

PROTECTION AND EMPOWERMENT OF MINORITY SHAREHOLDERS IN **BANGLADESH**

Dr. Nitai Chandra Debnath, FCMA, CGIA
Professor, and Director Studies (Current-Charge)
BICM



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Topics to be covered

- The Setting – Bangladesh
- Protection and Empowerment of Minority Shareholders Through Regulatory Reforms
- Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure
- Protection and Empowerment of Minority Shareholders Through Monitoring and Enforcement
- A New Commission: Ray of hope

The Setting – Bangladesh

Bangladesh is one of the fastest-growing economies in the world.

When the economic growth of a country flourishes, undesired consequences such as corruption, favoritism and inequality tend to increase if they remain unchecked

Emerging economies are characterized by poorly defined property rights, weak rule of law, weak investor protection and low quality government, lack of freedom of the press and poor financial transparency.

The case of Bangladesh is not much different. Absence of investor confidence in the regulation and operation of the capital market, impaired by weak regulatory enforcement and the slow progress of capital market infrastructure are among the major reasons quoted for its comparatively undeveloped capital market in comparison to its counterparts in the South Asian region.

The Setting – Bangladesh

Bangladesh has many characteristics of an emerging economy, including widespread corruption, lack of accountability and transparency. It is also reflected in the financial sector of the country. Regulatory bodies including government are trying their level best to reduce corruption.

Financial statements are prepared only to comply with the requirement of tax authority and the level of motivation to ensure transparency and accountability among financial managers is low.

Presence of concentrated ownership; as often few members of the same family, which is likely to have significant influence on corporate governance practice.

Controlling shareholders may try to use their power and to use corporate funds for their own benefit.

The Setting – Bangladesh

In case of family controlled firm, agency conflicts between managers and owners may not arise.

Another type of agency problem, conflict between majority and minority shareholders, may arise.

Majority shareholders tend to expropriate the interest of minority shareholders and existing law to protect the interest of the latter is comparatively deficient and obsolete.

Due to concentrated ownership, ‘Management’ or controlling owners **are** involved in manipulation through different earnings management techniques.

The Setting – Bangladesh

A recent study stated that earnings management is like a virus that spreads from one firm to another through board associates of common directorships. These common directors are acting like virus carriers in the sense that the directors of the infected earnings management firms carry these earnings management attitude to other firm(s) on whose boards they also are members.

As an emerging economy, to protect the interest of the minority shareholders, Bangladesh capital market has experienced significant regulatory reforms.

Country-specific political, cultural and economic factors strongly influence the success of governance reform.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

According to **companies Act (CA)** of 1994, shareholders in Bangladesh:

- have rights to attend and participate in company meetings either in person or by proxy.
- have power to elect and remove directors, appoint the company's external auditor and approve their remuneration
- can change the company's articles of association, authorize new share issues or reductions of share capital.
- have right to give final approval the amount of dividend recommended by the directors.
- can call for an extraordinary general meeting to discuss any issue of concern, if they have more than 10% ownership.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

- to protect their interest, they can also go to court or request the Registrar of Joint Stock Companies to investigate the affairs of their company.
- The Companies Act of 1994 requires listed companies to pay a dividend within two months from the date of declaration.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Bangladesh Securities and Exchange Commission (BSEC), as a regulator of the capital market, tries to protect the interest of investors in securities, develop the securities market and make rules for matters.

They issued different rules, directives, notifications, orders and guidelines to do that.

Credit Rating Companies Rules, 1996

No issue of debt security, or public issue of share (including rights share) at a premium, shall be made by an issuer unless the issue is rated by a credit rating company and declaration about such rating is given in the offer document, prospectus or rights share offer document

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Margin Rules, 1999

The margin account shall not be used to subscribe for new issues of securities.

The stock brokers shall not provide loan facilities to:

- a. purchase any newly listed security in between 1st to 30th trading day after listing of the said security;
- b. purchase any existing listed security in between 1st to 30th trading day after change of categorization of the said security. (*Directive No. SEC/CMRRCD/2009-193/177 and BSEC Order No. SEC/CMRRCD/2009-193/178*)

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Securities and Exchange Commission (Issue of Capital) Rules, 2001

The security (except debt security without conversion feature) including the equity security issued in part or in full against any convertible security by a listed company for which the consent is accorded under these Rules shall be subject to a lock-in of

- (a) Three years in case of directors and those who hold 5% (five percent) or more shares, and
- (b) One year in case of others, from the date of issuance of such security, or from the date of issuance of consent, whichever is later:

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Securities and Exchange Commission (Over-the Counter) Rules, 2001

The selling stock-dealer / stock-broker of the defective securities shall be liable to make good the losses, if any, sustained by the buyer in this respect, as determined by the exchange, along with the interest calculated at 1.5% per month on the value of trade and the exchange's commission or charges, within seven working days of serving a written notice by the exchange upon the selling stock dealer / stock-broker concerned, failure of which the selling stock dealer / stock-broker concerned shall be barred from any trading activities in the exchange under simultaneous intimation to the Commission.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015

The securities shall be offered to general public for subscription at an issue price to be fixed at 10% discount (at nearest integer) from the cut-off price.

Ordinary shares of the issuer shall be subject to lock-in, from the date of issuance of prospectus or commercial operation, whichever comes later, in the following manner:

- (1) All shares held, at the time of according consent to the public offer, by sponsors, directors and shareholders holding 5% or more shares, other than alternative investment funds, for 03 (three) years;
- (2) All shares allotted, before 02 (two) years of according consent to the public offer, to any person, other than alternative investment funds, for 03 (three) years;

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Bangladesh Securities and Exchange Commission (Public Issue) Rules, 2015

- (3) In case any existing sponsor or director of the issuer transfers any share to any person, other than existing shareholders, within preceding 12 (twelve) months of submitting an application for raising of capital or initial public offer (IPO), all shares held by those transferee shareholders, for 03 (three) years;
- (4) 25% of the shares allotted to eligible investors, for 03 (three) months and other 25% of the shares allotted to them, for 06 (six) months;
- (5) All shares held by alternative investment funds, for 01 (one) year; and
- (6) Shares allotted, within two years of according consent to the public offer, to any person other than the shares mentioned in sub-rules (1), (2), (3), (4), and (5) above, for 01 (one) year.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Securities and Exchange Commission (Rights Issue) Rules, 2006

No issuer of a listed security shall price its rights share above par value, if it has not been in commercial operation for immediate past three years having a track record of profitability.

The number of rights share proposed shall not exceed five for each existing share held in the company.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Bangladesh Securities and Exchange Commission (Research Analysis) Rules, 2013

The research firm/analyst and his/her dependents/employer cannot trade in the securities of the company whose report they are preparing for 30 (thirty) days before and 5 (five) days after the launching/publishing the report.

The research firm shall not publish a research report and shall not make a public appearance regarding a subject company for which it acts as issue manager, co-issue manager or underwriter of an initial public offering for 30 calendar days following the first date on which the security will be offered to the public.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরণ) বিধিমালা, ১৯৯৫

- কোন ব্যক্তি নিজে বা অন্য কাহারো মাধ্যমে সুবিধাভোগী ব্যবসা করিবেন না বা উক্তরূপ ব্যবসার ব্যাপারে কোন ব্যক্তিগত পরামর্শ প্রদান বা সহায়তা করিবেন না।
- স্টক এক্সচেঞ্জে তালিকাভুক্ত কোম্পানির কোন স্পন্সর (Sponsor), পরিচালক, কর্মকর্তা বা কর্মচারী, নিরীক্ষক বা নিরীক্ষাকার্যে সম্পৃক্ত ব্যক্তি, পরামর্শক বা আইন উপদেষ্টা, উক্ত কোম্পানীর বার্ষিক হিসাব সমাপ্তির তারিখ এর দুই মাস পূর্ব (ইংরেজী পঞ্জিকা বছর মোতাবেক) হইতে উক্ত হিসাব কোম্পানির পরিচালনা পর্ষদ (Board of Directors) কর্তৃক চূড়ান্তভাবে বিবেচিত, গৃহীত বা অনুমোদিত হওয়ার তারিখ পর্যন্ত সময়কালে আলোচ্য কোম্পানীর শেয়ার ক্রয়, বিক্রয় কিংবা অন্য কোন প্রকারে হস্তান্তর বা গ্রহণ করিতে পারিবেন না।

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (মার্চেন্ট ব্যাংকার ও পোর্টফোলিও ম্যানেজার)
বিধিমালা, ১৯৯৬

- পোর্টফোলিও ম্যানেজার তাহার মক্কেলের অর্থ অর্থ-বাজারে অথবা চুক্তির শর্ত অনুযায়ী বিনিয়োগ করিতে বাধ্য থাকিবেন।
- পোর্টফোলিও ম্যানেজার মক্কেলের অর্থ বিনিয়োগের সময় ফটকাবাজারী (speculative) লেনদেন করিবেন না।
- পোর্টফোলিও ম্যানেজার প্রত্যেক মক্কেলের তহবিল এবং সিকিউরিটিজ পৃথক পৃথক রাখিবে এবং উহা তাহার নিজের তহবিল ও সিকিউরিটিজ হইতে পৃথক রাখিবে এবং পোর্টফোলিও ম্যানেজার মক্কেলের অর্থ ও সিকিউরিটিজ এর রক্ষক হিসাবে কাজ করিবে।

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Acquisition and Takeover Rules, 2002

A public notice is necessary if a person is trying to obtain more than 10 percent ownership interest. At the end of the offer, if less than 10 percent of the issued shares remain with the public, the person is bound to buy those shares when offered. Moreover, ownership of more than 10 percent must be disclosed to the company, the Stock Exchange and the SEC.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Corporate Governance Code 2018:

At least one-fifth ($1/5$) of the total number of directors in the company's Board shall be independent directors; any fraction shall be considered to the next integer or whole number for calculating number of independent director(s).

The Chairperson of the Board shall be elected from among the non-executive directors of the company.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Corporate Governance Code 2018:

For ensuring good governance in the company, the Board shall have at least following sub-committees: (i) Audit Committee; and (ii) Nomination and Remuneration Committee.

The Audit Committee shall assist the Board in ensuring that the financial statements reflect true and fair view of the state of affairs of the company and in ensuring a good monitoring system within the business.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Corporate Governance Code 2018:

The Board shall select 1 (one) member of the Audit Committee to be Chairperson of the Audit Committee, who shall be an independent director.

The Audit Committee shall:

- (a) Oversee the financial reporting process;
- (b) monitor choice of accounting policies and principles;
- (c) oversee hiring and performance of external auditors

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

Digitization of Stock Exchanges:

Stock exchange trading of securities was fully automated in 1998, replacing the 44-year old system.

Automation has facilitated trading of securities from dispersed places and enhanced the volume of transactions

Central Depository of Bangladesh Limited (CDBL) has been created.

CDBL is entrusted with the efficient delivery, settlement and transfer of securities through computerized book entry system, without any physical movement.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

BSEC and Stock Exchanges classify securities into different groups based on their regular holding of AGMs, financial performance and dividend payment record.

The **categorization is intended to help general investors** to choose appropriate securities based on their risk taking preferences.

A total of **five categories have been introduced** at different points in time.

Recently, BSEC brought some changes in criteria of **Z** category shares.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

To ensure effective functioning of the AGM, the BSEC has issued a notification and an order.

According to the notification, no gift or benefit in cash or kind other than a cash and/or stock dividend shall be paid to equity holders for attending the AGM.

The BSEC has also directed listed firms to submit an audio visual recording of the AGM to the Commission.

Considering Covid19 situation, BSEC instructed the firms to conduct AGM/EGM through digital platform. Proceedings of the said meeting shall be recorded in both soft and hard copies in such a way that subsequent verification can be undertaken.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

One significant improvement in the Bangladesh capital market to assist shareholder empowerment is the availability of education and training courses.

To conduct a deeper level of capital market education and research, an institute named — **Bangladesh Institute of Capital Market (BICM)** was approved in 2008 and it began its operations from 2010. Currently, **BICM is offering free investor training, certificate courses on different areas, one year post graduate diploma in capital market.** The Institute has also been doing research on different areas of financial market.

From its inception, BSEC has been arranging regular training programs for investors in related areas. The Commission has also established an institute named – Bangladesh Academy for Securities Market.

Protection and Empowerment of Minority Shareholders Through Regulatory Reforms

For more involvement of existing and potential investors, and other stakeholders of capital market in the rule making process, the BSEC seek comments from the relevant stakeholders as it makes amendment proposals from time to time.

According to the BSEC website (<https://www.sec.gov.bd/home/comrequest>), comments have been sought on a total of 52 amendment proposals from 2009 to 3 October 2020 .

BSEC directed companies to transfer cash dividends to the banks of the shareholders within 30 days of declaration or approval.

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

Regulatory reforms to disclosure requirements in Bangladesh mainly cover four domains:

- (1) corporate governance arrangements;
- (2) financial reporting and timeliness;
- (3) self-dealing and insider trading; and
- (4) executive and non-executive compensation

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

(1) Corporate governance arrangements:

- Additional disclosure requirements on part of BOD in relation to CG arrangements
- The segment-wise or product-wise performance
- A detailed discussion on related party transactions along with a statement showing amount, **and** nature of related party.
- An explanation if the financial results deteriorate after the company goes for Initial Public Offering (IPO), Repeat Public Offering (RPO), Rights Share Offer, etc.

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

Corporate governance arrangements (contd.):

- An explanation on any significant variance that occurs between Quarterly Financial performances and Annual Financial Statements.
- A statement of remuneration paid to the directors including independent directors;
- A statement that proper books of account of the issuer company have been maintained;

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

Corporate governance arrangements (contd.):

- A statement that there is no significant doubt upon the issuer company's ability to continue as a going concern
- A statement where key operating and financial data of at least preceding 5 (five) years shall be summarized.
- An explanation on the reasons if the issuer company has not declared dividend (cash or stock) for the year.

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

Corporate governance arrangements (contd.):

- The Audit Committee shall report on its activities to the Board.
- The Audit Committee shall immediately report to the Board on the following findings, if any:
 - report on conflicts of interests;
 - suspected or presumed fraud or irregularity or material defect identified in the internal audit and compliance process o
 - suspected infringement of laws, regulatory compliances including securities related laws, rules and regulations.

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

(2) Financial Reporting and timeliness

- Need to comply with the BAS/BFRS as adopted by ICAB
- Need to have its financial statements audited within 120 days of the financial year-end date
- Need to hold AGM and have the audited accounts approved within nine-months of the financial year-end date
- Prepare and communicate quarterly financial statements
- A statement that proper books of account of the issuer company have been maintained;

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

Financial Reporting and timeliness (contd.)

- An explanation on any significant variance that occurs between Quarterly Financial performances and Annual Financial Statements.
- A statement that International Accounting Standards (IAS) or International Financial Reporting Standards (IFRS), as applicable in Bangladesh, have been followed.

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

(3) Self-dealing and insider trading

- Price-sensitive information to be immediately disclosed
- Disclosure of related party transactions
- Board meetings involving price sensitive information must be held outside the normal trading hours of the exchanges
- Prepare and communicate shareholdings position monthly
- A report on the pattern of shareholding disclosing the aggregate number of shares (along with name-wise details where stated below) held by:
 - (a) Parent or Subsidiary or Associated Companies and other related parties (name-wise details);

Protection and Empowerment of Minority Shareholders Through Enhancing Disclosure

self-dealing and insider trading (contd.)

(b) Directors, Chief Executive Officer, Company Secretary, Chief Financial Officer, Head of Internal Audit and Compliance and their spouses and minor children (name-wise details);

(c) Executives; and

(d) Shareholders holding ten percent (10%) or more voting interest in the company (name-wise details)

(4) Executive and Non-executive compensation

- A statement of remuneration paid to the directors including independent directors;

Protection and Empowerment of Minority Shareholders Through Monitoring and Enforcement

The success of any reform depends on the effectiveness of the monitoring and enforcement mechanisms.

In Bangladesh, enforcement of corporate and securities laws is generally shared by the Bangladesh Securities and Exchange Commission (BSEC), the Dhaka Stock Exchange (DSE), the Registrar of Joint Stock Companies (RJSC), Financial Reporting Council (FRC), professional accounting bodies and the judiciary.

Protection and Empowerment of Minority Shareholders Through Monitoring and Enforcement

Total number of enforcement actions taken by BSEC

	2014	2015	2016	2017	2018	2019	2020
Total number of Enforcement Action	273	114	146	120	188	226	90 (up to August 2020)

Protection and Empowerment of Minority Shareholders Through Monitoring and Enforcement

Financial Reporting Council

The Bangladesh Parliament enacted **Financial Reporting ACT (FRA), 2015** on September 9, 2015. FRA requires the establishment of the Financial Reporting Council (FRC). **FRC will act as an independent oversight body to bring trust, credit worthiness, transparency and accountability in the audited reports and accounting as financial reporting of the publicly listed companies.**

To achieve these objectives, FRC is doing following activities:

- (a) Setting Standards
- (b) Financial Reporting Monitoring
- (c) Audit Practice Review
- (d) Enforcement

Protection and Empowerment of Minority Shareholders Through Monitoring and Enforcement

ফাইন্যান্সিয়াল রিপোর্টিং আইন, ২০১৫

কাউন্সিলের সাধারণ উদ্দেশ্যসমূহ:

কাউন্সিলের সাধারণ উদ্দেশ্যসমূহ হইবে নিম্নরূপ,

- (ক) হিসাবরক্ষণ ও নিরীক্ষা পেশা স্ট্যান্ডার্ডস, নৈতিকতা সম্পর্কিত মান, ইত্যাদি নির্ধারণ;
- (ঙ) হিসাবরক্ষণ ও নিরীক্ষা সেবার গুণগত মান উন্নতকরণ;
- (গ) হিসাবরক্ষণ ও নিরীক্ষা পেশার উন্নয়ন সাধন;
- (ঘ) কাউন্সিলে তালিকাভুক্ত নিরীক্ষকদের হিসাবরক্ষণ ও নিরীক্ষা কাজের সর্বোচ্চমান নিশ্চিতকরণ;
- (ঙ) আর্থিক প্রতিবেদনের বিশ্বাসযোগ্যতা বৃদ্ধিকরণ;
- (চ) হিসাবরক্ষণ ও নিরীক্ষার পেশাগত কার্যক্রমের সততা, স্বচ্ছতা নিশ্চিতকরণ এবং সক্ষমতা বৃদ্ধিতে সহযোগিতা প্রদান

A New Commission: Ray of hope

A new commission has assumed office in May 2020. Since then, the Commission has:

- Brought some amendments to the Bangladesh Securities and Exchange Commission (Alternative Investment Rules) 2015
- Updated the panel of auditors' list of BSEC
- Changed the criteria of 'Z category' shares
- Directed all Asset Management Companies to publish their financial statements on time and portfolios in prescribed form
- Set effective limits for availing margin loan based on index

A New Commission: Ray of hope

- Approved non-convertible bonds worth more than Tk. 60.0 billions in favor of Banks, non-bank financial institutes, and other listed firms.
- Taken more than 50 enforcement actions for addressing irregular practices against different stakeholders of the capital market.
- Given permission for issuance of 11 IPOs, 2 mutual funds, and one right share offer within this short period of time.

A New Commission: Ray of hope

Comparative scenario of the progress of the commission's effort so far

When this Commission assumed office	Current situation
Average trade → 400 to 500 million	Present trade → 9000 to 12000 million ↑↑
DSEX index → 4000	DSEX index → 5000 ↑↑
Market Capitalization → Three lacs and twenty thousand crores	Market Capitalization → is more than four lacs crores ↑↑

A New Commission: Ray of hope

The stock market of Bangladesh, in August 2020, rose the highest of Asian stock markets and also **performed the best in the world** with a percentage of 15.80, according to a Bloomberg report.

Thank you