Hard for board to be brake and accelerator
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THE proposals in the Consultation Paper on revisions to the Code of Corporate Governance are commendable, being specific and actionable. They drill down to the very mechanics of corporate supervision, the nuts and bolts of board structures and the dynamics of board-management relationships.

One issue that bears more discussion is the philosophical one of what the role of a company board is, in the context of corporate governance.

The centrepiece of corporate governance is the board of directors. In an entrepreneurial context, the board is often a vanguard, a torchbearer and a scout for the company. It helps to seek new resources, guide new products and develop new markets. In these regards, the board assumes a key business function and helps to create value for the company.

With its expertise, knowledge and network, the board is an ideal platform to push the frontier for value sustenance. It is poised to span the boundary of the company with customers and suppliers as well as to facilitate otherwise unavailable alliances. It may also guide the enhancement of specific functions like accounting and auditing, technology and innovation, and investments and infrastructures.

But the worry is that boards may be constituted too much for control functions, and too little for value creation. This is in part due to the way corporations have developed. In the 1980s, corporations were often over-diversified and over-staffed, and managers over-paid. Independent boards became the order of the day to restrain corporate excesses.

But over the 1990s and the turn of the century, many corporations ballooned indiscriminately, unfettered by any authority or legislation. With the mega disasters of the infamous Enron case and its likes, the corporate world saw a tailspin of confidence in the managed company.

The global economic crisis of 2008-2009, triggered by failed business corporations and financial institutions' mistakes which somehow eluded the radar screen of boards and regulators, created a crisis of confidence in high-brow legislation and codes.

There was thus a concerted attempt to strengthen boards' oversight functions and to studiously avoid conflict of interest situations.

Corporate governance codes in many countries are drawn largely from the Anglo-American model. This is characterised by outsider-oriented boards which are often independently sourced to monitor company proceedings. This is in contrast to the Japanese or the German model where the board (or even two boards) extensively tap personnel from within the company or related entities for its members.

In recent years, the Anglo-American model has been pre-dominant. With the endorsement of influential bodies like OECD, there is a convergence to such a model in the codes adopted or adapted across many countries.
The challenge is that this model is prescriptive, spelling out the numerous and explicit requirements which go into the particulars of board and management matters. While this may be fine in advanced business economies, emerging regimes, such as those in parts of Asia, may find it contextually difficult, even onerous, to apply and enforce the exacting rules.

A company has to be well-governed, with an effective board - but must also be flexible enough not to drive out initiative and creativity.

At its heart, there is an underlying tension in conceptions of the role of a company board. Is it meant as a control function (like a watchdog) or as a value creation function (to drive business)?

A watchdog board will provide checks and balances on the management and furnish objective oversight to mitigate corporate malfeasance and misdemeanour. But there is a risk that this may impede agility that drives responsiveness and success.

Or should the board be a business-savvy one that contributes more directly to the company's mission?

A country's corporate governance code must therefore be clear-sighted on the fundamental purpose: What does the code really want boards to do?

Boards of directors have, over the years, assimilated more and more roles. There might have been a mission creep of boards. No thanks to the recent spate of financial crises, the pendulum may have swung more towards control rather than value creation. Whether this is desirable is debatable.

We have to be clear whether the board serves primarily as a protection of shareholder interest or as a projection of business interest.

It will be hard to have a two-in-one role. It is like a car. It will be hard for a board to be both a brake and an accelerator at the same time.

I am not advocating that we disregard the need for codes of governance in their current forms and thus throw the baby out with the bathwater. The more important consideration is to promote a code purposefully without losing sight of the essence of the business corporation. A code should not be so stifling as to kill the goose - the company - that lays the golden eggs.

There may not necessarily be a conflict of interest between the control and value roles of any board in itself. The tradeoff has to be weighed intelligently and justified by its context, for any company to define the posture of the board.

The best prescription for companies is to do more with less, and create more value with less control.

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