



BOARD GOVERNANCE & EFFECTIVENESS



FOREWORD

In the last few years, the corporate governance arena has witnessed significant change. Corporate governance practitioners have been applying Peter Drucker's idea that "what gets measured gets managed," and among senior leaders, what gets acknowledged and valued gets done even better.

I believe many executive and non-executive directors of Indian listed companies and members of professional teams that advise the boards and committees of listed companies are currently hungry for up-to-date insights into corporate governance practices. India Board Report 2015-16, published by Hunt Partners in association with AZB & Partners and PwC provides the necessary

stimulation for developing insights into current governance practices in India.

Corporate governance is undoubtedly moving to the forefront of the discussion among business leaders in India with the Companies Act, 2013. In addition, amendments made by the Securities and Exchange Board of India (SEBI) to Clauses 35B and 49 of the Equity Listing Agreement issued in April 2014 identify 'Monitoring and Reviewing Board Evaluation Framework' as a key function of the Board.¹

This fifth edition of IBR adds to the existing data on Indian board practices and provides invaluable trends concerning governance changes over time.



The discerning reader will be able to identify plenty of development areas for boards to focus on if they wish to improve their effectiveness. I would like to briefly comment on two specific issues related to board composition and structure:

- **Professionalism and workload of independent directors**

It is surprising to read that 95% of independent directors report that their letter of appointment does not mention the workload expected from them. Also on average an independent director commits less than nine days per year to board work. This compares very unfavorably with recent research results by McKinsey that identified the average work commitment in top international companies at 40 days!² If Indian companies are to expect higher levels of professionalism from their boards, surely the input from directors needs to increase substantially?

- **Board diversity**

Around the world, the diversity of boards is becoming increasingly valued as a mechanism for challenging 'group think' and stimulating innovation in strategies. The Companies Act requiring a woman on every board is a welcome step towards achieving greater diversity.

I am certain that this fifth edition of India Board Report will provide valuable insights concerning current governance practices in India for each and every reader that spends the necessary time to study and consider the findings.

Dr Chris Pierce
CEO, Global Governance Services Ltd, London
Senior Consultant, Board Evaluations Ltd, London

¹ Clause 49 Amendment (2014)

² Chinta Bhagat and Conor Kehoe (2014) High-performing boards: What's on their agenda? www.mckinsey.com



PREFACE

Never in the past has the role of the Board been as important as it is in India today. The country is poised for growth. In significant ways, the speed, volume and direction of growth will be decided by Corporates.

Increasingly, Corporates are becoming large and powerful. The consequences of inappropriate decisions could be unexpected and enormous. Hence corporate boards, board effectiveness and corporate governance become important. In this backdrop Hunt Partners' 'India Board Report 2015-16' is timely and a welcome addition to the scant data that is available on the subject.

The report has some very interesting data which cries out for attention. For instance, 8.7 days is the time which, on an average, a Director spends on his company Board in an entire year. Where is the time to update oneself on the domain knowledge in which the company operates? Or to study the

challenges it has? Or to help with strategy? Or to meaningfully participate in the many other things that happen between Board and Committee meetings in which the Director(s)' help is needed? No matter how smart one is, with an involvement of only 8.7 days in a year, one is definitely not putting in what is required.

Related to this is the lack of enough emphasis on orientation and continuous education on the Company and its domain. In today's VUCA age of extreme volatility in the business environment, to help your company remain the best, one needs to be well informed of all trends and changes in technology and marketplace. The executives and senior management in any Board will normally be far better informed and have more expertise than any Independent Director. In these circumstances to say the right things in the Board, to nudge the Company in the right direction, to be heard with respect, is not easy.



I am also concerned to find the echo of the sentiment that only a limited talent pool for Directors is available. Academia, media, social activists, intellectuals... surely they are all out there. Maybe the Board routine doesn't appeal to them. We need to reach out and invite them to join Boards.

All in all, a very comprehensive report indeed. My compliments to the authors and all those who helped compile it. I am sure that all readers, like me will find nuggets of information that stoke and excite them, so that we get motivated to make the Board functioning even better.

O. P. Bhat
Senior Independent Director
Ex-Chairman, State Bank of India



IBR 2015–16: AN INTRODUCTION

The enactment of the Companies Act, 2013, has brought about significant changes in the corporate governance scenario in India. The key drivers of the new law are ensuring higher transparency and accountability, and aligning the corporate governance practices in India with global best practices.

IBR 2015–16 undertakes an in-depth analysis of the practices of Indian boards, against the backdrop of the Companies Act, 2013. While several steps in the right direction have been taken, from an overall perspective, it appears that board performance in India follows a wave pattern—it meets the bar set by the new law at some points and misses it at others.

Issues of board composition, quality and diversity, along with the importance of board performance and evaluation, are as imperative in the Indian context as they are globally. Similarly, focus on compliance and transparency is as significant an issue under Indian law as it is elsewhere in the world.

Stakeholders and lawmakers globally are demanding more diverse and better quality boards. Back home, the Companies Act, 2013, is a significant step in this direction as it tries to bring more women into boardrooms, aims at a positive impact on the tone and performance of boards. The act also defines independent directors in a more narrow and specific manner than the earlier law, with the hope that this will result in truly independent board members. While the law has laid the foundations, the findings from the IBR survey show that Indian boards are still struggling

to find competent women and independent directors.

PWC's 2014 Annual Corporate Directors Survey suggests directors are attaching increased importance to their own and their boards' performance. Of the surveyed directors, 93% consider financial expertise of board members as a very important attribute. Similarly, more than 50% of the respondents of this IBR survey also preferred hiring younger and more qualified board members. In the long term, this should lead to better quality and more engaged boards.

Further, the IBR survey clearly indicates that maintaining transparency will remain a key responsibility for Indian corporates. From disclosing related party transactions to formal board evaluation procedures, most Indian boards are yet to get the requisite processes entirely right. This is expected to improve in the near future with the mandates of the Companies Act, 2013, being implemented more rigorously.

The IBR survey 2015–16 is an attempt to highlight these and other similar gaps in policies and practices, as seen through the eyes of independent directors. We, along with the other architects of this report, hope to see this gap diminish in the near future.

Deepak Kapoor
Chairman
PWC India

Zia Mody
Managing Partner
AZB & Partners

TABLE OF CONTENTS

| | |
|---|-----------|
| IBR 2015–16: AN INTRODUCTION | 6 |
| SCOPE AND METHODOLOGY | 8 |
| Research Methodology | 9 |
| FROM THE AUTHORS' DESK | 12 |
| CORPORATE SCENARIO: A STATUS UPDATE | 16 |
| Global Trends in Corporate Governance | 17 |
| Corporate Governance in India – Post Introduction of the Companies Act 2013 | 19 |
| SURVEY FINDINGS | 22 |
| Board Composition & Structure | 22 |
| Strategic Fit and Alignment of Directors | 23 |
| Documented Role and Expectations | 34 |
| Training of Independent Directors | 35 |
| Compensation | 37 |
| Separation of Chair and CEO | 40 |
| Controls and Procedures – Discipline & Transparency | 42 |
| Board Processes | 43 |
| Communications & Relationships | 51 |
| Minority Investors | 57 |
| Independence | 58 |
| Inter-board Relationships | 60 |
| Regulatory & Compliance | 62 |
| Directors & Officers Insurance | 62 |
| Performance & Leadership | 64 |
| Performance Management | 65 |
| Risk Management | 67 |
| Chairperson | 68 |
| Effectiveness of Committees | 69 |
| Sustainability & Corporate Social Responsibility | 72 |
| Selection of Independent Directors | 75 |
| ACKNOWLEDGEMENTS | 76 |



SCOPE & METHODOLOGY

The India Board Survey 2015-16 presents the importance of diversity in board composition, criticality of controls and procedures to comply with regulations, and best practices for high performance and effective strategy.



RESEARCH METHODOLOGY

The India Board Report is a first-of-its-kind, definitive survey on board composition, effectiveness and best practices which has been published biennially since 2005-06. Through in-depth surveys and questionnaires, the report aims to highlight the functioning of corporate boards in India.

The study consists of a two-part survey across:

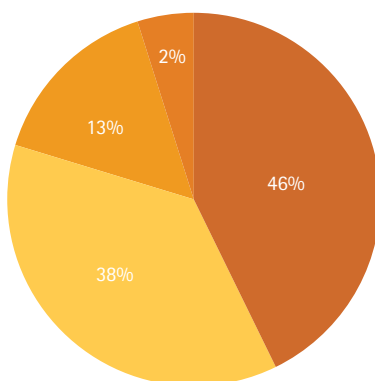
- Company Secretaries and Compliance Officers (Survey I)
- Eminent Independent Directors (Survey II)

Survey I was aimed at studying statistical data around boards in India and targeted over 500 companies. Selection of the companies was based on their market capitalization (750 crore INR and more) on the Bombay Stock Exchange (BSE) and their ownership. The companies that met this criterion are as follows:

- BSE 200,
- BSE Midcap,
- Publicly traded Public Sector Enterprises (PSUs)
- Multinational Companies (MNCs) listed in India

For every company, the survey included the following:

- Board demographics (age, size, diversity)
- Board meetings, committees and related workload
- Board evaluation and the procedure for selection of chairperson
- Selection of independent directors
- New committees including corporate social responsibility (CSR) and others
- Board chairperson and independent directors' remuneration
- Directors and officers (D&O) insurance
- Investor relations and communication



Survey I – Company category

“The latest edition of the India Board Report 2015-16, provides a useful compendium of the emerging trends in corporate governance in India. Given the backdrop of the Companies Act, 2013, the report provides detailed data and commentary on various aspects of board governance including board composition and structure, controls and procedures, and performance and leadership, based on a sizable sample of board members. It is a must for anyone involved with corporate affairs in India, including board members, senior management, regulators and investors.”

Marti G Subrahmanyam, Independent Director

Charles E Merrill, Professor of Finance and Economics, Stern School of Business, NYU

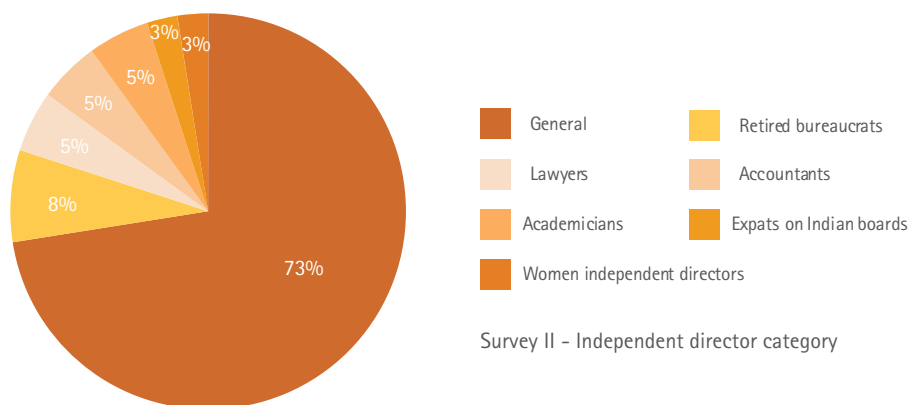
Survey II was aimed at obtaining the views of eminent independent directors regarding the functioning of Indian boards, including compliance, independence and overall management. They were also requested to rate their respective boards on effectiveness and identify priorities. Over 250 independent directors were targeted from leading Indian companies with large market capitalization, government enterprises and MNCs in India for Survey II. To ensure ideal representation of the independent director universe, the criteria for selection of independent directors was predefined as mentioned below:

- Academic: Educational institutions
- Accounts and finance
- Directors from private equity companies
- Expats on Indian boards
- Lawyers
- Retired bureaucrats
- Women independent directors
- Others: BSE 200, BSE Midcap, listed public sector and listed MNC companies

The topics covered in the survey include the following:

- Effectiveness of corporate boards
- Discipline and transparency in disclosure of information and in conflicts of interest
- Satisfaction levels of directors with the current structure and composition of their boards
- Time invested and processes used for monitoring and evaluating board performance
- Board Controls & Board Procedures
- Corporate issues advised and reviewed by the board
- Key responsibilities and priorities for corporate boards in India
- The extent of director involvement and effectiveness in meeting compliance requirements

In addition to the data collected for the current report from the two surveys, we have also presented historical analysis based on the past reports namely India Board Report 2007, 2009 and 2011.





FROM THE AUTHORS' DESK

IBR 2015-16 captures the current situation and trends in corporate governance in Indian companies.

The average board size & composition has shown limited variation over the last few years. Despite evident shortfalls, only 5% of the surveyed independent directors showed dissatisfaction with the current board composition.

Women constitute only 5%, and expats 4% of the total number of directors. The Companies Act, 2013 mandates inclusion of at least one woman director on the board of directors for listed firms. At the time of the survey, 64% of the surveyed firms were lacking in this respect. This number is expected to have come down drastically to below 15% in view of the changed legislation.

Corporate executives and retired bureaucrats have the highest presence on boards currently. A majority (>50%) of surveyed independent directors were in favour of hiring younger and additionally qualified board members.

The Companies Act, 2013, limits the tenure of an independent director to two consecutive terms of five years. Approximately, 40% of the surveyed firms indicated an average tenure of five years.

Along with hiring the right fit, it's equally important that companies provide on-the-job training for their independent directors. Only 2.5% of the surveyed independent directors have their roles clearly defined in their appointment letters. Less than half (~46%) of the surveyed firms have induction and training programs for their directors.

The remuneration of independent directors across company types reflects a strong disparity. The last three IBR surveys have seen more than 1000% increase in the average compensation given to independent directors who are also board chairpersons.

Indian boards are still some distance away from a truly independent and diverse structure.

While the Companies Act, 2013, lays down processes for effective corporate governance, it's the transparency and disclosure by firms which will ensure honest compliance.

Effective board meetings are necessary for procedural discipline and effective management. While the Companies Act, 2013, doesn't specify the time an independent director needs to spend on board meetings, it does recommend active participation.

Only 8% of the companies in India have a lead independent director who primarily reviews and advises the board on agendas and represents the views of the other independent directors.

Only 35% of the companies have the board meeting agenda authored by independent directors, thereby undermining their participation and contribution in these meetings.

Most companies comply with the mandate of a minimum four board meetings in a year, that generally last for half a day on an average.

For board meetings to be effective, it is equally important that board members are adequately aware of the current topics of discussion before the board.

Independent directors (60%) find the need to source third-party information regarding the competitive environment of the company in order to discuss identified issues at meetings. About 90% of the surveyed independent directors were adequately aware of the regulatory changes and developments in their industry.

As many as 76% of the companies surveyed share the information on risk and return at investor meetings and also satisfy their directors in promptly divulging market-sensitive information.

Maintaining transparency in key board transactions also works as an efficient control mechanism.

Section 134 of the Companies Act, 2013, sets to make board evaluation a formal process across firms. Among the companies surveyed, only 38% have indicated that they have a plan in place to conduct a formal board evaluation, of which 89% would prefer doing it internally.

12% of Indian companies have directors related to the promoter and 25% of the companies surveyed have directors directly or indirectly related to the CEO or chairperson of the company. 35% of the companies surveyed are yet to comply with the new regulation of mandatory disclosures of related party transactions.

According to our survey participants, the top three parameters that can enhance overall governance are separating the offices of the CEO/MD and chairperson (28%), mandatory formal whistleblower policy in companies (18%) and managing risks facing business (15%).

The board chairperson has key influence on any board's performance. 85% to 90% of the surveyed independent directors are satisfied with the way the board chairperson encourages an open board culture during board meetings.

While most independent directors surveyed were satisfied with their respective chairs, the selection process needs changes for better performance.

Many surveyed independent directors believed that committees allowed detailed and focused discussions around important topics. All the companies in our survey have been compliant in forming the committees, as mandated by Section 177 of the Companies Act, 2013.

Section 150 of the Companies Act, 2013, may help in setting in place a formal process of selection for independent directors. Currently most common method of selection is through the personal network of the nominations committee.

IBR 2015-16 attempts to highlight the gap between what is required by law and its implementation. We are hopeful about Companies Act 2013 and its earnest efforts at improving corporate governance in India.

Suresh Raina
Managing Partner
Hunt Partners

Sunit Mehra
Managing Partner
Hunt Partners



CORPORATE GOVERNANCE SCENARIO: A STATUS UPDATE

As businesses expand, the world shrinks. Multinational firms not only expand their products and services, but also spread best practices. Local firms are forced to emulate these to remain competitive.



GLOBAL TRENDS IN CORPORATE GOVERNANCE

In more developed countries, corporate governance norms already provide a basic framework for effective governance. They are now attempting to safeguard investors' interest from risks posed by the volatility of the global business environment. Internationally, the key issues that are at the forefront of corporate governance debates are:

- Corporate strategy
- Risk environment
- Cyber security
- Executive compensation
- Shareholder activism

Corporate Strategy

Governance in mature corporations is efficient and effective. These company boards are focussed on strategy building and implementation. According to PwC's 2014 Annual Corporate Directors Survey of US firms, 62% directors want to spend more time and focus on strategy. Technology and Big data have emerged as a key need for improvement within strategy. Many board members have indicated that boards should give more importance and time to issues concerning big data. Nearly a quarter of the participants indicated that their boards are currently not sufficiently engaged on these issues.

Risk Environment

It is also important to understand that 'strategy' is an evolving concept for any company. The changing risk environment compels businesses to regularly revisit and modify their strategies to be prepared for new challenges. The UK Corporate Governance Code requires directors to clearly define the risks facing their company. They must also list down the internal controls established to manage or mitigate these risks.

Cyber Security

In a world dominated by technology, cyber risks pose a threat not only for the businesses, but also for the government and individuals in any country. In the US, laws like the Sarbanes-Oxley Act and the Cyber Security Act aim to safeguard its residents against cyber threats.

While corporate governance laws have provided a control mechanism against fraud and malpractices, there are still a few grey areas where a consensus hasn't been reached. In this respect executive compensation and shareholder activism continue to be important topics of debate around the world.

Executive Compensation

Recommendations from the European Commission attempt to link performance to pay for supervisory directors of listed companies. This requires the variable pay to be based on 'predetermined and measurable' performance criteria. While an optimal pay structure is desirable, checks need to be implemented to detect in-system flaws.

Shareholder Activism

Shareholder activism is also believed to have a two-pronged effect on board performance. Its proponents perceive it as a control mechanism against a possible malfunctioning of the governance system. On the other hand, its opponents see it as excess power in the hands of the few ill-informed or self-centred shareholders. According to a report by PwC and Broadridge Proxy Pulse published in October 2014, *'the total number of actual proxy contests increased over the last two years, and the number of exempt solicitations (i.e., "no vote" campaigns against directors) nearly doubled'* in the US.

Influenced by international developments, lawmakers back home have attempted to bring corporate governance in India at par with the world with the Companies Act, 2013.



CORPORATE GOVERNANCE IN INDIA: POST INTRODUCTION OF THE COMPANIES ACT, 2013

The financial crisis of 2009 forced regulators and policymakers to strengthen compliance norms. Our earlier report, India Board Report 2011 evaluated the practices and trends in Indian boards, against the backdrop of the global crises and tightening regulations.

Since then governance codes and best practices have further evolved, and Indian corporate governance laws have witnessed a revamp with the introduction of the Companies Act, 2013.

Compared to its predecessor (Companies Act, 1956), the current Act presents noteworthy changes in the standards for governance, disclosure norms, compliance and enforcement. However, it will be some time before we can evaluate its implementation and success.

Very broadly, three critical themes relevant for the Indian Corporate scenario today are as follows:

- Board composition
- Compliance and transparency
- Board effectiveness

Board Composition

The Companies Act, 2013, has introduced norms on board diversity, independence and tenure of independent directors. The aim is to make Indian boards richer in skills, experience and expertise for effective governance. The Act mandates all listed companies to appoint at least one woman director on their board. The IBR survey 2014 found 64% of surveyed firms lacking in this respect. Data compiled by PRIME Database indicated that nearly 12% of companies listed on the NSE failed to meet the 31 March 2015 deadline set by the SEBI for appointing a woman director. Many others appointed immediate family members—wives

or daughters—of their promoters to evade penalties. This ensured a tick in the compliance box, but defeated the intent behind the regulation.

The Companies Act, 2013, precludes relatives and those with financial relationships with the company from becoming independent directors. This is a big change for Indian boards. In India, independence is often a theoretical construct. The IBR survey 2014 found that around 25% of companies had so-called independent directors, who were relatives of the owners.

Tenure of independent directors is another norm that the Companies Act, 2013, has reset. There are multiple examples among Indian companies of independent directors serving for multiple decades. The current Act restricts this tenure to two consecutive terms of five years each. However, the Act also gives companies a time of five years before they initiate a change in the current composition of their board.

The Act sets these norms of board composition to facilitate a healthy mix of competencies in the board. The big question here is whether companies will find a way to only comply with the law, without caring for fitment of selected board members.

Compliance and Transparency

The Companies Act, 2013, is a big leap towards bringing corporate governance in India on par with global standards. The SEBI, RBI, NSE, BSE and other similar organisations are also active contributors to this change. The onus, then, is on Indian companies to ensure compliance with an honest intent.

Access to complete and correct information is also imperative in ensuring regulatory compliance. About 10% of the independent directors participating in the IBR survey 2014 felt that company boards were inadequately aware of the regulatory changes. Further, 40% of the surveyed independent directors sourced additional information to make unbiased and accurate decisions. The Companies Act, 2013, mandates at least one meeting of independent directors in a year, without the presence of non-independent directors and members of the management. Among other things, independent directors are also required to

evaluate the quality, quantity and timeliness of flow of information between the management and the board.

Disclosure and transparency serve as efficient monitoring mechanisms for regulatory compliance. Various sections of the Companies Act, 2013, deal with transparency. One of the most significant provisions has been that of shareholder consent prior to entering into those related-party transactions that are not in the normal course of business or not at arm's length or are in excess of 10% of the annual turnover of the company. The Act makes it mandatory to disclose all financial transactions between related parties.

In a nutshell, law enforcement efforts of regulatory bodies will ensure compliance with statutes of the Act. However, true transparency in corporate governance practices will take time to become a norm in India.



"I have been following the India Board Report since it was first brought out by Hunt Partners. This report, in partnership with AZB & Partners, and with PWC, is now into its 5th edition. It is commendable that this important initiative is being regularly updated and refined. There is so much to be done in India to improve board practices. Executive fiat can achieve only so much, in fact too much can also be counter-productive. There is no substitute for standards and practices that are developed organically, as these form the bedrock of any section of society. The India Board Report 2015-16 contributes to that societal effort."

Sanjeev Aga, Independent Director and ex CEO Idea Cellular

Board Effectiveness

Meeting compliance is a necessary but not a sufficient criterion for board effectiveness. An effective board is formed by ensuring the right mix of members, working in tandem to deliver efficient decisions. Companies with better managed boards are known to have higher profits and valuations. These, in turn, can work as self-fulfilling objectives for corporate firms.

Independent directors responding to the IBR survey 2014 indicated that they were most effective when reviewing and advising on financial standards and internal controls. They were also confident and effective in dealing with matters of regulatory and financial risk management. CEO succession planning is where least number of respondents indicated being effective.

In a culture dominated by family-run businesses and promoter-led management, separation of the CEO/MD from the board chairperson emerged as a key parameter impacting board effectiveness in the IBR survey 2014. Also, the board's whistleblower policy and management of risks emerged

as key parameters that can enhance board effectiveness. At the same time, it is imperative that company management takes adequate measures to address and resolve the matters raised.

When Indian companies are convinced that transparency and board effectiveness have an impact on their valuations and profitability, compliance will have a greater purpose attached to it. A formal board evaluation process, as specified in section 134 of the Companies Act, 2013, is then expected to be based on more tangible criteria, than what it is presently based on, across listed companies and public companies with share capital of INR 25 crore or more. As per the current law, the annual reports of these companies must disclose the manner in which formal annual board evaluation has been made for performance of the board, its committees and individual directors and whether the term of appointment of the independent director should be extended or continued.

The Way Forward

The Companies Act, 2013, is a big step forward in terms of enhancing board effectiveness, independence, diversity and corporate governance in general. As always, the key challenges will be in implementation.

The big shift that has to take place is in the 'spirit' of adherence to the laws. Some promoters might continue to seek shortcuts to

achieve compliance without actually changing anything. However, many of the new rules will be hard to get around. And in the final analysis, the recognition that high-quality boards and corporate governance can impact valuations is essential. This is more likely to change attitude than laws.



SURVEY FINDINGS

Board Composition & Structure

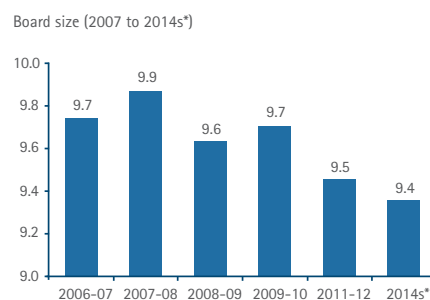
An optimal board structure is a pre-requisite for effective management of the business. With the objective of promoting diversity, the Companies Act, 2013, mandates inclusion of women; encourages impartial performance of independent directors; and restricts their tenure on the board. What remains to be seen is if Indian companies will truly imbibe these changes. Or will they only look for gaps in the new system to elude law-enforcement agencies?



STRATEGIC FIT AND ALIGNMENT OF DIRECTORS

Size and Diversity of Indian Boards

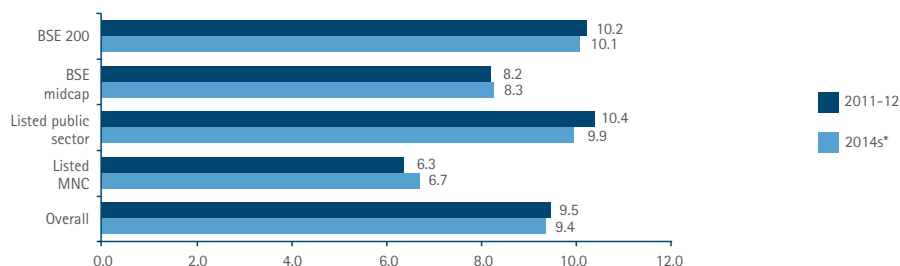
According to Cornelis de Kluyver, Dean – University of Oregon Business School, “the ideal size of the board should be such that it is sufficiently large to carry out the board's responsibilities, without unnecessarily degrading its effectiveness with excessive numbers that inhibit individual engagement and involvement of board members.”³



Source: India Board Report 2007, 2009 & 2011

In India, the average board size has been steadily decreasing over the years, from 9.9 in 2007-08 to 9.4 in 2014*.

Board size by company category (2012 and 2014s*)



Among the different categories of companies surveyed, Listed public sector companies had the largest board size of 10.4 in 2011-12, while BSE 200 companies were the largest in 2014* with 10.1.

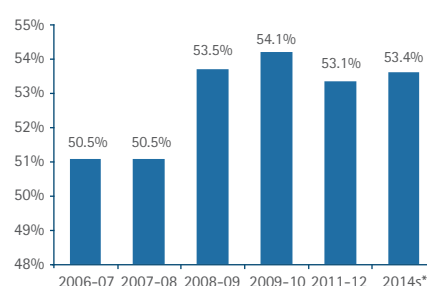
³ Mitch Dorger (2011). Size Matters: Right Sizing Your Board of Directors. Dorger Consulting. <http://dorgerconsulting.com/2011/07/20/size-matters-right-sizing-your-board-of-directors/>

* 2014 Survey Data

"Diversity is not about counting people but about making people count." ⁴

In a step towards enforcing diversity, the Companies Act, 2013, prescribes that independent directors should comprise one-third of the board of every listed company and that there should be at least one woman director on the board.

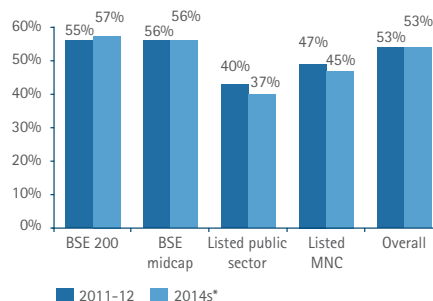
Independent directors on boards (2007 to 2014)



Source: India Board Report 2007, 2009 & 2011

In the period from 2006-07 to 2009-10, the representation of independent directors on the board increased from 50.5% to 54.1%. Since then, there has been a marginal dip to 53.4% in 2014s. However, the levels were above the lowest levels of 2006-07 and well above the new regulatory requirement of one-third.

Independent directors on boards by company category (2012 and 2014)

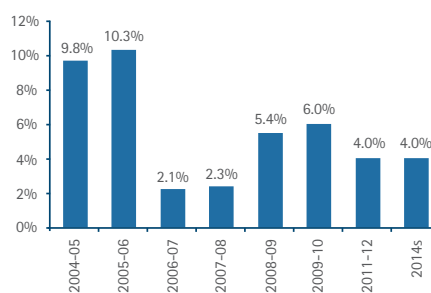


In 2011-12 and 2014s, the highest representation of independent directors was on the boards of BSE-listed and privately owned companies. The lowest representation of independent directors was in listed public sector companies (40%) in 2011-12, which declined further to 37% in 2014. In fact, as many as 25% of the listed public sector companies surveyed had no independent directors on the board.

⁴ Sudhir Kapadia, Amrish Shah (2013, September). India Inc – Companies Act 2013. EY.

Expat independent directors constituted 4% of the total boards in Indian companies in 2012-2013. This is much lower than the previous survey in 2009-2010 (6.0%). Their presence on Indian boards was the highest in 2005-06 at 10.3%.

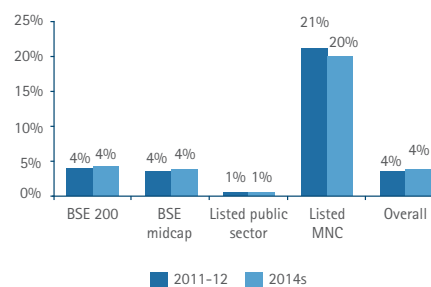
Foreign independent directors on Indian boards (2005 to 2014)



Source: India Board Report 2007, 2009 and 2011

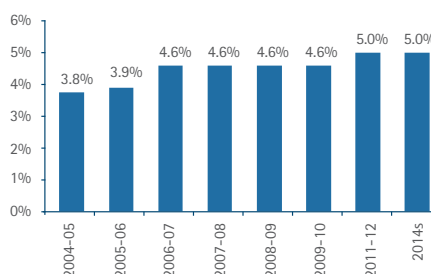
The share of expat independent directors in listed MNC firms is five times that of other firms.

Foreign independent directors by company category (2012 and 2014)



Inclusion of women directors on boards has seen a steady increase between 2004-05 and 2006-07. Their representation remained constant at 4.6% for the next three years. In 2011-12, there was a slight improvement, but it has been stagnant thereafter.

Women directors on boards (2005 to 2014)



Source: India Board Report 2007, 2009 & 2011

64% companies of the surveyed didn't have women on their boards.

"The process of ensuring diversity has to be a conscious effort by the promoters, and once they induct diverse set of independent directors, they should give them (women independent directors) the authority to act independently."

A Senior Independent Director

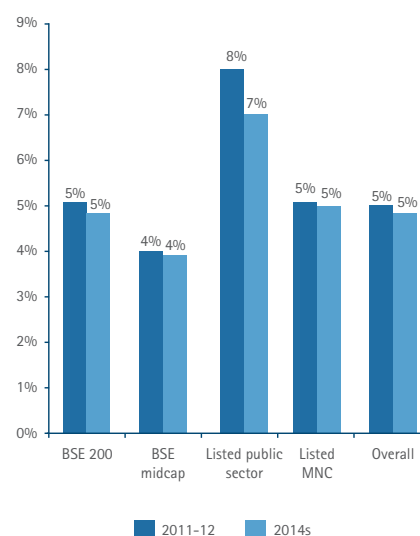
Listed MNCs had the highest board diversity with women comprising 5% of their board composition and expats comprising 21%. Among the Indian companies, listed public sector companies had the highest presence of women directors but the lowest number of foreign directors.

Companies Act, 2013 makes it mandatory for a woman director to be on the board of the following:

1. Every listed company
2. Every other public company having (a) paid-up share capital of INR 100 crore or more or (b) turnover of INR 300 crore or more

However, some independent directors were of the view that diversity cannot be ensured just by inducting women into the board. Moreover, promoters may induct women who are a wife, sister, or mother of the existing board members to be compliant.

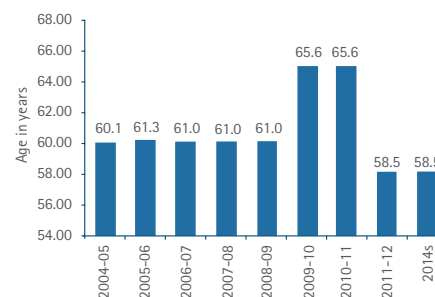
Women directors by company category (2012 and 2014s)



Composition of Independent Directors

Historically, the average age of independent directors has been above 60 years. It had increased to 65.6 years in 2010-11 but since then fell to its lowest at 58.5 years in 2014.

Age of independent directors (2005 to 2014)



Source: India Board Report 2007, 2009 & 2011

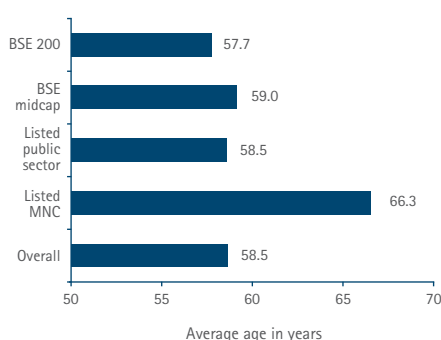


"There are probably too many retired people, retired government officers and some professional people on boards as independent directors. In order to get a better mix and to get people to spend quality time, independent directors need to be remunerated properly. This is almost impossible for many companies. The Act seems to think that people should be independent and work hard and take risks but get no remuneration."

Amal Ganguli, Director HCL

Some of the experienced bureaucrats voiced their dissent on the trend of appointing younger independent directors as they consider them "an inexperienced lot". On the other hand, another independent director highlighted that his company had benefitted from the "younger generation's quick decision-making abilities" and mentioned the practice of a "shadow board". Some companies have initiated the process of a 'shadow board' which involves young board members preparing a list of suggestions prior to a meeting, which improves the quality of discussions and hence performance of the company.

Age of independent directors by company category

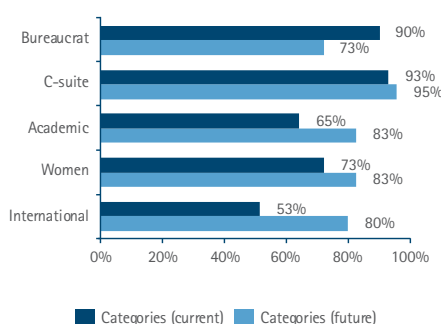


MNCs had the oldest board (66+ years) while the average board of BSE 200 companies was the youngest (57+ years).

CXOs or executive management (93%) and bureaucrats (90%) currently dominate the boards. However, the presence of bureaucrats was ruefully highlighted by some respondents. According to them, "bureaucrats are opinionated people and don't allow a healthy discussion to take place. They help the company interact with government officials but they need to be vetted before being appointed because their personality tends to impede the functioning of the board." As a result, fewer bureaucrats (73%) are desired on the board but CXOs (95%) continue to be the most desired in the future.

Currently, the presence of independent directors who are academicians (65%) and those with international experience (53%) is the lowest, but 83% and 80% of independent directors surveyed indicated the need for a greater presence of these two categories, respectively.

Current and future categories of independent directors



"Depending upon the nature of the industry, the number of bureaucrats on a board will vary. If a company has to maintain high level of interaction with the government, then these bureaucrats will serve the purpose."

A Senior Independent Director

“The board is a microcosm of the industry or the market. Therefore, a mix of various individuals with varied experience is required.”

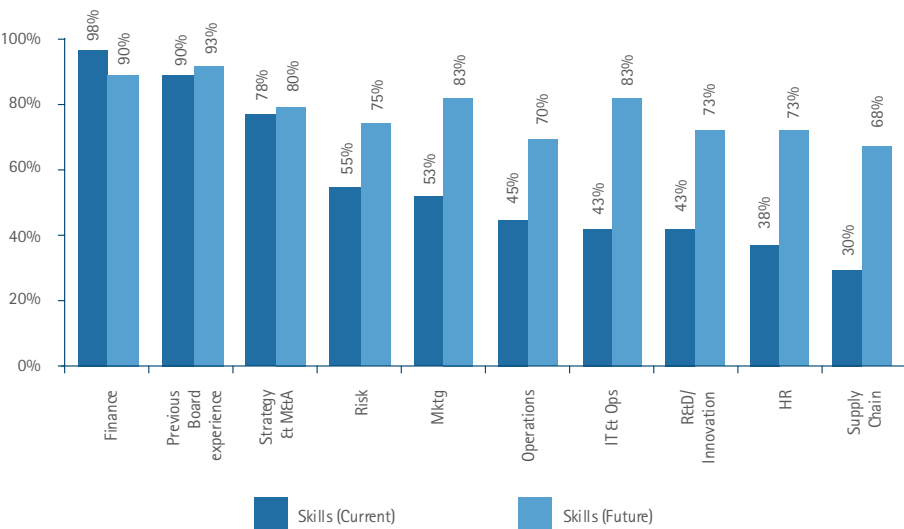
A Senior Independent Director

This need for diversity of skills in a company board resonated with other independent directors. For instance, independent directors from a non-financial background feel alienated in financial discussions and believe that independent directors with strong financial background skew the discussion. Currently, independent directors with a finance background (98%) dominate the board. However, independent directors want a higher presence of other skills in the future.

After finance, the next most prominent competencies independent directors should have are previous board experience and knowledge of Strategy & M&A (78%). Some of the competencies that are most lacking and need a higher presence in the future are Marketing (83%), IT and Operations (83%) and Risk (73%).

Independent directors unanimously agree that their skills should complement the company's interests and therefore the skills required largely depend upon the type of industry in which the company operates. For instance, a Human Resource (HR) expert with years of experience in people management could be more helpful on the board of a company that is in a people-intensive industry.

Current and future relevant skills of independent directors





"The most significant impact of the new governance era is to shift the purpose of the Board from enhancing shareholder value to balancing stakeholder interests. Those greed driven companies and boards that do not get this are the companies and boards that are responsible for most of what will ail future generations."

Nawshir Mirza, Senior Independent Director

Alignment of Board Structure with Shareholder Agreement

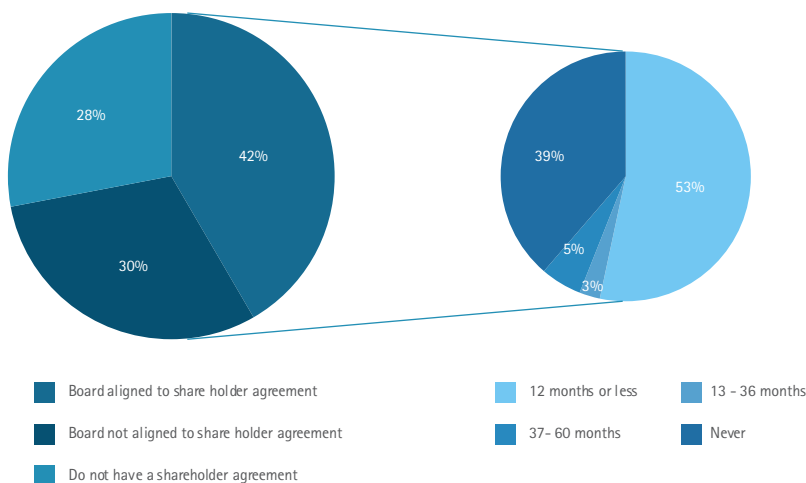
Globally, the company shareholders' agreement is considered an extremely important legal document as it governs the relationship between the shareholders of a company, sets out their obligations relating to the operation of the business and identifies the duties of the directors.

The Companies Act, 2013, stresses upon the need for a shareholders' agreement for the purpose of securing certain rights of shareholders, which were not available to them under the previous Act. With regard to the board structure, the Act has awarded control to the shareholders by allowing them the right of appointing a majority of the directors, to control the management, and to make policy decisions.

In India, the board structure is currently aligned to the shareholder agreement in 42% of the companies surveyed.

Of the 68% of the companies that have a shareholders' agreement, 53% review their shareholder agreement every 12 months or less, and 39% never review their shareholder agreement.

Board structure aligned to shareholder agreement and its frequency of review

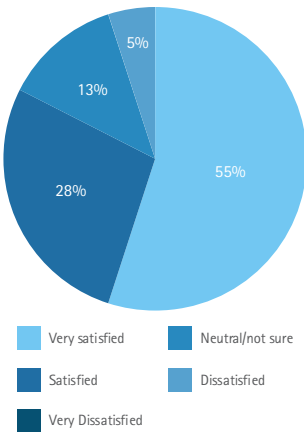


25% of the independent directors disagreed with the suggestion of increasing the number of independent directors on boards.

Areas of Improvement and Impediments to Changing Board Composition

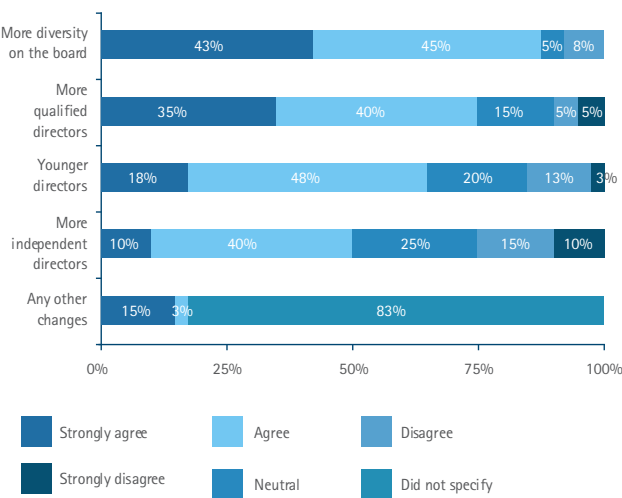
Despite the obvious lacunae, only 5% of the independent directors voiced their dissatisfaction with the current board composition. They were mostly unhappy about the over representation of a particular category of independent directors on the board.

Satisfaction with board composition



A significant majority of the independent directors surveyed are satisfied—"Very satisfied" (56%) and "Satisfied" (28%)—with the board composition.

Areas of improvement required in board composition



Independent directors clearly favour higher diversity on the board (88%). For instance, a senior woman independent director stated that she would like to see a "judicious mix of people on the boards so that there is a wider perspective".

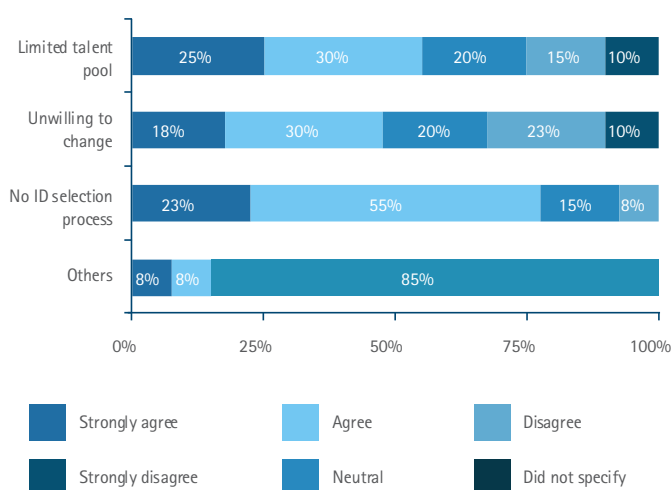
More qualified directors can also help improve board composition and 75% of the independent directors surveyed support it. However, one of the independent directors mentioned that the problem is the absence of skills amongst some of the independent directors rather than the lack of qualifications.

Another suggestion proposed by independent directors to improve board functioning was the need to have a board evaluation process that would allow for healthy discussions on the performance and continuance of the independent director.

When asked about the factors that impede change in board composition, the independent directors were of the opinion that the absence of a formal selection process for independent directors was the most important reason and 78% agreed that a selection process would help identify worthy independent directors.

The experienced independent directors strongly opined that a limited talent pool (25%) is another major impediment to changing board composition. A senior independent director mentioned that he foresees a need for 40,000 independent directors in India post April 2015.

Impediments to changing the board composition



"Formal process to select independent directors is generally non-existent in India where corporate ownership is still dominated by promoter families. However, companies belonging to 'industrial houses' do have capable independent directors despite the absence of a structured selection process. The concept of Nominations committee is relatively new and we see that enlightened professional managements do have a framework of policy and process to bring on board individuals with desired background and acumen. It may take some time to percolate this culture across corporate India, but it will happen."

A Senior Independent Director

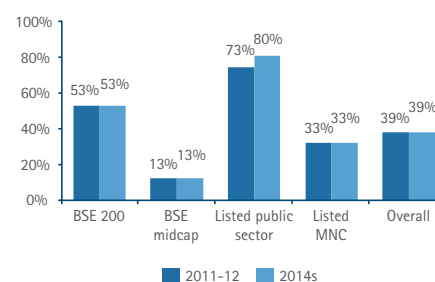
Tenure of Independent Directors

The Companies Act, 2013, states that an independent director can hold office for a term of five consecutive years. The independent director is eligible for re-appointment only after the company passes a special resolution and discloses such appointments in the board's report.

However, after re-appointment, the independent director can hold office for only two consecutive terms. If he or she wishes to continue serving as an independent director with the company, he or she will be eligible for re-appointment only after the expiration of three years of non-association with the company in any capacity, either directly or indirectly.

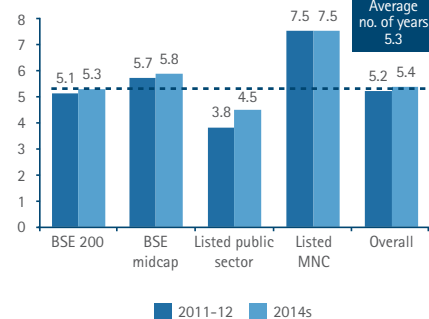
40% of the companies surveyed limit the tenure of the independent directors on their board. Listed public sector companies are most disposed (80%) to limit the tenure of independent directors, while BSE Midcap companies are least disposed (13%) to limit the independent directors' tenure.

Limitation on the tenure of independent directors



Of the companies that limit the tenure of independent directors, the average number of years that an independent director is permitted to be on the board is 5.3 years. The limit across all categories of companies is lower than the stipulated limit as per the Companies Act, 2013. Listed MNCs are lenient with the limit and these companies will have to reduce the number of years permitted to meet regulations. However, these companies can choose to extend the term at least once, as allowed in the new Act.

Tenure limit of independent directors by company category



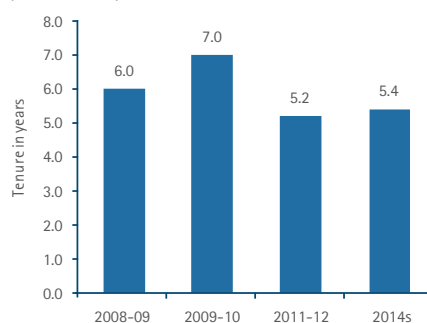


"India Board Report 2015-16 is an excellent snapshot of how boards are functioning in contemporary India. While there is definite improvement, corporate governance still has a long way to go. Based on an annual survey, the report offers useful suggestions to improve the effectiveness of boards."

Gurcharan Das, Independent Director and former CEO, Procter and Gamble, India

The Ministry of Corporate Affairs (MCA) had earlier released the corporate governance voluntary guidelines in 2009, which permitted three tenures for an independent director. However, as per clause 49 of the equity listing agreement, an independent director cannot serve for more than nine consecutive years, which could be a reason for the drop in the average tenure served by Independent directors.⁵

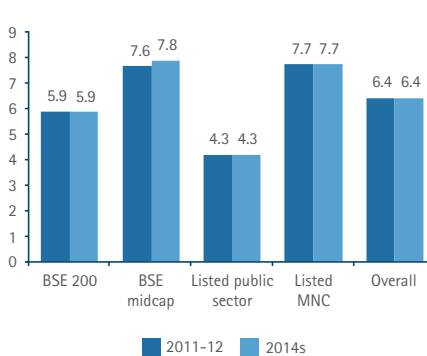
Tenure of independent directors (2009 to 2014)



Source: India Board Report 2011

The survey revealed that the average tenure of independent directors by different categories is the highest in BSE Midcap and listed MNCs at 7.8 years and 7.7 years, respectively in the year 2014. In contrast, independent directors in listed public sector companies had a much shorter tenure of 4.3 years, which is explained by the above stated finding that 80% of the listed public sector companies limit the tenure of the independent directors.

Tenure of Independent directors by company category



⁵ PwC (2013). Companies Act 2013, Key Highlights Et Analysis



An independent director sees the process of documentation of roles and responsibilities as a limitation and clarifies that role of an independent director has to be "all encompassing" and for which clearly identifying the roles and responsibilities may not be possible.

DOCUMENTED ROLE AND EXPECTATIONS

Roles and Responsibilities of Independent Directors and Lead Independent Directors

The Companies Act, 2013, prescribes a code of conduct and other duties for independent directors. This code places a significant onus on independent directors to assist in safeguarding the legitimate interest of the company and its stakeholders. The duties that the Act wants the independent directors to take on include the following:

- Constructive attendance in all board/general meetings
- Report of unethical practices, fraud and violation of law
- Maintain confidentiality of sensitive company information
- Ensure that concerns relating to management are placed before the board and are recorded in the minutes of the board meeting

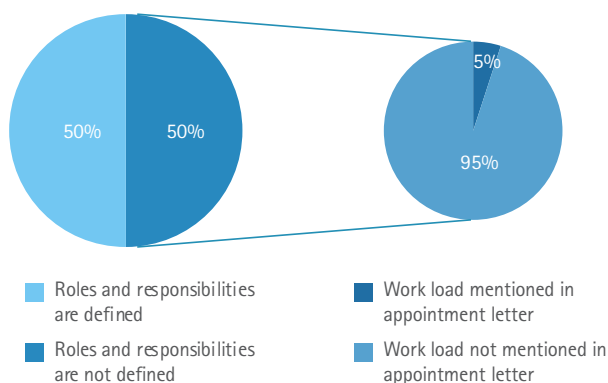
Interestingly, an equal percentage of independent directors surveyed felt that their roles and responsibilities were defined

but not clearly defined. However, the letter of appointment of 95% of the independent directors does not mention the work expected of them.

Companies will have to soon start detailing the workload of an independent director in the appointment letter as the Companies Act, 2013, requires it to be specified in terms of the following:

- The expectation of the board from the appointed director
- The Board-level committee(s) in which the director is expected to serve and its tasks
- The fiduciary duties that come with such an appointment along with accompanying liabilities
- The actions that a director should not take while functioning as a director on the board

Defined roles and responsibilities of independent directors



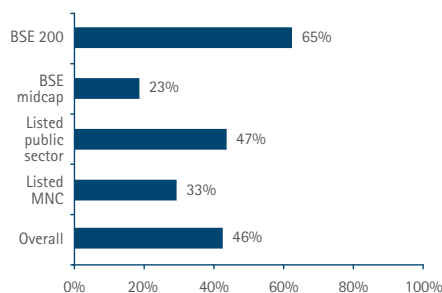


TRAINING OF INDEPENDENT DIRECTORS

According to the recommendations of the Institute of Company Secretaries of India (ICSI), training and induction programmes would be very helpful in increasing the awareness of new board members towards the industry in which the company functions, the company's business models and its competition. This will also empower independent directors to make informed decisions and foresee challenges that the industry or company may face in the future.⁶

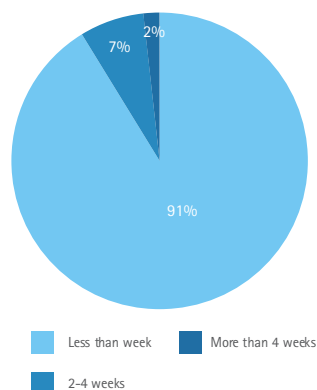
Induction and training programmes for new and existing directors are provided by 46% of the companies surveyed. Among the different categories of companies, 65% of the larger (BSE 200) companies provide induction and training. Only 23% of the BSE Midcap companies do this.

Induction and training for board members



Among the companies that conduct an induction programme for directors, the length of the induction programme is less than a week in 91% of these companies. Very few companies invest more time on induction. In 7% of the companies, it lasts two to four weeks and in only 2% of the companies it is more than four weeks long. According to an independent director who was surveyed, the duration of the programmes are kept short as they, the independent directors, have "limited time available due to their other commitments".

Average duration of induction programme

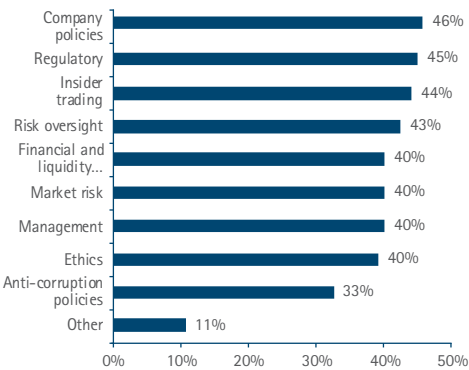


⁶ The Institute of Company Secretaries of India. ICSI Recommendations to Strengthen Corporate Governance Framework.

Foreign exchange risk, legal updates and corporate governance are some of the additional topics on which education is imparted.

The figure alongside shows the proportion of companies that provide training on specific topics. Interestingly, though, 47% of the companies do not provide training on any of these key topics to their new and existing directors. Company policies are the most common topic on which education is imparted while the least number of the companies conduct training on anti-corruption policies (e.g. FCPA and UK Anti-bribery Act). This clearly indicates that, on an average, companies give higher importance to policies and procedures than anything else.

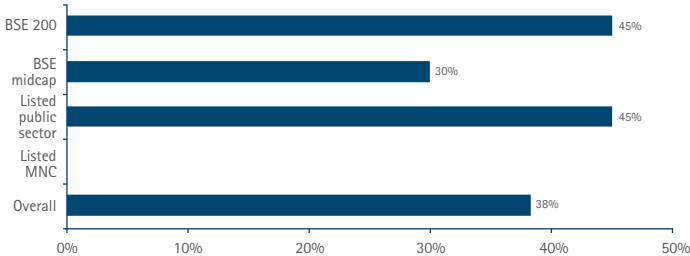
Key topics for additional training provided to independent directors



Our survey found that directors in a majority of the companies did not attend formal training and only 39% of the companies have directors who attended formal training. BSE 200 companies (45%) have the highest percentage of directors who have attended formal training programmes. On the other hand, directors in none of the listed MNCs surveyed have attended any form of formal training.

As is evident in our findings, it is critical that companies provide at least some training to their directors to provide them the requisite knowledge to perform their duties well. Even if companies do not organise training programmes, they must encourage directors to attend external training, where necessary. This will become more crucial with rising demand for independent directors.

Attendance of directors in formal training programmes





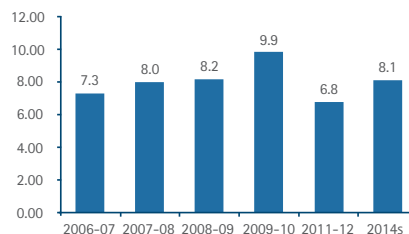
COMPENSATION

As per the Directors, Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2015, every listed company shall disclose the following in the board's report:

- Ratio of the remuneration of each director to the median remuneration of the employees of the company
- Ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director
- Key parameters for any variable component of remuneration availed by the directors
- Percentage increase in remuneration of each director
- Affirmation that the remuneration is as per the remuneration policy of the company

The compensation received by independent directors declined in 2011-12 (INR 6.8 lakh) from INR 9.9 lakh in 2009-10. Until 2009-10, the average compensation received by independent directors had steadily increased from INR 7.3 lakh in 2006-07 to INR 9.9 lakh in 2009-10.

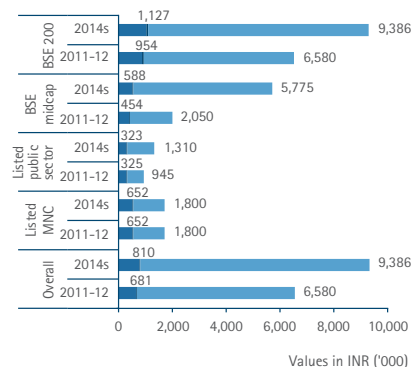
Average annual compensation of independent director (2007 to 2014)



Source: India Board Report 2007, 2009 and 2011

The average annual compensation received by independent directors was INR 8.1 lakh as per 2014 survey data. The compensation received by independent directors received a boost of 19% compared to the previous years' numbers of INR 6.8 lakh. Their remuneration ranges from as low as INR 2.4 thousand per annum to as high as INR 93.0 lakh for the year 2014.

Annual compensation of independent directors by company category



Interestingly, the lowest annual compensation was paid by a listed public sector company as they pay only INR 600 as sitting fees per meeting. Of the four company categories, directors in listed public sector companies receive the least remuneration with the average value earned being INR 3.2 lakh in 2014.

Note: In the above figure, only the average and maximum compensation values have been provided.

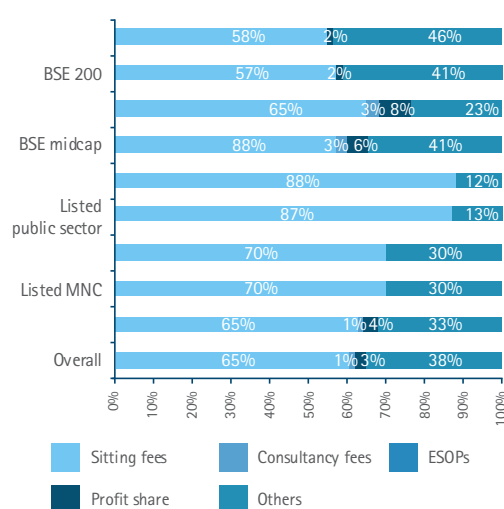
The Companies Act 2013, expressly disallows independent directors from obtaining stock options (ESOPs) and remuneration other than sitting fees and reimbursement of travel expenses for attending board and other meetings. Profit-related commission may be paid to them, but it is subject to approval of the shareholders. The compensation structure of independent directors in the companies surveyed does not include ESOPs and therefore the changes in the Companies Act, 2013, will not affect this component of the compensation.

The share of commission to total compensation is much higher for directors with high total compensation amounts. Therefore, the new regulations

will mainly impact directors with higher compensation, as commission forms a large share of their remuneration. Commission paid is highest among directors of BSE 200 companies; it constitutes 41-46% of their total compensation. Listed public sector companies on the other hand, pay negligible amount of compensation in commissions (12-13%) and do not pay their directors any share of the profits.

Regarding compensation, companies in India can no longer afford to ignore their minority shareholders as highlighted in the recent case of Tata Motors. The minority shareholders of Tata Motors rejected a proposal for remunerating executive directors in excess of permissible limits. The unique action by Tata Motors' shareholders hopefully ushers the beginning of an era where minority shareholders are able to challenge the management if they are unhappy with certain types of decisions.⁷

Break-up of annual compensation of independent directors



⁷ Shally Seth Mohile, Anirudh Laskar (2014, July 03). Tata Motors shareholders reject proposals executive pay. LiveMint

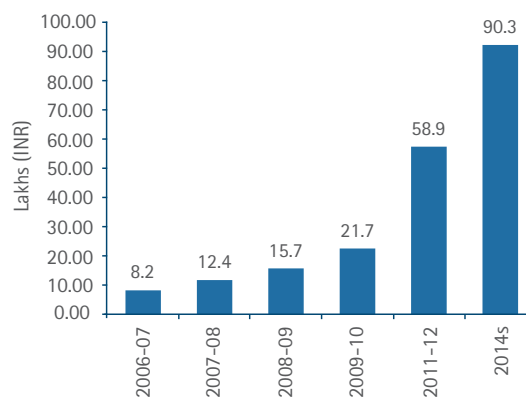


"Over the last five years, the India Board Report has assiduously captured the current reality of corporate governance and highlighted the issues and opportunities that remain to be addressed. In fact, the Companies Act 2013, has incorporated some of the issues that the earlier reports isolated, like diversity in boardrooms, risk assessment, board effectiveness, etc. As always, the India Board Report 2015-16 is comprehensive in its detail and a fair reflection of the achievements of corporate India, as well as the gaps that remain to be tackled. A must-read for all who care about improving governance and the effectiveness of boards."

Vinita Bali, independent director and former CEO, Britannia Industries

The average compensation received by independent directors who are also the chairpersons, increased by more than 300% from INR 21.7 lakh in 2009-10 to INR 90.3 lakh in 2014. Before 2011-12, the average compensation received by the chairperson increased steadily from INR 8.2 lakh from 2006-07 to INR 21.7 lakh in 2009-10.

Average annual compensation of independent chairperson (2007 to 2014)



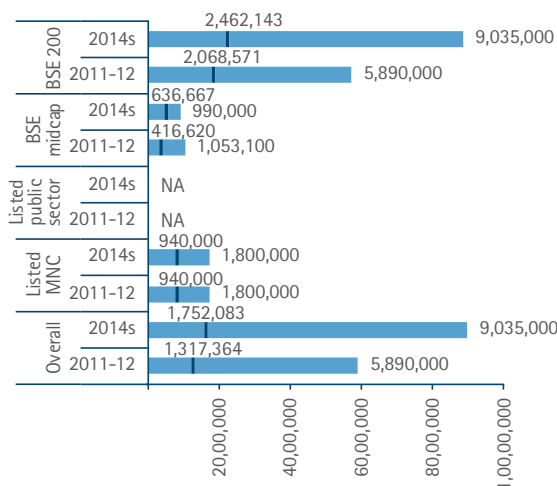
Source: India Board Report 2007, 2009 and 2011

The average annual compensation earned by an independent director who is also the board chairperson was INR 17.5 in 2014 compared to INR 13.1 in 2011-12.

The minimum compensation received by a board chairperson was INR 30 thousand in a BSE Midcap company and the maximum of INR 90.3 was paid by a BSE 200 company.

None of the listed public sector companies surveyed had appointed an independent director as the board chairperson.

Annual compensation of board chairperson



Values in INR

Note: In the figure above, values have been provided for only the average and maximum compensation.



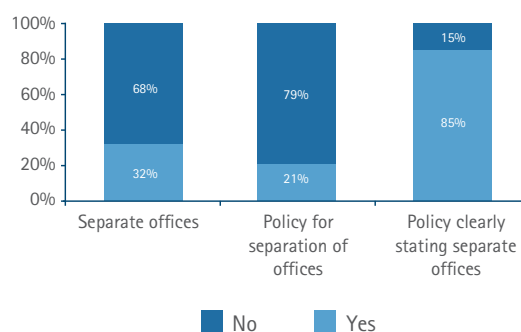
SEPARATION OF CHAIR AND CEO

International corporate governance experts advocate that the separation of the CEO and chairperson positions is a best practice since a CEO, who also chairs the board, enjoys unchecked power which may be detrimental to the company. On the other hand, some industry experts warn that separating the two offices can be detrimental as the roles risk losing unity of command, which is important especially in a fast-changing environment.

Companies Act, 2013, suggests that companies separate the offices of the chairperson and CEO/MD. However, this is not mandatory unless it is stated in the articles of a company. On the other hand, SEBI wants listed companies to voluntarily consider separating the posts of chairperson and managing director.⁸ As per our survey, 68% of companies in India do not have a separate chairperson and CEO/MD.

As per our survey, only 21% of the companies in India have a policy on the separation of the offices of chairperson and CEO/MD. Among the companies that have a separation policy, 85% of them clearly state that the two offices must be kept separate.

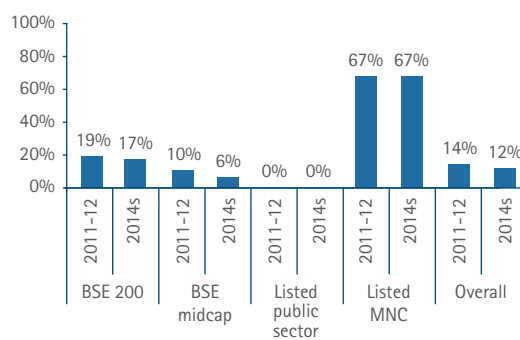
Separation of chairperson and CEO/MD's offices



⁸ The Economic Times (2014, February 19). Separate Chairman, CEO roles desirable, not mandatory: SEBI.

In India, many companies are closely held by the promoters and although some of them have evolved to be managed by professionals, the board often remains in the control of the promoters. As a result, even if the CEO/MD is not the chairperson, the position is often held by a confidant of the promoter. This is reflected in our survey as only 10% of the companies have an independent director as the chairperson. However, this is not the case with the listed MNCs in India; 67% of them appointed an independent director as the chairperson.

Independent director as chairperson by company category (2012 and 2014)





SURVEY FINDINGS

Controls and Procedures - Discipline & Transparency

The Companies Act, 2013, aims at a contributory participation of independent directors in the workings of a company board. The onus then is really on the company boards and their respective independent directors to assess their involvement.



“Both Companies Act and SEBI requirements are very prescriptive which results in companies ticking the box rather than genuinely adopting improved corporate governance practices. The regulators should outline the principles and allow corporate boards to develop procedures best suited for their companies.”

Arun Duggal, Ex-Chairman Shriram Capital & Independent Director

BOARD PROCESSES

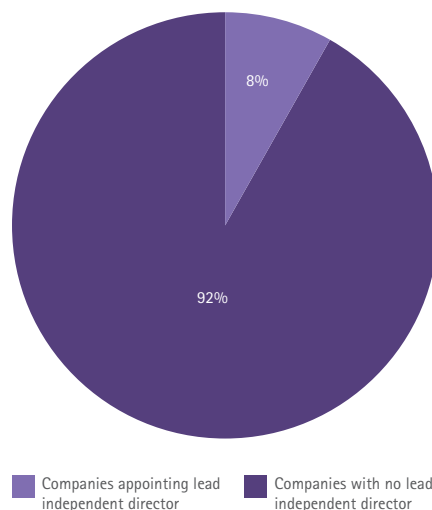
Lead Independent Director

Pressure from shareholders, regulators, and other stakeholders to improve the performance of corporate boards led some of the US companies to introduce the concept of a lead director. Since its conception, the lead director role has grown in importance and influence.

The ASX Corporate Governance Council suggests the appointment of a lead independent director, especially where the CEO also serves as the chairperson, or where the chair would not meet an objective assessment of 'independence'. The role of the lead independent director is to provide leadership to independent directors, liaise with the CEO on behalf of the independent directors, and advise the board on matters where there may be an actual or perceived conflict of interest such as chair/CEO performance evaluation.⁹

Merely 8% of the companies in India have appointed a lead independent director. This low percentage becomes critical in the context of board effectiveness among Indian companies where the promoter group tends to have a strong influence on the board. There is a pressing need to appoint lead independent directors but the process will have to be well thought through, else it will create 'two power centers' in the company board.

Companies with lead independent director



⁹ Jennifer Tunny (2013). Good Practice: Lead Independent Directors.

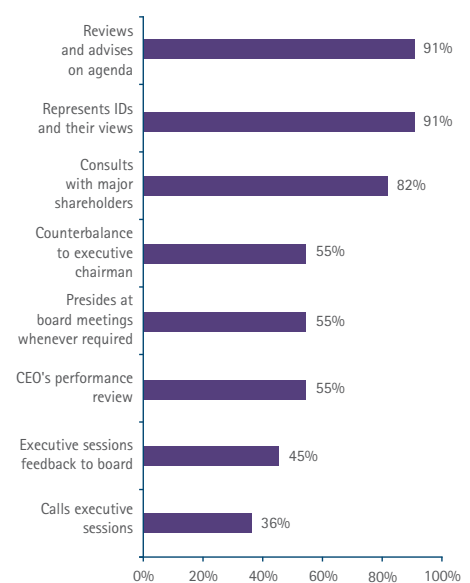
Among the 8% of companies surveyed that have appointed a lead independent director, the three most commonly assigned roles and responsibilities are outlined below:

- Reviewing and advising the boards on agenda (91%)
- Representing all the independent directors and their views (91%)
- Consulting with major shareholders (82%)

Infosys is a prime example of the success of appointing a lead independent director who represents and acts as a spokesperson for the independent directors. The role of the lead independent director as per Infosys' annual report is as given below:

- Presiding over all executive sessions of the board's independent directors
- Working closely with the chairperson, co-chairperson and CEO to finalise the information flow, meeting agendas and meeting schedules
- Liaising between chairperson, co-chairperson, CEO and independent directors group
- Taking the lead role, along with chairperson and co-chairperson in the board evaluation process

Existing roles and responsibilities of lead independent director



Meetings of Independent Directors

The Company Act, 2013, explicitly mentions that an independent director should strive to attend all the board and committee meetings in person or through video conferencing. It goes on to recommend that they participate actively and constructively.

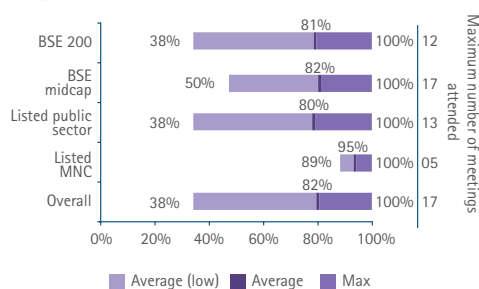
Among the different categories of companies surveyed, the attendance rate of independent directors on listed public sector company boards was the highest at 89% while those on listed MNCs clocked the lowest at 53%.

The Companies Act, 2013, does not suggest or mandate the time independent directors should dedicate towards each company board they are a member of. It only recommends that they devote sufficient time to board and committee meetings.

Our survey found that, independent directors in India dedicate 8.7 days in a year to each board on which they serve as a member. Among the different categories of independent directors, women independent directors dedicate the highest amount of time for each board (10 days). On the other hand, the least amount of time dedicated to the board is by the academicians and experts from the field of education.

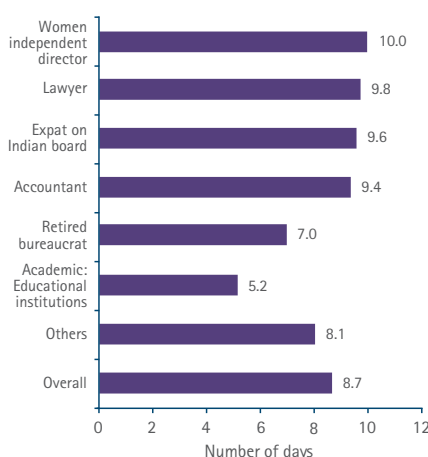
The Companies Act, 2013, requires independent directors to meet as a separate group. Separate meetings of independent directors, with auditors, with management and with the chairperson, are critical to ensure the independence of the independent directors. Such meetings help independent directors express their common or diverse views on management decisions.

Attendance rate of independent directors by company category



Independent directors of India Inc attend majority (83%) of board meetings.

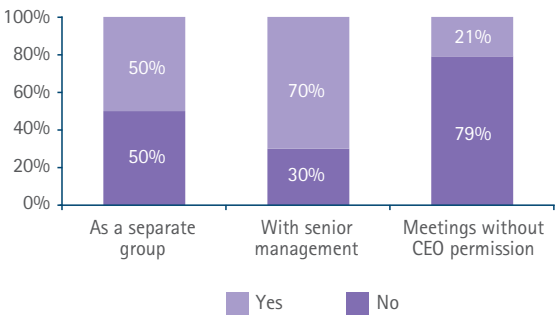
Days committed to board



Information helps the board perform their duties and it is the duty of independent directors to source it.

All independent directors must meet at least once annually without the presence of non-independent directors and other members of the management or CEO according to the Companies Act, 2013. Such meetings are legally termed as 'separate meetings'. According to our survey, independent directors in half these companies meet outside the board meetings. Going forward, companies will have to make provisions to facilitate 'separate meetings'.

Meetings of independent directors



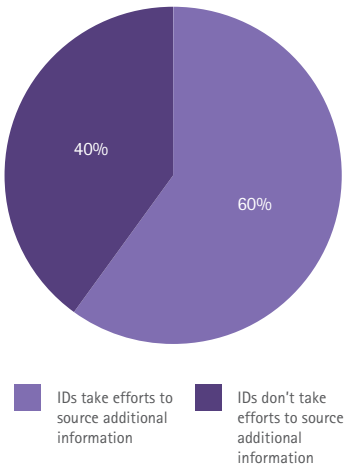
Independent directors can be held responsible for any frauds and scams in the company under the Companies Act, 2013. This accountability gives them the right to ask questions regarding the senior management. However, the Companies Act, 2013, does not make it mandatory to hold separate meetings of independent directors with the company management. Currently, 70% of the independent directors meet the senior management outside of the board meetings.

Independent directors should not require permission of the CEO to meet the company management outside of board meetings and without the presence of non-independent directors. Having to seek permission impedes their independence. In our survey, a majority (79%) of the independent directors who met senior management said they did not need permission of the CEO.

Independent directors must source third party information to gain an unbiased and accurate understanding of the company's competitive environment and compare information provided by the management, and identify issues to discuss in meetings.

As per the survey findings, 60% of independent directors do make an effort to source information from various third-party sources like reports, vendors, employees, etc.

Efforts of independent directors to source third-party information



Performance Evaluation

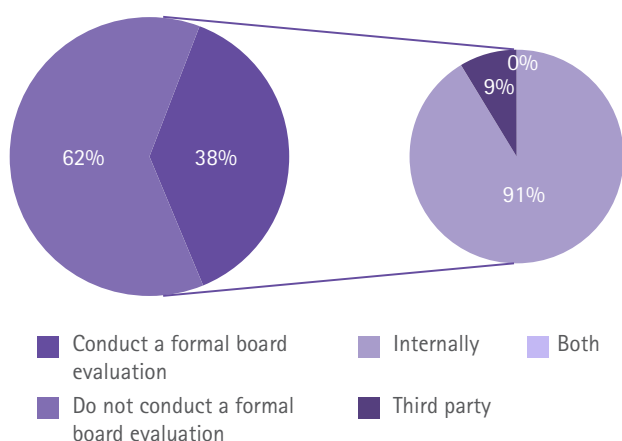
Schedule IV, section 149 of the Companies Act, 2013, Clause VIII, provides guidelines for conducting evaluation of boards. It states that the Nomination and Remuneration Committee of the company shall carry out evaluation of every director's performance. The reappointment of independent directors shall be on the basis of the performance evaluation report.

The board evaluation process should improve the overall attendance rate of directors and ensure that they have the capability and the willingness to contribute to the business.

The Companies Act, 2013, also explains the method for carrying out a board evaluation. It states that the performance evaluation of independent directors shall be done by the entire board of directors, excluding the director being evaluated and on the basis of the performance evaluation report; it shall determine whether to extend the term of appointment of the independent director.

A board evaluation process helps the board to step back and evaluate its own performance, which serves as a critical reflection on the board's confidence, and to judge the value the board is providing to the organization. Among the companies surveyed, 38% claim to have plans to conduct a formal board evaluation. Eighty-nine per cent of companies that have a board evaluation process, would prefer to do it internally.

Formal board evaluation procedure and mode of evaluation



"Although, in last one year, Indian regulations have become more stringent to make corporate governance in India stronger, but one has not seen much of a change on ground. Indian boards continue to remain a cozy club of friends and relatives with virtually no accountability. I hope and expect the boards to be more accountable and shareholders to be more demanding with class action suits now being a possibility in India."

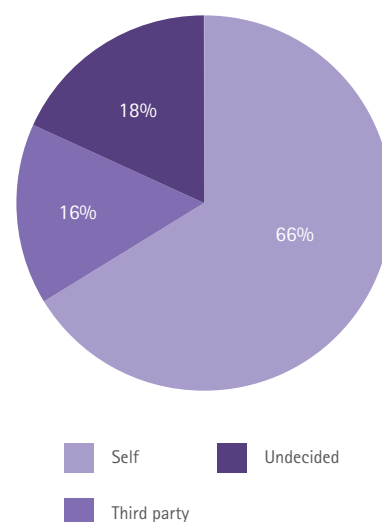
Anil Singhvi, ICAN Advisors



Board evaluation is mandatory under the Companies Act, 2013. Sixty-two per cent of the companies surveyed do not currently have a board evaluation process, and will have to introduce it. Among the companies that need to implement a board evaluation process, 66% would prefer to do a self-assessment and a very small percentage (16%) of companies, indicated that they will avail the services of an external/third-party assessor.

As promoter-driven organisations account for the bulk of the market capitalisation of Indian companies, a structured focus on the minority shareholder becomes important to ensure good governance. An article by The Wall Street Journal and Livemint highlights that some of the best-managed boards have a stated policy to evaluate all the decisions from the perspective of the minority shareholders. These well managed boards actively step out and talk to the management and the shareholders at formal or informal gatherings, participate in AGMs, have the lowest average turnaround time for addressing investor complaints, and the highest attendance levels.¹⁰

Preferred method for board evaluation



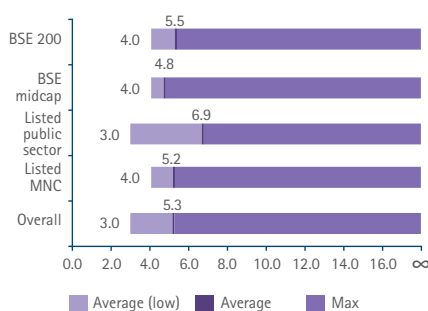
¹⁰ Inside India's best boards, retrieved December 10, 2012, from Live Mint & The WSJ

Length and Frequency of Meetings

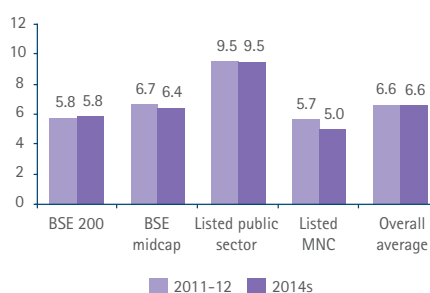
The Companies Act, 2013, under section 130, defines the board meeting and its code of conduct. It prescribes that a minimum of four meetings be held every year. It also specifies that there should not be a gap of more than 120 days between two meetings. There is no upper limit on the number of board meetings a company must or can hold in a year.

Most companies' policy on the minimum number of board meetings to be held in a year is compliant with the Act at four. Some PSUs stipulate a minimum of three meetings per year. Most companies have not set an upper limit on the number of meetings as the Act does not require them to do so.

Board meeting limit set by company category



Board meetings held annually by company category (2012 and 2014)



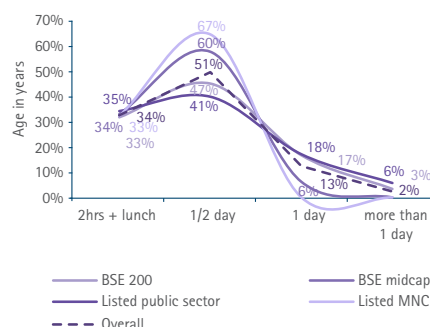
Interestingly, the minimum stipulation notwithstanding, PSUs on an average were found to hold the largest number of meetings per year (9.5 in 2014) and listed MNCs hold the least number of meetings per year (five in 2014s).

The Companies Act, 2013, mandates the number of board meetings to be held but not the duration of the meeting. It only suggests that the entire agenda be discussed and all queries of directors be answered in the meetings.

In a majority of the companies, board meetings last for half a day (51%) and it's even shorter for 34% of the companies where the meeting is for two hours and lunch.

Board meetings of Indian companies are longer compared to the MNCs in India. Some board meetings go on for an entire day and sometimes even spill into the next day. Board meetings of the MNCs surveyed did not last longer than half a day.

Average duration of board meetings by company category



“Board meetings in India are getting more engaging and meaningful. Issues of challenging strategy, preventing fraud and breaches of IT security and risk management are being debated vigorously. Attention is being riveted on safety, proxy company activism, CSR and evaluation. The composition of boards is changing as corporate India is realizing that diversity delivers. Refreshment is happening at all levels for boards and board members. I feel more challenged and also free to challenge more fully. Clearly, the correlation between share price and board effectiveness is emerging. A very exciting period is playing out.”

Shailesh Haribhakti, Independent Director & Group Chairman, DH Consultants Pvt. Ltd.

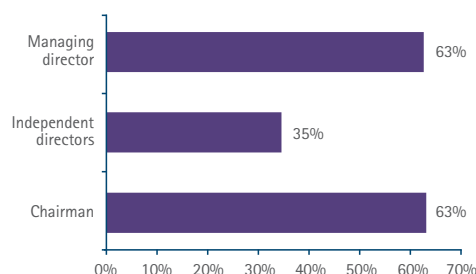


Agenda: Who Sets the Agenda?

Company secretaries draft the items of the board meeting agenda in co-ordination with managing directors, independent directors and chairperson of the board. The company secretary is responsible for setting the agenda but does not have the authority to select the agenda without prior approval.

The chairperson (63%) or the managing director (62%) generally writes the items of the board meeting agenda. In some companies, this is done by independent directors (35%). This underlines the fact that in a majority of companies, items of interest to independent directors may not appear on the agenda and therefore may not be discussed. This undermines their participation and contribution in board meetings.

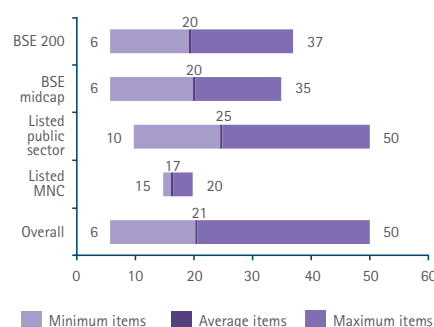
Author of the board meeting agenda



The agenda of a board meeting should include minutes of the last meeting and relevant topics with necessary information for the current meeting. For instance, if the board meeting is just after the release of the quarterly results, the current topics on the agenda should include highlights of the quarterly results, purchases of capital goods, and management accounts. Similarly, for meetings after board evaluation, the agenda should include details of board performance.

The average number of items in a board meeting agenda was 21 as per the survey, with a maximum of 50 and minimum of six. The average number of items on the board meeting agenda was the lowest among listed MNCs (17). Listed public sector companies in contrast have the most items in the agenda. This is expected given that they also have the longest board meetings compared to the other categories of companies.

Number of items on a board meeting agenda by company category



The advantage of having directors that sit on other boards is their knowledge of the external environment of the company and of other industries. At the same time a company must restrict access to classified information for such independent directors. To avoid conflict, the company may ask an independent director to not sit on the board of a competitor.

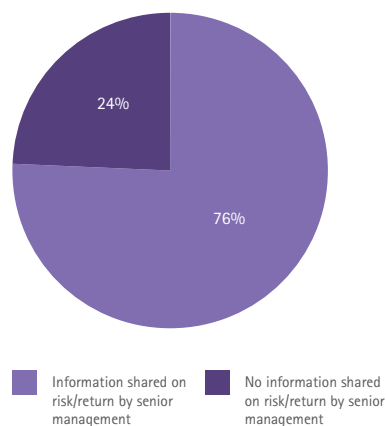
In a recent case, Eric Schmidt, the current executive chairperson and the then CEO of Google Inc was asked to resign from the Apple board. The reason behind his resignation was that both Apple and Google are competing in the mobile market on the internet and the Apple board was not comfortable having such a close competitor on the board.



COMMUNICATIONS AND RELATIONSHIPS

The Companies Act, 2013 mandates that the company discloses risk related information in meetings and records it in the minutes of the meeting. The primary objective of the board is to protect the rights of the investor and hence shareholders must be made aware of any risk to the company. Our survey found that 76% companies do share the information on risk/return at investor meetings.

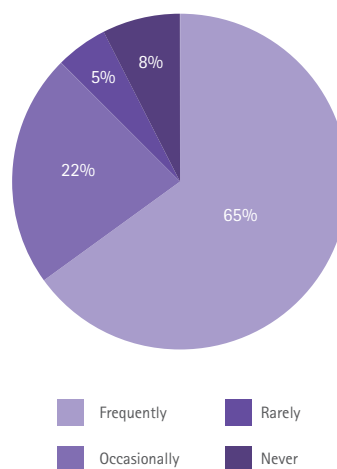
Senior management share information on risk/return in investor meetings



Health and safety violations are discussed in board meetings frequently by 65% of the companies. Another 22% discuss it occasionally but 13% rarely discuss it or never discuss it at all. It is important to bring such violations to the notice of the board as safety standards need to be attended to prevent incidents in the future.

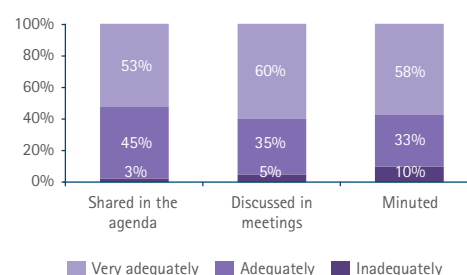
In the global context for example in UK, it is mandated by law that the board set effective health and safety management systems. The boards also need to devise a health and safety policy. To implement this policy effectively, the code suggests that health and safety violation issues should be discussed in board meetings.

Discussion of health and safety violations in board meetings



Discussing and recording sensitive items is required to encourage board members to freely share their views. In western countries a practice of 'in camera' meetings is conducted for independent directors to discuss sensitive items. In such meetings, the minutes are not recorded but a collective view is recorded. The collective views of independent directors are then communicated to the board at the board meeting.

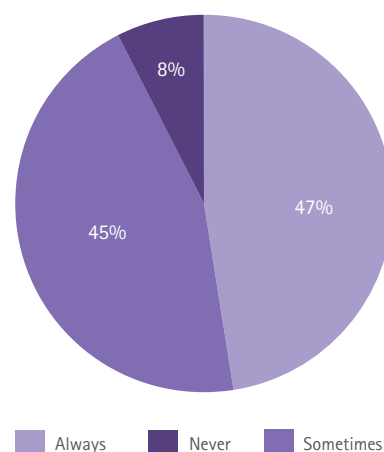
Discussion and recording of sensitive items in board meetings



In India, independent directors believe sensitive items are adequately shared in the agenda discussed in meetings, and then duly recorded in the minutes. The percentage of directors that feel this is inadequate is very small. A large percentage (10%) believe that it is inadequately minuted.

According to the rules of the Ministry of Corporate Affairs (MCA), an independent director will be held responsible for any action taken by the company board which he had knowledge of but did not register a dissent. Hence, in order to safeguard independent directors in such situations, it is necessary that their disagreement gets minuted. The Companies Act, 2013, gives independent directors the right to check company records for discrepancies and register their dissent in the board meeting minutes.

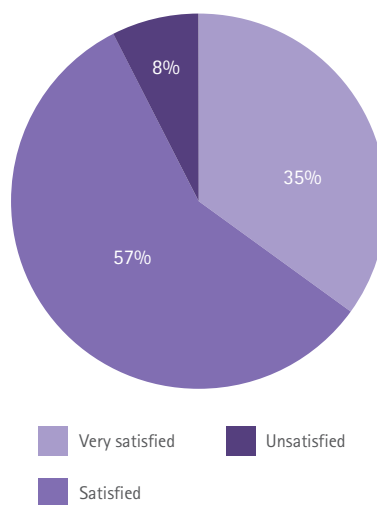
Recording dissent of independent directors



Forty-seven percent of the directors confirm that their dissent is 'Always' recorded, 45% said 'sometimes'. Very few (8%) of directors said that it is never minuted.

Disclosing market-related information to the public is a good practice to maintain transparency and attract investors. As per the revised clause 36 of the listing agreement of SEBI, companies have to disclose market sensitive information including price sensitive information to stock markets. Most (93%) of the directors are satisfied with the disclosures on major and market sensitive information made by companies.

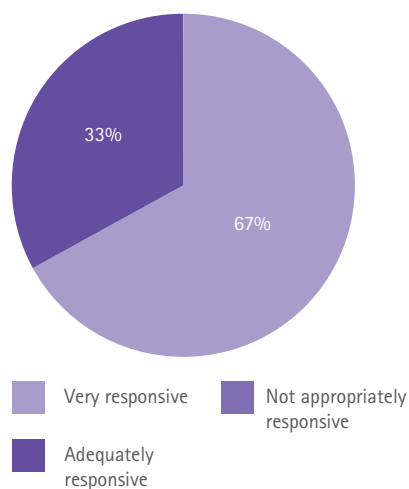
Public disclosure of sensitive information



The directors surveyed unanimously agree that the management is responsive to requests for clarification or amplification of information. In fact, a larger percentage of them consider the management to be very responsive.

Information disclosure, voluntary or on request, is very important for protecting shareholder interest. Therefore, independent directors should demand clarification on issues important to protect shareholder interests.

Responsiveness of management in clarifying information

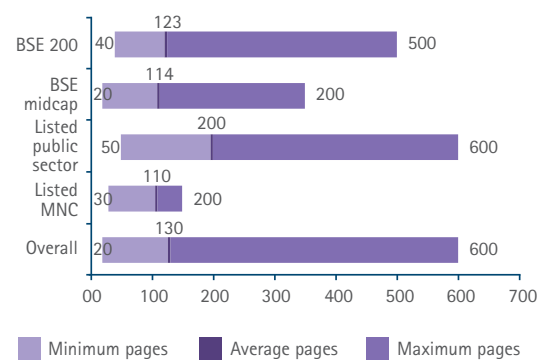


Information Sharing

The time available for a board meeting is limited and using it to introduce the topics in detail is a waste of valuable time. Hence, a comprehensive board pack helps members of the board to do their homework on the topics.

The average size of the board pack of the companies surveyed is nearly 130 pages and the largest pack is as much as 600 pages. The size of the board pack of the different company categories is proportionate to the number of items they have and the length of the meeting—listed public sector companies have the largest average board pack while MNCs have the smallest.

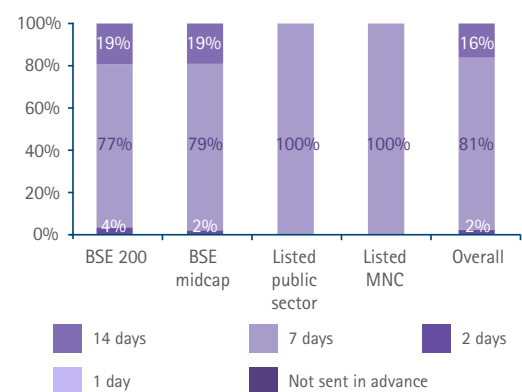
Average size of pack



The provisions of the Indian Company Act, 1956, made it mandatory for companies to send the notice and documents for the board meeting at least 21 days before the meeting. This has been reduced to seven days as per the Companies Act, 2013. Further, the Companies Act, 2013 permits the notice and documents to be sent through electronic or paper mode. This shorter notice aligns with board members being allowed to attend the meeting through video conference.

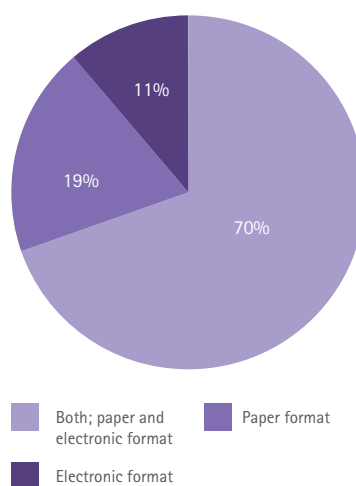
Most of the companies already follow the new norm and send the board meeting documents at least seven days before the meeting. Around 19% of both BSE 200 and BSE midcap companies send the documents 14 days in advance. These companies now can take an extra week to send it.

Time before board meeting documents are sent



Use of electronic medium over paper to send the board packs is increasing among companies. The advantages of electronic media over paper are lower usage of paper, easier to mail bulk documents, and safety of documents. Though there are a lot of advantages of sending a board pack in electronic format, some of the older independent directors prefer receiving hard copies. Further, public sector companies need to send the board pack in paper format as they have to submit one copy to the parent ministries in the paper format.

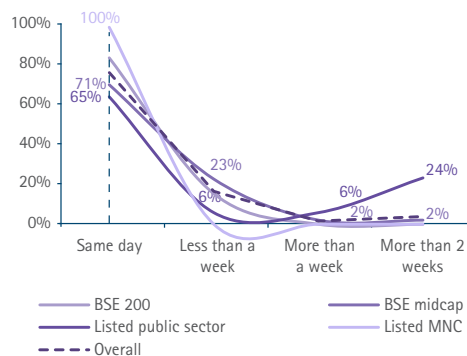
Format of the board packs



According to the Companies Act, 2013, quarterly and annual results should be announced to the stock exchanges within 15 minutes after the conclusion of the board meeting. Further, the revised clause 41 of the listing agreement makes it mandatory to publish the financial results in 48 hours.

Seventy eight percent of the companies publish the results on the same day they release it to the exchanges and 17% publish within a week. Going forward the companies that take more than 48 hours to publish their financial results will need to revamp their systems to be able to publish it in the stipulated time.

Days taken to release financial results



10.4% companies do not hold investor meetings.

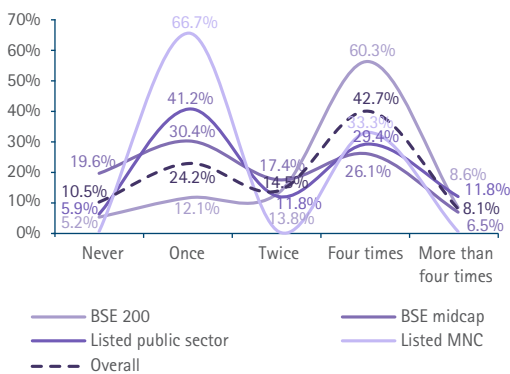
Annual General and Investor Meetings

AGMs and investor meets are held for companies to discuss their capital investments, risks, opportunities, mergers and expansion plans with investors and shareholders. A few companies also use AGMs as a platform to meet their shareholders and customers.

BSE 200 companies comparatively hold the most number of investor meetings. All listed MNCs hold investor meetings, which are mostly annual. A substantial percentage of BSE Midcap companies (19.1%), however, do not hold investor meetings.

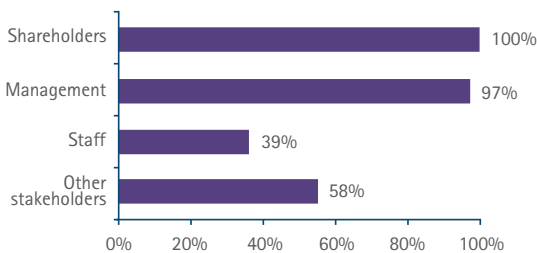
The secretarial standards set up in the Companies Act, 2013 mandate that, the quorum of AGMs must comprise at least five members from the body corporate and two members with voting rights. The Act does not specify who must be invited but mandates that shareholders, all board members as well as an auditor, need to participate. Shareholders can attend via video conferencing.

Annual investor meetings



All the companies invite their shareholders to AGMs as this is the main forum for shareholders to be involved in the functioning of the company and ask questions. Many companies also invite other stakeholders such as auditors, lawyers and labour unions. Government enterprises also invite government representatives and members from other government enterprises.

AGM invitees



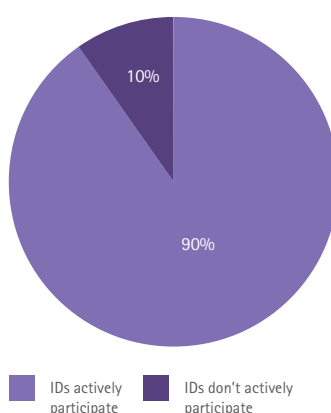


"Independent directors have a key role in corporate governance both as fiduciaries as well as custodians of the trust of the minority investors of listed companies. I am very pleased to see from the latest edition of the IBR 2015-16, that there is slow but steady progress in this domain within our companies. I want to congratulate the team behind this report for holding up a mirror on this issue and for regularly reminding us how much further we have to travel."

Nachiket Mor, Independent Director

According to the Companies Act, 2013, the duties of independent directors include active participation in board meets and AGMs. Active participation entails presenting the findings of the audit report and financials details in the annual report to the shareholders. The survey found that independent directors of most companies actively participate in the AGMs.

Active participation of independent directors in AGMs



"Independent directors take upon themselves the task of upholding the minority shareholders' interest without having a stated policy."

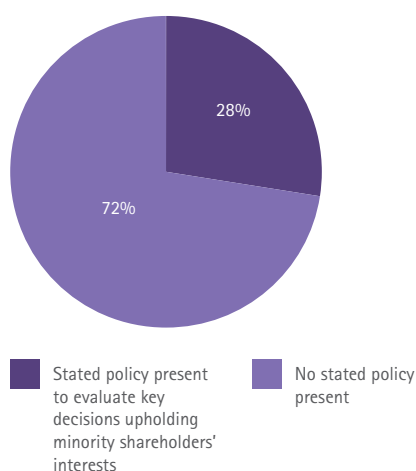
A Senior Independent Director

MINORITY INVESTORS

The importance of protecting minority shareholders' interest was very low in India as per our survey, as only 28% of the companies had a stated policy to evaluate all key decisions from the perspective of minority shareholders.

The Companies Act, 2013 does not make the process of evaluating all key decisions from the perspective of minority shareholders compulsory, but empowers the cause of minority shareholders by suggesting that during adjudication on class action suits, the Tribunal¹¹ will ensure that their interests are protected and wrongdoers, including auditors and audit firms, will be required to compensate as per orders by the Tribunal.

Key decisions evaluated from minority shareholders' perspective



¹¹ National Company Law Tribunal, constituted under the provisions of the Companies Act, 2013.



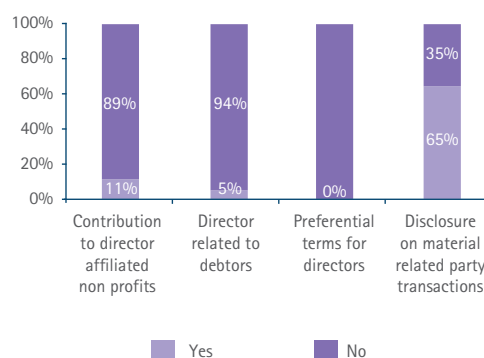
INDEPENDENCE

Related Party Transactions

The Companies Act, 2013 defines regulations for related party transactions to protect investors. Under the new rules, related party transactions do not require central government approval. Instead, it is mandatory to get approval from the audit committee or the board of directors as well as the shareholders through a special resolution. Related party transactions are now mandatorily required to be disclosed in the director's report, with justification.

The Companies Act, 2013 mandates that if a company is contributing more than 25% of the total funds received by a non-profit organisation, then no member of the organisation or their relative can become an ID contributing in the company. The reason behind introducing this regulation is to monitor funds allocated for CSR activities and to ensure that they do not get diverted for personal gain. Eleven percent of the companies surveyed have independent directors who are affiliated to a non-profit organisation to which the company is a major contributor.

Disclosure on related party transactions



According to the Companies Act, 2013, if a person or the company he is affiliated to, has received a guarantee or is indebted to a company, such a person can't be allowed to become an ID in the indebted company. However, 5% of the companies surveyed, do have directors who have a relation with an entity which is indebted to the company.

Although there is no regulation for awarding discounts or preferential terms for company products or services to the directors of the company; none of the companies surveyed gives such preferential treatment to their directors.

Related party transactions need shareholder approval and have to be disclosed in the director's report section as per the Companies Act, 2013. The requirement of board approval gives an opportunity to the board to discuss such transactions. Thirty-five percent of the companies surveyed are yet to comply with this new regulation.

In the 2013 case of FTIL-MCX, Forwards Markets Commission (FMC) declared FTIL unfit to run an exchange. FTIL is a major technology services provider in the financial space. It was a founder of MCX, and also its technology vendor. After FMC announced its judgment, FTIL was forced to sell its stake in MCX as well.

Independence of Independent Directors

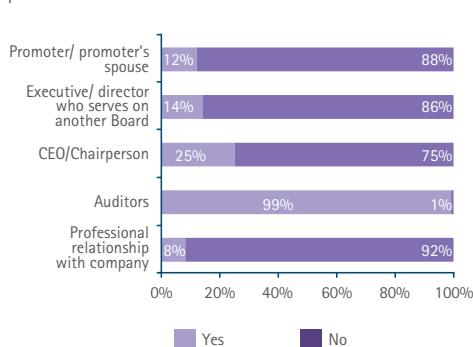
Board diversity can result in a conflict of interest due to the relationships that board members have with other members of the board or the company. Instances of conflict often arise during the appointment of independent members of the board, and transactions with companies affiliated with relatives of directors of the company.

The new regulations and rules are a step towards preventing such conflicts of interest. However, the intent and spirit of employing best practices is more effective than regulations in preventing conflicts.

The new guidelines and practice followed by the companies surveyed are:

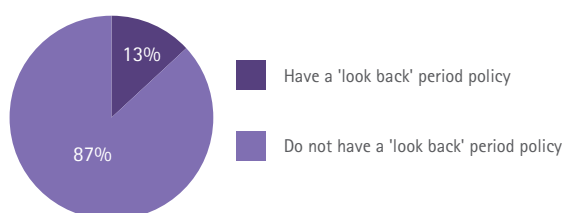
- According to section 149 of chapter XI, Companies Act, 2013, an ID should not be related to the promoter or director of the company or subsidiary or holding company. There was no such provision in the old act. Overall, 12% of Indian companies have directors that are related to a promoter or promoter's spouse.
- In 86% of the companies surveyed, independent directors do not sit on the board of another company, whose executive officer also sits on the same board with the Independent Director.
- Twenty-five percent of the companies surveyed have directors that are directly or through an immediate family member, related to the CEO or chairperson of the company. The Companies Act, 2013 does not have any regulation on such relationships but it explicitly says that no independent director should be related to a promoter of the company.
- In almost all the Indian companies (99%), the auditor does not have any relationship with the director or their family members. Auditor independence is of prime importance to enable transparency in disclosure of financial statements.
- If a director or anyone of his immediate family members provides professional services as a consultant, supplier or vendor to the company, he or his relative becomes a beneficiary of the company. Most Indian companies (92%) surveyed have refrained from such a conflicting relationship with members of the board.

Independent directors with potential professional conflict



Majority of the companies do not have any director with a professional relationship with the company and hence, they have not devised a look back policy.

Extended look-back policy for directors with professional relationships

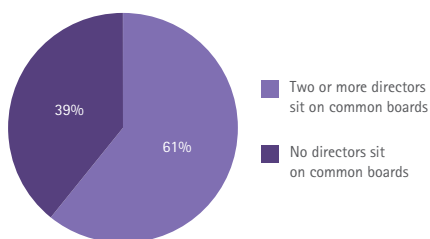




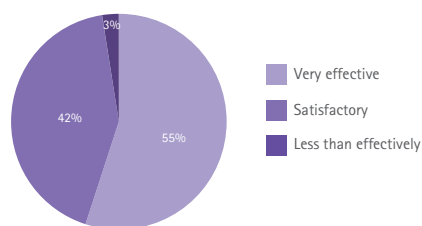
INTER-BOARD RELATIONSHIPS

Internationally, directors that sit on common boards are termed as interlocking directors. They form a chain of relationships with multiple boards and their directors. In a research by Rosanne Jane Hawarden of University of Massey, New Zealand, she found that the presence of such interlocking directors raises question of influence of one director on the other through board room contacts.¹² The influence can be in terms of aligning views in the other board's benefit or in terms of putting a diverse view in a board meeting, ultimately influencing the board's effectiveness.

Board members on common boards

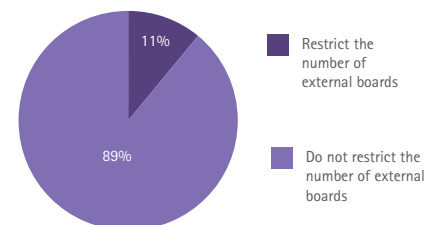


Board members' working relationships within and outside board meetings

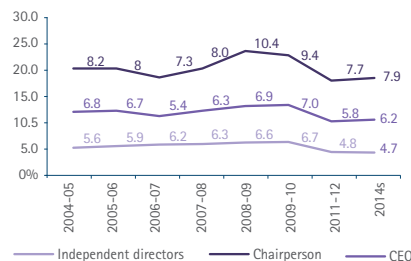


Regulating board member relationships and their working environment may not result in increasing board effectiveness. Relationships play an important role in developing the right dynamics for performance. This is possible when members meet often, have constructive discussions, manage conflicts effectively, and align to the common goals of the company. Our survey findings indicate that almost all directors are satisfied and consider their working relationship with other directors effective.

Company restrictions on external board membership for independent directors



External board membership (2005 to 2014s)



Source: India Board Report 2007, 2009 & 2011

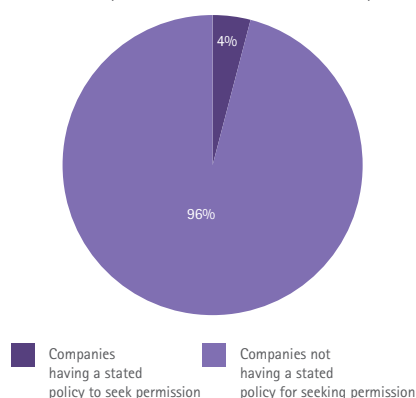
From 2004 to 2014, chairpersons have been members on the highest number of external boards compared to independent directors and CEOs. From 2007 to 2009, all three categories saw an increase in such membership. It declined in 2011-12 and then again witnessed a small rise in 2014.

¹² Rosanne Jane Hawarden (2010). Women on Boards of Directors: The origin and structure of gendered small-world and scale-free director glass networks.

The Companies Act, 2013 and Clause 49 of the listing agreement do not mandate independent directors to seek permission of the board before joining any other company's board. However, they need to inform the board of the same. The intimation of joining a new board is necessary for the company to ascertain if the director is affiliated with a company in the same field in order to accordingly determine the level of information to be shared with such a director.

A majority (96%) of the companies surveyed do not ask independent directors to seek permission from them for joining any other external board.

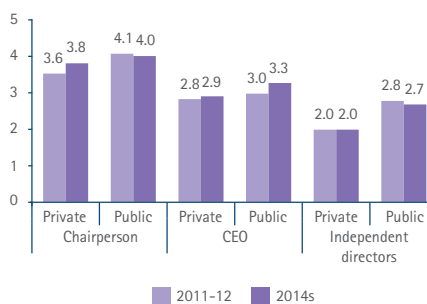
Permission required for external board membership



Membership on multiple boards on one hand enables chairpersons and CEOs to understand the outside business atmosphere better and on the other, they need to strike a balance as well as do justice to their commitment to all the boards. Interestingly, independent directors are members of fewer external boards compared to chairpersons and CEOs.

Among the companies surveyed, only 4% had independent directors who were not members on other company boards. Similarly, there are a few chairpersons and CEOs of the companies surveyed who do not sit on any external board of a private or public company.

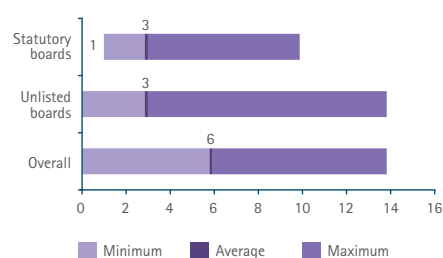
External board memberships of chairpersons and CEOs (2012 and 2014)



The independent directors surveyed sat on a maximum of 10 statutory boards and 14 unlisted boards. The provisions of the Companies Act, 2013 restricts the maximum limit to 10 boards and SEBI has further restricted membership of statutory boards to seven.

Independent directors of listed public sector companies are required to sit on boards of subsidiaries and divisions of companies as well. The structure of listed public sector companies is different from other listed companies as their subsidiaries or divisions are not considered to be separate companies; independent directors are required to devote time for them.

Statutory and unlisted board membership of independent directors





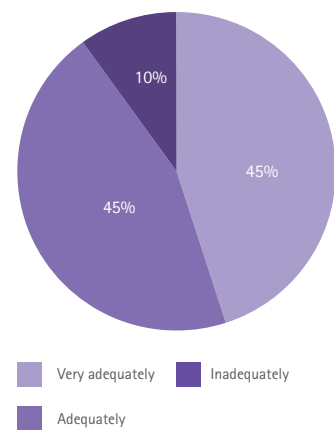
REGULATORY AND COMPLIANCE

It is very critical for companies to have detailed information on political, regulatory, economic, market, social, technological and demographic details of each country the company operates in. Of these, awareness of regulatory changes is of utmost importance as it can impact the approval of various permissions and licenses.

In a few companies, a team of legal experts or the company secretary gives the board a background on recent and upcoming changes in the regulatory or business environment at board meetings.

According to 90% of the independent directors, company boards are adequately aware of the developments in regulatory changes specific to the industry.

Board's awareness of developments in the regulatory environment



DIRECTORS AND OFFICERS INSURANCE

As per the Companies Act, 2013, directors and officers (D&O) insurance has been accorded statutory recognition. It states that the amount paid as insurance is deducted from their remuneration, in case the director or the officer is found guilty of negligence, default, misfeasance, breach of obligation or breach of trust.¹³ D&O policies cover directors and other top-line managers in the event of all out regarding any decision undertaken by them in good faith. So, if a section of stakeholders is aggrieved by certain decisions of a company and claim damages, these covers will come into force.

According to an article by the Times of India, with the Companies Act, 2013 awarding additional responsibilities to the independent directors, the D&O insurance component becomes more important and "well desirable" to them. Further, the Act has introduced class actions suits to strengthen the enforceability of shareholders' rights. In order to protect themselves from all types of legal action, corporates view this D&O insurance as an additional benefit.¹⁴

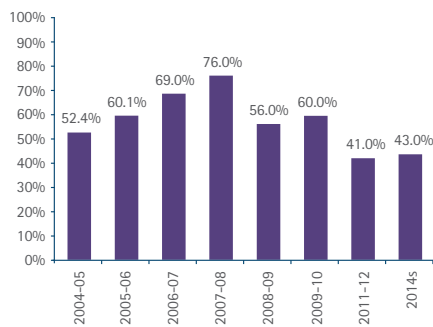
¹³ Clyde&Co (2013, October) International Review: FI and D&O

¹⁴ The Times of India (2014, March 17), Companies queue up for insurance as independent directors get more roles



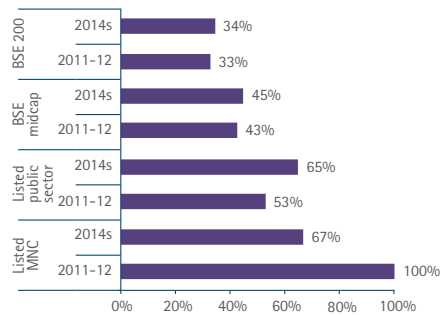
The percentage of companies providing D&O insurance has seesawed drastically between 2004-05 and 2014s. With increasing onus being placed on independent directors, industry experts foresee more companies following suit.

D&O insurance cover (2005 to 2014)



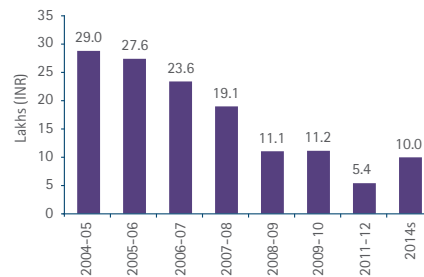
Source: India Board Report 2007, 2009 and 2011

Company-wise D&O insurance cover



Although the Companies Act, 2013 has made it mandatory to provide D&O insurance, it has not specified the amount of coverage. As per the findings of our survey, the average insurance premium amount has steadily decreased over the years from INR 29 lakh in 2004-05 to INR 5.4 lakh in 2011-12. In 2014, it increased to INR 10 lakh.

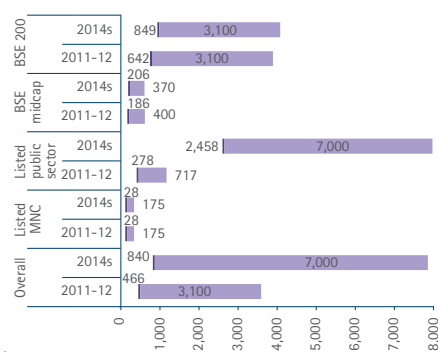
Insurance premium amount (2005 to 2014)



Source: India Board Report 2007, 2009 & 2011

The highest premium paid, as observed in the 2014 survey, was 70 lakh INR, paid by a listed public sector company and the least amount was 5,000 INR by a BSE Midcap company.

Average amount of D&O insurance premiums



Values in INR ('000)

Note: In the above figure, values have been provided for only the average and maximum insurance premium.



SURVEY FINDINGS

Performance & Leadership

Board chairperson and board committees, both play an important role in effective corporate governance. Majority of the Independent Directors surveyed showed satisfaction with their Chairperson's performance. Further, most Indian companies meet the statutory requirements of audit and shareholder grievances committees. With the basic framework of effective leadership in place, Indian corporate firms can now focus on their performance management.



"The India Board Report has constantly endeavoured to take a comprehensive view of the 'State of Corporate Boards' in India. The latest IBR findings suggest a gap between the law and its execution, Diversity in board composition and Risk management, being the case in point. However, the true measure of board effectiveness would be determined by a formal Board Evaluation process as stipulated by the law, hardly performed with integrity by the majority of companies."

Keki Dadiseth, Senior Independent Director and Ex. Chairman Hindustan Unilever

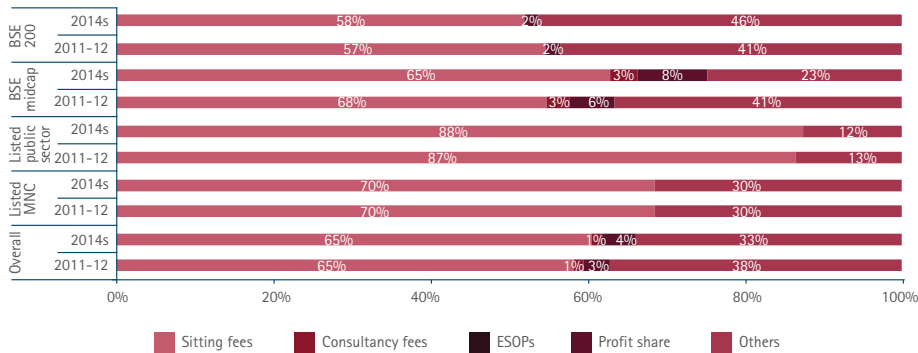
PERFORMANCE MANAGEMENT

Eighty percent Independent Directors feel they are most effective while advising and reviewing the financial standards and internal controls. Other areas which they are relatively confident about are advising on and reviewing financial risk as well as regulatory risk management (73%).

When it comes to ensuring that the person at the helm of company affairs is the right person for the job and is performing optimally, the board is not effective according to 25% of the independent directors surveyed. This is a reflection of the culture of promoter-led management where the reins of the company get handed over to the next generation.

The other area where independent directors are not effective is board member selection (20%). This strengthens the argument for the need of a formal and rigorous selection process, supported by a formal board evaluation.

Board's effectiveness in advising and reviewing

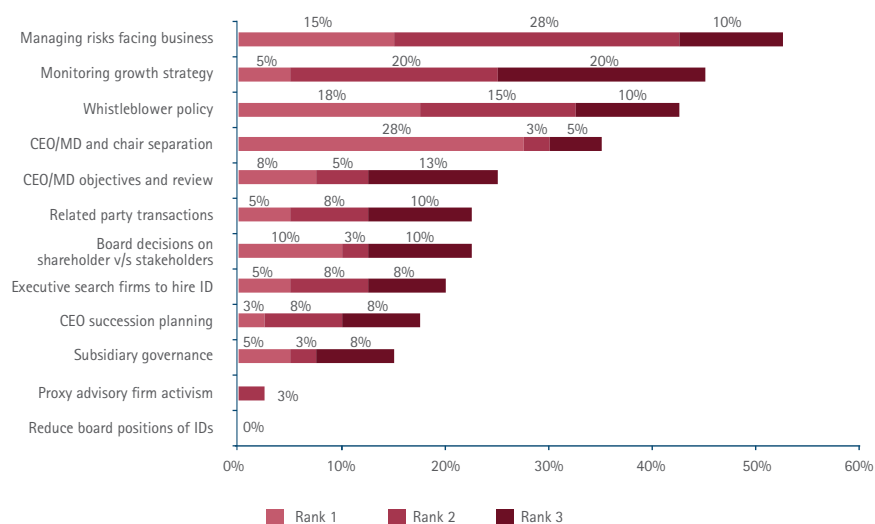


The impact of separating the offices of CEO/MD and Chairperson was ranked at the top by the highest number of Independent Directors. However, this strong view is concentrated with a select group of Independent Directors as very few ranked it second (3%) or third (5%). Whistle blower policy is the second highest ranked parameter. This may be attributed to the slew of scams impacting the Indian industry. The third most important parameter (15%) was the management of risks by companies.

The identification and management of risks faced by businesses has garnered the highest vote share of Independent Directors (53%) for all three ranks which indicates its importance. This parameter is closely followed by monitoring growth strategy (organic/inorganic) which according to independent directors also has an impact on governance with a total vote share of 45% for all three ranks.

CEO succession planning, low subsidiary governance and proxy advisory firm activism are the three parameters which are perceived to have a low impact on overall corporate governance.

Top three parameters that will have the greatest impact on overall governance



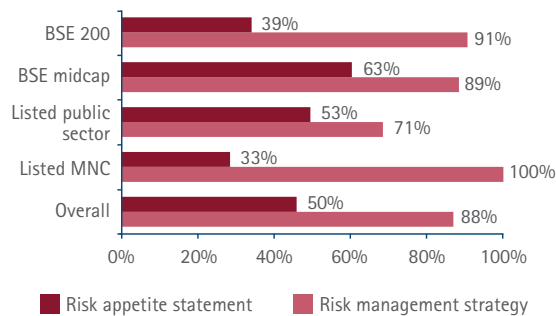


RISK MANAGEMENT

A significantly higher percentage of companies' risk policy includes a risk management strategy (88%) than a risk appetite statement (50%).

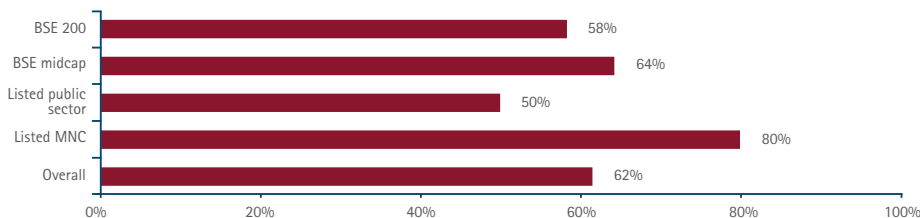
At one end of the spectrum, all the listed MNCs surveyed have a policy for risk management strategy. At the other end, listed public sector companies have the lowest percentage (71%). The least percentage of listed MNCs (33%) have a risk appetite statement in their while BSE Midcap companies were the highest at 63%.

Risk policy content



About 62% of the companies are of the view that they have an efficient enough process for reporting of data and risk state for risks to surface. Adequate risk management processes are in place for 80% of the listed MNCs while only 50% of listed public sector companies have their processes in place.

Adequate risk management process



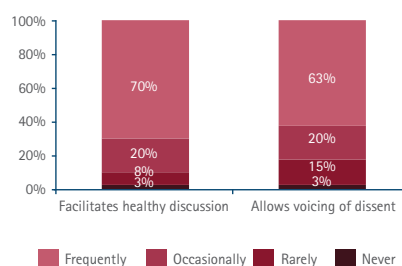


CHAIRPERSON

Independent directors surveyed are satisfied with the way the board chairperson encourages an open board culture by facilitating healthy discussions and allowing members to express their dissent.

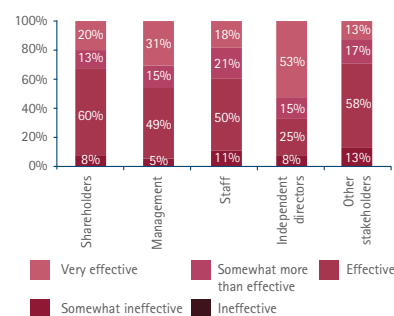
Majority (70%) of the independent directors were of the opinion that their board chairperson facilitates a healthy discussion in board meetings while only 3% said the chairperson never allows healthy discussions. Similarly, 83% of directors were of the view that the chairperson allowed them to voice their dissent and 3% said they were not allowed to express their dissent.

Chairperson supports open board culture



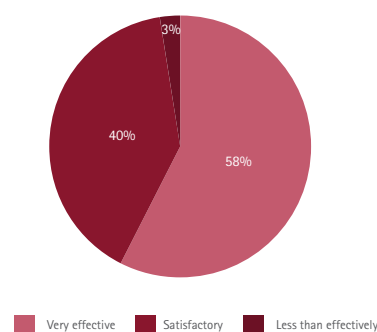
The chairperson of the boards in Indian companies is able to communicate effectively and have meaningful relationships with all the stakeholders. This is echoed by the independent directors surveyed as 88% were of the view that the chairperson is effective in communicating and maintaining relationships with various stakeholders and most effectively with them.

Quality of the chairperson's relationship and communication



The board chairperson is expected to resolve conflicts and facilitate the proceedings of a board meeting. The chairperson must build an atmosphere of trust and encourage a culture of dissent to successfully manage relationships and differences. According to the independent directors surveyed, the chairperson is able to manage conflict within the board successfully (97%).

Chairperson's ability to manage conflict within the board





EFFECTIVENESS OF COMMITTEES

Board Committees

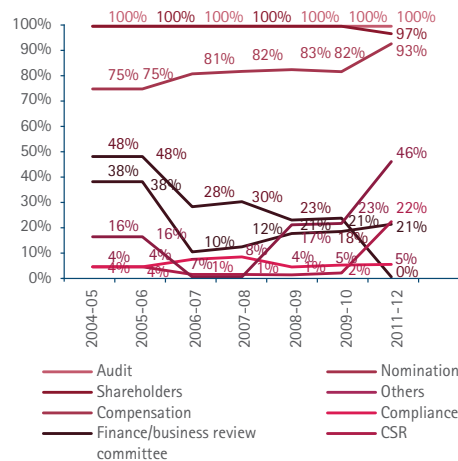
Sections 135, 177 and 178 of the Companies Act, 2013, mandate companies to set up an audit, nomination, shareholder relations and CSR committee.

All the companies in our survey were compliant in forming the mandatory audit committee and shareholders/investor grievances committee. Many companies have voluntarily created a compensation committee. Seventy-five percent of companies had the committee in 2004-05, which increased to 94% in 2014.

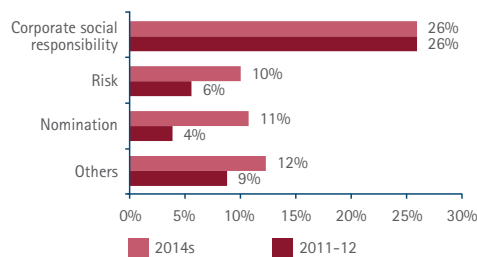
In contrast, only 23% of companies have an existing nomination committee and CSR committee. As the two committees have become compulsory as per the new regulation, a sizeable number of companies will have to take measures to form the two committees. Similar to the requirements applicable to audit committees, the Companies Act, 2013, requires that independent directors constitute a majority of the members of the CSR committee.

Twenty-five percent of the companies that have a CSR committee have set up the committee only in the last two years. This is in anticipation of the committee becoming mandatory as per the Companies Act, 2013. Similarly, a few of the companies have recently set up a nomination committee. These companies will benefit from having taken these measures in advance rather than waiting till the Companies Act, 2013, is implemented.

Board committees (2005 to 2014s)



Board committees recently started



In anticipation of the Companies Act, 2013, many companies have set up CSR and nomination committees in the last two years.

“The new Companies Act has pointed Indian corporate boards in the direction of better governance. Board responses to it so far have been mixed, underscoring, yet again, that mere compliance with the letter of the law without embracing the spirit of it, does not raise governance standards.”

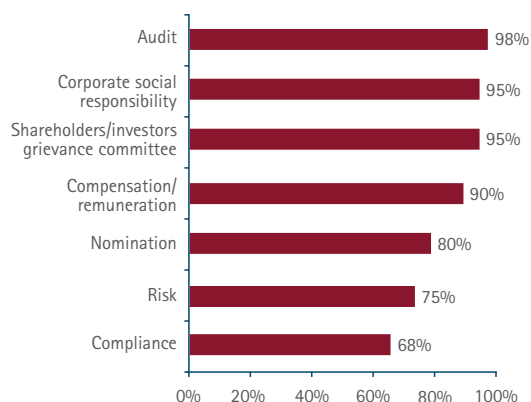
Rama Bijapurkar, Independent Director

According to 97% of independent directors, additional board committees are needed.

Independent directors are of the opinion that different committees allow the board to have detailed and focused discussions. For instance, the existence of a compliance committee helps reduce the work load of the auditor or audit committees which otherwise also have to do compliance work. This in turn enables the audit committee to focus their discussions around audit related matters.

A significant majority of independent directors underlined the need for all the key committees of a board. Interestingly, audit (98%), CSR (95%) and shareholder committee (95%) are most required according to independent directors, and this aligns with the new regulation which has made these committees mandatory.

Committees required

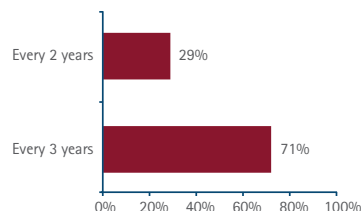
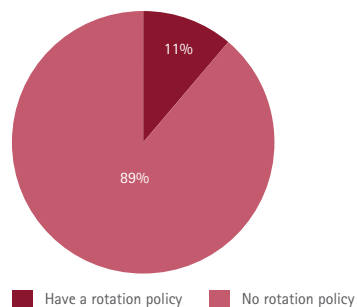


Only 11% of companies have a policy for rotating committee chairs, and frequency of rotation is once every three years.

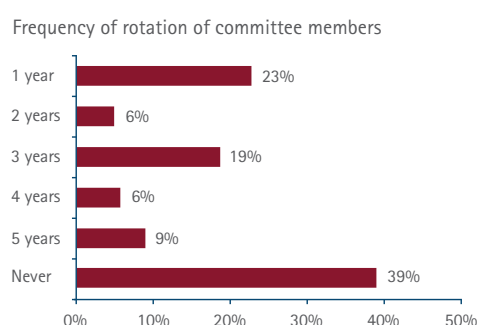
Tenure of Committee and Chairperson

Of the companies surveyed in India, 89% did not have a written policy for rotation of board committees' chair. Rotation of committee members in companies is mainly done on retirement. A similar trend exists in the US, ² where only 14% of the companies with revenue above \$5 billion have such a policy.

Rotation policy of the committee chair



Although very few companies surveyed had a policy to rotate the committee chair (11%), a high proportion of these companies (61%) rotated the committee members. Further, the frequency of rotation was usually one year (23%) or three years (19%). There are benefits of periodic change and some recommend a rotation between every three and seven years. However, frequently rotating members of certain committees like the audit committee chair affects its functioning as audit committees need continuity in membership as well as leadership. Also, limiting the tenure restricts the complete use of the members' experience and skills.



On the other hand, studies have found that a longer tenure leads to more lenient decision-making at the committee level. For instance, the salary of the CEO and senior management were higher in companies where tenure of compensation committee members was longer. This may be due to a closeness that develops between the management and board over time which dilutes their independence.¹⁵

Media reports suggest that some directors oppose the rotation of committee members or those in leadership positions. These directors are of the view that if something is working well for the board then rotating members for the sake of compliance is unnecessary as it causes inconsistency in board performance.

¹⁵ Clyde&Co (2013, October) International Review: FI and D&O Judy Canavan, Blair Jones and Mary Jo Potter, Sibson & Co, Board tenure: How long is too long?

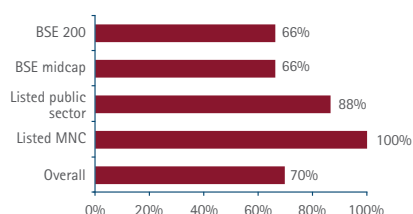


SUSTAINABILITY AND CORPORATE SOCIAL RESPONSIBILITY

The Companies Act, 2013, makes an effort to introduce a culture of CSR among Indian companies by making it mandatory for them to formulate a CSR policy and allocate a portion of their profits on social activities. This must be implemented by every company having a net worth of 5,000 million INR or more or a turnover of 10,000 million INR or more, or a net profit of 50 million INR or more, during any financial year.

As per our survey, only 68% of the companies had a CSR agenda. All the listed MNCs surveyed, had a CSR agenda. Similarly, a sizeable number of listed public sector companies (88%) had an existing CSR agenda.

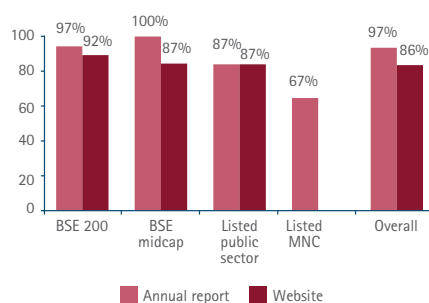
Profit contribution for CSR activities by company category



The MCA has also made it mandatory for companies to publish their CSR agenda. The CSR agenda must be prepared by the board of directors with details of the policy developed and implemented, initiatives taken during the year and funds allocated for these activities. This statement must be presented during the general meeting.

Among the companies that had a CSR agenda, 96% of them also published their activities with most companies opting to publish it in their annual report (94%) compared to publishing it on the company website (85%). This was the trend across different categories of companies but interestingly, none of the listed MNCs published it on their website.

Method of publishing the CSR agenda by company category

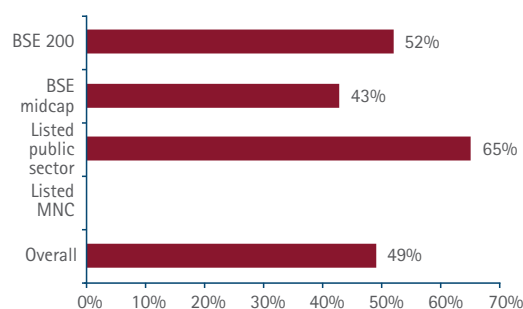


The Companies Act, 2013, does not specify the requirement of a dedicated CSR head but mentions that every qualifying company needs to constitute a CSR committee of the board which consists of three or more directors. The mandate of the committee shall be as follows:

- To formulate and recommend a CSR policy to the board
- To recommend amount of expenditure to be incurred on CSR activities
- To monitor the CSR policy of the company from time to time

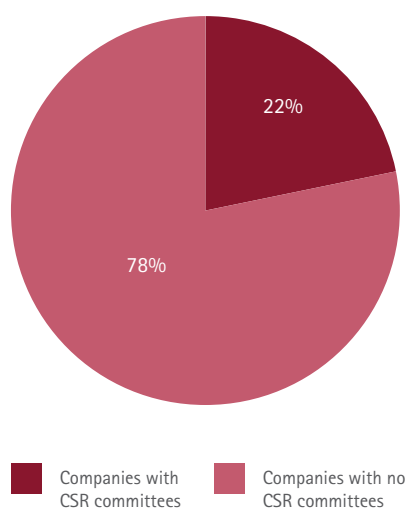
49% percent of the companies had appointed a CSR head dedicated to monitor the company's CSR activities. Appointment of a CSR head was highest among listed public sector companies while none of the listed MNCs had a CSR head to manage its CSR activities.

CSR head appointed by company category



The Companies Act, 1956, did not require companies to constitute CSR committees. Hence, majority (77%) of the companies did not have a CSR committee. Few of the companies (23%) surveyed have acted proactively and constituted a CSR committees in the year 2011-12 and 2014.

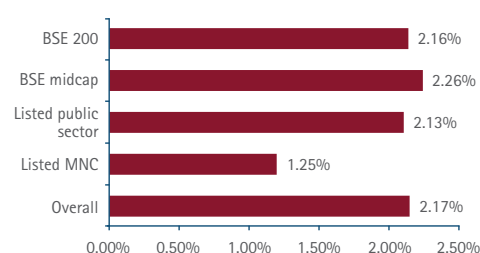
Companies having dedicated CSR committees



As per section 135 of the Act, companies with a specified net worth or turnover or net profit were required to mandatorily spend 2% of its net profit towards specified CSR activities.

Incidentally, on an average, companies had been spending a bit more (2.17%) than the mandated 2% on CSR activities but 35% of the companies interviewed spent less than the stipulated percentage. The lead spender amongst all the category of companies was BSE Midcap, which spent 2.26% of its profits towards CSR activities.

Profit contribution for CSR activities by company category



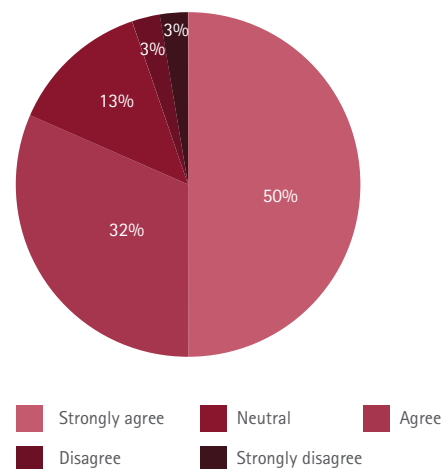
The CSR practices of listed MNCs were significantly below par and their intent appeared to be more to meet compliance than to truly give back to the community. This was evident since all of them had a CSR agenda but none of them had a CSR committee or CSR head to manage its CSR activities. Further, they spent, on an average, the least portion of their profits (1.25%) on CSR activities.

Board Effectiveness

Collectively, 82% of the independent directors who were interviewed agreed that an increase in time spent by directors on board duties did indeed translate into higher board effectiveness and confidence.

However, 6% strongly disagreed that there is a correlation as, despite their presence in board meetings, very often their opinions were not considered. Some independent directors also questioned the true reason behind appointing independent directors, when what companies really want are people who will "toe the line".

Correlation of time commitment for board duties with board effectiveness





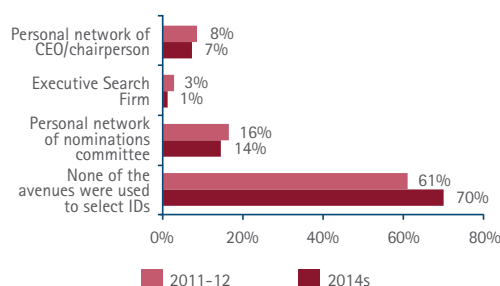
"The new Companies Act, 2013 has entrusted independent directors with far and wide reaching responsibilities. Companies will now take extra heed and effort to find quality directors. While the intent of the Act cannot be questioned, it needs to be noted that one must be independent in spirit rather than from a legal standpoint. The role of an independent director has become very demanding and the liability very onerous. This will deter honest and qualified individuals from wanting to join boards as independent directors."

Renu Sood Karnad, Managing Director - HDFC and Independent Director

SELECTION OF INDEPENDENT DIRECTORS

The companies that did select independent directors, the most common method of selection was through the personal network of the nomination committee. Using the services of an executive search firm was the least common approach in selecting independent directors. This is reflective of the preference of company boards and their promoters to select independent directors who would perhaps "toe the line" and be a "mute spectator" to the board activities.

Selection procedure for independent directors



61% of the companies in 2011-12 and 70% in 2012-13 did not adopt any of the three methods to select independent directors.

During the survey, it was noted that listed public sector companies did not use any of the three avenues to select independent directors as the government selects them. The listed public sector companies' board along with the CEO or chairperson recommends suitable independent directors to the government panel that chooses from the identified list.

To help ensure the selection is un-biased, the Companies Act, 2013, has detailed the selection process of independent directors and also briefly detailed the criteria for selecting an independent director. The guidelines are meant to ensure the following:

- The appointment process of independent directors is independent of the company management.
- There is appropriate balance of skills, experience and knowledge in the board.
- The appointment is formalised through a letter of appointment.
- Any member is allowed to inspect the terms and conditions of appointment of independent directors.



Acknowledgements

We sincerely acknowledge and thank the below mentioned Independent Directors for their active support and guidance in designing and executing this study, as without their expert inputs the report would have been incomplete.

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Mr. Gautam Nayak

Mr. George A. Issac

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Mr. Prakash Telang

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Mr. Sailendra Narain

Mr. Sanjay Majmudar

Mr. Shri Prakash

Mr. Sumit Chandwani

Mr. Sushil Khanna

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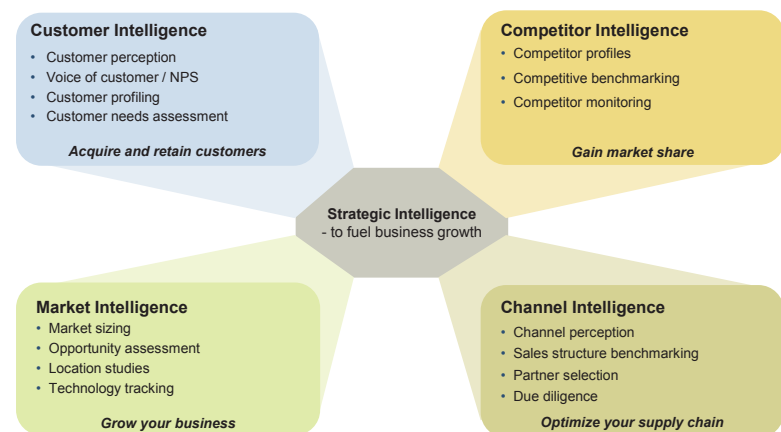
Hunt Partners in partnership with Board Evaluations Ltd., UK and SP Jain Institute of Management and Research run a first of its kind initiative in India, "Directors' Club". It is a unique training & certification program that is accredited by NFCG (Ministry of Company Affairs), with a charter to train and familiarize Directors in effective execution and running of boards. The program is delivered by the best in class faculty from across the globe. The program provides:

- Familiarization with global best practices in Board operations
- An understanding of the liabilities and responsibilities/duties of a Director
- Knowledge of board dynamics and the behavioral skills required to better manage boardroom conflicts
- The competencies Directors require to implement responsible corporate governance practices

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AZB & Partners
AZB House, Peninsula Corporate Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai - 400 013,
India
Tel: +91 22 6639 6880
Fax: +91 226639 6888



Hunt Partners
412 B, Trade World,
Kamala Mill,
Mumbai - 400 013,
India
Tel: +91 22 4340 1100
Fax: +91 22 4340 1199



PricewaterhouseCoopers Pvt. Ltd.
252, Veer Savarkar Marg,
Shivaji Park, Dadar
Mumbai 400 028
India
Tel: +91 22 6669 1000
Fax: +91 22 6654 7800/7801/7802