

A series of interfaces with the entire range of stakeholders of Corporate Governance has given rise to a number of questions, issues, concerns and, happily, some suggestions and solutions. In each issue of this monthly newsletter, we will be getting two experts to articulate their thoughts on a specific topic. The first issue is now with you. Needless to add, we welcome your feedback at d.garg@excellenceenablers.in.

Editor

INDEPENDENT DIRECTORS – ENDANGERED OR EMPOWERED?

With the disquieting number and variety of corporate scandals having shaken the trust of ordinary men and women in the institution of the joint stock company as a vehicle of economic growth, lawmakers and regulators have sought to put in place structural and systemic solutions. The emergence of the institution of the Independent Director, as an instrumentality to promote sound Corporate Governance, has been a significant consequence.

When the concept of Independent Directors originally surfaced the predictable response of promoters and management was to seek persons with whom they had a high comfort level. The Independent Directors saw their role as largely confined to making up the number to address the arithmetic of Board composition.

With the extraordinary range of responsibilities heaped on them by law and regulations, Independent Directors have realised that there is a price to pay for passive presence. Regulatory interventions are becoming more in-depth, intrusive and inquisitive. From sleeping (and occasionally snoring) in boardrooms, they have to sit up and take notice and stand up for principles. In the process, are they empowered or endangered? Nawshir H. Mirza and Zia Mody provide their insights.



M. Damodaran
 Chairperson, Excellence Enablers
 Former Chairman, SEBI, UTI and IDBI

Independent directors are in the fortuitous situation of being equidistance from all stakeholders. They are, therefore, the best constituent of a board to champion the interests of those stakeholders who are not represented around the boardroom table. They are expected by law to be the voice of the silent majority who are affected by their company's activities. This is a tremendous responsibility but it also provides them with tremendous power: Not merely to protect minority shareholder interests, but also the interests of the community, future generations, the environment, vendors – stakeholders whose interests are often overlooked in the blinkered pursuit of shareholder value. Few have yet applied their minds to how they can discharge this responsibility, most continuing in the old strain of "adding value" of the traditional kind – increased profits. Most independent directors assume a passive role, one in which they react to ideas conceived of by the controlling shareholder or his appointed management. So, whilst society's expectations, as captured in the law, are of independent directors who act as defenders of stakeholder interests actively, most of them are unaware that times have changed very rapidly.



Nawshir H. Mirza
 Independent Non-Executive Director on Boards

Herein lies the danger to their continued existence. Companies are made the villains for many social ills, from obesity to climate change, and the chorus for reigning in at least the more egregious of their activities rises louder. The only organism inside companies to prevent such behaviour is the independent director. They act or they go.

The peace of mind of an independent director is today a rare commodity. She is charged with being the moral gateway for the benefit of public stakeholders. Independent directors wear different hats, often sitting together uneasily. Mindful of the many regulators that, in hindsight, call into question their actions, they often overdeliberate the many decisions taken in good faith at a given point of time. These could well be viewed quite differently later by regulators keen to demonstrate their anxiety to serve the public interest. No longer is it enough for directors to be not present at a particular meeting to absolve themselves from having not participated in the decisions. They have to stand up and say no and object once they get the minutes and read them. So what are they really supposed to do? Upset the decisions which would have been deliberated and thought through when they were not present and put decision-making in flux simply because there is nervousness about their being questioned about what they did, years after the decision was taken. Is there an anxiety about drawing comfort from and accepting the integrity of collective decision making and moving on? Do Independent Directors have to concentrate on the 'cover their tracks' agenda more than 'grow the company' agenda?



Zia Mody
 Managing Partner, AZB & Partners

These obvious worries apart, the good news is that the independent director today is clearly more empowered. He has a clear role to play. He can change the course of board management in the best possible way. Governance then becomes far more meaningful and not mere lip service.

More empowered? Yes.

More endangered? Possibly.

Do let us know of any specific issues you would like to see addressed in subsequent issues.