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Expert Expressions
Corporate Governance Demystified

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It is that time of the year when value –adding Boards begin to set in motion the evaluation process that determines what they need to do better , and what more they need to do. The time for being prisoners of a pedestrian questionnaire that prompts predictable responses is over. Here is hoping 2018 will see more of constructive conversations that challenge Boards to raise the Bar of Governance and performance. Happy New Year.

Editor

SEEING VALUE IN EVALUATIONS

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"I was invited to join the Board. I did not apply for this position. Why should I be evaluated?"

To any serious student of Corporate Governance, it must seem strange that the evaluation of Boards and their constituents would need justification. The Board of Directors is the instrumentality through which it is sought to ensured that the company is run in a manner consistent with the interests of all stakeholders. That being so, it stands to reason that the competence and commitment of the Board and its members must be periodically evaluated.

The overly prescriptive arrangement for evaluation, detailed in Schedule IV of the Companies Act, 2013 has raised the hackles of many corporate chieftains. The resultant empty exercises that masquerade as Board evaluation are not much different from giving a dog a bad name before hanging it.

In this background, a roundtable was organised by us for invited participants to deliberate on "Seeing value in evaluation". The major takeaways from that candid conversation are captured in this newsletter.

The purpose, although obvious, of Board evaluation, is a good starting point. With the Board of Directors, as the ultimate arbiter of a company's destiny, it is non-negotiable that its performance as an entity, tasked with superintendence, direction and control, should be dispassionately assessed. There is, presently, near unanimous acceptance of the need to move away from "evaluations" that use unimaginative questionnaires and lead to politically correct responses. An honest appraisal led by the Chairperson of the Board or of the NRC is clearly the course of action to embark on.

Notwithstanding the high maturity level of the average Board member, it is important to recognize and respect sensitivity while undertaking the exercise of evaluation. The inability or unwillingness of Board members to accept deficiencies, when pointed out, should not lead to a suboptimal exercise that shies away from working on areas for improvement.

On the question whether outside expertise is required for an honest objrctive assessment, there is presently no agreement. Concerns of confidentiality are often mentioned as reasons for not inducting external evaluators. This is obviously a matter that can be addressed by putting in place an appropriate non-disclosure agreement.

The related issue, and one that is most critical, is the expertise and experience that an external evaluator brings to the process. Mere theoretical knowledge or a text book approach will yield no worthwhile outcome. It is imperative that the external evaluator should have considerable boardroom experience as also the maturity to carry on a meaningful conversation with the members of the Board and other possible respondents.

Reengaging the same expert for many years on the trot, is an avoidable preposition. Familiarity, over time, and the pulling of punches, will translate to conclusions that the Board likes to hear and not what the Board needs to know. To obviate this shortcoming, it could be considered whether external experts should be rotated out after three or four years.

Yet another approach could be for evaluation to be done in-house every alternate year, and by an outside expert every alternate year. This could enable the benchmarking of the in-house exercise.

While companies have undertaken evaluation of Boards and, on occasion, of the Board Committees, some of them have avoided evaluation of individual directors and the Chairpersons, on the specious plea that it could lead to a collegial and cohesive Board being destabilized. In omitting this vital aspect of evaluation, such companies are clearly in default of legal and regulatory provisions.

Across the board, the question that remains unaddressed is "What happens after evaluation?" It is necessary to remember that evaluation is a means to an end, which can be achieved only when feedback is given to those who have been evaluated. This must be done, preferably in one-on-one conversations, by the Chairperson of the Board or of the NRC. Failing this, the entire process would be sterile. The day is not far off when the investors will factor in an evaluation premium. Equally, when things go wrong, and a Board is in the dock for sleeping on its job, two questions will necessarily arise -"Who did the evaluation?" and "How was it done?' Are the answers, my friends, blowing in the wind?