

SEPARATE MEETING OF IDs – RITUAL OR RESULT ORIENTED? September 25, 2020

SUMMARY OF DISCUSSIONS

Background

*Schedule IV of the Companies Act, 2013 (the Act) provides inter alia that “independent directors of the company shall hold **at least** (emphasis supplied) one meeting in a financial year, without the attendance of non-independent directors and members of management.” It goes on to provide that the meeting shall review the performance of non-independent directors, the Board, and the Chairperson, and assess the quality, quantity and timeliness of flow of information between the company management and the Board.*

Some companies have consciously chosen not to take note of the words “at least”. They have one perfunctory meeting every year. Some others have chosen to ignore the words “without the attendance of non-independent directors and members of management”. They have the Company Secretary (a KMP) participate in the meeting(s), ostensibly to keep notes and draft minutes. The discussion at such meetings amount to no more than going through the motions. At the other end of the spectrum are companies that have the separate meetings before or after every Board meeting, and sometimes, independent of Board meeting dates, to address issues of importance and urgency.

Can this forum of a separate meeting of IDs have life breathed into it, to make it relevant and meaningful?

DISCUSSIONS

- There is a need to strengthen the institution of IDs. Depending on which side of the divide we are on, they are considered to be either punching bags or freeloaders.
- The forum of separate meeting of IDs has been created by the Companies Act, 2013, for a very specific reason, which is to undertake Board evaluation. However, with the forum having come into being, some companies have breathed life into it, and are making it add value to the deliberations at Board and committee meetings, as well as to what happens outside of meetings.
- Three basic questions relating to this forum need to be addressed -
 - What is happening in these meetings at present?
 - What should be happening in these meetings?
 - How can companies/ IDs move from what is happening in these meetings, at present, to what should be happening?

MEETINGS OF IDs

- In 2014, Chairpersons of Boards, both promoters and professionals, were very apprehensive of this forum. Now, Chairpersons and Boards are past that stage of apprehension.
- While a number of persons believe that the attitude of the promoter/ Chairperson plays an important role in determining the effectiveness of this forum, others believe that it depends more on the intent of IDs, since, if IDs want to have such meetings, with a proper agenda, no one can prevent it from happening. Also, if IDs speak one-on-one with the promoter, the latter is likely to see reason in matters that surfaced in this forum.
- While some companies have only one such meeting in a year, others who see value in this forum have meetings of IDs, even when no Board meeting is scheduled and discuss some important items. Ideally, it should be convened as often as the need is felt.

- Boardroom culture and the tone at the top are important factors in determining the need for such meetings.
 - With an open, collaborative and constructive tone at the top, the need for such meetings is lesser since IDs can speak their minds in the boardroom. Board and committee deliberations also then are reflective of this, and they perhaps do not need an additional mechanism in the form of separate meetings of IDs to voice their views and concerns.
 - In this, the role of the Chairperson is also very important. She should proactively encourage feedback and constructive conversations in the boardroom. Blindly appreciating the management should be discouraged.
 - Senior/ older IDs too should play a role, and actively encourage the newer IDs to be intellectually honest.
- A number of factors play an important role in deciding the effectiveness of such a meeting.
 - The process of selection of IDs, and how independent they are in relation to the promoter, will play an important role in determining the robustness of such a forum. If IDs have personal agendas, this forum cannot be effective.
 - If the intention of IDs is to effect improvement, it will play a huge role in deciding the effectiveness of these meetings. If IDs do not express themselves for fear of rocking the boat, these meetings will not be effective.
 - The role and independence of the Nomination and Remuneration Committee (NRC) will also play an important role since that will decide the true independence of the Board.
 - It is felt that if the Board and committee meetings of a company are effective, this forum too would be effective.
- Companies that have more than 1 meeting in a year, have these meetings scheduled at different times.
 - In some companies, IDs meet before the Board meeting to discuss any issues or concerns that they may want to flag in the Board meeting.
 - In some companies, IDs meet after every Board meeting. The focus of these meetings is not on the agenda items, but on processes. The intent is to improve processes.
 - In some others, the entire Board meets post every Board meeting to see if any issue which had arisen during the Board meeting needs to be discussed.
 - In some companies, IDs meet before the Board meeting to discuss any issues/ concerns, and again after the Board meeting to give feedback to the Chairperson.
- It is felt that the timing of the meeting is not important. The meeting should be focussed on improving processes, and not on specific agenda items.
- Some companies have also started organising dinners after quarterly Board meetings with the participation of Board members and top management persons, in some cases along with their spouses. The focus there is on the entire team. This helps IDs see the Board and the management as having shared objectives and concerns, and promotes teamwork. Such dinner meetings are not meant to focus on quarterly numbers.

WHAT IS DISCUSSED IN THESE MEETINGS?

- In some companies, Board evaluation is the only agenda for these meetings.
- However, a number of other important matters can be discussed in such meetings.
 - Board agenda should ordinarily not be discussed in such meetings since all Board members should be present when it is discussed. However, items such as the functioning of the Board, team work etc can be discussed in this forum.
 - Every Board has persons who are hesitant to express their views. Some Boards have persons who cannot accept the candour of others. This forum can help address this gap.
 - Some IDs may not be comfortable with the outcome of some deliberations in the Board or committee meetings. That can be brought up in such meetings.

- Some sensitive topics / ideas can be discussed in such meetings, and conveyed to the top management/ Chairperson of the Board. Forward looking sensitive questions or anticipatory issues, such as on risk, persons, succession planning etc, which are sometimes not raised in the boardroom, can be raised here. Further, the tone at the meetings, early signs etc can be commented on by IDs.

WHO SHOULD LEAD THESE MEETINGS?

- Lead ID (if there is one) or senior-most ID can act as a coordinator for these meetings, and set the agenda.
- Chair of Audit Committee (AC) and Chair of NRC too have important roles to play since, in those committee meetings, important items are discussed. In AC meetings, issues such as outcome of internal audit, behavioural issues, managerial controls etc are discussed. In NRC meetings, issues such as managerial effectiveness, culture, succession planning etc are discussed. All these topics deserve the attention of IDs, and should be discussed in this forum. Accordingly, in the absence of a Lead ID, these two Chairs can drive the agenda of such meetings.
- An ID, who is also the Chairperson of the Board, should be a part of such meetings since these meetings are more than just being about Board evaluation. She need not Chair such meetings as it will be chaired by the senior-most ID. Issues which are important to the functioning of the Board and the committees are discussed in such meetings, and so being an ID, she should be in the loop.

FEEDBACK FROM THESE MEETINGS

- The Lead ID or the senior-most ID can give feedback, including on actionables, to those concerned, post the meeting.
- Chairperson of the Board/ promoter/ CEO is given feedback. This is an open forum where IDs can speak freely first to the promoter, without the presence of the CEO, and later the CEO can be invited. Companies that have been having one-on-one conversations between the Chairperson and the IDs have found it to be very helpful. The receptivity in such meetings is high since they are off-line, and therefore there is no threat perceived.
- Over a period of time, Chairpersons and CEOs have become more encouraging of such meetings since they have realised that these meetings would not focus on finding faults, but on improvement.
- While some IDs feel that there is no need to write minutes of such meetings, since a number of sensitive issues are discussed, others feel that the important actionables arising from the meeting should be noted, since memory can fade with time. If the approach that minutes should be a record of decisions, and not of discussions, is followed for such meetings, it can work.
- In case recommendations of IDs are not being followed, the minutes can be presented to the Chairperson of the Board/ to the CEO. Ideally, these should be mentioned in the Action Taken Report (ATR) of subsequent meetings so that the Board can follow up on these points.
- Minutes should ideally be noted either by the senior-most ID/ Lead ID or by any Director, designated to do so.

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