excellence enablers
CORPORATE GOVERNANCE SPECIALISTS
(AN M. DAMODARAN INITIATIVE)

COMPANY SECRETARIES
PIVOTS OF THE BOARD

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INTRODUCTION TO THE PROGRAMME

Even though law and regulations refer to Company Secretaries (CSs) as Key Managerial Personnel (KMPs), there is no clear understanding among many persons on the role and responsibilities of the CSs. This interaction was intended to get CSs to articulate their thoughts and concerns on important matters central to the functioning of the company. What follows is a faithful rendition of the views expressed, in the words of the panellists and the participants.

The views expressed in this report are those of the panellists and the participants, and do not necessarily reflect the views of Excellence Enablers Private Limited.

SESSION 1: "MINIMUM INFORMATION" ON RPTs

Session Introduction

From time to time, SEBI has made increasingly prescriptive provisions relating to Related Party Transactions (RPTs). The crowning glory of these efforts was an extraordinarily detailed itemised prescriptive template that SEBI wanted all companies to put in place while seeking approval of the Audit Committees and shareholders for such transactions. The problems that the standards gives rise to are plenty.

Panellists for the session

Mr. Narayan Shankar
Former Company Secretary
Mahindra and Mahindra

Ms. Neerja Sharma
Company Secretary &
Chief Compliance Officer
InterGlobe Aviation

Mr. Sanjeev Grover
Company Secretary
Maruti Suzuki India

Mr. Satwinder Singh
Founder & Managing Partner
Aekom Legal

Question

Originally, Clause 49 of the Listing Agreement dealt with listing requirements. It was subsumed in SEBI LODR Regulations, 2015 (LODR), circulars, master circular on RPTs, and the norms by the Industry Standard Forum (ISF). The emphasis is on greater transparency, accountability, and minority protection, which are concerns that the Regulator has always had. Standards on minimum information on RPTs has 88 questions. What is the need for the new standards and what is its objective?

The stated objective of the industry standards on RPTs is to standardize the format for minimum information to be provided to the Audit Committee or the shareholders for review and approval of RPTs. The objective seems to be to seek greater transparency, and accountability, to ensure that there is possibly a prevention of conflict of interest by setting guidelines to identify and manage conflicts of interest that may arise from RPTs, and thereby protecting the interest of the minority shareholders. The master circular of November, 2024 had provided a very broad framework, while the new standards are more prescriptive and detailed for various scenarios and types of transactions. The new norms have introduced stricter thresholds for disclosure, thereby possibly enhancing the rigor of compliance. The role and the expectations from the Independent Directors (IDs), the Audit Committees, and the KMPs has also become a lot sharper. The introduction of the standardized format is obviously expected to bring in uniformity of practice, not leaving room for individual interpretations.

However, the standards have possibly been drafted from a place of lack of trust. India already has a very robust regulatory framework around RPTs. Companies have been strengthening their internal systems and processes to make sure that when something is put up for approval, there is enough rigor in the process of examination.

One of the clauses in the circular states that “The industry standards forum shall take into consideration the feedback received for simplification of the industry standards and release the same in a time-bound manner to meet the revised guidelines.” So, there is hope.

Question

Why was there a need to complicate the RPT regime by dividing disclosures into those relating to comprehensive, limited, and minimal disclosures? Were the existing regulations not enough? Also, SEBI had taken out a procedure for amendments, which spoke of public consultation. These changes skipped that process too.

It is believed that in a number of instances, IDs themselves went to SEBI stating that they were getting inadequate information. Also, the information coming from different companies, in relation to RPTs, differed. There was no standard template. NFRA too has begun to question auditors on documents relating to the basis for arms length pricing. Hence it was felt that in a disclosure-based regime, it was a good idea to mandate the minimum information that ought to come to the Audit Committees. The norms have not

changed the definition of Related Parties (RPs) or RPTs. The requests made to the ISF were tabulated, and then the norms were decided. The increased disclosures are likely to give IDs a better grasp of what is happening, since Audit Committee would have to specifically record comments.

The logic behind comprehensive, limited and minimal disclosures was to ensure that in all instances proper disclosures are made by promoters and RPs, and yet there is no overburdening while making disclosures.

It is felt that ISF is not a public authority, and hence public consultation was not done. However, change may be in the offing. CFOs are sending their comments on the norms to SEBI, and the 3 industry chambers are likely to consider them. A number of CFOs believe that only a limited number of persons got represented in these fora and hence the norms should be open for comments.

Question

Why is there such an increased onus on Audit Committee, and in turn the IDs, since only IDs approve RPTs? Audit Committee has to provide its views on a number of items relating to RPTs, including on the valuation report and the fact that the promoter will not benefit from the RPT. Further, with all the documents coming to the committee, and in turn the Board, the immunity under Section 149(12) of the Companies Act, 2013 for IDs will not be available, should anything go wrong.

There is no additional onus on IDs. The responsibility of Audit Committee is to ensure that the transaction will not be prejudicial to the interest of the company. There is no additionality being introduced.

Section 149(12) of the Companies Act, 2013 states that ID will be held responsible only for any acts of omission or commission, which he/she came to know through a formal Board process, or which were done with his/her connivance or where he/she did not act diligently. The same will apply for these standards. The standards are intended to ensure that the IDs are aware of the Board processes, which include the information that came to the IDs, and the right questions that the IDs ought to have asked. In the case of Satyam, the IDs mentioned that they received a 1000 page document at night, and next morning, they were to decide on Maytas. That time, they were in a class action suit, which was filed against the Audit Committee members. They were given the benefit of doubt by a US Judge of being victims, and not perpetrators of the fraud. Today, the regulators and judiciary are not as liberal. A Director needs to prove with documentation that he/she is a victim. The process followed by the Director is important. So with certifications from KMPs, the Audit Committee can form an opinion on the RPT.

Would an ID be absolved based merely on the certificates given by the KMPs? Or does the Audit Committee have to involve independent consultants? This remains to be seen.

Question

Is there a need to change the materiality threshold since Rs 1000 crores is not as large an amount for some of the larger companies in India? Also, a number of companies have formed Joint Ventures (JVs) for ease of operations. In case an urgent approval for an RPT is required, would the details required not cause unnecessary delays? Would then ratification of such RPTs be permitted? What are the practical challenges in implementing the norms?

The materiality threshold of Rs 1000 crores needs to be revisited since a number of bigger companies have much higher consolidated turnover. As per the Linde India order, the Assessing Officer of SEBI has taken a view that material RPT means sum total of all the transactions with one RP. Then, the need for taking individual approvals, as per LODR, is not clear. The order is under review now.

When regulations were working smoothly, was it necessary to constitute a forum because there were some complaints? There is a cost in getting the additional information. Big companies have multiple RPTs, including though JVs. The JVs were setup with some business logic and on the basis of some agreed ownership pattern. Getting all the information as per the norms, including 3 bids, for each RPT, is not practically possible. There could also be a situation when if the information is not available, an ID may not vote on an RPT. The Regulator should consider carve outs for at least the well governed companies.

Royalty and dividend are not comparable. Also the suggestion that companies should focus on R&D, to reduce royalty spend, cannot work for all companies.

In order to follow the norms, in some companies, cross functional teams have been setup. However getting 3 bids is proving to be a challenge. Also, with regard to certificate from KMP, the basis on which the CEO has to certify is not clear. Also what process should be followed is not clear. In addition to the certificate, there is also a need to justify to the Audit Committee that the transaction is in the best interest of minority shareholders. The whole process has big gaps, when a company tries to implement the norms.

With regard to royalty, there are confidential agreements between parties, which cannot be disclosed at times.

Question

There cannot be one set of standards for all industries. If some IDs felt that they are not getting enough information, could not a better solution have been devised?

It seems that the norms stem from a lack of trust, and so more prescriptive arrangements are being put in place. RPTs intend to address conflict of interest. There were two requirements for RPTs, namely, the transaction should be in the ordinary course of business and it should be at arm's length. These are the 2 questions that IDs on Audit Committees are expected to ask. If IDs complained to the Regulator about lack of information, the Regulator should not have entertained such complaints since it is for the Directors to get the information that they require from the management.

The standards envisage getting a peer group, and in the absence of this information, to ask the analysts. If a company is unable to find its peer group, how would analysts be able to create a peer group, and generate this information? Audit Committee, sitting in judgement on a valuation report prepared by experts, is also unlikely to throw up any well-informed conclusions.

It is going to be difficult to have RPTs approved because of the information overload being expected to be complied with, and the resultant overload on KMPs and Audit Committees. The Audit Committee members are not going to put their signature on something which is incomplete information. There would also be a huge amount of time of management that would be spent on collecting this information. Is this information contributing in a constructive way to the decision? The answer is no. Somewhere there should be some serious rethink about what is it that is being expected.

There is a need to revisit the norms in totality, and to rewrite them in simpler language, to address one question – Is the Audit Committee in a position to ensure that there is no conflict of interest? And then it should be left to the Committee to ask for information that is relevant. If the Board or the Committee are to bring experts for every matter, there is no need for Directors. A Director may not be an expert, but is expected to have the ability to think logically, to ask the right questions, and to seek additional information.

Question

Do these norms expect Audit Committees to become akin to executive committees?

No. There is a need for a more engaged Audit Committee.

Question

Should not there be separate rules for non-executive promoters, who are not involved in day-to-day operations?

One recommendation being considered is whether promoters, who are non-executive, should be asked to certify only those transactions where they are interested, and not all transactions, specifically where the promoter is not part of management.

SESSION 2: FACILITATING DECISION-MAKING BY THE BOARD

Session Introduction

A CS has to manage the expectations of his/her Board, Directors, and Chairperson, and ensure that decision-making is facilitated.

Boards

There are a number of Boards which are value-destroying, some Boards which are value-neutral, and a few which are value-positive. A Board is central to the way a company conducts its business. However, the Board does not conduct business. It is managements that run companies. Boards ensure that managements do their job well. The Board is critical because the shareholders and other stakeholders look to the Board to ensure that their interests are addressed. Owing to decades of distrust of promoters, shareholders feel that there is a need to look at the what is happening a little closely. Therefore, the Board is critical.

Directors

There are Directors and Directors. Some come prepared. They ask the right questions. They speak only when they have to speak, and contribute consciously in a very constructive fashion to decision-making by the Board. At the other end of the spectrum are Directors who come unprepared, and do not even open the agenda documents. Occasionally, they would go through those during the Board meetings while the discussions were on. Directors fall into two categories, there are those who have something to say, and equally, those who have to say something. There are Directors who have domain expertise (as opposed to domain familiarity) which is a double-edged sword because there would be the tendency to second guess the CEO on operational matters.

Chairpersons

It is believed that if somebody is appointed the Chair of a Board, he/she hits the ground running. He/she has what it takes to lead the Board. There are Chairs who are lost in the process of chairing Boards because they are not prepared for the responsibility of chairing a Board, not being told by someone what you need to do, and what you should not do. This results in a "free for all" in the boardroom, which is not good for decision-making.

Company Secretaries

In this kind of background, the one person who is flying the flag of good processes, good practices, good governance, and conduct of business is the CS. It is not the easiest of jobs. Ensuring disciplined conduct by old people, many of whom are past their sell by date and should be sitting at home, but are in boardrooms, thinking that they are contributing to the running as a company, is not easy.

Panellists for the session

Mr. M. Damodaran
Chairperson, Excellence Enablers; Former Chairman, SEBI, UTI & IDBI

Mr. Pramod Kumar Rai
Company Secretary & Compliance Officer
Nestle India

Ms. Savithri Parekh
Company Secretary & Compliance Officer
Reliance Industries

Question

What do you do as a CS to ensure that Boards deliver on what they are tasked to do?

Quality of agenda notes

The Companies Act, 2013 specifically mentions the details which ought to be given in explanatory statements. Secretarial Standards mandate circulation of agenda papers at least seven days prior to the meeting. However individual companies decide how governance standards should be developed - What would be given, and how it would be given. Having a legal provision that says notes need to be given, provides limited help. Companies may give a half page note or a three page note with a half page executive summary. This is left to the CS. It is not about quantum of information, but the quality of information, and how exactly it is presented. All the information should not be presented at the meeting, with no pre-reads, because this will cause information overload, and will not lead to informed discussions.

Sequencing of agenda items

There must be a clear order in which agenda items would be taken up at the meeting. The ones which require maximum discussion should be placed first, because they are the items on which there would be active discussions. Only those items for noting, where a Director may have an observation, should get priority in sequencing. LODR has given a laundry list of items which have to be placed before the Board for noting. If there are discussions on each item, and the Board does not follow reporting by exception, a lot of time would be spent on noting items alone, and the Board will not have time to add value to the decision-making process.

Balance information overload

Where there is an information overload, it is necessary to prioritize. Have an agenda with red, amber, and green classification. Only the red ones are to get discussed, and the green ones are for information. Amber is for raising questions, if there are any specific responses required from the team. To make this work, a CS should ensure that the operating team is available to answer all the questions which are marked red.

Meaningful discussions would happen if the person handling a particular issue is present in the boardroom. It will get implemented only if persons who are supposed to implement are present.

Promote intelligent discussion on a proposal

It is the CS who can assist in an intelligent discussion on a proposal. Very often he/she is not the person who is the creator of the material, or capable of adding value to the basic point which has been brought out. However, a CS can certainly raise the questions which the Directors may probably raise. Presentations may be technical. A CS can ask 3-4 questions from a lay perspective, and it may send people back to the drawing board to make the presentation more meaningful.

Question

Who sets the agenda for the Board because decision-making ultimately is the product of discussions, which are the product of an agenda?

Terms of reference

It must be ensured the terms of reference are drawn up not meeting-to-meeting, but well before. For listed companies, these are based on LODR. However the CS should not stop at that. Good governance is about moving beyond compliance. The CS must consider the business needs, and dovetail that into the terms of reference of the committees. There is also nothing prescribed for the Board per se. However, there are precedents. There are practices which would have evolved over a period of time.

Calendar of items

The calendar of items to be placed before the Board and the committees should be prepared for the whole year, at the beginning of the year, ideally a quarter before the end of the previous financial year. In that case, the CS knows what items will be covered, what are the contents of each of those items. He/ She can ensure that the concerned stakeholders are socialized, and made the process owners. In this manner, there would be four buckets at each meeting, routine items for noting, non-routine items for noting, routine items for approval, and non-routine items for approval. The second set, the third set and the fourth set would require clear time allocation so that at least pre-decided minimum time is spent on those items.

Time allocation for agenda items

For routine items, the CS would know the time required based on earlier meetings. A number of CSs do not plan with respect to time allocation. If an agenda will take more time, take the item out. Push it to a special meeting. In any case, most large companies today convene more than the minimum number of meetings in a year.

Question

Too much or too little – is information flow a problem with Boards?

Adequacy of information

Adequacy of information is a tricky challenge for each CS. As far as the framework is concerned, there are LODR, Companies Act, 2013, Secretarial Standards, Guidance notes, and FAQs, each giving items to be presented at different intervals. But the challenge is always in terms of adequacy. When an agenda is fixed, the CS has to decide about whether a presentation has to be taken to the Board or whether the information is excessive or inadequate. Such conversations with management persons is not always easy. It is a difficult job, but it has to be done. The CS also has to plan the time of the Board, and has to ensure that the management persons keep back up shorter presentations ready if there are time overruns.

Unnecessary quoting of law

Quoting of sections or provisions of law should be only when it helps a Director to take a decision.

Meeting with Chair
Having a meeting with the Chairperson of either the committee or the Board, at least seven days in advance helps in taking the Chair through the agenda items, and letting him/her decide how many items are to be taken up in the meeting.

Anticipate requirements of Directors
There are many legal requirements relating to agenda items. The CS should check what are the expectations of the Board regarding flow of information, as captured in the Board evaluation exercise. The outcome of the IDs meeting would also shed light on their expectations.

Annual calendar for agenda
Having an annual calendar of agenda items also helps plan in advance.

Not just adequacy, but accuracy and timeliness
Directors often complain that they do not get information in time. At times, seven days may seem too much. But a number of CS ensure that presentations are sent at least 48 hours before the meeting, with at least the essence of the presentation being sent to the Chairperson at least 6-7 days in advance. It helps understand the expectation. Also, agenda items can then be categorised into agenda for discussion and decision, and agenda for noting to set the expectations right.

Summary of each agenda item for Chair
A small note for each agenda item specifying the legal requirements being given to the Chairperson helps because that gives a clear guidance to him/her.

Set the agenda "with" the Directors
The agenda should be set "with" the Board, and not "for" the Board. That would signal better involvement.

Question

Are colourful presentations preventing discussions in the boardooms?

If there are too many presentations, most, if not all, of which are colourful, there may be little to no discussions on them. If the CS proactively ask the business owner questions on what is expected from the Board, over a period of time, it will have the positive effect of less time for presentation, and more time for discussions on the topic.

Question

There is a tendency to send the agenda seven days in advance of a meeting, with most business-related items being presented at the meeting. Does this amount to empty compliance and too much focus on discussions only on compliance related matters?

Exception reporting for compliance is a good idea

Exception reporting is something which some large companies use, especially with respect to items for noting. However, with respect to compliance, one cannot rely completely on exception reporting because in the Director's Responsibility Statement, the Directors are certifying that there are systems in place for ensuring compliances, and these systems are working efficiently. For this, the process that can be used by the company is to map compliances, to identify compliances, and present the process of monitoring compliances to the Audit Committee, at least once a year. This would be a good practice because there is an assurance with respect to the process. Then on a meeting-by-meeting basis, only concerns are escalated. This is very important also since anything to do with compliance has reputational implications.

The top sheet could just be a one pager giving a confirmation that there are no exceptions, if there are no exceptions. And the detailed dashboard could form a part of the annexure. There is the Board agenda, and then there are Board notes, and there are supporting papers. If these supporting documents form a list of annexures, the Directors can access them.

Some CSs have developed dashboards wherein they have mapped compliances as high, medium and low risks. They present to the Board, by exception, a summary for each quarter. Depending on which risk the Directors want to deepdive into, the corrective action is presented by the process owner. The CS acts as a facilitator for this.

Push back on presentations coming late

There is a tendency for business heads to send the presentations at the proverbial last minute. The CS can push back stating that if presentations do not reach him/her at least 48 hours prior to the meeting, and if he/she is not able to review it before sending it to the Board, the agenda item would be dropped, with the permission of the Chairperson. This helps in creating discipline.

Question

Are Directors informed of their responsibilities arising out of the various provisions of the Companies Act, 2013, LODR etc since the responsibilities are far too onerous? For example, Directors are supposed to certify that the right accounting policies are being followed. Many Directors, even if they want to know, do not know where to find the accounting policies. And yet they certify.

Directors have started asking questions on whether they need to know some of the items coming to the Board or the committee, especially operational items. They also push back on some matters. It is for the management person(s) to justify whether the Board or the committee ought to be aware of that information.

Question

There is information asymmetry between the Whole-time Directors and the Non-whole timers. But within the community of IDs, those that are on the Audit Committee, for example, get far more information than those who are outside the Audit Committee. Is that a constraint in the boardroom, and how does that get addressed?

Separate meeting of IDs

The problem is greatly reduced provided there are sufficient number of meetings of IDs where the Chair of the respective committee briefs the other Directors about the major issues which have been discussed at the meetings. Also, each of the Chairs can share their experiences with the others. The manner in which topics are shared and discussed can also throw a lot of light on what is being discussed on different topics in different committees.

Briefing by Committee Chairs in Board meetings

At the Board meeting, the Chairs of the respective committees, can make presentations to the Board. Also, there are matters where they give their views, which is also an assurance to the other Board members.

Same level of information

It is not practical to expect all the IDs to have the same level of information. All Board-level committees give an assurance to the Board, and it is for the efficient functioning of the Board. Having said that, there may be certain matters where the Board may decide, or the IDs may ask, for the information to be given to them, and this has to be respected.

Information sharing and inviting for committee meetings

With digitisation, the CS can ensure that all Directors have access to the committee agendas, even if they are not members of the committee. Also, while sequencing the meetings, care can be taken that there are no concurrent meetings. If a Director wants to attend a committee meeting, an invite can be shared with him/her. This also ensures that interested non-members can be aware of discussions in the committee meetings.

Minutes

While meeting of minutes go to each Director, they would never capture everything.

Question

Should minutes capture flavour of discussions or be a transcript of the discussions at the meeting?

When discussions are recorded, all the important discussions should be summarized, without naming persons. At least the major points that were discussed should clearly come out so that application of mind by the Directors concerned is very clearly brought out in the minutes.

An insider, when he/she reads the minutes, will be able to make out what the discussions were, including the outcome. But when an outsider or a Regulator reads it, they should be able to derive comfort that these points were discussed. There are different ways of looking at the minutes, inside view and outside view, both of which have to be balanced, without exposing the company or any of the Directors.

Question

Does the separate meeting of IDs add value? Is convening the minimum 1 meeting adequate?

For a CS, who is not present in the meeting, it is difficult to explain the scope of these meetings. In a number of companies, IDs have expanded the scope. Such meetings have often raised important questions like exposure to second line of leadership, succession planning, talent management, flow of information, expectation on quality of agenda items, and topics that should come to the Board, such as cyber security. The suggestions from IDs, are recorded and formally presented to the Chairperson/ management. They are minuted as well. For these meetings to be productive, they are best convened informally and without a defined structure.

It should be for the IDs to decide the number of meetings. Some companies have a meeting before each Board meeting. Others do not follow this practice since IDs speak informally to one another. Some companies also have the practice of having these meetings after the Board meeting, for review. However there should be a minimum of 2 meetings in a year.

Question

Should there be rotation of committee memberships to ensure that different Directors are members of different committees during their tenure?

It would be person-specific since different committees require different expertise. For example, with respect to Audit Committee, there is a requirement to have a Director who understands financial statements. However, other Directors, should be encouraged to attend as invitees.

Also, in the past, rotation of committees was not discussed. But the conversation has started in some companies.

Question

Has the process of Board evaluation changed?

Process of Board evaluation is maturing. A number of evolved companies discuss qualitative aspects, and do not focus on only the quantitative aspects. This shift is also because earlier Directors were apprehensive in giving feedback about other Directors. But with increasing responsibilities of the Board, it is critical that the Board does a good job of evaluation. The IDs are also increasingly becoming more involved in CEO selection process, because they want to be sure that the person can run the company well. They are not okay with it being only the promoter's prerogative to appoint the CEO.

Question

When should items with Unpublished Price Sensitive Information (UPSI) be sent to the Audit Committee or the Board?

It is important to have a round of discussions with the Chair of the Audit Committee as well as the IDs, and explain the CS's perspective of a very short time window being given with respect to UPSI matters. Some Directors too are not comfortable with UPSI items reaching them in advance for fear of their being suspects in case the information leaks.

Further, the Secretarial Standards require the CS to take consent on a yearly basis. Post that, the Directors are fully aware of the situation. There are divergent practices today. A few companies give it two days beforehand. Very few companies give it seven days before the meeting. The question is not of when you should give, but what is it that the Directors are comfortable with, and how the CS ensures that this does not, in any way, compromise on their independent judgment.

If a short window of time is being given to the Directors, there should be a summary capturing the more important/ relevant points so that Directors can take decisions. If this is done, Directors would be okay to get information at the last minute with respect to UPSI, with all other agenda notes reaching them well before time, so that on all other matters, much time would not be required for discussions, and more time would be devoted to UPSI matters.

Some companies also follow the practice of having the Audit Committee meeting on Friday evening after market hours, and having the Board meeting on Monday morning. This way, the Board will get enough time to study the papers, during non-market days.

Question

How does a CS communicate to the IDs that the feedback received from them post the separate meeting of IDs has been considered and is being actioned?

It is ensured because an action taken report is prepared on feedback received from IDs, and they are kept informed. They also actually see the actions being implemented. For companies that minute the actionables from the meeting, the feedback from IDs is usually shared with the Chair, who pass it to the CS for minuting. It is then the responsibility of the CS to convert it into an action plan.

While this is not a uniform practice, it is value-adding. Otherwise, the trust that the CS or the company would have built with the Directors might get eroded.

Question

The role of the CSs has become very critical in the sense that they have to deal with different sets of persons, especially different Directors, with different views, about a particular agenda item. It is therefore the role of the CS to develop a relationship of trust with the Board members, whereby the Directors are aware that the CS does not represent only the interest of the management. Is this correct?

The CS is the Secretary of the Board, and not of the management. It is all about how much communication the CS has with the Directors. Is it just before the Board meeting or continuously? The mode of communication is also important. It should not necessarily be through emails, but can be through WhatsApp, telephone, or meetings. It is the comfort and the trust built over a period of time. There is no cookbook or recipe for it. There are a lot of ingredients to it though.

As long as the Directors call up the CS to ask for anything – good or bad or otherwise- everything is okay vis-à-vis the CS because the trust factor is kept intact. If it is someone else through whom the Director gets the information, and someone else who tells the CS what the Director had asked, the CS has something to work on.

Question

With a rise in shareholder activism and proxy advisory firms, who give opinions on the quality of decisions, are they CS's friends or foes? How much reliance should be placed on them while taking decisions at the Board level?

Proxy advisory firms will ask for a lot of information. These firms are mandated to place their voting guidelines on the website. As a CS, it is a good practice to be prepared on the basis of these guidelines. Similarly, large institutional investors, pension funds etc also have their guidelines. Most of the issues that are raised, are on disclosures. As a CS, if one is able to justify the rationale of a decision, and give proper and complete disclosures, while ensuring necessary confidentiality, then it is okay. CSs have to proactively ensure that concerns are addressed too because they would not want any resolution to be voted

against. The CS can look at past track record, including of international proxy firms. The CS should also look at the shareholding pattern, and should know which proxy firm's advice is more likely to be followed. It is better to prevent the damage rather than handling the damage control.

There are occasions while handling investor relations when institutional investors would want to speak with management. The CS should facilitate such discussions. These discussions should not relate to information that is confidential, but should focus on items in public domain, which may need clarification. The questions and voting trends of large institutional investors is mostly in sync. Management should be prepared to answer their questions.

It is up to the company to ensure that while the decisions are taken, the interest of minority shareholders is also protected. Companies ultimately engage with both the institution investors and proxy advisers. However a balance has to be maintained. Post voting, the results are analysed and placed before the Board or the Stakeholders Relationship Committee.

At the Board level, the views of the proxy firms may or may not be presented But the management takes into account the views, and works proactively to ensure that all the resolutions are passed.

SOME OTHER GOOD PRACTICES HIGHLIGHTED

- Meetings between credit rating agencies and Directors are becoming important. They are very informative.
- CS should proactively reach out to Directors for their feedback, comments and suggestions. These dialogues often throw up a number of items that the CS can work on.
- Monthly updates to Directors on regulatory changes helps keeping them informed. This also builds their trust since they feel that the CS is aware and will take care of all requirements.
- CS should reach out to Directors after agenda has been sent, to clarify any questions/ concerns that they might have. This will help Directors come better prepared for meetings.
- Having a pre-meeting of the Chief Compliance Officer with the Audit Committee/ Chair of Audit Committee, meeting of the Chief Risk Officer with the Risk Management Committee, meeting of the Internal Audit head with the Audit Committee Chair as well as the Audit Committee is very helpful, and helps build confidence of the Directors.

ABOUT EXCELLENCE ENABLERS

We are a niche Corporate Governance advisory firm. We do not attempt to be all things to all persons. Improving Corporate Governance policies and practices is our *raison d'etre*. Our mission is to demystify Corporate Governance and to persuade corporates that it is nothing more than doing the right things at the right time in the right manner for the right reasons.

We do not tick boxes. We help you think out of the box.

For any further information on the survey, please contact:

Ms Divyani Garg
d.garg@excellenceenablers.in
+91 9650012066

CONTACT US

+91 11 43595444-445

solutions@excellenceenablers.in

www.excellenceenablers.com