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SEBI Stewardship Code and Covid Effect

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BACKGROUND

The word ‘steward’ generally implies a person who is responsible to look after the concerns or take care of its assigned or targeted set of patrons. Coming to the topic under discussion, the term ‘Stewardship Code’ has been applied as one of the tools of corporate governance world over. It has been associated with the act or the duty of the institutional investors such as Alternative Investment Funds (**AIFs**), Mutual Funds, pension funds, insurance companies, banks etc. vis-à-vis their investors/policy holders whose money they invest in the listed companies. As such, there is a fiduciary responsibility of such institutional investors towards their investors as regards their investments in such listed companies. It underscores the duty of the institutional investors to raise any concern or make such interventions in the affairs of the listed companies so as to protect and uphold the interest of such investors of the institutional investors. One may call it as one of the renewed modes of shareholder activism.

STEWARDSHIP CODE – AROUND THE WORLD

Globally, the concept of Stewardship Codes is a very established one. In India, the concept was indirectly prevalent for some time but has gained its formal foothold only in the year 2017. Basically, the Stewardship Code can be understood as means of interaction between the shareholders and a listed company – listed company because of the quantum of public interest and their involvement in the same. The Stewardship Codes have been enacted by the regulators world over as a means of enhancing corporate governance from the purview of listed entities so as to enhance their responsibilities and accountability towards its shareholders. The crux is to enhance the investor-company relationship and lead to better engagement between them. It will be a win-win situation, both for the company and its shareholders, where the shareholders stay loyal to the company and the company in turn reciprocates b factoring the concerns and views of its shareholders as regards its functioning and management. The idea is to communicate the concerns and apprehensions of the shareholders to the company management and the company in turn addressing those concerns - ideally with concrete steps.

The Stewardship Code is essentially for the institutional investors as they in turn represent the interest of innumerable investors in any given listed company. Institutional investors include AIFs, Mutual Funds, Insurance Companies, Banks, pension funds.

The UK, in the year 2010, became the first country to adopt the Stewardship Code more so as a response to the after effects of 2008 financial crisis which significantly raised the fingers on efficacy of prevalent corporate governance standards in the UK banks and financial institutions. Subsequently, quite a few countries including United States of America, Malaysia, Brazil, Japan, South Africa, Taiwan, Kenya, Hong Kong have adopted their respective Stewardship frameworks. The European Union adopted a Shareholders Rights Directive that includes elements found in existing stewardship codes.

ESSENCE OF STEWARDSHIP CODE

Basically, Stewardship Codes are meant to promote the shareholder democracy by holding the company more accountable with its policy decisions wherein the companies are required to carry out timely disclosures as well as provide justification for their business actions to the share 'owners'. The issues that essentially are targeted by such Stewardship Codes are conflict of interest, voting, monitoring, environment and social responsibility and general conduct of the concerned company. In this direction, and as one of the means, the listed entities in most of the jurisdictions have to update their company websites with investor policies, annual and quarterly results, materiality events, stakeholder engagement etc. These are all ways and means to provide the shareholder with adequate tools to analyse the performance of the concerned company and at the same time flag out any issue which pertains to the share 'owners'. The listed companies are expected to do course corrections especially as regards the 'concerns' raised by 'big and sophisticated investors' viz. institutional investors. This is more to do with the news and media coverage that an institutional investor can manage to garner and the probable pitfalls where the concerned company doesn't address such concerns of the 'big investors'. This also keeps the company always on its feet.

It might perhaps be a bit early to gauge the impact of these Stewardship Codes in the different countries and whether the same has well and truly lead to resurgence in the way of shareholder protection or whether the Codes have been just mechanically implemented. It is worthwhile to note that the first country to adopt the Stewardship Code, i.e. the UK, has revamped its code and the UK's Financial Reporting Council has come out with UK Stewardship Code 2020. This represents the first significant revision of the Stewardship Code since its original publication in 2010 and being implemented from January 01, 2020. It is bound that other countries too may modify their respective codes in line with the experiences encountered by such respective countries after coming out with the first version of their codes.

STEWARDSHIP CODE AND ITS INDIA CONNECTION:

Stewardship Code by PFRDA for pension funds

In the year 2018, the Pension Fund Regulatory and Development Authority (**PFRDA**), came out with 'Common Stewardship Code'. All the Pension Funds under the NPS architecture were required to follow such code and the voting policy notified by the PFRDA. This code has set of principles to be followed by pension funds.

Stewardship Code by IRDAI for Insurers

The Insurance Regulatory and Development Authority of India (**IRDAI**) had, in the year 2017, issued a code for stewardship for the insurance companies. The code was in the form of set of principles which the insurance companies needed to adopt and made applicable from financial year 2017-2018. Guidelines for each principle under code had also been prescribed by the IRDAI. As per the code, insurer should have a board approved stewardship policy which should identify and define stewardship responsibilities that the insurer wishes to undertake and how the policy intends to fulfil the responsibilities to enhance the wealth of its policyholders who are the ultimate beneficiaries. In February 2020, the IRDAI have revised the stewardship code for the insurers after review of existing guidelines on stewardship code based on the experience in implementation, compliance by the insurers and the recent developments in this regard.

SEBI Stewardship Code for Mutual Funds and AIFs

The Securities and Exchange Board of India (**SEBI**), through a circular in December 2019, have come out with '*Stewardship Code for all Mutual Funds and all categories of AIFs, in relation to their investments in listed equities*'.

The circular highlights the importance of institutional investors in capital markets across the world which is increasing the world over; they are expected to shoulder greater responsibility towards their clients / beneficiaries by enhancing monitoring and engagement with their investee companies. Such increased engagement is also seen as an important step towards improved corporate governance in the investee companies and gives a greater fillip to the protection of the interest of investors in such companies.

Similar such requirement for Mutual Funds already in place

SEBI has already implemented principles on voting for Mutual Funds through Circulars in the years 2010 and 2014, which prescribed detailed mandatory requirements for Mutual Funds in India to disclose their voting policies and actual voting by Mutual Funds on different resolutions of investee companies. SEBI along with IRDAI and PFRDA had subsequently examined a proposal for introducing stewardship principles in India, which was approved by a sub-committee of the Financial Stability and Development Council (FSDC-SC).

It has now become mandatory for all the Mutual Funds and all categories of AIFs to follow the SEBI enacted Stewardship Code with respect to their investments in listed entities.

Principles under SEBI Stewardship Code

The SEBI enacted Stewardship Code lays down certain principles for the said institutional investors which are as under:

1) Institutional Investors should formulate a comprehensive policy on the discharge of their stewardship responsibilities, publicly disclose it, review and update it periodically.
2) Institutional investors should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.
3) Institutional investors should monitor their investee companies.
4) Institutional investors should have a clear policy on intervention in their investee companies. Institutional investors should also have a clear policy for collaboration with other institutional investors where required, to preserve the interests of the ultimate investors, which should be disclosed.
5) Institutional investors should have a clear policy on voting and disclosure of voting activity.
6) Institutional investors should report periodically on their stewardship activities.

Along with the said principles, SEBI has also provided guidance to such principles for effective implementation.

Implementation of SEBI Stewardship Code and its deferment

The SEBI enacted Stewardship Code was originally meant to come into effect from the financial year beginning April 01, 2020.

However, the ongoing CoVID-19 pandemic situation has put a screeching halt on the global economies who are now trying their best to grapple with this unprecedented situation. Due to this, SEBI has, through its circular on March 30, 2020, decided to extend the implementation of its Stewardship Code.

SEBI received requests from the Association of Mutual Funds of India (AMFI) and the Indian Association of Alternative Investment Funds (IAAIF) requesting an extension of the deadline for implementation of the Code as the prevailing situation resulting from the CoVID-19 pandemic makes it challenging, inter-alia, to i) effectively monitor and intervene at appropriate situations with the management of the investee companies; ii) engage with the boards of the investee companies.

SEBI, after taking into consideration of the said representations, has now decided to extend the implementation of the Stewardship Code to July 01, 2020. It is needless to state that the present times are quite challenging whose severity cannot be apprehended by any one. However, everyone hopes for these gruelling times to get over as soon as possible and all eyes are always on look out for any news announcing some kind of elixir to defeat this pandemic which already has caused a global impact in monstrous proportions.

CONCLUSION

The role of stewardship has been widely gaining acceptability and the same being viewed as a pivotal tool for promoting shareholder democracy and accountability with regulatory backing. This should provide added impetus to the shareholders in protecting and promoting their rights vis-à-vis their companies. This is very important in today's day and age wherein there have been increasing participation of retail investors in listed equity which being predominantly routed through institutional investors. This should alert the companies, the ones who aren't already, that their business decisions may not be blindly followed or remain unquestioned, as has been the case till now – at least in some cases.

Although, the SEBI enacted Stewardship Code is yet to be implemented and see the light of the day, it certainly signals the noble intentions of the regulators of further upholding the ethos of corporate governance and promises a brighter future for shareholders. It remains to be seen as to how the Mutual Funds and AIFs goes about doing their business of shielding investor interests, especially in this pandemic struck environment, which has its own set of challenges.

The stewardship code should prove to be an additional investor friendly tool which at the one hand makes the listed companies responsible and accountable for their actions and on the other hand requires the institutional investors to frame the necessary guidelines, and more crucially, take required and timely action with a view to protect and promote the shareholders interest. This could well and truly prove to be a knight in the shining armour qua shareholder activism and in one way a redemption of the faith that the shareholders repose in the company management.

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