

Need for independent directors

AF NESARUDDIN

The importance of financing any business requires no elaboration. In addition to owners' equity, raising money from the capital market and borrowing from banks seem to be the commonly used avenues, especially for large business entities. The money raised from the market is public money and financing from banks is made out of depositors' money. If any business is run by the owners' capital only, involvement of public interest is at a minimum, unless it is a public utility entity. Even in some countries, businesses absolutely funded by owners do not warrant an audit, except for verification by the revenue department for tax collection purposes.

Throughout the world, the use of public money either from banks or the capital market are subject to strict monitoring and various regulatory compliance, and Bangladesh is no exception. In the global context, the Bangladesh capital market is not that prominent. But in terms of the size of the Bangladesh economy and related factors, it has drawn the attention of many investors, especially for the high rate of return and comparatively easy repatriation.

The Securities and Exchange Commission (SEC) has been playing a very important role in safeguarding the public interest being a regulatory agency. The Bangladesh Bank's role is also commendable in keeping the banking sector on track to safeguard the interest of both the depositors and investors.

The SEC issued notification in early 2006 for ensuring good corporate governance in the interest of the investors and the capital market. Subsequently, it was reinforced for strict compliance. This notification was concerning, among other things, the appointment of independent director on the board of listed entities. The SEC notification specified the number of independent directors, its disqualification in terms of insider and procedure of appointment. However, it did not specify the qualification and competence of the independent director and other pertinent issues. Many listed companies and banks



Angry investors protest a recent stockmarket fall. Analysts now question the roles of independent directors in the capital-market debacle.

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appointed independent directors in compliance.

No doubt, this is a good move by the SEC. The role of the independent director is considered as a watchdog, like independent auditors. The first condition of an independent director is that s/he must be independent by nature, appearance, character and judgment. In the board, an independent director should question intelligently, debate constructively, challenge rigorously, listen sensitively and decide dispassionately. Creating the culture of debate in the board and its committees is desirable for good corporate governance.

The board and its committees function without any culture of openness and debate can seldom produce the expected outcome and fail to meet public expectations. Now the time has come to assess the outcome of such a move in the light of its intended goals, public expectation and assurance of good corporate governance.

Unfortunately, in a number of cases, independent directors

are appointed by the choice and convenience of the owners and elected directors. It will not be irrelevant to mention that many of the independent directors consider their appointment as prestigious, rather than focusing on their expected role.

In the recent debacle of capital market, the role of independent directors cannot be beyond questions because the interest of the small investors could not be adequately protected due to misleading and incorrect information and rumours. A listed company having a strong culture of corporate governance seldom resorts to such misleading information and rumors to market. It should be kept in mind that independent directors should also play a supporting role to the functions of both executive and non-executive directors without scarifying the independence and prime role of the independent director.

There are lots of peculiarities in Bangladesh unlike many other countries. Rules and regulations framed for a particular

purpose are seen to be misused with malafide intention and often used to serve the self-interest of the people controlling the business, ignoring the interest of the common people.

As such, a system of corporate governance including appointment of an independent director needs to be reconciled with the ground realities of Bangladesh, since corporate ownership and control are not uniform in an emerging economy like us and markets are dominated by many family managed entities.

Having served more than a year as an independent director of the largest government owned commercial bank, I sometimes had to raise and initiate debates on unpleasant issues for the greater interest of the bank. No doubt, a few of my colleagues extended their support to my standing. I believe that it was possible because the appointment was made by the government. If I were appointed by the elected directors, as prescribed by the SEC notification, possibly playing my due role would have

been difficult with risks of jeopardising the relationship.

It may be noted here that the New York Stock Exchange regulations prescribe that a majority of the board should be comprised of independent directors and the definition of an independent director has been tightened.

Further, non-executive and independent directors meet at regular intervals without management. In order to ensure good corporate governance, it is mandatory to constitute a few committees, namely, Corporate Governance Committee, Compensation Committee and Audit Committee.

All these committees shall consist of independent directors only. Establishment of internal audit functions with competent professionals is also a prerequisite for corporate governance. The compulsory adoption of a code of business conduct and ethical standards are also given due importance in order to conform to the best corporate governance practices.

The appointment of independent directors should be made under a policy guideline, including appointment by the SEC based on the profile of the independent directors submitted by listed companies and banks. The SEC should also conduct proper diligence as to competence, independence, knowledge and experience of the incumbent.

Also important are adequate technical knowledge to review legal and statutory compliance; sufficient knowledge on the industry/business of the entity; not related to promoters and management at the board level and not connected with business directly or indirectly in any way; more than one independent director should be there to defend the debate initiated and balance the board at a minimum level; whether required time can be devoted by incumbent; whether the incumbent is aware of his role, responsibilities and public expectation for the position; director's free access to management and documentations; courage, market reputation and afford to be independent; remuneration matching his qualification, time and experience; age and physical fitness; and self-declaration of eligibility of the independent director and should sign a Non Disclosure Agreement (NDA) for obvious reasons.

Practices in India, Singapore and Malaysia can also be reviewed to crystallise the issues involved before a guideline is prepared to this effect in Bangladesh. A nominated director representing institutional investors should not be considered as an independent director. The required provision for the removal of independent directors should be in existence if s/he fails to perform the designated duties and public expectations. Resignation of the independent director either voluntarily or forcefully warrants immediate investigation by the regulatory agencies for public interest to unearth the incidents and assess the position.

The writer is a chartered accountant and a partner of Hoda Vasi Chowdhury & Co, an affiliated firm of Deloitte.

MOBILE-PHONE SPECTRUM AUCTION

Three plus Three makes four

The telecoms regulator sets the rules for an auction of the 4G spectrum



THE ECONOMIST

Ten years ago, Gordon Brown, then the chancellor of the exchequer, was acclaimed for his prudence in using a windfall of £22.5 billion to pay down the national debt. The money came from auctioning off electromagnetic spectrum to mobile-phone operators in 2000. The likes of Vodafone and Orange needed the new bandwidth to launch third generation, or 3G, services, such as mobile internet access. Sadly for Mr Brown's successor but one, George Osborne, nothing like as much will be raised by next year's planned auction of new spectrum for 4G, the draft rules for which were announced on March 22nd.

The advantage of 4G over its predecessor boils down to greater speed: 4G mobile internet access could be much faster than home or office broadband connections, making it much easier to watch video content on phones or tablets. However, operators feel they overpaid in 2000, when the tech-

nology bubble was at its most inflated. This left them short of cash to invest in infrastructure, which is why coverage remains patchy in some rural parts of Britain. As a rough guide to what Mr Osborne can expect from the spectrum sale, Germany raised just €4.3 billion from its own 4G auction last year.

The government will want to squeeze as much revenue as it can from the sell-off, but it must also preserve competition in a consolidating industry. The recent merger of Orange and T-Mobile has left Britain with four mobile-phone operators: Everything Everywhere (the imperious name for the newly merged company), Vodafone, O2 and Three. That is a healthy number compared with some countries, such as America, where AT&T's proposed acquisition of T-Mobile USA would create what some regard as, in effect, a duopoly. But Three warns that it would struggle in an unrestrained bidding war with its larger rivals for the new spectrum. Without 4G services, it might be forced out of the

market, cutting the number of operators to three.

Ed Richards, head of Ofcom, the telecommunications regulator, appears to share this concern. The draft auction rules surprised many in the industry by explicitly aiming to preserve four providers. Ofcom plans to do this by capping how much spectrum any one company can buy, and by forcing the auction to be repeated if four separate bids are not successful.

Ofcom is consulting on its plans and is likely to be deluged by lobbyists. Three wants the auction to compensate it for Ofcom's decision, taken in January, to allow operators that already had 2G spectrum to convert it for 3G services. This gives its rivals wider geographical coverage and greater capacity to handle calls and web-browsing. Three, which only entered the market at the time of the 3G auction, has no 2G to exploit.

The bigger operators, for their part, might try to persuade Ofcom to dilute its com-

mitment to maintaining four providers, or even go to court to argue that the rules give Three an illegally privileged position. The longer these arguments go on, the longer British consumers will have to wait for the benefits of 4G. They were among the first to enjoy 3G services, but the disputes between companies and regulators have allowed other countries, such as America, Japan and Sweden, to steal a march on 4G technology.

There are issues of social justice, and not just national pride and impatience, at stake. A "digital divide" has opened up in Britain in recent years: parts of the country still have slow broadband, or none at all. The emergence of 4G has been vaunted as part of the solution. Mobile phones are already rivalling fixed connections as the main way in which people access the internet. But even if Ofcom's planned auction is delayed no further, Britain will not get 4G until at least 2013.

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