

BOARD LEVEL SUCCESSION PLANNING

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In the recent months there have been a lot of issues regarding CEO and Board members appointments. Based on my experience as Board Chairman and Independent Director of Company Boards in India and overseas, I recommend more focus on Succession Planning for the CEO, Board Chair, Committee Chair, Independent Directors (ID's) and other Non-Executive Directors. At present, in most companies, CEO and Board level successions tends to be episodic or accidental which exposes companies to a major event risk. Besides being essential for good corporate governance, recent regulatory developments make it an urgent priority.

As required in the Companies Act 2013, most companies appointed IDs mostly for a five-year starting April 2014. In 2019, in most companies, most directors were reappointed for another five-year term maximum permitted under the law. This will create a cliff in 2024 when most IDs, including Committee Chair must retire. They will need to be replaced by new IDs without the benefit of overlap and orderly succession at Board level.

SEBI has mandated that Boards need to identify Skills and Expertise required and available among the Board members. Boards must have a Diversity policy, an Independent woman Director. SEBI is also planning to mandate that Non-Executive Chairman not be related to MD/CEO. Directors can serve on maximum of 7 listed company Boards and appointment of Directors over 75 years age will require a special resolution.

In addition, the Proxy Advisory firms have guidelines which may be more stringent from the regulatory requirements. For example, some of the proxy firms and institutional investors consider being on more than 5 Boards as over- Boarding. For family-controlled companies in India, the issue of having family members as Chair or MD versus having a professional in one or both of these positions is another significant matter.

Taking these factors into account, it will be prudent for the NRC's to develop a comprehensive five year Board Succession plan to ensure that the CEO, Chair and NED succession is orderly and there is reasonable overlap between incoming and outgoing NEDs. It also should provide for the contingency of sudden vacancy of CEO, Chair or NED position. Not only will such thoughtful planning be in the long-term interest of the company, but the equity analysts, investors and Proxy Advisory firms and regulators may require it in future.

Following is a suggested framework for this Board Succession planning process:

1. **CEO succession planning** is most important and the Board must identify possible insider successors and implement a development plan for each of them, as well as be mindful of possible CEO successor from outside the company.

2. Next to the CEO selection, **the selection of the Board Chair** is most important for the company. As per SEBI proposed requirements, the Chairman position will be non-executive and the CEO/MD should not be related to Chairman. It would be extremely important for the Board to spell out in great detail the Role definition and division of responsibilities between the Non-Executive Chair and CEO/MD and have Lead Independent director or Chair of NRC available to resolve any differences if they arise. Since most companies in India are promoter controlled, choice would need to be made as to how the promoter Family exercises control.

3. **The Board must decide on** the mix of skills and expertise that ideally should be available on the Board. Traditionally, Boards have selected directors with Corporate governance, business, professional, public policy , Legal and academic back grounds. But now additional skills are relevant, including Digital, Social media, Venture capital and Private equity, Capital Markets, Innovation , Business Transformation, Risk Management, Cyber Security , etc.

4. It may be difficult to have all of these skills and expertise on the main Board. However, **the main Board capability can be augmented by** setting up an Advisory Board of experts, and/or getting some of the experts to serve on the Board subcommittees and/or by retaining experts as consultants to the Board. For example, the Board may retain a retired Government official as an advisor, the Audit Committee may include an external Risk management or Cyber Security expert, or the NRC may retain an HR or Compensation professional as an advisor.

5. The NRC should then prepare an **inventory of skills and expertise of current Directors** available on the Board and in various Board committees. This will help NRC to identify skills and experience gaps to be filled in the main Board, Advisory Board and by induction of subject matter experts.

6. While it is important to have people with diverse skills and experience on main Board of the company, **the most important traits are wisdom, strategic thinking, and ethical values** of Board members. These traits can be best ascertained by the collective judgement of the NRC members and through discrete reference checks. They must also make sure that the prospective Board candidates can work as a well-knit, trusting team in good circumstances and also if the company faces adversity.

7. Another important issue to **consider if there should be of term limit and/or age limit** for Chair, CEO/MD, and other Board members. The regulations now do prescribe two five years term limits for IDs, but each company will have to develop a framework for Term and age limit for Chair, CEO and other Board members. Instead of two five year terms, a shorter (3/4 year term) may help in adequate overlap.

8. **Similarly, Committee Chair succession plan** should be developed for Audit Committee, NRC and other Board committees. It should ensure overlap between incoming and outgoing committee Chairs.

9. **The Boards** must also develop a list of potential future Board members of different backgrounds and refresh the list periodically. This will be very useful for filling Board vacancies in future particularly if they were to arise suddenly.

10. **Gender balance at Board level** should continue to be improved beyond the current requirement of having at least one-woman ID. I recommend that companies should have at least two woman Directors. In the UK and in many European countries most companies are targeting to have 25-30 percent woman Directors. Norway already has 40 percent.