

A Special Workshop on Corporate Fraud and Misconduct: The Role of Independent Directors

April 22, 2022

Virtual

The **Institute of Directors (IOD)**, India organized a Special Workshop on Independent Directors, on April 22, 2022, to deliberate upon findings of an online survey jointly conducted by Institute of Directors (IOD) and Deloitte Touche Tohmatsu India LLP (DTTILP) on the theme '**Corporate Fraud and Misconduct: Role of Independent Directors**', with a view to assess how Independent Directors (IDs) in Boards perceive occurrence of corporate fraud, their preparedness in addressing it, and the best practices required to mitigate frauds and misconduct risks. The Report was released during the last IOD's 'Annual Directors' Conclave, held in October 2021.

The virtual event witnessed participation by around **150** participants, including senior board directors, independent directors, practising professionals including Chartered

Accountants and Company Secretaries, and Compliance Officials from well-known corporates.

The workshop commenced with a Survey Report presentation on '**The Role of Independent Directors in addressing Corporate Fraud and Misconduct**' by:

Mr. Nikhil Bedi

Partner and Leader – Forensics, Financial Advisory
Deloitte Touche Tohmatsu India LLP

Mr. Bedi in his '**Keynote Address**' said, "The voice of the Independent Directors; is our voice". The aim of this Survey Report is to discuss and deliberate the views of some of the leading Independent Directors, on their vital role in Boards, and in addressing corporate fraud and misconduct. The thought



Distinguished Speakers live during the event: (From L to R): **Mr. Nikhil Bedi, Lt. Gen. J. S. Ahluwalia, PVSM (Retd.), Mr. Shallesh V. Haribhakti FCA, Dr. Manoj Vaish & Mr. Jyotin Mehta, FCA, FCMA, FCS**



Mr. Nikhil Bedi

Partner and Leader – Forensics, Financial Advisory
Deloitte Touche Tohmatsu India LLP



Lt. Gen. J. S. Ahluwalia, PVSM (Retd.)
President
Institute of Directors, India

behind this survey was to understand from the Independent Directors:

1. What are the best practices which can be instituted;
2. Mitigation strategies which can be employed; and
3. The potential lapses likely to happen in organisations when it comes to actual frauds.

Disruptions of any kind, be these technological or other, lead to rise in fraud, and Independent Directors have by large, echoed the sentiment, in the survey responses, i.e. **corporate frauds will increase in the next 2 years, as digital governance is not keeping pace with market realities. 'Cybercrime' is voted as one of the biggest factor in occurrence of frauds.**

In order for companies to have proper in-house investigation mechanism, they need the tools to run audit trails to detect frauds.

- Almost 60% of frauds are being reported through 'whistle-blowing' hotlines.
- A vast majority, over 50% of the IDs have a broad general awareness but they need to be much better equipped to tackle the menace of non-compliance, fraud and misappropriation.

Most of the time, there is absence of proper and independent whistleblowing hotlines, and these are not tracked adequately. Sometimes, people do not feel confident about reporting on red-

flag issues, as the whistle-blower hotlines are not independent but are rather dealt in-house.

As Independent Directors are viewed as true guardians to safeguard public interest, they must conduct '**Vulnerability Assessments**', '**Periodic Health Checks**', and '**Mitigation Measures**'.

- Independent Directors have emphasized through their responses that, training & awareness has remained very low in areas such as '**Vulnerability Assessments**', '**Periodic Health Checks**', and '**Mitigation Measures**'.
- Being the first deterrent in preempting possibility of frauds, IDs must be better equipped to spot red-flags and their duties could be segregated to avoid frauds.

There is no '**fraud playbook**', so to say. Along with '**fraud prevention**', '**fraud detection**' has to be paid due attention.

Fraud incidents still happen in companies, even with proper whistle-blower mechanism. This indicates, that better clarity is needed to identify who needs to be reached out, if one apprehends a red-flag issue, who is responsible within the organization to take notice of such matters and promptly act on them, when such incidents happen. Today, some companies even have 'case management tool' for whistleblower cases, the question is are all these complaints promptly entertained and acted upon?

Identifying key vulnerable areas of risk within the company's operations is one of the top needs of organisations, i.e. a robust **Fraud Risk Management (FRM) framework** and suitable training for directors.

- Ensuring there is better understanding of 'fraud management framework' and focus on refreshing these frameworks proper oversight, periodic updates to boards, proper training & sensitization, sense of transparency along with trust being built top-down would help curb and prevent recurrence of frauds.

Boards must build an ethical culture in the organization, where there is transparency in all dealings, policies are open, regulations are limited, and a rewarding & secure mechanism is deployed for whistle-blowers which could help in identifying such occurrences.

This was followed by the '**Inaugural Session**'. **Lt. Gen. J. S. Ahluwalia, PVSM (Retd.)**, President, Institute of Directors, India delivered the '**IOD President's Address**' and welcomed all the



Mr. Shailesh V. Haribhakti FCA
Chairman
Blue Star Limited, L&T Finance Holdings Limited,
L&T Mutual Fund Trustee Limited, Future Lifestyle
Fashions Limited and NSDL e-Governance
Infrastructure Limited; and
Independent Director on the Boards of
Bennett Coleman and Co. Limited (Times Group),
Mahindra Lifespaces Developers Limited,
Ambuja Cements Limited, ACC Limited, etc



Dr. Manoj Vaish
Lead Independent Director, GHCL Limited;
Independent Director
Mirae Asset Trustee Company Private Limited;
Chairman
Working Group to streamline the role and
obligations of
Trustees of Mutual Funds, SEBI



Mr. Jyotin Mehta, FCA, FCMA, FCS
Independent Director and Chairman
Audit Committee, Linde India Limited;
Independent Director on Boards of
ICICI Prudential Trust Company Limited,
Suryoday Small Finance Bank Limited,
JSW Ispat Special Products Limited,
ICICI Prudential Pension Funds
Management Company Limited,
Mahindra Rural Housing Finance Limited,
Mahindra Insurance Broking Limited, etc.

Independent Directors, participants & keynote speakers and shared how Independent Directors can play a significant role in fraud prevention and also highlighted the fraud management framework.

This was followed by a **Special Session on Listen, Learn & Interact with Independent Directors** with some of the most notable Independent Directors of the country.

1. Mr. Shailesh V. Haribhakti FCA

Chairman, Blue Star Limited, L&T Finance Holdings Limited, L&T Mutual Fund Trustee Limited, Future Lifestyle Fashions Limited and NSDL e-Governance Infrastructure Limited; and Independent Director on the Boards of Bennett Coleman and Co. Limited (Times Group), Mahindra Lifespaces Developers Limited, Ambuja Cements Limited, ACC Limited, etc.

2. Dr. Manoj Vaish

Lead Independent Director, GHCL Limited; Independent Director, Mirae Asset Trustee Company Private Limited; Chairman - Working Group to streamline the role and obligations of Trustees of Mutual Funds, SEBI

3. Mr. Jyotin Mehta, FCA, FCMA, FCS

Independent Director and Chairman - Audit Committee, Linde India Limited; Independent Director on Boards of ICICI Prudential Trust Company Limited, Suryoday Small Finance Bank Limited, JSW Ispat Special Products Limited, ICICI Prudential Pension Funds Management Company Ltd. Mahindra Rural Housing Finance Limited, Mahindra Insurance Broking Limited, etc.

Mr. Haribhakti emphasised that every organisation must establish a KYC (Know Your Client) whenever dealing with a 'counter-party'. He emphasised on the need to have a robust infrastructure for fraud detection and mitigation, with proper framework & standards. He shared some practical insights on how frauds can be investigated for each organisation:

- Ensuring company culture is not soft.
- Establishment of a robust vigil mechanism.
- Human connectedness-driven behavioural aspects.

- Suitable technology for 'prevention' and 'detection' of fraud.
- Discovery and responsibility to fix responsibility for the fraud.

He emphasised the need to safeguard the '**whistle-blower**', to promote a culture of public accountability and integrity.

Dr. Vaish shared the need of a robust risk management system, built by experts, to support Independent Directors. He said whistleblower policy is an extremely important tool. Independent Directors are stressed & constrained with limited board interactions as only 4-5 meetings takes place in a year but they must raise the right questions and not feel shy as it is their fiduciary responsibility to alert the board about frauds. He suggested 'outsourcing', to detect frauds by seeking help from outside experts & external consultants.

Mr. Mehta began by complimenting the Survey Report & its findings. He pointed out how the Audit Committee does not take internal audit report seriously. A complaint, whether anonymous or with name, both should be addressed effectively with proper attention & investigation. Anonymous complaints, sometimes do have a lot of factual information also. He also shared his perspective on frauds happening in start-ups due to lack of proper 'risk control mechanisms'.

Thereafter, **Mr. Haribhakti** moderated the **Q&A Session** and proposed the '**Vote of Thanks**'.

The thoughtful presentations and personal experience narrated by the Distinguished Speakers on this topical Theme were highly appreciated by all the participants. ■

This report is compiled by:

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