors comprising of non-executive directors. There is a provision for director’s remuneration, disclosures and code of conduct. The agreement also asks to set up a qualified and independent audit committee, with details of their powers and role as a committee. It further provides for a detailed compliance report on corporate governance in the Annual Reports of the company.
• **Other Committee:** The SEBI appointed a committee under the chairmanship of Mr Narayan Murthy, to evaluate the adequacy of existing corporate governance practices and further improve these practices, in 2003. The committee recommended that there shall be no nominee directors. Where an institution wishes to appoint a director on the Board, such appointment should be made by the shareholders. An institutional director, so appointed, shall have the same responsibilities and shall be subject to the same liabilities as any other director. Nominee of the Government on public sector companies shall be similarly elected and shall be subject to the same responsibilities and liabilities as other directors.

• **Corporate Governance Voluntary Guidelines:** Keeping in mind that the subject of corporate governance may go well beyond the law and that there are inherent limitations in enforcing many aspects of corporate governance through legislative or regulatory means, the MCA considered necessary that a set of voluntary guidelines called ‘Corporate Governance - Voluntary Guidelines 2009’, are prepared and disseminated for consideration and adoption by corporates. These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines. The guidelines are not intended to be a substitute for or additions to the existing laws, but are recommendatory in nature.

• **Companies Act 2013:** The new Companies Act has added certain provisions in the Act which specifically deal with matters relating to corporate governance. For example, in Chapter IX on accounts of companies, section 134 lays responsibility over the board of directors to make sure that all the statements are in order. Further, in Chapter XI on appointment and qualifications of directors, section 149 provides that every listed public company shall have at least one-third of the total number of directors as independent directors. Also, in Chapter XII on meetings of board and its powers, section 177 requires the Board of Directors of every listed company shall constitute an Audit Committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority. This part also provides for the duty disclosure and accountability of directors towards the company. These are some of the provisions which are intended to integrate corporate governance principles into the written law.

But corporate governance extends beyond corporate law. Its fundamental objective is not mere fulfillment of the requirements of law but in ensuring commitment of the board in managing the company in a transparent manner for maximising long term shareholder value (Birla Report). In FRCs this commitment is vital to the efficient and steady growth of the business. However, FRCs have their own share of challenges, which are highlighted below.
CHALLENGES

The main challenge for any FRC is to keep family members united and their interest aligned over the years, and to attract outside investors and retain qualified professionals. The concentration of power discourages investors and reduces the company’s value. This challenge gets more complex as the family and the business grows. Therefore, it is very important for every FRC to not only have a strong and transparent corporate governance policy but to implement it efficiently and equitably.

Cadbury sums up the three requisites for family firms to manage successfully the impacts of growth: They need to be able to recruit and retain the very best people for the business, they need to be able to develop a culture of trust and transparency, and they need to define logical and efficient organizational structures. (Cadbury, 2000)

Atop many of Hong Kong’s largest companies are aging entrepreneurs who began making fortunes in the 1950s and ‘60s, at the height of the postwar boom. Now that these magnates are in their twilight years, the question of their succession is coming to light – and often being settled with ugly court battles, including mothers suing their children and brothers ousting brothers. In the past few years, a number of legal disputes have erupted over the distribution of money and power in multibillion-dollar family businesses.

No amount of law or regulations can do anything to help the business of an FRC if the members themselves do not step up to the challenge and take control of the situation. One example in Hong Kong is of the Kwok brothers. Kwok Tak Seng established the business of property in Hong Kong in 1958 with two partners. Later the business grew and became a public listed company. It is one of the largest and most successful property businesses in Hong Kong, known as the Sun Hung Kai Properties. In 1990, after the senior Kwok’s death, his elder son Wilson Kwok took over the business. He was the chairman and the chief executive of the company.

Everything was going very well till 1997 when Wilson was kidnapped for a ransom. It is said that after his return he suffered some mental problems (which he has denied). In the year 2008, his mother (a majority shareholder) replaced him as the chairman and appointed his two younger brothers, Thomas and Raymond, to take over the control of the business. All of this brought negative publicity for the company, showed the weakness in corporate governance and resulted in loss of investors’ trust.

In 2012, the co-chairmen brothers and three others were accused of giving bribes in exchange for information on land sales between 2005 and 2007. The trial, which lasted more than three months, highlighted the close ties between some of Hong Kong’s most powerful businessmen and government. Their company is one of the world’s most valuable real estate companies. However, the brothers’ arrest caused its shares to plunge to a 14-year low, erasing billions in market value.
Thomas stepped down as co-chairman and co-managing director at Sun Hung Kai after he was sentenced in 2014. Thomas’s brother Raymond was also arrested but later acquitted of all charges. He has since been running the group as chairman. Thomas’ resignation did little to restore the company’s image. He publicly stated that he would rather learn to ride a bike and study theology than return to his office while on bail. But critics suspect he may still influence the group, by acting as a consultant or appointing close relatives to the board. His son Adam became an executive director in 2014. Recently, the current chairman’s younger son, was named executive director. Another cousin became an alternative director to the chairman. Fortunately, however, among all these controversies the company has done well in business.

Similarly, in India, Dhirubhai Ambani, the founder of Reliance Industries, started the business as a textiles company, which grew to become one of India’s biggest conglomerates. His two sons, Mukesh and Anil, inherited the empire in 2002, after his death. A rift developed over the following years between the brothers over their inheritance and the management of the group, and they ended up parting ways and dividing the family business. In 2005, a demerger of the Reliance empire was approved, brokered by their mother (a majority shareholder).

However the family drama did not end here. Soon the brothers were out in the open, battling court cases. At the heart of the dispute was a 2005 contract which gave Mukesh the rights to India's gas supply and handed his brother the power plants, which needed the gas to generate the country's energy. The legal battle over the terms of this contract was estimated to have already soaked up £20 million in legal fees, but the cost to the country was being measured in much more than just money.

During this demerger and afterwards, many accusations and counter accusations were made between the brothers, including mismanagement, conflict of interest and the directors of the company being not independent, etc. In 2010, the mother brokered a peace agreement between the brothers. They agreed to draft a non-compete agreement and resolve their disputes in an amicable way.

In wake of controversies like these the main question is whether changes in law or by signing agreements (Clause 49) make any difference to how the corporation would eventually be run. Specially in case of FRCs where emotions and personal feuds may overtake the interests of other stakeholders, including that of the company. The challenge for any FRC is to not let the family feuds affect the day to day business and to make sure that there is a system in place where personal matters can be resolved amicably, without interfering with the business or grabbing any negative media attention.
STEP FORWARD

Good corporate governance leads to various benefits, including: stability and long-term sustainability for investors; stability and growth for the enterprise; acquisition and retention of talent; reduction in risks, mismanagement and corruption; reputation and recognition and higher firm valuation. (Sharma, 2015)

The OECD Principles on Corporate Governance describe the kind of corporate governance framework a company may adopt. Following is a brief look at this framework:

- It should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement.
- It should protect and facilitate the exercise of shareholders’ rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
- It should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance.
- It should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
- It should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
- It should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.

Every FRC should protect and facilitate the exercise of shareholders’ rights, and create investment opportunities. It is vital for the business to create an environment of transparency, stability and good governance. This can only be achieved by creating such relationship between family managers and non-family professionals that it creates a well-functioning management team and leads the company to success.

‘The question arises as to how to develop a theory of good governance that may protect the interests of both stakeholders and shareholders. The answer lies in the “balance” or “conciliation” of interests. A fair and balanced stakeholder perspective results in the long-term maximization of shareholder value. There is no inherent economic conflict between shareholders and stakeholders over time, with the result that maximizing shareholder value will maximize the benefits to all stakeholders.’ (Singh, in Blanpain 2011)
The owner family members must understand that the business does not exist in isolation nor does it function only on the whims and will of the family who founded it. A strong business needs a strong team of professionals, experts and enthusiastic employees. The interest of the business is to involve the interest of all the stakeholders. Also, they must recognize that their own personal and family issues must not hinder the efficiency of the management, otherwise it leads to chaos, loss of business and mistrust among the stakeholders.

Similarly, if directors are trained and made to understand that their role is not of just being an executive, but their duty is to design, install, maintain and refine the prudent control systems of their company (Tourani-Rad & Ingley, 2011), the result might be very different than just laying down rules and company policies. Good managers should not just focus on profit, they should be able to focus on growth of the company and increasing its wealth generating capacity in a healthy way, which must last it for a long-term. Directors must also be involved with the business as owners/family members. They should not feel that they are salaried employees who have no role in business decisions. This requires a transparent system of management and well defined roles.

For directors, it is suggested, that there could be director development activities/workshops where they can be given training and updates on the social, legal and economic changes, etc. These development programs can be run either on state/government level and/or company level where the owner directors and independent directors, all can be given the same kind of information and training in order for them to function in unison.

It is also suggested that every FRC should have a family council or a forum where they can express their grievances, discuss their concerns and resolve their conflicts. These councils may have some of the elder family members (men and women) and some independent outsiders. They can act as facilitators, mediators or even counsellors for other members. Even in the early stages of family firm, it is wise to have some sort of forum where the views of family members regarding the business and its development can be expressed. (Mallin, 2013)

Most of the FRCs face the problem of personal feuds and resentment between senior and junior family members. A family council can provide a platform where all the members can be brought together and resolve their issues face to face. Such council may involve other shareholders, professional managers or even auditors, etc. depending on the severity and need of the issues. Many of the family issues get aggravated because of no timely response. A family council can provide a formal/informal set-up where the family members may share their views, ideas or resentments.

These councils can meet formally 3-4 times in a year, and should have a system of being requested to meet in between too. There should be an informal procedure to conduct the proceedings in such councils so that every member feels comfortable to talk about their concerns. No minutes should be kept of such proceedings, except any formal decisions made by the
members which need to be implemented in the future. For every council meeting, only members who have issues to raise and resolve must be present, and all proceedings should be kept confidential. Any person who is not a family member should only be allowed to attend the meeting if all the concerned members agree.

Any decisions taken in such council meetings, which would have any long-term or short-term effect on the interest of the company, shall be discussed with the board. The board here must also consist of family members, professionals, non-executive directors, etc. The advantages of a formal governance structure are that there is a defined structure with defined channels for decision making and clear lines of responsibility; the board can tackle areas that may be sensitive from a family point of view but which nonetheless need to be dealt with; and the appointment of non-executive directors would encourage external shareholder participation. (Mallin, 2013)

In fact, OECD also recognizes some of the governance challenges for family-owned businesses as well, such as keeping peace in the family for inter-personal, social and business reasons; presence of outside, non-family shareholders, etc. Solutions used include mechanisms to:

- Separate functions of ownership, control and management
- Create family offices to clarify boundaries between the family’s and company’s accounts
- Develop the skills and knowledge of heirs so they can become responsible owners, as they assume various roles as an owner, director or an employee (Chapter 5, para 3.4)

The International Finance Corporation, in its Family Business Governance Handbook, provides for certain solution at the senior management level. It states that ensuring that the family-owned company has the right senior managers is a process that should start early, even as early as during the founder(s) stage of the family business. Some of the steps of this process are:

- Analyzing the organizational structure and contrasting the current and optimal roles and responsibilities (compared to peer companies) of each senior manager.

- Designing a formal organizational structure that clearly defines the roles and responsibilities of all senior managers. This should be based on the company’s current and future business operations’ needs.

- Evaluating the skills and qualifications of the current senior management based on the new organizational structure.

- Replacing and/or hiring senior managers.

- Decentralizing the decision-making process and approval levels as necessary. Decision-making powers should be linked to the roles/ responsibilities of managers and not to their ties to the family.
• Establishing a clear family employment policy and making its content available to all family members.

• Developing an internal training program that allows skilled employees to be prepared for taking on senior assignments in the future.

• Establishing a remuneration system that provides the right incentives to all managers depending on their performance and not their ties to the family. (page 47)

Even for the government, there are certain recommended steps which can be taken to further improve the corporate governance environment. Governments should ensure that there is a system in place where large companies will not be able to register their businesses if they do not have any principle/code on corporate governance. Every FRC must show a family council/committee/forum structure before they can commence business. Government should also introduce incentives for companies which have a good corporate governance record. Governments cannot be a silent spectator to the mismanagement and then the failure of these large companies, especially when the efficient working of the economy is dependent on such large businesses. The legal and regulatory framework should ensure that the stakeholders’ interests are protected and there is no exploitation of rights.

Therefore, it can very well be said that to survive and thrive in today’s competitive and globalized economies it is vital for every business to refer to the corporate governance guidelines by various institutions, such as the OECD principles, Clause 49 of the listing agreement or other institutional corporate governance codes. Every company needs to take its corporate governance responsibility very seriously, for the sake of its business as well as its stakeholders.

Therefore, just to reiterate, it is suggested that a FRC must have an efficient management team, involving owners, non-executive directors, etc, with a transparent, independent and responsible system. There should be an independent family council to deal with matters which may affect the business of the company. However, these councils must act for the benefit of the company as a whole and in tune with the management of the company. Good corporate governance requires participation and commitment of the members to act in the best interest of the company. In a FRC this participation and commitment comes with an added responsibility of not letting the family feuds or personal resentment come in the way of progress of the business.
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