REGULATION OF DIFFERENT MODES OF CORPORATE FINANCE IN INDIA, USA (DELAWARE) AND UK- A CRITICAL ANALYSIS

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ABSTRACT

The present challenging world of corporate impulses all the corporations to actively grow their businesses in terms of operations or strategic development of their company; otherwise, their business cannot see the next light of the day. Even when the established companies or corporates are considered, corporate financing assists them to strengthen their company in the corporate world through various strategic investments or by adopting multiple measures like mergers or acquisitions or restructuring their business. Corporate finance ensures access to capital to a corporate. Not only that it aids the corporate's funding and also provides the tools necessary to allocate and consume the funds with the corporation to increase the value of the company. It also provides the legal and regulatory structure that needs to be adopted to make long-term decisions for the growth of a corporation. With this research, I aim to study the basic theory involved in corporate finance, including information about equity, debts, capital markets, valuation of corporates, etc. Further I want to analyze the types or modes of the corporate finance that exist. There are two major types of the corporate finance that work on the time for which the funds are allocated. The two divisions were short term and long term corporate finances. They further had various subdivisions too that allowed us to understand the nature and scope of the funds raised. Globally, implementing the corporate finance is easier in the developing countries as they have less severe laws which enable the outside money entry for the corporations. The developed countries are more structure and strict in their regulations as they have sufficient sources to generate funds. In this research I have elaborated on how the corporate finance system is there in India, USA and UK. This study emphasizes on the regulations and provisions that govern corporate finance along with authorities that regulate it. In this study I have further taken a comparative analysis of these three countries to know how the corporate finance regulations work, their impact on the capital market, and their challenges in each of these regions.

Keywords: Corporate, Corporate Finance, Corporate Finance Regulations, Comparative Analysis.

INTRODUCTION

Corporate Finance provides lifeline to the fledgling firms, as without funds, these corporations would not be able to grow and thrive. Even established businesses need financing for restructuring of corporate strategies. This helps the business to sustain a long term and grab huge market. For a corporation to implement corporate financing it needs to align its business goals with the laws governing the company's acts.[1] The word corporate finance deals with all type of business funding, capital assets with the company, and all obligatory actions adopted by the corporations to increase value of the firm. Additionally it is a process that aims to maximize the returns or profits for the investors.

Corporate financing includes debt or equity as sources of capital for the functioning or for investing purposes of the corporates. Other business forms such as partnerships or limited liability companies also raise funds through corporate financing. These businesses ensure their success through actively using funds cautiously and resourcefully by appropriately allotting funds to the business strategies that will yield the higher returns. Further, the surplus funds from profits are used to fund the long term projects of the company.[2]

In other words, corporate finance refers to dealing with the actions of capital organization and controlling so that the corporate can maximize the value of the company and increase the returns of shareholders. Through the tools under the head of corporate finance the corporations tend to carefully allocate their financial resources by balancing the risks and increasing the profitability of their corporation.

The needs for the capital investments for the corporation are evaluated with corporate finance. Through this evaluation the company projects the funding to be raised to meet the needs and futuristic goals of the corporation.[3] For the corporations to flourish they acquire assets to sustain the market. These assets are both fixed and current assets. The corporations in order to increase their value raise money and call for investments through varied sources. Funds are the utmost necessity without which businesses cannot think to grow.

The funding can be raised through both long term and short term debts. The primary concern of corporations under corporate finance is making considerable profits to enable the

[1] Corporate Finance, Bajaj Finserv, https://www.bajajfinserv.in/corporate-finance
[2] What is Corporate Finance?, Investopediahttps://www.investopedia.com/terms/c/corporatefinance.asp
[3] Corporate Finance, Clear Tax , https://cleartax.in/g/terms/corporate-finance

corporation to grow through cash inflow to the organization.

The capital received is further put in the expenditures of the corporations, like making an investment or paying equity or debts or to give the shareholder dividends.[4] All these financial activities concerning allocating funds to various expenditures are made by incorporating corporate finance methods and tools.

Chief financial officers (hereafter CFO) are the personals that overlook the funding of the corporates. They are responsible for allocating the funds to the right business operation that would increase the flow of funds, help to maximize profits and plans to generates returns on the investments of the. Along with CFO, the Board of Directors is responsible for making the major decisions that are related to the financial resources implementation.[5]

Under this paper I have tried to identify the importance of the corporate finance regulations in the corporate world. I have analyzed the history that influenced the evolution of regulating laws in the three selected countries. In this I have studied the need of the corporate finance regulations and it different modes. Further, to study the corporate finance regulations and its different modes in India, USA (Delaware) and UK. Additionally, I have analyzed the problems and challenges faced in the implementation of the regulations in the three countries taken for analysis.

Through this research I will analyze the corporate finance regulations in India, USA (Delaware) and UK. It aims to bring out the difference and similarities between the three systems of corporate finance regulations. It further elaborates on how these systems have evolved through time with the help of extensive case laws.

The paper further highlights the challenges that are put forth in front of the regulating bodies, also suggests what all necessary changes can be adopted to make the corporate finance system more efficient.

HISTORY OF CORPORATE FINANCE

The emergence of corporate finance dates back to 15th century in the European countries. "VOC" also famously known as Dutch East India Company was the first ever company to list

[4] Corporate Finance Overview, CFI,(https://corporatefinanceinstitute.com/resources/knowledge/finance/corporate-finance-industry/)

[5] Supra note at 2.

itself publically and to recompense dividends to its shareholders on a regular basis. Not only this, but the Dutch East India Company also the first joint - stock company to raise fixed capital. With the start of 18th century, London evolved as the epicenter of corporate finance throughout the world. During this time developments were observed in the forms of lending and investments. Further, in twentieth century there was an enormous increase in the common stock finances along with the share capital raised through listings in comparison to various other capital sources.

The present world of corporate financing is the result of influence from the developments in the USA and Britain with regards to financing and regulation of corporate financing.[6]

CONNOTATION OF CORPORATE FINANCE

As the present challenging world of corporate impulses all the corporations to actively grow their businesses in terms of operations or strategic development of their company; otherwise, their business cannot see the next light of the day. It has become the ultimate truth that corporate finance is the backbone of a growing business without which success is unlikely.

Funds are the utmost necessity without which businesses cannot think to grow. They are needed for a corporate to structure their business and give it a direction of development in this competing world.

Corporate finance deals with how the companies regulate their funds. Being subsidiary to finance, corporate finance deals with all the capital administration of the corporations as to how it is used in restructuring the organization or making investment or to implement the capital to the urgent needs of the corporation. Its working area includes how the capital structure of a corporation is utilized to increase its overall worth.[7]

A corporation undertakes corporate finance so that the shareholders receive the maximum value to their investment through thorough strategic planning of long and short-term goals for the corporate. The primary concern of corporations under corporate finance is making considerable profits to enable the corporation to grow through cash inflow to the organization.

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[6] Baskin, Jonathan & Miranti, Paul. (1997). A History of Corporate Finance. 10.1017/CBO9780511665219.
[7] Supra note 1

investment or paying equity or debts or to give the shareholder dividends.

All these financial activities concerning allocating funds to various expenditures are made by incorporating corporate finance methods and tools.[8]

Even when the established companies or corporates are considered, corporate financing assists them to strengthen their company in the corporate world through various strategic investments or by adopting multiple measures like mergers or acquisitions or restructuring their business. Corporate finance ensures access to capital to a corporate. Not only that it aids the corporate's funding and also provides the tools necessary to allocate and consume the funds with the corporation to increase the value of the company. It also provides the legal and regulatory structure that needs to be adopted to make long-term decisions for the growth of a corporation.[9]

PRINCIPLES OF CORPORATE FINANCE

To understand the working of corporate finance, getting to know the essential core principles is necessary. Following are the basic fundamental principles of corporate financing[10]:

1. *Investment Principle – choosing for the suitable domain to allocate financial resources.*

Under the investment principle, financial resources allocation is done in a way that they fruit efficient decisions. It states that when a company assigns its funds to the accurate choices, it opens new possible opportunities for the company. It ensures that the investments must be made with consideration of futuristic funds. The corporate finance is an umbrella term that involves various actions in context to the fund allocation of the firm. It involves valuing the return on a planned investment so that it can allot credit days to the customers. Corporate finance further deals with selecting markets to invest in, or companies that can be acquired or merged with.

2. *Financing Principle – pursuing the capital structure to fund the business*

Every business sustains on its capital, that is a generally a mix of debt and equity. Financial principle pursues to achieve a capital structure that demonstrates an ideal mix financial instruments which have a futuristic approach. This principle is used to make good financial

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[8] Sura note 2,at 5.
[9] Id at 4
[10] Principles of Corporate Finance, https://pages.stern.nyu.edu/~adamodar/New_Home_Page/background/cfin.htm

decisions that help businesses to have funds used optimistically. This principle helps to acquire the best value of the financial resources. An optimal capital structure allows the business to achieve its short term and long term goals.

3. *Dividend Principle- assigning the produced profits*

After the allocation of money is done wisely the company tends to earn money on its invested funds. This principle states that the company utilizes corporate finance tools to ensure the returns are rightly awarded to the investors and are used to pay off the debts. Under this principle, it is on the company to decide whether to utilize the surplus cash to pay off or use it to expand businesses. These decisions are made while considering maximum value of the business. Private and public corporations both deal with the dividend decisions variedly.

MODES OF CORPORATE FINANCE

The types of corporate finance ensure various methods through which a company can produce funds for its operations. The division of corporate finance is on the basis of the period for which capital is operated.[11]

The division is made under two major heads:

Types of corporate finance:

1.Short Term Corporate Finance:

These corporate finances are granted for one year or less. This type of funding is mainly for short phases and is approved only when the banks reject long-term finances. These loans are usually granted as one-time loans. These loans are mostly aimed to pay the interests levied on the principal amounts.

Short Term Corporate Finance includes under it :

i. Bank Overdrafts:

   The term overdraft means when from a bank account all money is extracted and the balance reaches to zero, this state of the bank account is called overdrawn. The corporations have a prior agreement that states the authorized limit of the account to be

[11] Types of Corporate Finance, Upgrad, https://www.upgrad.com/blog/scope-and-types-of-corporate-finance-everything-explained/

overdrawn. In case the overdraft is within the decided limit, the interest will be charged as per the prior agreed terms, however if the overdraft is more than the agreed limit then extra charges are charged and the company has to payback with the highest interest rates.

ii. Trade Credit:

A trade credit is a financial tool used in the business to business transactions. Herein, the client purchases any good while makes the payment to the supplier at a later scheduled date. The purchased goods get delivered as soon as they are bought but the monetary consideration against it is given in a period of time that ranges from 30 days to 60 or 90 days. For example: Car company offers a trade credit to 90 days or perhaps much longer as per their agreement. This type of corporate finance is basically the credit that a company provides to another to company to buy their products and services.

iii. Accrual Accounts:

All the businesses follow either one from two central accounting principles for their accounting/ bookkeeping systems, which are: accrual basis or cash basis.

But the frequently used system is the accrual basis method, in which expenditures and revenues are to be recorded as they occur, in spite of the fact that the payments/ cash or check are received or paid for the entry made. Sale in credit is the best example of the accrual accounts. Sale in credit is when sale is entered in accounting records each and every time bill are produced. In this the cash is not actually received when the invoice is generated. Similarly, in case of accrual account an expenditure is entered in the financial records of account when goods are ordered not when cash / check is actually been paid.

iv. Finance Lease:

A corporate finance wherein the company is the owner of an asset till the lease is repaid. For example, many companies own the functioning control over the assets only till the time payment planned is exhausted.

v. Operating Lease:

It is an agreement under which the company is enabled for the usage of a valuable asset although it cannot transfer legal rights of ownership of assets.

vi. Hire Purchase/Outright Purchase:

Under this corporations use their capital optimistically, rather than the actual purchase of products or equipment companies look at better options like leasing or renting. To make best utilization of the working-capital, it is cost-effective to leasing or renting particular assets. This totally depends on the mind-set towards assets ownership by the company. Nowadays, companies prefer to rent their assets over time, where it has an even cash-flow over the lease cycle.

2. Long Term Corporate Finance[12] :

These corporate finances are usually granted for one year or more. This type of funding is mostly for a long period and is more beneficial than the short-term finances as the interest rates offered are low, as well as the loan amount repayment has to be made over a long period of time that allows the corporations to fund long term goals. All these long-term loans have easy monthly installments, which don't cause a huge burden to the financial sources of the corporation.

The long term Corporate Finance includes under it :

i. Bank Loan:

Bank loan is types of corporate finance that every business prefers to choose. As bank loans tend to provide the companies with varied types of loans, ranging from medium to long-term loans. Banks provides the companies loans for a set fixed period / time, in which they have to make the repayment of the loan. The loan provided is for a time period like 3, 5, 10, 15 or 20 years after which payment is done with the interest rate on the principal amount.

ii. Financial Institution Loan:

The final institutions provide funding to companies not as loans but against the share ownerships in their business.

iii. Debentures:

This type of corporate financing is taken for medium-term to long-term financing. This generally undertakes the large businesses that borrow money which they return at a

[12] Supra at 11

fixed rate of interest. Debentures are commonly called as bond, notes, loan stocks which act as a certificate to the loan taken verifying that the business is liable to repay a certain loan amount with a fixed interest rate.

iv. Equity Issuance :

The method through which a business generates funds from people to continue its business functioning. Under equity issuance, a business/ company sells its stock or new equity to the investors. This includes both private sale and public sale. Under these two types of corporate finance investor can choose equity issuance, primarily general public offerings (IPOs) and the other as Secondary equity offerings (SEOs as FO).

v. Flotation:

Conversion of a private entity into public by issuing shares for the general public. This type of corporate financing ensures obtaining funds from external means rather than depending upon earnings and fresh projects for maximizing the corporation.

vi. Stock Dilution:

Stock dilution is also known as equity dilution, means when in a business the current shareholder's ownership decreases due the issuance of new equity by the company.

IMPLICATION OF CORPORATE FINANCE REGULATIONS: GLOBAL OVERVIEW

When we consider the global perspective, it is evident that corporate finance in developed countries is far more structured and standardized than in developing countries.

The developing countries have less stringent laws to ensure the external finance inflow for the corporations as the internal finance are not sufficient to sustain their financial markets.[13]

As the world has witnessed an era of globalization, it has become an obligatory development for countries to build regulations and institutions that can ensure the stability of the financial markets and can help in the growth of the corporates without the threat of failure and market

[13] Stephen D. Prowse, 1996. "Corporate finance in international perspective: legal and regulatory influences on financial system development," Economic and Financial Policy Review, Federal Reserve Bank of Dallas, issue Q III, pages 2-15.

insecurities.[14] For developing and third-world countries, the internationally generated funds act as a life savior for corporates.

It offers substantial financial sources for the corporations to exploit and put it on the path of growth and investments. Apart from the external finances, the corporations acquire funds through financial institutions, which are under great scrutiny of the laws provided by the regional institutions.[15]

The economic structures of the corporate firms have changed and evolved due to significant influence by the globalizing world. In this pandemic era, the central aim that motivates corporate finance is to maximize the value of a company to create market dominance. A significant shift from the traditional corporate financing of borrowing was seen after the 1990s to the modern capital issuance. This allowed conventional debt financing to be replaced by current equity financing.

IMPLICATION OF CORPORATE FINANCE REGULATIONS IN INDIA

India being a developing country had a traditional approach to raising funds for the corporate financial needs. This traditional approach depended more on the debt culture rather than raising money through other sources. This led to the downfall of the companies in contrast to their original motive of growing the corporation. The Indian Financial system was more dependent on the external cash flow to regulate its requirements. Adding to this the India financial system did not have proper regulatory systems. Post the 1990s; India witnessed huge changes in its regulating system and authorities. The laws regulating the financial market and the corporate finance of the companies became severe. The present Indian financial system is much more structured system that provides with the regulations and provisions that regulate the flow of capital throughout the country. The financial system is regulated by regulating authorities. The Reserve Bank of India (RBI) is the major supervisor and regulator of this financial market.[16]

Along with the RBI there are various financial institutions that regulate and supervise the economic sector. Further in context to the corporate finance, Non- Banking finance Companies

[14] Brown, P., Michayluk, D., Stickney, C., Harrington, D. and Palepu, K., (2008) Corporate financial analysis. South Melbourne: Cengage Learning.

[15] Booth, L., Aivazian, V., Demirguc-Kunt, A. and Maksimovic, V. (2001), Capital Structures in Developing Countries. The Journal of Finance.

[16] Errol D'Souza. "Structure of Corporate Finance and Corporate Governance in India." Economic and Political Weekly, vol. 35, no. 48, Economic and Political Weekly, 2000, pp. 4196–205.

(NBFCS) along with the Department of Company Affairs (DCA), National Bank for Agriculture and Rural Development with RBI look into the banking tasks of the cooperatives.

In addition to the above regulating authorities Securities and Exchange Board of India (SEBI), under the Securities and Exchange Act of 1933 was established to standardize the securities, mutual funds and the overall capital market. The aim of this act is also to regulate the issuers of securities along with all the activities in relation to the security market.

USA (DELAWARE) APPROACH TO CORPORATE FINANCE REGULATIONS

The financial system in the USA is much more structured than in the developing countries. Its banking system that regulates the flow of cash in the financial markets has strict laws regulating them than those in the developing countries. But when the securities market is concerned US has a more liberal approach to it than in the developing countries.[17]

Over the past decade the funding system in US has seen a shift from the banking dominance to other finance companies or savings institutions for the short term finances. On the other hand the securities market has shown tremendous growth in terms of the long term capital funding in the USA. The roots of the corporate finance in the US are found in the Delaware Corporate Law. Under the US stock exchange more than half of the publically trading corporations have been incorporated in the Delaware's authority.

Delaware has also topped the list for the out of state incorporations in the USA. Delaware has been acknowledge worldwide for being favorable nation for the corporations to step foot in. This was seen as the result of Delaware flexible statues that allow the investors cost effective business compared to the other strict areas of the USA. Delaware offers the businesses the value for money as it has balanced corporate laws that regulate its financial market. There are regulations that instruct provisions to protect the investors from any loss when generating funds for a corporation.

A business may have insufficient funds to cover its processes. This is covered by the concept of undercapitalization. Under this grave personal liability for the shareholders of a corporation can be invoked. In accordance to the Delaware laws, court may "pierce the corporate veil" exposing its shareholders to personal liability, if the funding is not enough for the corporation

[17] Financial Regulation in Delaware, Ballotpedia, https://ballotpedia.org/Financial_regulation_in_Delaware

processes and liabilities.

In ***Minton v. Cavaney,***[18] court explained the undercapitalization concept. Herein, the court observed that "the equitable owners of a corporation are personally liable …. when they provide inadequate capitalization …" They stated that the proprietors of small businesses must have adequate capitalization to function the business. Further it held that proper capital fundingis needed to cover possible future accountabilities so that the shareholders don't suffer later. The court emphasized that a legal framework of regulation needs to be provided for the protection of the directors, and also to controls the shareholders. They added that the legal framework is needed because this will be supporting the growth of the company to its maximum value. It also has shielding provisions to protect the investors from any loss when generating funds for a corporation.

UK APPROACH TO CORPORATE FINANCE REGULATIONS

The era of corporate finance started in the 15th century from European countries. The first ever publically listed corporation that was incorporated was the Dutch East India Company. It was the first corporation to adopt corporate finance, to generate funds, pay dividends etc.[19] From the 15th century to the present 21st century, UK has evolved tremendously in terms of corporate finance. The foremost object of the regulations in UK is to assure that the funds available with the corporate and fully utilized before the new funds are raised. It also ensures that the funds that are aimed to be generated are utilized to make major investments, develop and grow the company through strategic steps that may include mergers, acquisitions etc.[20] The UK's corporate financing is influenced by a number of legislative regulatory and other sources. The laws relating to corporate financing are majorly formulated to ensure that the funding of the corporations is done within the scrutiny of the laws.

The crucial legislation that governs it is the Companies Act 2006 (the Companies Act together with the Listing Rules and the Disclosure Guidance and Transparency Rules (the DTR) made by the Financial Conduct Authority (the "FCA) . The Companies Act is the main legal manual for all UK companies.

[18] Minton v. Cavaney, 56 Cal. 2d 576 (1961)
[19] https://www.iasplus.com/en-gb/resources/other-regulatory/company-law
[20] The future of the financial regulation in the UK, Shearman, https://www.shearman.com/Perspectives/2021/05/The-Future-of-Financial-Regulation-in-the-UK

Further, other regulations that are focused on the corporate financing in UK are the UK Corporate Governance Code the UKCG Code for associates and the UK Stewardship Code for institutional investors, each of which is currently issued and administered by the Financial Reporting Council. The City Code on Takeovers and Mergers the Takeover Code is also relevant when the subject of a takeover or merger transaction occurs.

The upcoming National Security and Investment Bill will increase the UK Government's powers to scrutinize and arbitrate in certain takeovers, mergers, acquisitions and investments that give rise to a national security risk. Also, companies need to consider the application of guidelines produced by investor protection groups, such as the Investment Association and the Pensions and Lifetime Savings Association. Although these guidelines are non-binding, investors in UK companies increasingly use them as guiding principles.

By the benefit of the Listing Rules, the UKCG Code applies to the companies that have a supreme listing of equity shares in the UK. The Listing Rules necessitate companies to state in their annual report as to how they have applied the UKCG Code and to explain and justify any areas of non-compliance. Whereas the Stewardship Code, elaborates good practice for institutional Investors mainly asset owners, asset managers and service providers when engaging with UK listed companies

CONCLUSION

Corporate finance deals with how the companies regulate their funds. Being subsidiary to finance, corporate finance deals with all the capital administration of the corporations as to how it is used in restructuring the organization or making investment or to implement the capital to the urgent needs of the corporation. Its working area includes how the capital structure of a corporation is utilized to increase its overall worth.

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As the world has witnessed an era of globalization, it has become an obligatory development for countries to build regulations and institutions that can ensure the stability of the financial markets and can help in the growth of the corporates without the threat of failure and market insecurities. For developing and third-world countries, the internationally generated funds act as a life savior for corporates. It offers substantial financial sources for the corporations to exploit and put it on the path of growth and investments. Apart from the external finances, the corporations acquire funds through financial institutions, which are under great scrutiny of the laws provided by the regional institutions.

The Indian Financial system was more dependent on the external cash flow to regulate its requirements. Adding to this the India financial system did not have proper regulatory systems. Post the 1990s; India witnessed huge changes in its regulating system and authorities. The laws regulating the financial market and the corporate finance of the companies became severe. The present Indian financial system is much more structured system that provides with the regulations and provisions that regulate the flow of capital throughout the country. The financial system is regulated by regulating authorities.

The roots of the corporate finance in the US are found in the Delaware Corporate Law. Under the US stock exchange more than half of the publically trading corporations have been incorporated in the Delaware’s authority. Delaware has also topped the list for the out of state incorporations in the USA. Delaware has been acknowledged worldwide for being favorable nation for the corporations to step foot in. The UK's corporate financing is influenced by a number of legislative regulatory and other sources. The laws relating to corporate financing are majorly formulated to ensure that the funding of the corporations is done within the scrutiny of the laws. The crucial legislation that governs it is the Companies Act 2006 (the Companies Act together with the Listing Rules and the Disclosure Guidance and Transparency Rules (the DTR) made by the Financial Conduct Authority (the "FCA) . The Companies Act is the main legal manual for all UK companies.

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