

# INDIA BOARD REPORT 2018 – 19

Board Governance  
and Effectiveness





# Foreword



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Good Corporate Governance is correlated with business performance. A professionally-managed and well-governed Board will normally ensure that their companies outperform their less effective and inefficient competitors.

A recent report by the IFC in 2019<sup>1</sup> identified that companies in the top Corporate Governance quartile exhibited an average return of equity (ROE) that was 20 percent higher than those of companies in the bottom Corporate Governance quartile. In this research, specific Corporate Governance practices that were found to have the highest correlations with financial performance included: following internationally recognized standards, having a dedicated internal audit function with its own charter or terms of reference, having a written code of ethics/conduct, and having a written policy for the approval of related party transactions. Other related research has identified that when a Board focuses upon Corporate Governance, the following measures improve: shareholder value, competitiveness, operational and financial efficiency, access to outside capital, and the company's reputation and trust.

In recent times, Corporate Governance in India has undergone significant changes, as companies are quickly becoming aware of its critical importance. The Companies Act and SEBI requirements have mandated all companies to improve their governance. Enlightened Boards, realizing that these compliance requirements are merely minimum thresholds, are often exceeding these legal minimums. Such Boards have been applying Peter Drucker's idea of 'what gets measured gets managed', resulting in an increasing number of professional managers and non-executive directors setting clear key performance indicators of governance.

The positive extent of these governance reforms has been identified by various bodies. For example, the World Bank, in its 'Ease of Doing Business 2020' study, has identified that India has jumped 14 places in the World League Table, from rank 77 last year, to rank 63, out of 190 countries. Many businesspeople seem to be unaware that India has been among the world's top ten rapidly-improving countries for the last three years.

I believe that many executive and non-executive directors of Indian listed companies, as well as members of professional teams that advise Boards and committees of listed companies, are currently hungry for up-to-date insights into corporate governance practices. They need reliable sources of inspiration and data to identify, develop, and benchmark good governance practices. This report provides the necessary stimulation for developing insights into current governance practices in India.

The previous five India Board Reports have been extremely well received amongst the national and international business communities. They each contained fresh insights—based on exhaustive research—that cannot be found anywhere else. This sixth report adds to the existing data on Indian board practices and sheds light on trends related to governance changes over time. I am certain that the India Board Report of 2018 -19 will provide many invaluable insights concerning current governance practices in India, empowering the discerning reader to identify various development areas for Boards to focus upon in order to improve effectiveness.

*<sup>1</sup>IFC (2019) Governance and Performance in Emerging Markets: Empirical Study on the link between performance and corporate governance of investment clients*

# Preface



## **Arundhati Bhattacharya**

Ex-Chairman & Managing Director, SBI  
Independent Director on the Boards of Wipro, Piramal Enterprises,  
Reliance Industries, Swift India, among others.

## India Board Report

### A definitive survey on Board Composition, Effectiveness and Best Practices

Indian Boards, like their counterparts across the world, have come a long way. From being 'closed-door, old boys' clubs' that spent most of their time golfing and dining and nodding their assent, Boards today have evolved in the face of increasing performance demands that are driven by legal and regulatory changes, as well as stakeholder expectations. Accordingly, the composition of Boards, too, has undergone a metamorphosis. The ensuing survey, conducted across a large number of Independent Directors as well as Company Secretaries, provides an insight into the shifting preferences of companies and the evolving structure, functioning and role of Boards. What comes through quite clearly is that companies are indeed moving toward compliance of the norms set out for Board composition. However, the question that begs to be answered is whether they are consciously choosing Directors who possess, as Dowshan Humzah, Director and Chair of The UK Advisory Board, characterizes it – POETS, i.e. Perspective, Outlook, Experience, Thought, Sector, and Social Background.

Unfortunately, today, compliance tends to happen much more in letter than in spirit. As Lord Myers, one of the Ambassadors of Board Apprentices, has said, "Too often in the UK, we appoint to fit as opposed to appoint to challenge". This applies to India too, as well as several other countries across the globe.

It is not as though companies do not realize that a superior Board is a great enabler toward out-performance. Today, there is enough empirical evidence of the same. However, assembling such a group also demands tremendous effort

and planning. Good quality talent is always in short supply and recruiting such professionals is therefore, a difficult task. Further, as Board members are increasingly expected to play the manifold roles of Watchdog, Guide, Sensitizer, Problem-Solver and the like, a Board position has ceased to be an easy post-retirement stint. In fact, with more and more companies looking for younger people who are more clued in on the digital age, we are looking at the possibility of a new category of professionals who may, mid-career, decide to step off and take up Board seats as the next phase in their career. Given the time commitment, devotion and involvement required, such changes are already beginning to happen.

However, as with all things, one needs to strike a balance. For example, while the expectations from Directors of a Board are sky high, members of the Audit Committee are given only a few hours to go through the quarterly numbers, in the name of preventing untimely leakage. While the concern is genuine, the solution is extremely imperfect, as the inadequate time period leaves committee members with little choice but to accept what is being put before them. Similarly, the need to pass a qualifying online examination is unlikely to enable Directors to carry out their duties more efficiently.

In sum, companies do realise that investors will place a premium on Fairness, Accountability, Responsibility and Transparency. Companies, therefore, need to facilitate and ensure Board evolution, not only in letter, but in spirit as well. The Regulators and Authorities also need to enable this process with the right regulatory and legal structures. The India Board Report 2018-19, through its surveys and comprehensive research, sheds light on how far Indian companies have come in this journey, and will leave the reader with new ideas that could impact and influence the evolution of their company's Board.

# Introduction

With the Companies (Amendment) Act, 2019 coming into effect from July, 2019, we can already see its significant impact on the corporate governance landscape in India. The act reflects the recommendations made by the Kotak Committee on Corporate Governance, approved by the Securities and Exchange Board of India (SEBI) in order to improve the regulatory framework.

India Board Report 2018-19 analyses these recommendations and attempts to correlate their implications on the changing governance in India to the voice of the Directors. Some of the major issues being composition of the board, diversity inclusion and independence of the board. The report also goes on to emphasize the importance of aligning corporate practices to global standards as India continues to grow as a major player in the global market.

The growing importance of Board composition, diversity and quality along with board performance and evaluation, are equally crucial 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. The Companies (Amendment) Act 2019 lays strong emphasis on the





Independence, Diversity and Transparency of the Board of Directors. Protection of investors' interests, importance of shareholder information rights and related party transactions have been given strategic emphasis. The Insolvency and Bankruptcy Code, 2016 (IBC) serves as a Code for corporate governance. Its first-order objective is rescuing a company in distress. The second-order objective is maximising value of the company's assets, and the third-order objective is balancing the interests of stakeholders.

The India Board Report 2018-19 tries to cover the increasing expectations for director performance and the growing complexity and scope of board oversight. Organisations often fall into the "governance trap", namely, governance becomes a "compliance with regulations" game.

A new approach to governance, with directors more engaged with topics such as corporate culture, cybersecurity, social issues and the environment, is emerging. This change is timely because the current global realm invites corporations to redefine how they function today and how they will do it tomorrow. Investors are

getting increasingly involved and vocal with demands about what they want from their boards, the price of ignoring corporate governance is a lot more expensive. Corporate governance introduces clarity to decision systems, diminish risks, and brings legitimacy and efficacy too.

India Board Report 2018-19 has tried to bring to the fore, the current trends, along with what's expected from corporate governance under increasing scrutiny and expectations. It's a board's primary task not only to comply with corporate governance, or to embrace it for competitive, reputational and investor relationship improvement, but a sound corporate governance influences investor trust positively; it can be the secret sauce that leads to better business results, and to stay a step ahead of the competition.

**Shyamal Mukherjee**

Chairman  
PwC India

**Zia Mody**

Managing Partner  
AZB & Partners



## From the Author's Desk



The Companies (Amendment) Act, 2019, has reinforced the Companies Act 2013, and the Ordinances from 2018 and 2019, which have now been made transparent by the Amendment. The Amendment has also re-categorized offences such as civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead. These changes have been effectuated in order to fill critical gaps in the Corporate Governance & compliance framework.

India is a diverse country with multiple languages, ethnicities, and cultures, but the same doesn't hold true for the composition of our Boards, especially with respect to Directors. That said, the year 2018-19 has witnessed a significant increase in the participation of women in Indian Boards, as it rose to 14%, a singularly steep rise as compared to figures from the preceding years. This positive change can be attributed to Women Independent Directors who have acted as role models and furthered the interests of women in the workforce through various initiatives, such as pushing to hire more women, among others.





The role of the Independent Director has now taken centre stage, and the expectations placed upon them have undergone a massive transformation. From board composition & compensation, to board evaluation, transparency, third party transactions, cyber security, CSR, and more, directors now need to speedily acquaint themselves with every latest development, in order to stay ahead.

2018-19 turned out to be a challenging period for Independent Directors, with financial failures, governance concerns, and increasing attention from both regulators and the public causing stormy waters in a relatively calm ocean until now. With the role of Independent Directors coming heavily under the scanner, and in order to ensure that these professionals are competent enough to shoulder the responsibilities demanded of them, SEBI has now proposed an online examination for Independent Directors in areas related to Corporate Governance, Company Law, Securities Law, and Basic Accountancy.

However, these changes have been met with significant opposition and criticism, and their impact remains to be seen. New legislations, such as the recently-implemented Insolvency and Bankruptcy Code, 2016 (IBC), are also supporting the push for increased and better Corporate Governance. SEBI has put forth another much-awaited reform—that of separating the roles of Chairman and Managing Director. By keeping Board Leadership and Company Leadership distinct—a policy that is widely adopted in developed countries—SEBI is aiming to professionalize the governance of Indian corporations. Unsurprisingly, this move, too, has been met with resistance; and though the date of compliance has been extended by SEBI, companies are still taking time to warm up to the idea. However, the extended deadline gives us reason to hope that, although it may take time, this welcome move will ultimately be implemented, much to the benefit of all.

**Suresh Raina**  
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# Executive Summary



To foster a thriving business environment, corporate culture needs to be uniform, consistent, and subscribe to standardized rules and regulations. Lately, several instances of non-compliance have emerged—companies have deviated from expected norms and taken questionable decisions that have raised eyebrows in many quarters. Companies that flout existing regulatory frameworks commonly find themselves in deep waters, emphasizing the need for tighter external checks.



It is great to see a continuation of the work that Hunt Partners, PwC, and AZB have anchored on assessing board governance and the practices that anchor this cadence. There is ample empirical evidence to suggest that several practices and processes must be strengthened and streamlined, with a focus on accountability and results that look at business operations comprehensively and in a robust manner. Non-executive directors carry a unique responsibility that must be carried out in a professional and independent manner.

**Vinita Bali**  
**Former MD, Britannia Industries**  
**Independent Director on Boards**

## IBR 2018 – 2019

### What to expect

In the IBR 2018–19, we explore the current and future Corporate Governance trends, and headlining events in India and across the globe—outlining what today’s Boards need to keep in mind going forward. The second part of the Report presents the analysis of our in-depth surveys conducted with over 500 Independent Directors and Company Secretaries, from companies across diverse sectors. Among other things, this section discusses, in detail, the changing roles, regulations, and requirements of

Independent Directors, the diversity of India Inc.’s Boards and takeaways thereof; thus presenting crucial insights that can assist leaders in building a stronger, compliant, and more effective Board.

## Key Points of the Report

### SEBI and the ‘Kotak Committee’

The Securities and Exchange Board of India (SEBI) is the nation’s watchdog, protecting the interests of investors in securities, and promoting the development and regulation of the securities market in India. As part of its ongoing efforts to improve Corporate Governance, SEBI appointed the ‘Kotak Committee’ in 2017 to review India’s Corporate Governance principles. Led by Uday Kotak, the Committee submitted 81 recommendations in total. Out of these, 40 were accepted by SEBI without any modifications. 15 were accepted with modifications, while 18 were rejected. SEBI sent 8 of the total recommendations to various agencies for their inputs.

This Report outlines the details and impact of these recommendations.

### Conservative yet Globalized World

Notwithstanding the protectionist views expressed by some world leaders, India is still a major player in the globalized world, where exchanges, trade, and transactions spill across geographical borders. This has necessitated an alignment of corporate practices to global standards, and as leaders and torchbearers of Corporate India, the Board of Directors—(hereafter referred to as Directors)—need to be aware of these international best practices. From Board composition and compensation to Board evaluation, transparency, third party transactions, cyber security, CSR and more, Directors now need to speedily acquaint themselves with every latest development in order to stay ahead.

The objective of this Report is to discuss these major global trends in detail.



### Independent Directors and Board Composition

Independent Directors (IDs) are an integral part of the Board of any company. They balance its composition and bring fresh perspectives to the Directors and other stakeholders. At present, the Companies Act requires every listed company to have at least one-third of the total number of Directors as Independent Directors (IDs). SEBI LODR (Listing Obligations and Disclosure Requirements) Regulations now impose stricter obligations: At least half of the total Directors of the Board of a listed entity need to be IDs if the Chairperson is an Executive, or related to the promoter, and in other cases, at least one-third of the Directors should be IDs. By increasing the number of IDs, SEBI seeks to promulgate a healthy

diversity in perspectives among the corporation while minimizing instances of nepotism that could seep into corporate functioning. The stipulation of a higher number of women IDs is also a praiseworthy progressive step—and one that will soon effect a notable shift in the way companies operate. Thanks to this new mandate, in 2018-19 alone, the participation of women in Indian Boards rose to 14%, a singularly steep rise as compared to previous years.

### Corporate Diversity does not reflect India's Diversity

India is a diverse country with multiple languages, ethnicities, and cultures, but the same doesn't hold true for the composition of our Boards,

**By 2025, India envisions to become a \$5 trillion strong economy—a promising vision indeed for its citizens, and one that has already been set in motion by the country's 6000+ listed companies that fuel the job creation and growth engine for India's millions. These organizations play a pivotal role in nation building—moreover, they also define and dictate the culture of 'Corporate India', even if somewhat obscurely.**



especially with respect to Directors and IDs. Currently, of the total Independent Directors interviewed, 95% of them believe that women and C-suite Executives are well-represented on the Board, whereas only a few Directors share the opinion that expats and academicians are well-represented. Including bureaucrats or former civil servants allows companies easy access to power corridors in the government and boosts their network. However, fewer bureaucrats (favoured by 18% of the respondents) are desired on the Board, but C-suites or CXOs (favoured by 77% of the respondents) continue to be the most desired in the future. It is imperative to have Independent Directors from varied backgrounds so that they

can bring diverse skill-sets and expertise to the Board. The IBR presents a detailed perspective and data analysis of the diversity of India Inc.'s Boards.

Additionally, it also dwells on the parameters having the greatest impact on Corporate Governance, Board processes, communications & relationships, RPTs, the effectiveness of committees, and Director compensation.

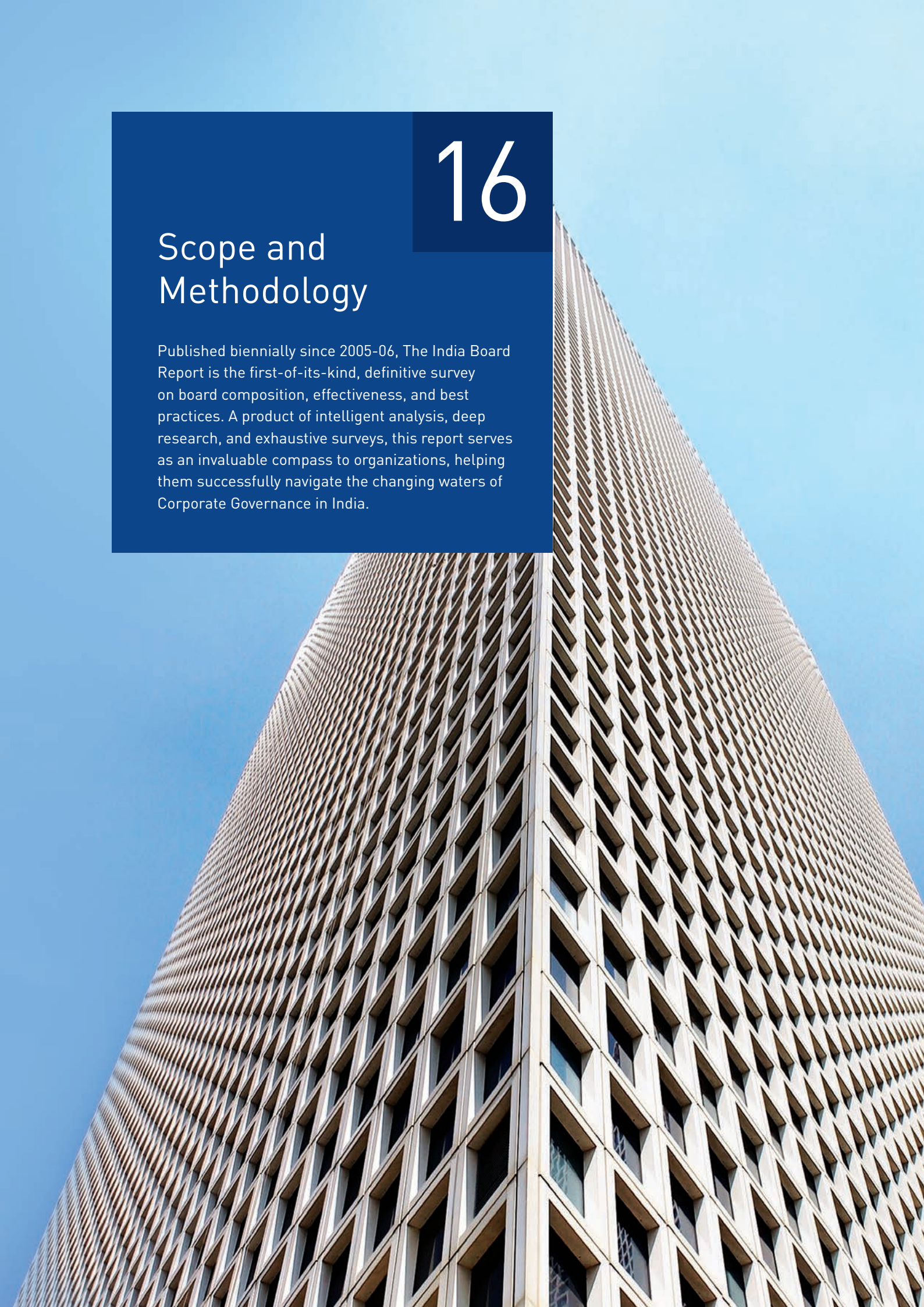
In a nutshell, this edition of the India Board Report is an indispensable read for all those seeking a comprehensive analysis on Indian Corporate Governance.





## Scope and Methodology

Published biennially since 2005-06, The India Board Report is the first-of-its-kind, definitive survey on board composition, effectiveness, and best practices. A product of intelligent analysis, deep research, and exhaustive surveys, this report serves as an invaluable compass to organizations, helping them successfully navigate the changing waters of Corporate Governance in India.





## Scope

The IBR 2018–19 is composed of two parts—the first part, based on secondary research and analysis, sheds light on current and future Corporate Governance Trends in India and across the world, detailing their impact and key takeaways for organizations.

The second section—an outcome of two extensive surveys—addresses the subject of Independent Directors (IDs) in Corporate India, exploring their identity, role, impact, compensation, and the underpinning qualities that ensure successful Board Governance and Functioning.

## Methodology

### Part 1—Insights from the secondary research

We employed secondary research to arrive at the current and future trends of corporate governance, collating and presenting information from various sources after rigorous verification.

### Part 2—Insights from the Primary Research

For the second part of the report, we conducted two in-depth surveys: The first, with noteworthy Independent Directors, and the second, with eminent Company Secretaries. These participants were chosen from companies that spanned diverse industries. The companies were selected based on certain parameters, including their market capitalization, their inclusion in the Bombay Stock Exchange (BSE), and their ownership. The entities that met these criteria were broadly identified from the following:

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

For the Surveys, over 250 Independent Directors and an equal number of Company Secretaries were

targeted, judiciously chosen across companies as listed above. To ensure ideal representation of the Independent Director universe, we diversified our scope to include Directors from the following categories:

- Corporate Leaders
- Academicians
- Accounts and finance domain
- Private equity professionals
- Expats sitting on Indian Boards
- Lawyers
- Retired bureaucrats
- Women Independent Directors

This survey was aimed at understanding and exploring the following key areas:

- Board composition and structure: Impediments and areas of improvement
- Independent Directors' appointment and remuneration
- Committees: Structure, functioning, and trends
- Board meetings: Nature of proceedings, working relationship between Board members, meeting structure, and impact
- Increasing compliance and regulatory affairs
- Board culture and conflict resolution
- Risk identification, policy, and management
- Board effectiveness, Board evaluation, and training
- Discipline and transparency in disclosure of information

### Survey outcome

**The data gathered in the two surveys, from a total of over 500 respondents, was then analysed according to specific parameters. Many valuable insights were derived from this exhaustive study, which have been compiled and presented in this report.**



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## Corporate Governance Scenario **A status update**

Time and again, history has shown that a company which applies the core principles of good Corporate Governance—i.e. fairness, accountability, responsibility, and transparency—usually tends to outperform other companies; while attracting investors to finance further growth.



# Overview of Indian Corporate Governance Trends

## Key Events and Trends in India

**Kotak Committee Reform:** In the last few years, India has faced several challenges in aligning Corporate Governance with a fast-evolving, high-growth business environment. The public exposure of several high-profile governance lapses compelled the Securities and Exchange Board of India (SEBI) to appoint the 'Kotak Committee', in 2017, to review Corporate Governance principles.

The Committee proposed a set of tougher Corporate Governance norms aimed at increasing transparency, strengthening board independence and board composition, and enhancing disclosures. The Ministry of Company Affairs and SEBI may take time to ratify these regulations. In the meanwhile, however, Boards will still be expected to rigorously implement the spirit of the Companies Act 2013 and the updated SEBI rules, while better aligning themselves with international best practices.

If the Kotak Committee recommendations are accepted, there will be a rise in the demand for qualified board members, as the Committee requires all listed companies to have at least six Directors on the Board.

To answer to this need, the Committee proposes that half of the Board be independent, rather than one-third of the Board, as currently required. Related independence disclosures, such as what standard of independence is being utilized, have also been proposed to help boost investor confidence.

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**Maintaining the independence of the Board is a major concern in India, especially among minority shareholders.**

The 2013 regulations mandate that at least one person on the Board should be female. Most companies comply by simply appointing a female relative to the Board

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**In response to this disquieting trend, the Kotak Committee recommends that at least one of the Independent Directors be a woman.**

Out of the 81 recommendations by the Kotak panel, the market regulator SEBI has accepted 40 proposals without any modifications and 15 more with modifications. 18 proposals were rejected, while the remaining 8 have been referred to other agencies.




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Corporate governance in India has continually improved, particularly in the last decade. Most progressive promoters have realized that investors are willing to pay a premium for well governed entities. Environment, Sustainability, and Governance (ESG) will play an increasingly important role in corporate strategies all around the world including in India.

On the other hand, the increased liabilities under regulations and very aggressive approach by investigative approach against Independent Directors are becoming a major deterrent in attracting high quality professionals to join corporate Boards. An Independent Director should be held liable only if he has participated in or ignored a corporate wrongdoing for personal gains.

**Arun Duggal**  
Chairman, ICRA  
Chairman, Mangalore Chemicals & Fertilizers  
Independent Director on Boards

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## Proposals accepted without modifications

Proposals	Impact
<b>Reduction in the maximum number of listed entity directorships from 10 to 8 by April 01, 2019, and further to 7, by April 1, 2020</b>	Currently, only a few individuals hold more than 7 Director positions. These individuals will have to give up their directorships in some companies.
<b>Expanding the eligibility criteria for Independent Directors</b>	Companies will not be allowed to appoint individuals related to the promoter group as Independent Directors, primarily because such individuals may not be able to discharge their duties independently due to certain prevailing circumstances.
<b>Enhanced role of the Audit Committee, Nomination and Remuneration Committee, and Risk Management Committee</b>	A Risk Management Committee will now be a mandatory requirement for the top 500 listed entities by market capitalization, as opposed to the top 100 listed entities as is applicable currently. Furthermore, at least two-thirds of the members of the Nomination and Remuneration Committee will need to be Independent Directors.
<b>Disclosure of utilization of funds from QIP/preferential issues</b>	Companies will have to ensure better transparency and appropriate disclosures concerning the utilization of proceeds from preferential issues and QIPs.
<b>Disclosures of auditor credentials, audit fee, reasons for the resignation of auditors</b>	Companies will have to disclose the credentials and terms of appointment of the auditors. Disclosing fees paid will prevent companies from paying audit fees that are disproportionately high in relation to their assets. This move will ensure more transparency and will help investors make informed decisions.
<b>Disclosure of expertise/skills of Directors</b>	Every listed entity's Board of Directors will be required to outline the competencies and expertise that it believes its Directors should possess. Only then, can companies appoint Directors, ensuring that these individuals fit this description, before the end of the financial year.

## Proposals

## Impact

### Enhanced disclosure of related party transactions (RPTs)

Companies will have to make half-yearly disclosures of RPTs on a consolidated basis. Strict penalties will be imposed on those failing to do so. Any entity belonging to the promoter group of the listed entity, holding shares worth 20% or more in the listed entity, shall also be a related party.

### Mandatory disclosure of consolidated quarterly results with effect from FY20

Currently, the Companies Act 2013 and SEBI Regulations mandate listed entities to submit consolidated financial statements every financial year. Soon, companies will require to submit the same on a quarterly basis.

### Enhanced obligations on the listed entities with respect to subsidiaries

Companies can expect more oversight over unlisted 'material subsidiaries' both in India and overseas. The definition of the term 'material subsidiary' could be tightened to include those subsidiaries whose income or net worth exceeds 10% (as against the current 20%) of consolidated income or net worth.

### Secretarial audit to be mandatory for listed entities and their material unlisted subsidiaries

Entities will have to submit to compulsory secretarial audit checks for compliance with all regulations under various acts, including the Companies Act, the Foreign Exchange Management Act (FEMA), and the SEBI Act.

## Proposals accepted with modifications

SEBI has made 7 out of 15 proposals that it has accepted with modifications. These include:

## Proposals

## Impact

### Minimum of six Directors to be appointed in the top 1,000 listed entities by market capitalization by April 1, 2019, and in the top 2000 listed entities, by April 1, 2020

Currently, there are 65 companies among the top 1,000 NSE-listed companies that have less than six Board members. These companies will have to appoint more Board members.

### At least one woman Independent Director to be appointed in the top 500 listed entities by market capitalization by April 1, 2019, and in the top 1000 listed entities, by April 1, 2020

Currently, more than 30% of the companies do not have a Woman Independent Director.

## Proposals

## Impact

**Separation of CEO/MD and Chairperson (to be initially made applicable to the top 500 listed entities by market capitalization w.e.f. April 1, 2020)**

Currently more than 30% of the top 500 NSE-listed companies have the same individual discharging the role of CEO and Chairperson.

**The quorum for Board meetings to be one-third the size of the Board, or 3 members, (whichever is higher) in the top 1,000 listed entities by market capitalization by April 1, 2019 and in the top 2000 listed entities, by April 1, 2020**

Currently, the Companies Act 2013 requires a quorum of one-third of the total strength of the Board of Directors or two Directors, whichever is higher. As per the new regulations, companies will need at least one-third of the Board, or a minimum of three members, whichever is higher, to be present for Board meetings.

**Top 100 entities to hold AGMs within 5 months after the end of FY 2018-19 i.e. by August 31, 2019**

Currently, listed companies are given six months from the end of a financial year to conduct their AGMs. The top 100 companies will now have to conclude their AGMs within five months following the end of the of the financial year.

**Webcast of AGMs to be compulsory for top 100 entities by market capitalization w.e.f. FY19**

Currently, the webcast of AGMs is not mandatory. From this fiscal year onwards (2019), the top 100 companies will be required to provide this facility.

**Shareholder approval for Royalty/brand payments to related party exceeding 2% of consolidated turnover (instead of the proposed 5%)**

While the Kotak panel had proposed a 5% threshold, the SEBI Board has decided to take more stringent action. In the financial year 2016-17, there were about 32 companies whose royalty and brand payments were over 2% of their consolidated turnover. Interestingly, there were only 10 companies where royalty payments were over 5%. Typically, MNCs are known to pay high royalties to their overseas parents. Such payments will now require the approval of more than half (50% + plus one vote) of the minority shareholders.

**The recommendations advanced by the Committee and approved by SEBI do a commendable job in coping with the ever-changing global trends and market demands, within the purview of Corporate Governance. These recommendations represent a tremendous leap forward in realizing transparent and sound Corporate Governance.**

## Overview of Global Corporate Governance Trends

### Broad Trends

Our interviews and research have brought to the fore a few key global trends in Corporate Governance. Directors must acquaint themselves with these shifts detailed below.

### Board Composition and Compensation

- a) The latest G20/OECD principles reinforce and bolster the role of Independent Directors. Different countries have their own laws governing the minimum representation of Independent Directors on their Board. Instituting a special committee of the Board to handle remuneration policies and contracts for Board members is now encouraged as good practice. This special committee will comprise either entirely of Independent Directors, or enjoy a majority of them.<sup>[1]</sup>

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**Executive pay will continue to remain in the spotlight, as investors are looking for additional engagement and/or disclosures around total compensation and its link to long-term strategic goals and business performance.**

- b) Globally, an uplifting trend has been observed with respect to gender parity: Entities are now focusing on increasing and maintaining the percentage of female representatives on their Boards.
- c) The Directors' direct industry experience will come under the scanner by activists and institutional investors while assessing composition and quality of the Board.

### Board Evaluation

- a) Across the world, the Nomination & Remuneration committee is being encouraged to ensure strict compliance with established nomination procedures; and

to facilitate and coordinate the search for a balanced and qualified Board.

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**A separate committee has been proposed to create and implement a process by which Boards can regularly assess its performance, the performance of its Committees, as well as of its Individual Directors.**

- b) According to recommendations in the revised G20/ OECD principles on Corporate Governance, Boards should keep a strict eye on their performance—they should regularly evaluate their performance and examine whether the Board comprises relevant backgrounds and competencies in the right proportions.

### Risk

- a) Following conflicts of interest among auditors and securities analysts, as well as a number of Boardroom failures, the Sarbanes-Oxley Act was passed in 2002. Since the passage of this act, many organizations have taken a procedural approach to risk management, settling for risk management processes that emphasize form over substance. Organizational risks are listed, charted, graphed, and circulated. Signatures are obtained, trainings are logged, and boxes are checked for the necessary purpose of documenting compliance with regulatory requirements. However, companies would do better to understand and enforce the spirit of the regulation, rather than complying mechanically.
- b) Across the globe, the Board of Directors is being entrusted with the responsibility of establishing the company's risk management policy, their risk appetite, and internal financial control systems.
- c) In keeping with the above directive, every Board is now required, at least once a year,



to disclose enough information to shareholders so that they can evaluate the Board's functioning and efficiency. In the information furnished, the Board should also state the methodology of risk assessment.

### Related Party Transactions (RPTs)

- a) RPTs will now have to be conducted according to market practices in terms of deadlines and rates; and these particulars will now have to be reflected in the reports of organization. The approval and execution processes of RPTs need to ensure efficient management of conflicts of interest, while protecting the interests of the company and its shareholders. Conflicts of interest—a part and parcel of RPTs—will now be addressed through proper monitoring and disclosure.

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**In most jurisdictions, emphasis is now being placed on Board approval—in the majority of cases, approval for company-related transactions will be necessary, from the Independent Directors, as well as from the Investor/ Nominee Directors.**

- b) Shareholders, too, now have the power to approve or disapprove certain transactions.

### Technology Disruption

- a) In today's age, the changes wrought by technology disruption on markets, consumers, employees, and service delivery are evident and numerous. Boards must keep abreast of these changes and of the implications of AI, Internet of Things, and Robotics, as these continue to pose both risks and opportunities for organizations.

### Human Capital

- a) Institutional investors are directing increased focus on human capital. Their interest covers various aspects, from effective succession planning at the C-suite level and beyond,

to company culture, gender diversity, and executive compensation.

### Internal Financial Controls Disclosures

- a) The Corporate Governance code for most of the countries in US, Europe, and the APAC region now necessitates an effective internal control system, along with a full disclosure of the sufficiency of this system in the company's annual report.
- b) Globally, the Board of any listed entity will now be entrusted with the following responsibilities:
  - Putting in place and submitting internal control systems
  - Ensuring that all financial records are properly maintained
  - Enforcing appropriate accounting standards and presenting a true and fair picture of the financial position and performance of the entity, ensuring that the opinion furnished is based on sound risk management practices and effective internal controls

### Corporate Social Responsibility

- a) In several countries, the Corporate Governance Council, or Board, is publishing a sustainability report, or at the very least, paying serious attention to Corporate Social Responsibility, with their Annual Reports providing a complete picture of their business activities, including the impact of social initiatives.

## Increasing Emphasis on Investor Engagement and Transparency

**Worldwide, governments and investors are taking increasing interest in investor stewardship—a trend which is having a significant impact on Global Corporate Governance.**

- a) The stewardship code was first adopted in 2010 by UK, with other jurisdictions soon following suit. More recently, the European Union has adopted the 'Shareholders Rights Directive'; and several countries, including India, are now actively considering the adoption of the same. These codes include investor duties related to crucial areas of governance which are as follows: Conflicts of interest, voting, monitoring and engaging with Investee Company, and the consideration of Environment, Social and Governance (ESG) factors. As a result of this emphasis, many of the world's largest institutional investors are now expanding the existing staff and resources dedicated to engaging with investee companies and proxy advisory firms.

### Activist Investing

- a) The influence of activist investors on the decision-making process of Boards is on the rise. Most Boards find themselves

caught between activist investors who place emphasis on long-term shareholder value creation, and institutional investors who seek short-term value enhancement. To walk this line successfully, companies need to engage in meaningful dialogue with activists.

### Growth and Value Creation

- a) The role of a Director is to ensure growth and value creation within the organization. Today, traditional business models, especially those depending on paid labour to drive value, are being undermined or upended. Therefore, Directors are now asking Management to create innovative growth models that are less dependent on, or even independent of, existing modes of value creation.

### Retirement Age Looms for Many Directors

- a) There has been a recent push for Boards to add younger Directors; and companies have been instituting a mandatory retirement age for Directors as a way to introduce change. By and large, the two mandatory ages for retirement are 72 years and 75 years, followed respectively by 42.3% and 36.6% of companies that mandate a retirement age.

**Source:** [1] [OECD \(2015\), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris.](#)

## Key Events



Numerous political factors have led the country to expect increased investor engagement with companies and continued change in the standards of governance.

The New York City Comptroller (NYCC) launched the Boardroom Accountability Project 2.0—an initiative designed to put pressure on large public companies to 'refresh' their Boards with the objective of making them "more diverse, independent, and climate-competent." Within 12 months of the launch, the NYCC claimed that

over 50% of the companies ‘adopted improved processes and increased transparency with regard to Board quality, diversity, and refreshment’, and that the activities of the NYCC were ‘changing Boardroom culture, leading companies to cast a wider net for Directors, without sacrificing quality.’<sup>[1]</sup>

Activist investors continue to influence the composition, functioning, and decision-making process of Boards. One of the roles of activist investors is to closely observe and benchmark CEO compensation and pay disparity, as compared to other named Executive Officers and peer companies. The year 2018 witnessed the first disclosures concerning the CEO pay ratio, as mandated by The Dodd-Frank Act.

**Source:** [1] [\*Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign—Version 2.0\*](#)

## UNITED KINGDOM



The 2018 Guidelines on Directors’ Duties—Section 172—focuses on how Directors operate, and lists all their roles and actions in the capacity of Directors. Of these, making formal Board decisions comprises a small part. These guidelines specify five focus areas to help Directors implement Section 172 in the company’s decision-making process, all of which are tied together by one overarching theme: **The company’s ‘culture’.**

**‘Company culture’ is also the centrepiece in the new 2018 Corporate Governance Code.**

The 2018 UK Corporate Governance Code (the 2018 Code) has been published by the Financial Reporting Council (FRC). This version finalizes the ‘fundamental review’ of the Code undertaken by the FRC. The 2018 Code, coupled with The Companies (Miscellaneous Reporting) Regulations, 2018, which updates the Companies Act, 2006, marks the culmination of the British Government’s slew of governance reforms aimed to build trust in business.

The 2018 Code elevates the importance of stakeholders; however, in response to concerns raised over the fundamentals of shareholder primacy, as set out in company law, the FRC has emphasized that it is not overriding or interpreting the law. The Companies (Miscellaneous Reporting) Regulations Act, 2018, requires companies to disclose how their interests, along with the points listed in section 172 of the Companies Act, 2006, have been considered in the Board’s discussions and influenced its decision-making.

It also covers directives in other areas like employee engagement and stakeholder interests, as well as Corporate Governance structures and CEO pay ratio.

## EUROPEAN UNION



With political uncertainties ranging from Brexit, to rising populism, a lot of negative sentiments have been expressed against globalization and foreign acquisitions of local companies. Executive remuneration continued to be the key issue throughout the EU. In the UK, concerns were mainly centered around governance changes,

while mainland European countries turned the spotlight on the ‘Shareholders’ Rights Directives.’

With regard to Board composition, the European Commission continues to insist that Independent, Non-Executive, or Supervisory Directors be well represented on the Boards in the member states. It has also proposed a legislation mandating that 40% of Non-Executive Director posts must be occupied by women by the end of 2020, a significant increase from 16.6% in 2013.

## Future Trends and Outlook

Long-term Direction Trends



### A New Corporate Culture

Culture comprises the totality of values, attitudes, and behaviors that an organization exhibits in its operations and relations with employees, customers, and other stakeholders. It is the glue that holds the organization together, and a key determinant of risk and success. To deliver results, organizations need Directors who can continuously shape and oversee a culture that drives performance.

Experts predict that there will be an evolution in corporate culture, with a growing focus on gender issues and corporate attitudes. In North America, we are now witnessing an unprecedented number of women joining Boards, reversing the United States’ disquieting trend of a slow decrease in women representation, behind global norms. In the wake of the #MeToo movement, and headlining, high-profile cases and allegations of sexual harassment, corporate culture is likely to become the center of attention for both Boards and investors globally, ensuring proactive intervention and management of risks like never before.<sup>[1]</sup>

Culture as an aspect will also take centre stage in discussions around risk oversight, bearing in mind the recent, globally-widespread incidences of scandals. These include aggressive sales

strategies and poor data protection in the US, corruption scandals in Latin America, collusion among car manufacturers in Germany, negligent quality control measures at Japanese firms, and poor lending practices and misconduct at some global banks. In light of this, several Corporate Governance codes have now begun to give significant importance to culture. The key takeaway for investors? It’s time to figure out a successful method to evaluate corporate culture and detect potential risks, given the available disclosures.<sup>[1]</sup>



### Towards More Transparency

The future shines bright on the aspect of disclosures and transparency. Positive changes are already underfoot, as several countries revisit their governance codes, strengthen regulatory frameworks, and align themselves to recommended best practices, independence standards, and disclosure requirements. Countries like Canada, the United Kingdom, the Netherlands, Denmark, Brazil, Taiwan, Malaysia, and the Philippines are forerunners in this transformation. Simultaneously, many investors are now actively asking for more information on key issues, including the process for Director qualification and nomination, climate change risk, management incentive structures, and corporate strategy.<sup>[1]</sup>



### Seismic Political Shifts

Political developments may either slow down or accelerate the rate of change in many countries. Common among the changes that regularly surface is the call to tighten the reins on executive pay. However, efforts towards the restriction of shareholders may also emerge in the guise of protectionism or more management-friendly legislation. In the U.S., a mix of deregulation and regulation efforts are being rolled out as we write this.<sup>[1]</sup>



Today, regulators and customers are now demanding that Boards integrate the views and expectations of shareholders into business strategy and management. Simultaneously, there is increasing pressure on Boards to increase Boardroom diversity. While recruiting more female representatives and individuals from

minority groups is one way to address the diversity issue, Boards are also looking at appointing a new crop of leaders who can bring to the table fresh perspectives and diverse skill-sets.

**Source:** [1] [The Corporate Governance World in 2018](#)

## Key Challenges and their Impact

**As Public and Private Sector Company Boards gear up for the ride ahead, here are the challenges that they believe will have maximum impact on their businesses over the next 12 months.**



### Changes in the Regulatory Climate

Diverse legal domains such as company law, securities regulation, accounting and auditing standards, insolvency law, contract law, labour law, and tax law impact Corporate Governance requirements and practices. These legal influences risk creating unintentional overlaps and conflicts, which may hamper efforts directed at improving Corporate Governance.<sup>[1]</sup>

### The Prospect of an Economic Slowdown

An unfavorable political or economic environment putting the brakes on the economy was the second-highest concern among Directors, who expressed doubt in the ability of their management teams to handle concomitant emerging issues.

## Growing Cyber Security Threats

An annual report by the National Association of Corporate Directors, NACD, released on 6th December 2018, states that, “Although a majority of the Boards are comfortable with their understanding of cyber risk, they continue to regard it as an area for improvement and indicate that cyber threats will have a significant impact on their companies in the next 12 months.”



In my experience, Indian Boards overall still lag the effectiveness of international best practice. In part, this reflects a culture of caution among the Non-Executive directors who do not feel able to challenge promoters or executives as often as they might. In part, it reflects issues of board composition, including less diversity. Things are improving, no doubt, but there is still a long way to go.

**Alan Rosling**  
**Co-founder and Director**  
**ECube Investment Advisors**  
**Independent Director on Boards**

The report further stated that, on average, only half of the population of the Directors are confident of their grasp of cyber risks to provide effective oversight and guidance. And of all the Directors surveyed, only a few claimed to evaluate the consequences of decisions such as mergers and acquisitions, new product development, and new market entries, through the lens of cyber security.<sup>[2]</sup>

## Worsening Geopolitical Volatility

Geopolitical tensions could have a sudden and negative impact on the economy creating ripples across the world. To effectively tackle these geopolitical changes, Boards will need to continuously monitor and anticipate

different scenarios, and assess the impact on their marketplace, their industry, and their organization.

## Growing Business Disruptions

Boards foresee a number of disruptive and interrelated business trends impacting their organizations over the next year. As per our survey, more than half of the Boards (58%) identified significant sector changes as one of the top five trends that would affect their organization over the next year. The business environment is changing faster today, and the consequence of these changes seems to be more significant and widespread than before.

## Competition for Talent

Finding, attracting, and accessing highly skilled people is critical in an environment of changing workforce expectations, where shrinking half-life of skills and technical knowledge pose formidable challenges.

The trends detailed above are often interconnected risks that have further compounded business uncertainty, especially since management teams find it difficult to anticipate their occurrence, as well as mitigate their impact.

**Source:** [1] [Principles of Contemporary Corporate Governance, Chapter 2.5](#)

[2] [NACD Report, December 2018, 'Uncertain Regulatory and Economic Climate Tops List of Corporate Directors' Concerns for 2019'](#)





30

Independent  
Directors  
**An introduction**

## Board Composition and Structure

### Overview and Trends

The composition of a Board of Directors is important from many perspectives. The Board develops the mission and policies of an organization, and establishes its overall strategic direction. People with distinct fields of expertise, values, opinions, and networks comprise the Board of Directors. It stands to reason that the individual characteristics and experiences of the people who serve on the Board, and who come from diverse professions, cultures, and populations, influence and directly impact the mission, policies, and overall direction of the organization. A diverse and inclusive Board of Directors usually provides an organization with relationships to many groups—relationships that can open up multiple opportunities to build strategic alliances.<sup>[1]</sup>



On the Boards I am involved with, we map existing Board members on a multi-dimensional matrix. We then use a Board composition and succession planning model. Those tools together help identify any gaps, which then drives future Board hiring.<sup>[2]</sup>

**Charlotte Valeur**  
Founder & Chairman, Board Apprentice Global

Interestingly, the use of formal skills analysis tools, covering several dimensions of characteristics, from professional skills to emotional intelligence, is now being incorporated into mainstream methods aimed at evaluating and improving the composition of Boards.

It is therefore not surprising that the composition of a Board sends a powerful message to current and future workforces on the organization's commitment to equality of opportunity. It also speaks of a strong focus on superior

performance, since studies have now clearly shown the benefits of diversity. McKinsey & Company revealed that companies with strong gender diversity among their Executives were 21% more likely to outperform on profitability, as compared to their peers. A study by Gallup of corporations in the retail and hospitality sectors found increases of 14% in comparative revenues and 19% in net profit respectively in gender-diverse business units versus less gender-diverse business units.<sup>[3]</sup>

The Financial Reporting Council (FRC) has highlighted the importance of the Board's role in establishing the 'tone from the top of the company' in terms of its culture and values. In addition, the FRC emphasized that conversations and debate, both constructive and challenging, are essential to the effective functioning of any Board. One of the ways in which this can be promoted is by incorporating greater diversity on the Board; hence Board composition is critical for good governance and great performance.

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**In today's age, the primary skill of a new Independent Director or Non-Executive Director can no longer be their ability to move in the right circles or simply fit in with the existing Board and culture.**

The new world we live in, shaped by digital technology, more open markets, and increased competition, has accelerated the need for change and also what many call the 'War for Talent'. As a result, to find new solutions to old problems, we must work with people who are different from us, even if we don't really understand them. The privilege, preference and mediocrity of yesterday must be replaced by the equality, opportunity and meritocracy of today's value system—so that we find the best-of-the-best from the widest talent pools who can solve the world's new challenges and realize opportunities. Being able to see with different eyes also makes it easier for a Board to see all opportunities and risks facing the organization, and reduces the risks associated with the phenomenon of groupthink.<sup>[2]</sup>

## Size and Diversity of Indian Boards

A recent study states that the Board should be large enough to carry out its fiduciary and other duties in an effective and efficient manner. While 5 to 7 Board members is ideal, up to 15 members is acceptable when accounting for unusual circumstances. Besides looking at numbers, Boards need to consider several other factors in choosing Directors, such as:

- Diversity
- Independence
- Functions
- Skills, talents, abilities, areas of expertise
- Representational requirements
- Regulatory requirements

At the same time, an over-sized Board is also not recommended. Adding non-fiduciary groups or committees, such as an advisory Board, can help pare down the size of the Board.



The FRC recognises that diverse Board composition in respect of protected characteristics (such as gender and race) is not on its own a guarantee. Diversity, inclusion and impact is just as much about difference of, what I have termed, POETS (Perspective, Outlook, Experience, Thought, Sector, and Social background), which of course correlates closely to those with different protected and social characteristics.<sup>[2]</sup>

**Dowshan Humzah**  
**Director and Chairman**  
**UK Advisory Board**

## Recommendation and Rationale

In today's dynamic and complex world, having a Board of Directors with diverse skill-sets has become an advantage and a necessity. The importance of diversity on a Board cannot be

overstated. A group of individuals with varied abilities and experience is critical for providing comprehensive guidance and direction to a company.

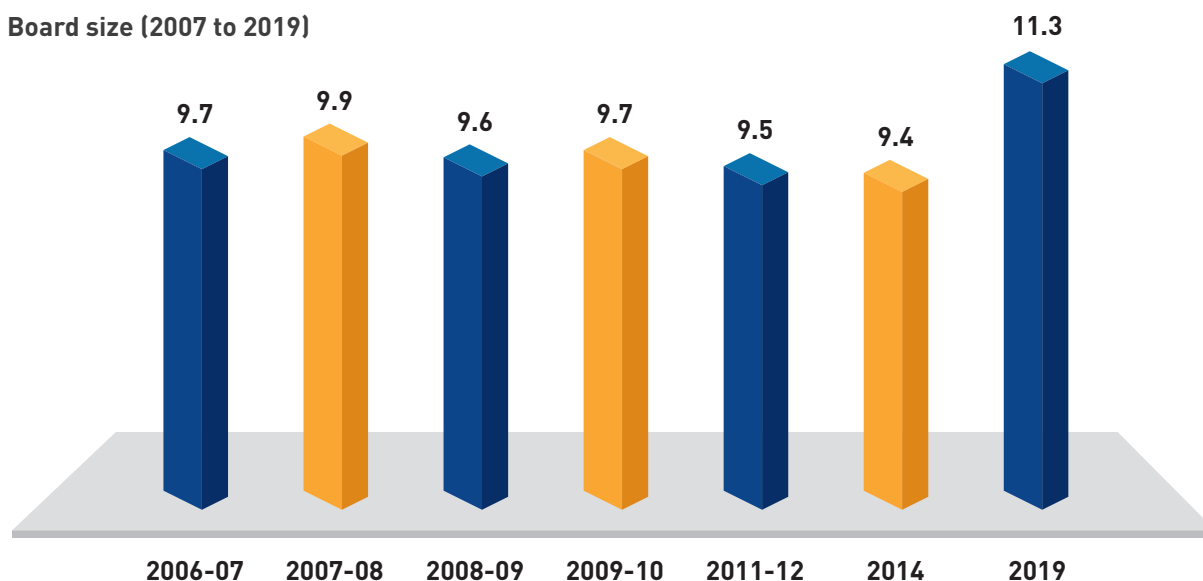
While a Board may choose to seek external expert advice on various matters, its Directors still need to have complementary skill-sets to discharge their collective responsibility of making informed business decisions. Typically, these skill-sets would include technical or academic expertise, general management experience, global business exposure, and knowledge of technology, manufacturing, operations, risk management, etc. Currently, The Companies Act and SEBI LODR Regulations require only the disclosure of a brief profile of a Director upon their appointment, including the appointee's expertise in specific functional areas (as mentioned in SEBI's 'Report of the Committee on Corporate Governance'). There is no specific requirement to disclose the required and available expertise matrix of the Board on a regular basis, leaving shareholders with inadequate information to analyze whether a Board has a sufficient mix of diverse expertise and skill-sets. It is therefore recommended that the Board of Directors of every listed entity be required to disclose the list of competencies and expertise that it believes its Directors should possess, along with the list of competencies and expertise that its members actually possess.



A good Board meeting is a conversation, not a series of presentations. Having differing and challenging perspectives makes that conversation richer and more impactful to all stakeholders in the long run. However, to have that richly diverse and talented board composition is a challenge, as Lord Myners has further stated: "Too often in the UK, we appoint to fit as opposed to appoint to challenge."<sup>[2]</sup>

**Lord Paul Myners**  
**One of the Ambassadors of Board Apprentice**

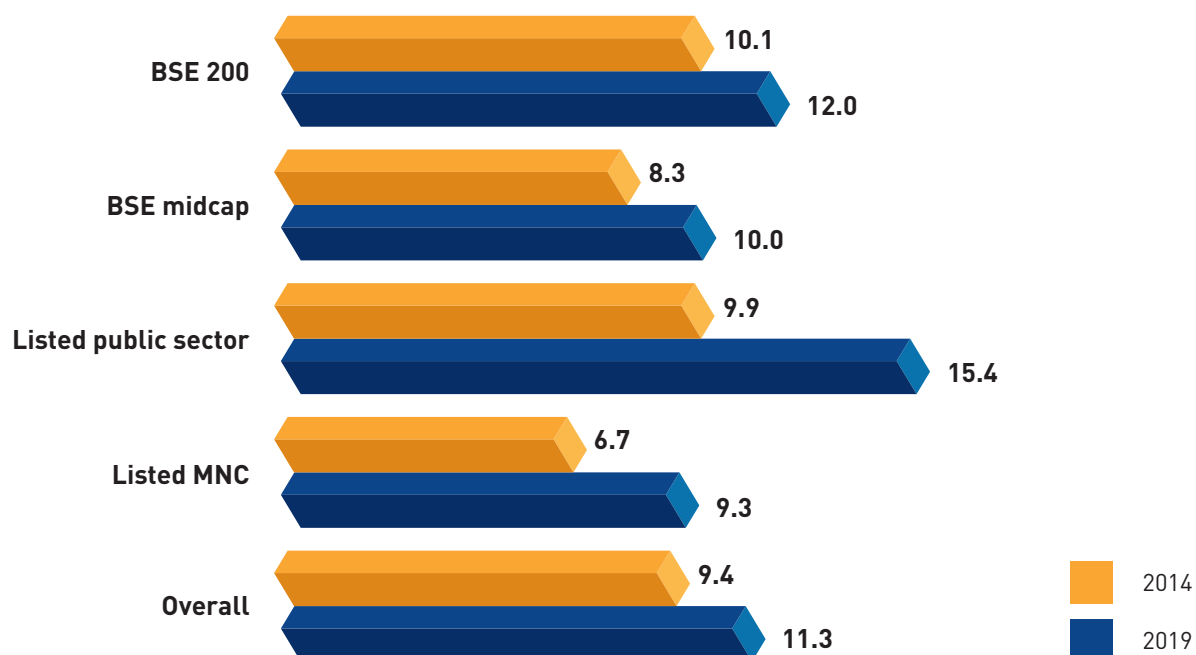
### Board size (2007 to 2019)



**Source:** Hunt Partners India Board Report 2007, 2009, 2011 and 2015

In India, the average Board size in 2018-19 is at an all-time high of 11.3, a newly observed development as compared to the 2014 average of 9.4, which in its turn had consecutively declined from the 2012 and 2010 averages of 9.5 and 9.7 respectively.

### Board size by company category (2014 and 2019)



If we study the above data for the different categories of companies surveyed, BSE 200 companies had the largest Board size at 10.1 in 2014, whereas listed public sector companies took away that title four years later, with a Board size of 15.4.



According to SEBI's 'Report of the Committee on Corporate Governance', it is essential that a company have a sufficient number of Directors on its Board in order to carry out its functions effectively. Given that the Boards of listed entities, unlike unlisted entities, have additional functions and obligations, it is crucial that these Boards consist of a sufficient number of Directors with diverse backgrounds and skill-sets, who are able to fulfil these increased responsibilities. The results of our survey show that the size of Boards in India was 6 at its minimum, and did not cross 18 Directors at the maximum.

**One of the recommendations of the SEBI-appointed Kotak Committee was that there be a minimum of 6 Directors in the top 1,000 listed entities by market capitalization, by April 1, 2019; and in the top 2000 listed entities, by April 1, 2020.**

#### Gender Diversity on the Board

Currently, The Companies Act and the rules prescribed within require at least one Woman Director on the Board of Directors of every listed entity. This is validated by the SEBI LODR Regulations, which also currently mandate that at least one Woman Director be on the Board of a listed entity.

#### Recommendation and Rationale

Diversity, including gender diversity, is often seen to have a positive impact on the decision-making

processes of corporate Boards. The Companies Act and SEBI LODR Regulations have taken a progressive step in mandating that at least one woman director be on the Board of Directors of listed entities, a move calculated to address the weighing concern of under-representation of women on Boards in India. Although India lags behind many developed markets with regard to women's participation on corporate Boards, the general reaction of corporate India on having to include at least one woman on every Board has largely been positive.

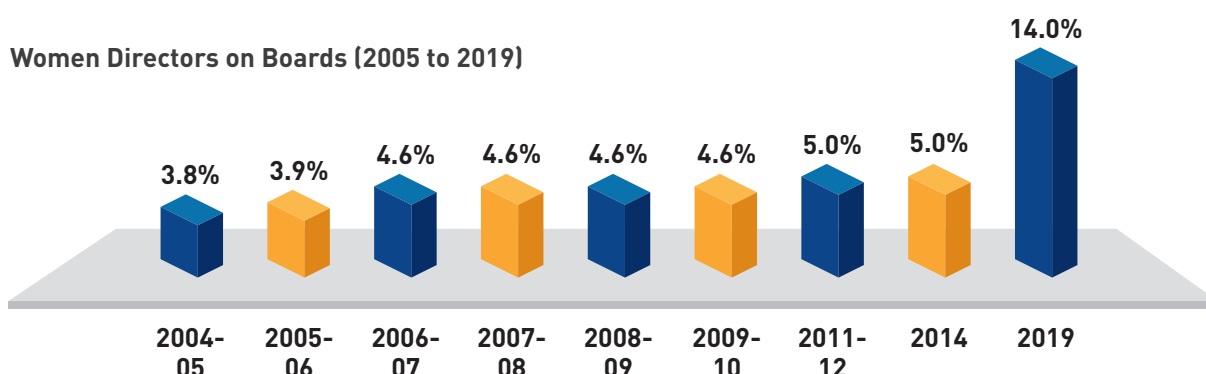
**Women representation on the Boards of NIFTY 500 companies, which was resting at 5% as on March 31, 2012, increased to 14% as on March 31, 2019.**



The concept of a Board of Directors, indeed of a joint-stock-company, is very much an evolving subject, not just in India but globally. The India Board Report, now into Volume 15, has been the most rigorous and definitive study of this subject in India. Each volume painstakingly examines outcomes, studies best practices, and paves the way for iteration and constant improvement. More significantly, the India Board Report provides much needed thought leadership.

**Sanjeev Aga**  
Former CEO and MD, Idea Cellular  
Independent Director on Boards

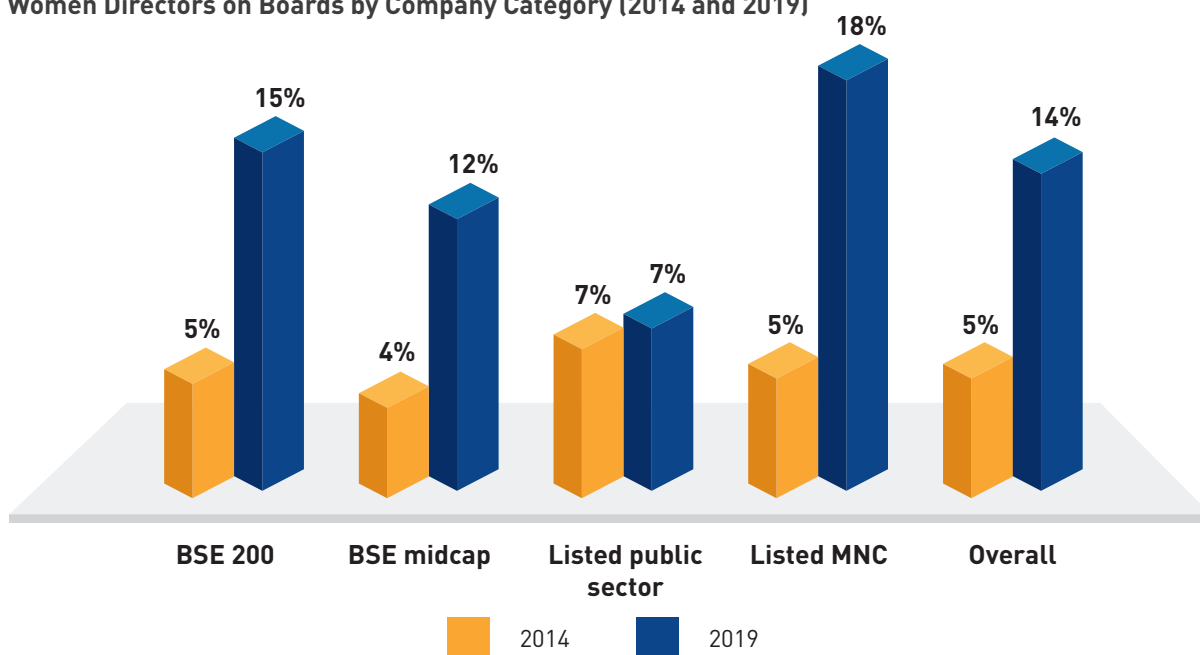
#### Women Directors on Boards (2005 to 2019)



**Source:** Hunt Partners India Board Report 2007, 2009, 2011 and 2015

Encouragingly, the presence of women directors on Indian Boards rose to an all-time high of 14% in 2018-19. The presence of women on Boards stayed at a steady 4.6% from 2006-2010, before rising to 5% in 2011 and 2014. The deviation from this previous trend makes this change in 2018 a noteworthy one - driven primarily by regulatory intervention. All the companies surveyed in 2018-19 had at least one woman director on their Boards.

#### Women Directors on Boards by Company Category (2014 and 2019)



The recent years have witnessed an impressive increase in the overall representation of Women Directors on Boards, from 5% in 2014, to 14% in 2018-19. In 2018-19, listed MNCs and BSE 200 companies showed the highest diversity, with women comprising 18% and 15% of the Boards respectively. This is a notable change from 2014, where Listed Public Sector had the highest diversity, with women comprising 7% of their Boards.

**Sources:** [1] [Why Board Composition Matters](#), [2] [Board Composition is the Beating Heart of Good Corporate Governance and High Performance](#), [3] [Board Diversity Propels Performance](#)



I have been on various Boards for the last two years, and it has been an extremely useful learning experience. The transition from Directing a company to guiding management to make the right choices is not easy. It requires patience but also firmness. Finding where you can truly add value without interfering is a challenge you have to overcome. You cannot order, instead you have to suggest and help management find the right answers and solutions themselves.

Diversity on the Board is critical. Diversity, not just in terms of gender, but also of experiences and traits as it then gives you a more balanced perspective of the issues and challenges. Good Boards are very clear of what is their role as distinct from Management.

**Bhaskar Pramanik**

**Former Chairman of Microsoft India, Independent Director on Boards**



## Independent Directors— Representation and Composition

### Recommendation and Rationale

Given that the role of the Independent Director (ID) is the backbone of the governance of a company, it is imperative to have a sufficient number of IDs on a Board to ensure that the interests of all stakeholders are safeguarded, especially those of minority shareholders. To improve governance, it is recommended that every listed entity's Board, irrespective of whether the Chairperson is an Executive or Non-Executive Chairperson, appoint as many IDs as required to make up at least one half of the Board's total number of Directors. However, given that this may require significant changes to the composition of the Boards, SEBI's Committee on Corporate Governance has suggested that an appropriate period of transition be provided for effecting such a change. The Committee has therefore recommended that this change be made applicable by April 1st, 2019, to the top 500 listed companies by market capitalization; and by April 1st, 2020, to the remaining listed companies.



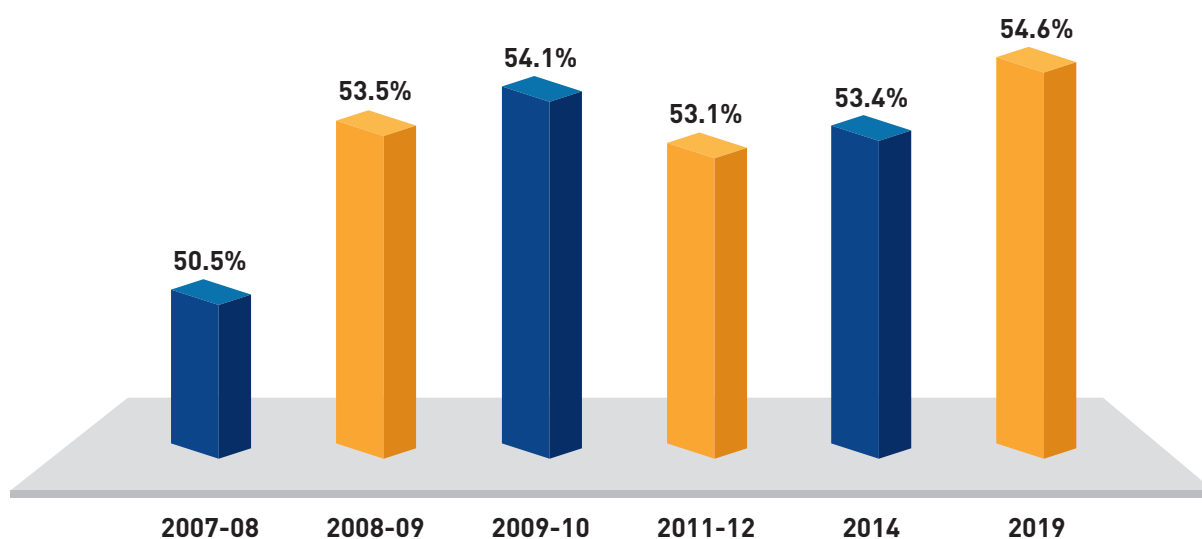
Independent Directors are so central to better Corporate Governance. As a nation of half a million Independent Directors, a strong system should be in place. There is so much reliance on this entity as a separate class of Directors and no one is looking at their code of conduct.

**A senior government official  
MCA, Government of India**

The independence of Boards is a major concern in India, especially among minority shareholders, and this concern is one of the reasons why the Kotak Committee proposed that one-half of the Board be independent, rather than one-third, as is required now. Related independence disclosures, including the details of the standards of independence being utilized, have also been proposed to help boost investor confidence.

In our survey, only one entity among the surveyed companies had less than the stipulated quota of 1 Independent Director for every 3 Directors. In fact, only 3 out of 11 Directors on this company's Board were IDs. The highest representation for IDs was 87.5%—7 out of 8 Directors on the surveyed company's Board were IDs.

### Independent directors on boards (2007 to 2019)

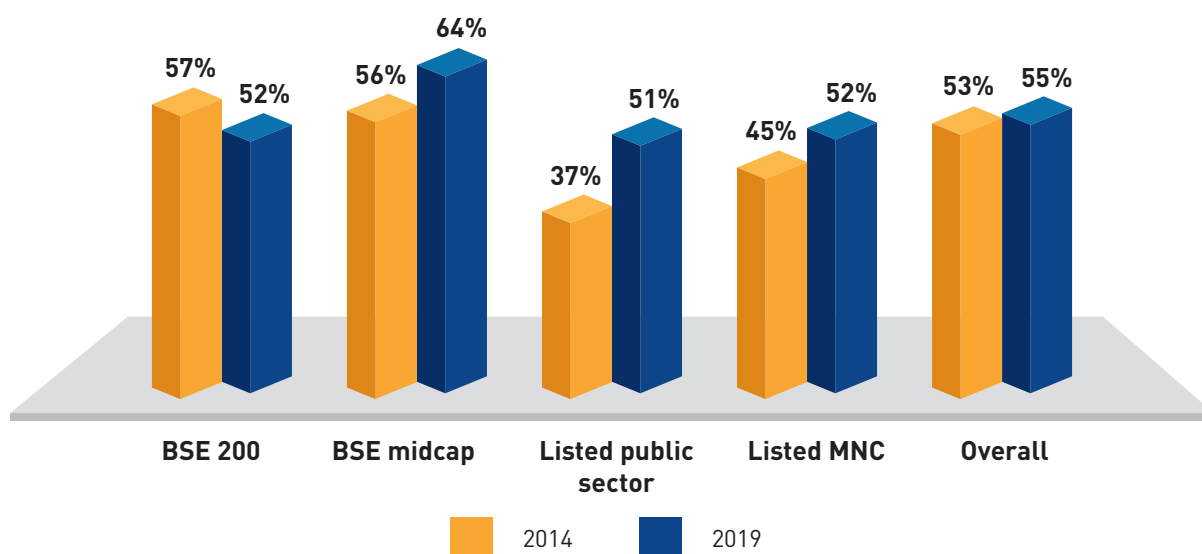


**Source:** Hunt Partners India Board Report 2007, 2009, 2011 and 2015

It is encouraging to note that the representation of Independent Directors stands at 54.6% in 2018-19, higher than the previous average of 53.4%. Moreover, the current figures are well above the new Companies Act regulation requiring at least one-third of the total number of Directors on the Board of every listed company to be Independent Directors.

SEBI LODR Regulations impose stricter obligations that require at least one half of the total Directors on the Board of a listed entity to be Independent Directors in case the Chairperson is an Executive, or is related to the promoter.

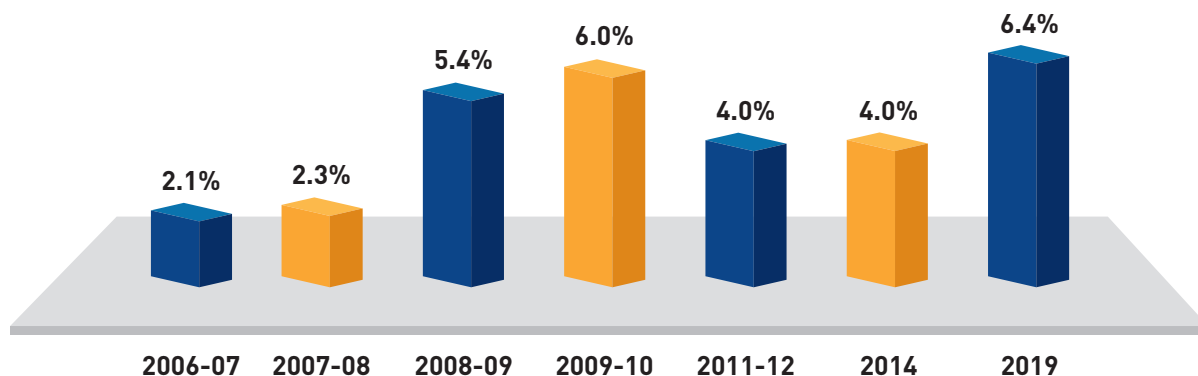
#### Independent Directors on Boards by Company Category (2014 and 2019)



The chart above shows data compared across various company categories in 2014, and then subsequently in 2018-19, keeping other parameters of companies surveyed and methods constant.

In both the years surveyed, the highest representation of Independent Directors was on the Boards of BSE midcap companies (56% in 2014, and 64% in 2019); while the lowest representation of Independent Directors was seen in listed public sector companies, despite an increase in 2019 to 51%, as compared to 37% in 2014-15.

#### Foreign Independent Directors on Indian Boards (2006 to 2019)

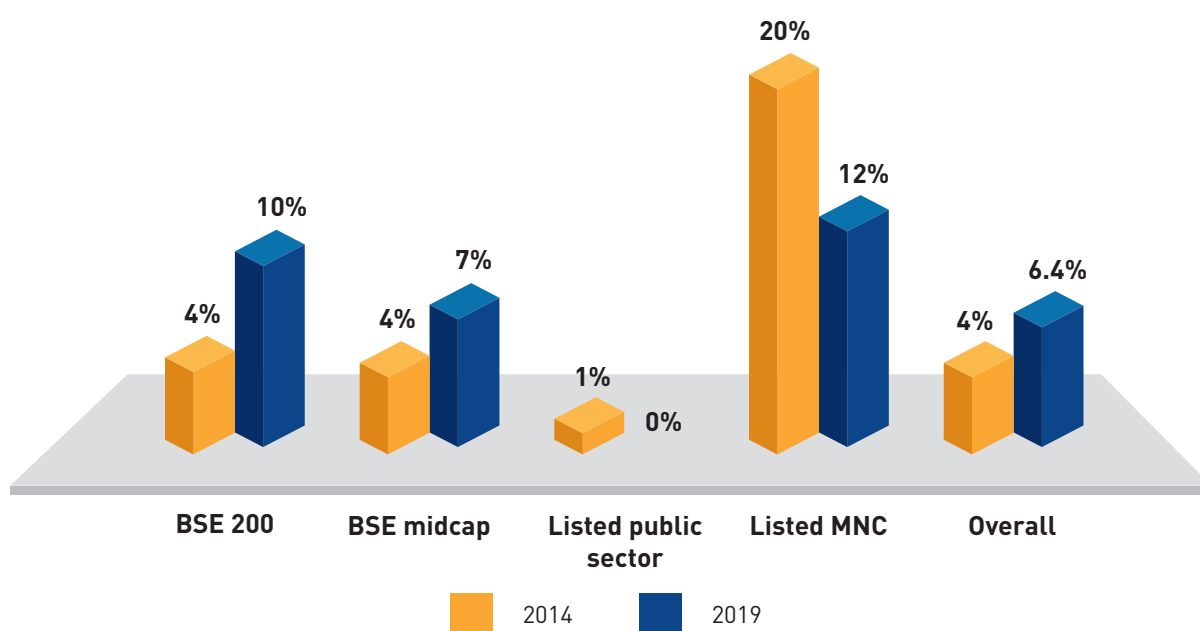


Source: Hunt Partners India Board Report 2007, 2009, 2011 and 2015

Company Law in India does not bar foreign nationals from holding the post of Directors in Indian companies. A foreigner or a non-resident Indian can be appointed as an Executive or a Non-Executive Independent Director of both public and private Indian companies.

According to our survey, expat Directors constituted 6.4% of the total Boards in Indian companies in 2018-19. Approximately 50% of the companies surveyed had no foreign Directors; while in the case of three companies out of those surveyed, over 50% of the Directors were of foreign origin.

### Foreign Independent Directors by Company Category (2014 and 2019)



In 2018-19, listed MNCs had the highest percentage of foreign Directors at 12%, followed by BSE 200 companies with 10% of their Board composed of foreign Directors, while Listed Public Sectors had no foreign Directors on the Board.

## Women Independent Directors

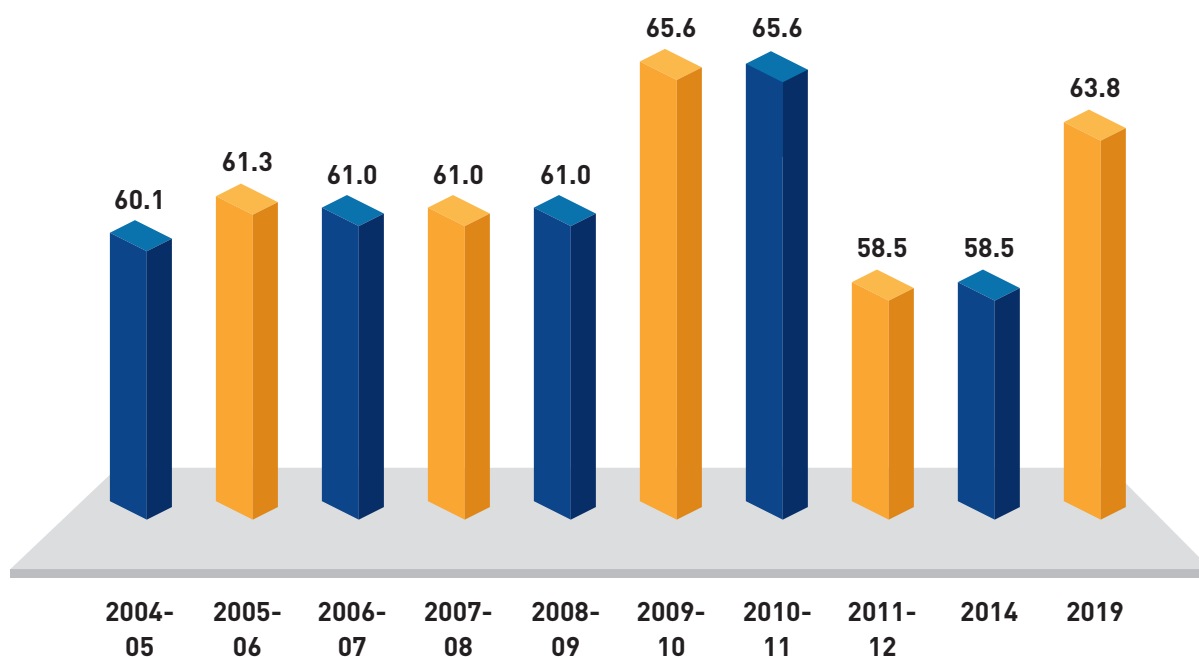
The Kotak Committee has recommended that there be at least one woman Independent Director in the top 500 listed entities by market capitalization by April 1, 2019, and in the top 1000 listed entities, by April 1, 2020. Currently, over 30% of the companies surveyed do not have a woman Independent Director.



The Kotak Committee Recommendation for the one woman required by the Act to be an Independent Director is a good beginning. Two women or 25 percent should be our immediate objective, going up to 33% in due course.

**Naina Lal Kidwai**  
**Chairman, India Advisory Board**  
**Advent International PE**

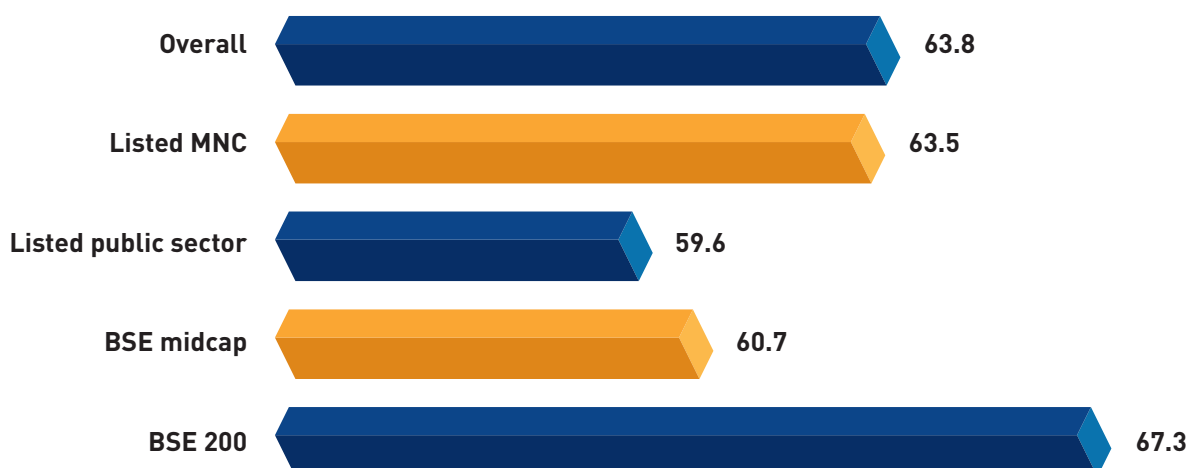
### Age of Independent Directors (2005 to 2019)



**Source:** Hunt Partners India Board Report 2007, 2009, 2011 and 2015

Historically, the average age of Independent Directors has been above 60 years. While the age of IDs hit a record high of 65.6 years in 2009-10, it reached its lowest at 58.5 years in 2014. In 2018-19, the average age of IDs is close to 64 years.

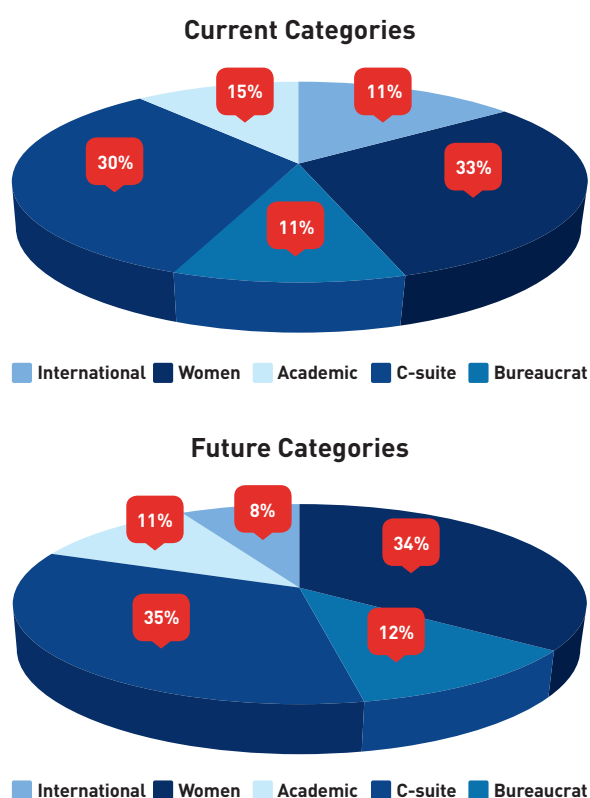
### Age of Independent Directors by Company Category (2005 – 2019)



The data gathered across the different company categories surveyed shows that BSE 200 companies had the oldest Boards (67+ years); while the average age of IDs on the Board of Listed Indian PSUs was recorded at the lowest (59+ years).

The Committee on Corporate Governance, SEBI, recognizes that while age itself may not be a determinant of the efficiency or capability of a person, nor the basis for disqualification of a Director, endorsement from a higher number of shareholders may be required for Directors to continue in their position beyond a certain age.

### Current and Future Categories of Independent Directors



The proposed amendment to the SEBI LODR Regulations (w.e.f. October 1, 2019) regarding the age of Non-Executive Directors is revealed in the insertion of a new sub-Regulation (1A). It states that no listed entity shall appoint a person or continue the directorship of any person as a Non-Executive Director who has attained the age of 75 years unless a special resolution is passed

to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

**Currently, among the majority of the Independent Directors, 33% share the opinion that women and C-suite Executives are currently well-represented on Boards, whereas only a few Directors believe that expats and academicians are well-represented.**

However, fewer bureaucrats (8%) are desired on the Board, but C-suite or CXO Executives (35%) continue to be the most desired. It should also be noted that Independent Directors (34%) continue to support the presence of more women directors for the future.



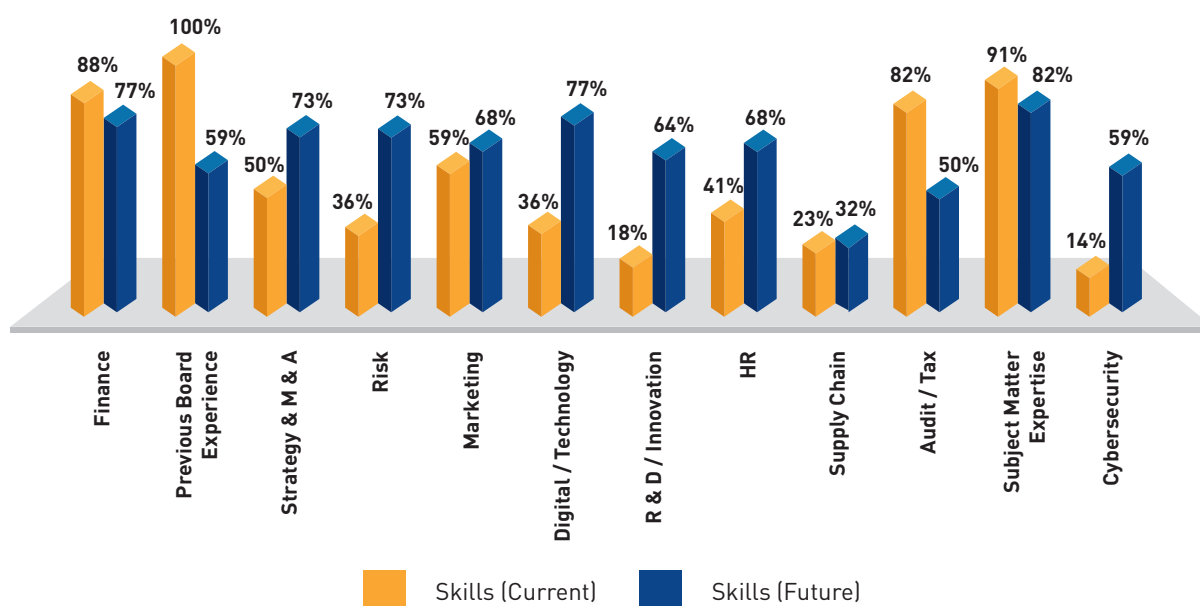
Most companies prefer appointing former bureaucrats as this naturally adds weight to their set-up. While there is no restriction on civil servants joining any company Board, this can lead to questions on ethical conflict of interest.

**Amarjit Chopra**  
**Former President**  
**Institute of Chartered Accountants of India**

In today's dynamic and complex world, diverse skill-sets of the Board of Directors have become a necessity. A group of individuals with varied skill-sets and experience provides comprehensive guidance and direction to a company.

The Committee on Corporate Governance, SEBI, acknowledged that while a Board of Directors may seek external expert advice on various matters, given the collective responsibility and the need for the Board for making informed business judgement, a balanced sustaining Board with complementary skill-sets amongst the Directors is highly essential. Typically, these

## Current and Future Relevant Skills of Independent Directors



skill-sets would comprise technical/academic skills, general management, global business, technology, manufacturing/operations, risk management, etc. Considering this, Board members should collectively have a wide set of skills appropriate for the relevant business.

Currently, Independent Directors with previous board experience (100% of those surveyed) and with subject matter expertise (91% of those surveyed) are well-represented on the Board.

**However, Independent Directors seek other skills in higher numbers in the future, including cyber security (59% cited these skills), R&D & innovation (mentioned by 64%) and digital technology (77% voiced this preference).**

After subject matter expertise, the next most prominent competencies Independent Directors currently demonstrate relate to finance (88%) and knowledge of audit/tax (82%).

Boards in Australia and New Zealand are increasingly demanding digital capabilities and experience from their members, including expertise in new technologies like IoT, Big Data and Data Analytics.

**Shifting our focus to global trends, Board Directors in the UK seek a higher presence of skilled Directors in the field of new and emerging technologies like Artificial Intelligence, followed by technology infrastructure, marketing and international experience.**

In other European countries too, digitalization has become the quintessential disruptive opportunity for Boards in 2018-19. Developing and adding digital competencies on the Board will inevitably change its composition, as newer members bring fresh ideas and a different approach to hierarchy, dissent, and challenge. Cultural leadership behavior will change, as discussions become more open, with less dominance granted to seniority and experience. Experience, as expressed at the Board level, will also acquire new value—the experience of questioning traditional methods and strategies. In short, Boards will have to adapt to more challenge, not only from Non-Executives, but also from Executives. Successful Directors will be those who possess the determination and confidence to ask the right questions. They may not, however, have all the answers.

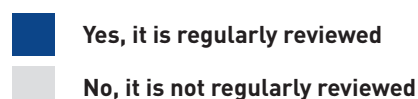
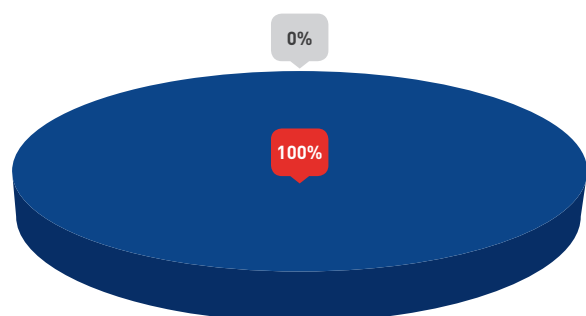
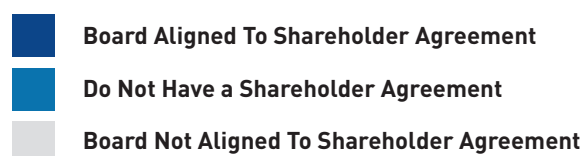
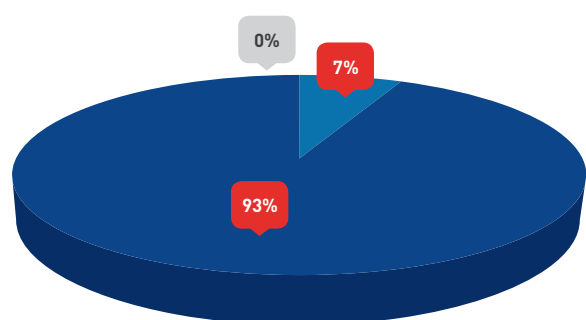


## Alignment of Board Structure with Shareholders' Agreement

The shareholders' agreement is instrumental in determining the number of members on a Board, the names of members to be appointed, the mechanism of appointments, and the rules for Non-Executive Directors.

The Board of Directors is responsible for the management of the business and the corporation. Therefore, the weight of shareholders' agreement should facilitate a Board representation that is in the best interests of the stakeholders of the venture or enterprise.

**Board structure aligned to shareholder agreement and is it reviewed regularly**



According to the Companies Act, 2013, the existence of a shareholders' agreement is essential for the purpose of securing certain rights of shareholders. The agreement should list the rights of investors, for example, the instance of family and friends holding specific shareholding interests so that they can make appointments to the Board. The most recent and high-profile case in which the shareholder's agreement took center stage was that of Interglobe Aviation, highlighting the differences between its promoters.

**In India, as per the current available data, Board structure is aligned with the shareholders' agreement in 93% of the companies surveyed. 100% of these companies review their agreement regularly.**

Usually, Board appointments and removals require the approval of a majority shareholder in order to effectively control the company. This implies that a minority shareholder will not have the right of representation on the Board. The shareholders' agreement looks out for the interests of a minority shareholder by giving them the right to appoint a Director, as long as they hold a minimum percentage of shares.

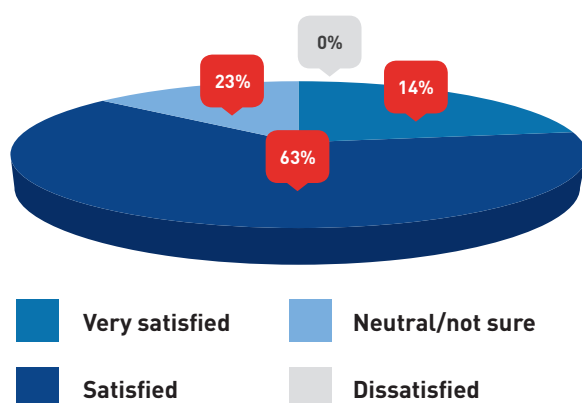
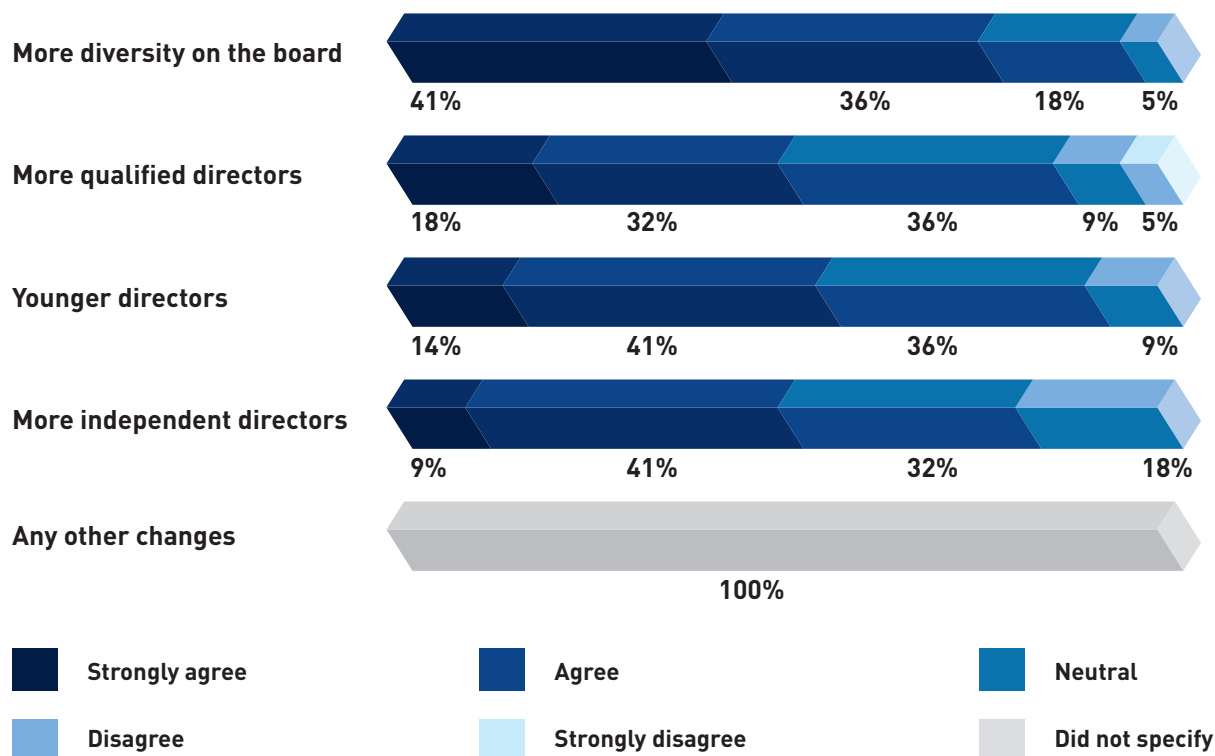


Activism among shareholders is the highest in Asia as rules like the consent of 'majority of minority' shareholders have given teeth to the ranks. At Fortis, for example, following shareholder protests, the Board had to expand to accommodate three new members for improving transparency and governance. There was dissent when the Board decided to go with a bid from the Munjal-Burman family, thereby exposing fissures within.

**Banker  
BNP Paribas**

## Areas of Improvement and Impediments to Changing Board Composition

### Satisfaction with Board Composition



The survey revealed that there was no major dissatisfaction with regard to Board composition. A significant majority of the Independent Directors surveyed are satisfied with the composition of the Board. 14% of those surveyed are very satisfied, and 63% are satisfied.



In promoter-driven organisations, it is extremely important to constitute an independent Board that is empowered to challenge the owners and management from time to time, rather than merely functioning as a rubber stamp. While the Companies Act, 2013 delves into many crucial areas pertaining to corporate governance in India, the real success of an organisation lies in following various regulations, not just on paper but in “true spirit”.

**Meher Pudumjee**  
Chairperson, Thermax Ltd.

## Areas of Improvement Required in Board Composition

50% of Independent Directors disagreed with the suggestion of increasing the number of Independent Directors on Boards.

### Independent Directors clearly favour higher diversity on the Board (41%).

It is recommended that the Board of Directors of every listed entity be required to list the competencies/expertise that it believes its Directors should possess. It should also be required to disclose the list of competencies/expertise that its Board members actually possess.

While the Committee on Corporate Governance, SEBI, acknowledges the ever-evolving and changing regulatory environment, it also states that ignorance of the law is no excuse for poor or questionable functioning on the part of a Board, and that the Board's supervisory role holds it

ultimately accountable for unlawful actions of the company.

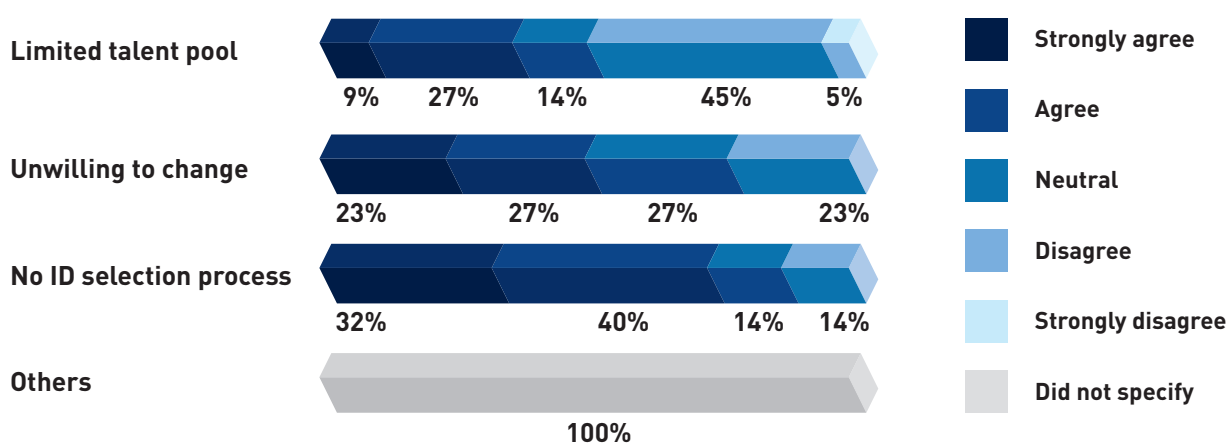
Accordingly, to enable the Directors to exercise their judgement and discharge their duties with sufficient knowledge, they need to be kept abreast of the changes in laws, regulations, judicial or regulatory orders, and compliance requirements. Therefore, in order to maintain a stable and compliant Board composition, it is recommended that the Board of Directors be updated on regulatory changes at least once every year.



People are indeed raising issues and there are an increasing number of promoters who are looking at value additions from the Board as they have a generational view towards their business.

**Amit Tandon**  
Founder  
Institutional Investor Advisory Services

## Impediments to Changing Board Composition



**When asked about the factors that impede change in Board composition, Independent Directors held the primary reason to be the absence of a formal selection process for Independent Directors.**

Further, 73% of Independent Directors agreed that a formal selection process would help identify worthy Independent Directors.

Experienced Independent Directors (9%) strongly opined that a limited talent pool is another major impediment to changing Board composition. A senior Independent Director mentioned that he had earlier forecast a need for 40,000 Independent Directors in India from April 2019 onwards.



maximum number of listed entity directorships, held by a person, be brought down to eight by April 1, 2019, and subsequently to seven by April 1, 2020.

The Committee also directed attention to the rationale of the United Kingdom's Cadbury Committee, set out in the Report of the Committee on the Financial Aspects of Corporate Governance (1992), which says that, "Given the importance and the particular nature of the Chairman's role, it should, in principle, be separate from that of the Chief Executive. If the two roles are combined in one person, it represents a considerable concentration of power."



Till recently, Indian Boards have operated like a club. The rules on paper are only useful if they can be implemented in spirit.

**Harsh Mariwala**  
**Chairman, Marico**

The Committee on Corporate Governance, SEBI, believes that holding multiple directorships beyond a reasonable limit may render it impossible for a Director to allocate sufficient time to a particular company, thus hindering their ability to play an effective role. In light of the increasing responsibilities of corporate Boards, and the subsequent increased demands on time from Directors, the Committee recommends that the maximum number of directorships in listed entities be reduced to seven, irrespective of whether the person is appointed as an Independent Director or not. However, in the interest of providing an adequate transition period, the Committee recommends that the





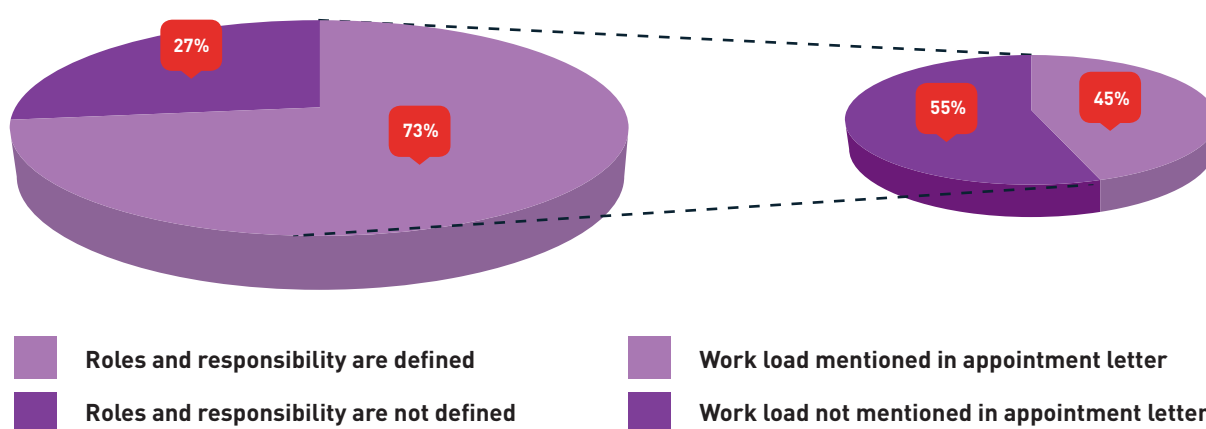
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## Role, Functioning, and Impact of Independent Directors

An Independent Director serves as a guide, coach, and mentor to the company. The role involves improving corporate credibility and governance standards by working as a watchdog, as well as assisting in managing risk. Independent Directors are responsible for ensuring better governance by actively participating in various committees set up by the company.

Australia Institute of Company Directors states that, “A Non-Executive Director’s responsibilities will normally be outlined in the Corporate Governance charter and may also be touched on in a Director’s letter of appointment. Specific terms will vary from organization to organization, but will usually cover a Director’s responsibility in relation to effective governance of the organization, formulation of the organization’s strategic direction, recruitment and performance of the CEO and many more functions.”

### Defined Roles and Responsibilities of Independent Directors



Our survey revealed that 7 out of every 10 Independent Directors have claimed that their roles and responsibilities are clearly defined; while 45% of the Directors surveyed have agreed that the scope and demands of their work are mentioned in the appointment letter.



The Board should understand what its role is and so should the Management. Both should do their bit... Boards need to discharge their responsibilities, be better constituted and everyone—including the government—needs to step back and allow them to run the organization. Their job is to address difficult questions, not to stay away like many government nominees on several Boards do these days.

**M. Damodaran**  
Former Chairman, SEBI



We have lately seen that many Boards have not been able to play their roles well.

**Harsh Mariwala**  
Chairman, Marico

## Induction & Training of Independent Directors

The Companies Act provides sufficient guidance on the training and onboarding of Directors. In addition, the SEBI LODR Regulations require that Independent Directors be familiar with certain specified subjects. However, there exist no specific provisions on the induction and training of IDs, as well as the frequency of revisions and updates to the information dispensed and methods used during training.

Independent Directors, in most cases, bring a diverse set of skills and experiences to Board deliberations, and some of these may not be strictly associated with the company's main operation, business or product. To ensure that these skills can be harnessed in the context of the company's business, it is important to ensure that these IDs understand the company's operations in reasonable granularity.

According to the Regulation 25(7) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Independent Directors should undergo appropriate induction & training, and regularly (on an annual basis) update and refresh their skills, knowledge, and familiarity with the company, including the following:

- a) Nature of the industry in which the listed entity operates
- b) Business model of the listed entity
- c) Roles, rights, responsibilities of Independent Directors and

- d) Any other relevant information

A quick comparison with the UK will reveal that the Non-Executive Directors' Association has developed an intensive core training course for all existing and aspiring Non-Executive Directors (NEDs), and others who work with them or advise Boards. The course is applicable to NEDs/IDs regardless of their experience. For some, this course will serve as an introduction to Board governance and functioning, while for others, it will offer a chance to evaluate their knowledge and approach.

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**Interestingly, all the companies approached in this recent survey have affirmed the existence of a well-structured training and induction program for board members.**

**The SEBI LODR regulations stipulate that the induction or familiarization program should consist of the following points:**

1. All Independent Directors should be aware and updated on the latest trends, with regard to their roles, rights, and responsibilities in the Company. A Directors' kit containing information about the Company, Memorandum and Articles of Association, Annual Reports of the previous three years, Investor Presentations, recent Media Releases, etc. should be handed over to the new Director.

### Induction and Training for Board Members



2. The appointment letter issued to the Independent Directors must outline, inter alia, the expectation of the Board from the appointed Director, their fiduciary duties, and the accompanying liabilities that come with the appointment of Director of the Company.
3. The Independent Directors need to be furnished with necessary documents/ brochures, reports, and internal policies to enable them to familiarize themselves with the Company's procedures and practices.
4. Periodic presentations should be made to the Board and Board Committee Meetings, expounding on details, including updates on business and performance of the Company, global business environment, and business strategy and risks involved.
5. The Company should conduct frequent tours of its factories and plants for the benefit of its Directors.
6. Quarterly presentations on operations that are made to the Board should include information on business performance, operations, market share, financial parameters, working capital management, fund flows, risk management, subsidiary information, regulatory scenario, etc.
7. Detailed presentations on the duties and responsibilities of Independent Directors and the Company's business segments must be made at the separate meetings of Independent Directors, which are held yearly.
8. The Independent Directors must be given the freedom to interact with the Company's management in order to discuss matters pertaining to the Company's affairs, and put forth their combined views to the Chairman and Managing Director. They must be provided with all documents necessary to acquire a good understanding of the Company, its various operations, and the industry segments of which it forms part.



We must all realize that Corporate Governance is all about maximizing shareholder value, while ensuring fairness, transparency, and accountability to every one of the stakeholders, whether it is customers or employees or investors or vendor partners or the government of the land and the society.

**Narayana Murthy**  
IT industrialist and the co-founder of Infosys





# Board Efficiency & Firm Performance

## The Influence of Independent Directors

The Board of Directors, and in particular, the Chairperson and committees of the Board, play an important role in effective Corporate Governance.

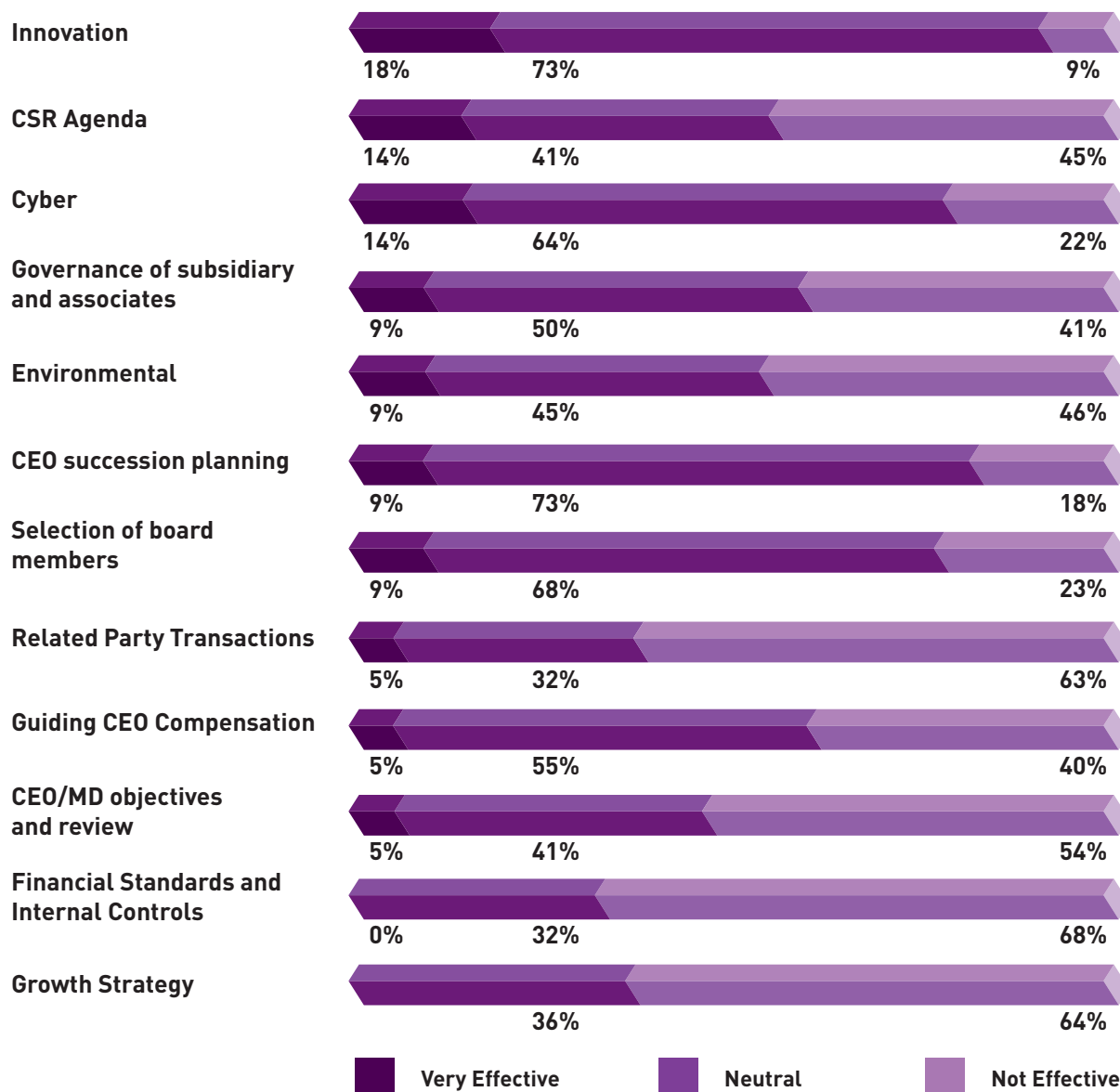
The effectiveness of an Independent Director in India is influenced by several factors. Two factors in particular stand out. The first, is the nature of the company itself. Multinationals, minority shareholder companies, public sector enterprises, group-affiliated companies and entrepreneurial businesses will expect and tolerate varying degrees of involvement by Independent Directors—a fact that should always be accounted for when considering a directorship. The second factor pertains to the circumstances surrounding the appointment of Independent Directors. These have a marked effect on the way Directors demonstrably go about their duties.

When it comes to performance of a firm, performance can be considered as the effectiveness of a firm in achieving goals and targets within a specified time frame. Areas such as Strategy, Risk, and Growth have been identified by Independent Directors as having the greatest impact on Corporate Governance and performance.





## Performance Management: Board's Effectiveness in Advising and Reviewing



As per the Kotak Committee recommendations, performance evaluation criteria should include:

- Performance of the Directors
- Fulfilment of the 'Independent' Criteria
- Independence from the Management

A quick study of the graph above reveals that the majority of the Independent Directors' opinions carries neutral impact on the Board's effectiveness in advising and reviewing.

Amongst those Directors who believe that they are very effective in certain areas, a mere 18%

feel that they are most effective in 'Innovation'. Other areas, with respect to advising and reviewing, in which these Directors express relative confidence, include CSR Agenda (14%), and Cyber Risk Management (14%).

**68% of the Independent Directors surveyed claimed that the Board is not effective when it comes to financial standards and internal controls.**

## The other areas where Independent Directors feel that Boards aren't effective enough pertain to growth strategy and related party transactions (64%).

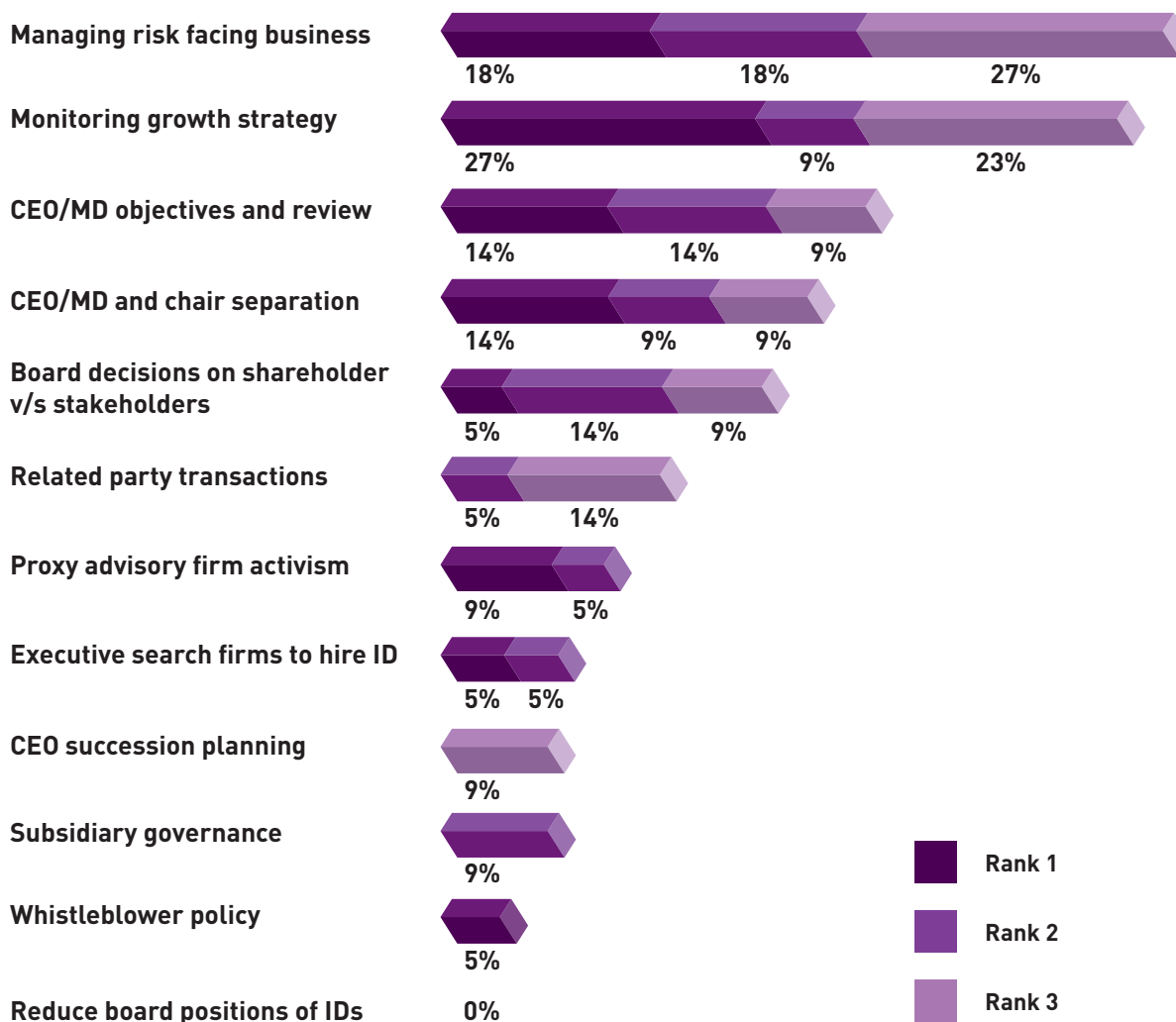
This is a point of concern: Boards need to be effective when it comes to related party transactions as a number of regulatory procedures have been put in place to ensure that related party transactions are conflict-free and do not negatively affect value for shareholders.

As a result of this reporting requirement, many companies have special policies and corporate compliance procedures to ensure that related party transactions are appropriately documented and reported.

The objectives of the CEO/MD, and their reviews, is considered as the third most important parameter (14%). In addition to the above list, the identification and management of risks faced by businesses have garnered the highest vote share of Independent Directors (63%) across all three ranks, indicating the importance of this factor. This parameter is closely followed by monitoring growth strategy (organic and inorganic), with a total vote share of 59% across all three ranks.

At the other end of the spectrum, CEO succession planning, low subsidiary governance, and proxy advisory firm activism are perceived to have a low impact on overall Corporate Governance.

### Top Three Parameters that will have the Greatest Impact on Overall Governance



**Monitoring growth strategy is believed to have the greatest impact on overall governance—the importance of this aspect is evident from the fact that the highest number of Independent Directors ranked it first, and very few ranked it second or third. Managing risks faced by the business is the second-highest-ranked parameter to have an impact, a phenomenon that could be attributed to the dynamic nature of markets and global situations.**

#### Risk Management Committee and Process

The current SEBI LODR regulations require the top 100 listed entities to form a Risk Management Committee; however, the role of this committee has not been specified. The Companies Act also makes no specific provisions on this subject. Given the fluctuations in today's business environment, an active Risk Management Committee is imperative for the identification, mitigation, and resolution of risks.



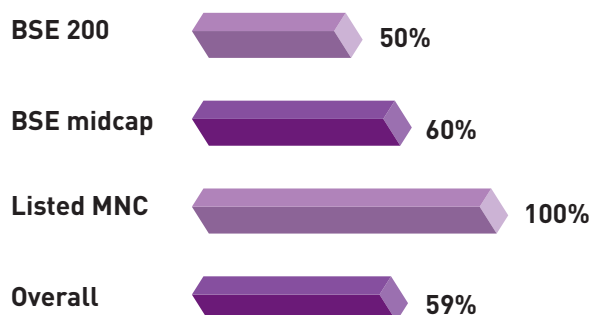
We are going from one extreme to another. Everyone wants to drown out the sound of the Board members, who have been nominated to do a job... Independent members know only as much as the Management shares with them, so the Board may ask tough questions but accountability should rest with the Management.

**Kiran Mazumdar-Shaw**  
Chairperson, Biocon

These risks that are being managed operationally on a daily basis call for a more formal structure, especially for the next set of high-growth companies. It is therefore recommended that the requirement of a Risk Management Committee be extended to the top 500 listed entities by market capitalization, and not just to the top 100 listed entities as is currently applicable.

In addition, it is recommended that the Risk Management Committee specifically cover the topics of cyber security and related risks in view of their increasing relevance.

#### Adequate Risk Management Process



The chart above reveals that 59% of the companies surveyed believe that their processes for reporting data and the state of risk is adequately efficient. 100% of the listed MNCs have adequate risk management processes in place, while only 60% of BSE midcap companies have managed to put these processes in place.

#### Chairperson of the Board: Providing Leadership

The Chairperson of the Board shoulders the responsibility of leading the Board and leveraging the efforts and expertise of each of the individual Directors.



Business environment continues to be disruptive. This requires not only businesses but also their board of directors to be agile in providing strategic direction. Given the growing importance of non-competitive forces, corporate strategy is increasingly complex and also an increasingly important driver of performance. Boards are facing increasing calls from all stakeholders, including management and investors, to be more deeply involved in setting proactive strategy and dynamic risk management.

**Dr. Indu Shahani, President & Chair of ISDI, ISME**  
Independent Director on Boards

The enforcement of good Corporate Governance practices at the board level depends on one crucial factor—the independence of the Chairperson.

Thus, if a potential Chairperson has any conflict of interest that hampers their ability to take independent, objective decisions, (such as holding share options material to their wealth at the time of appointment), their application should be reconsidered. To ensure the Chairperson's independence, internationally recognized governance codes stipulate that the Chairperson should not have previously held the position of CEO in the same company. Investors worldwide prefer this structure, as it is held to be the most efficient.

However, in certain cases, it may be in the company's interests to have a Chairperson who was previously an Executive of the company. A common example is where the Chairperson happens to be the founder or the owner of majority shares, but no longer wishes to continue as CEO.

'As per the Kotak Committee, listed companies with more than 40% public shareholding should separate the roles of Chairperson and MD/CEO w.e.f. April 1, 2020.'

The separation of powers between the Chairperson (i.e. the leader of the Board), and the CEO/MD (i.e. the leader of the management), is seen to provide a better and more balanced governance structure, especially by enabling more effective supervision of the management, by virtue of:

- a) Providing a structural advantage for the Board to act independently
- b) Reducing excessive concentration of authority in a single individual
- c) Clarifying the respective roles of the Chairperson and the CEO/MD
- d) Ensuring that the tasks of the Board are not neglected, due to lack of time, by a Chairperson who's also discharging the duties of CEO/MD
- e) Increasing the possibility that the Chairperson

and CEO/MD posts will be assumed by individuals possessing the skills and experience appropriate for those positions

- f) Fostering a Board environment that is more egalitarian and conducive to debate

This approach, laid down as best practice by many Corporate Governance codes, is actively demanded by many jurisdictions, while many companies are actively considering its adoption.

There is weight to the recommendation of separating the roles of Board Chairman and CEO, since this separation equips the Boards with a structural basis for independence. It may prove to be in the interests of the company to restrict the amount of power the CEO is vested with—a point worth considering for countries like the United States, which endows its CEOs with an unusual amount of authority, as compared to other Western leading economies.<sup>[1]</sup>

While some may argue that this separation could lead to a lack of accountability, we believe the opposite, in fact, is true: Separating the roles ensures that the Board can concentrate on its role of supervising the company's management and protecting the interests of the shareholders, while enabling the CEO to discharge his duty of managing the company efficiently.<sup>[1]</sup>

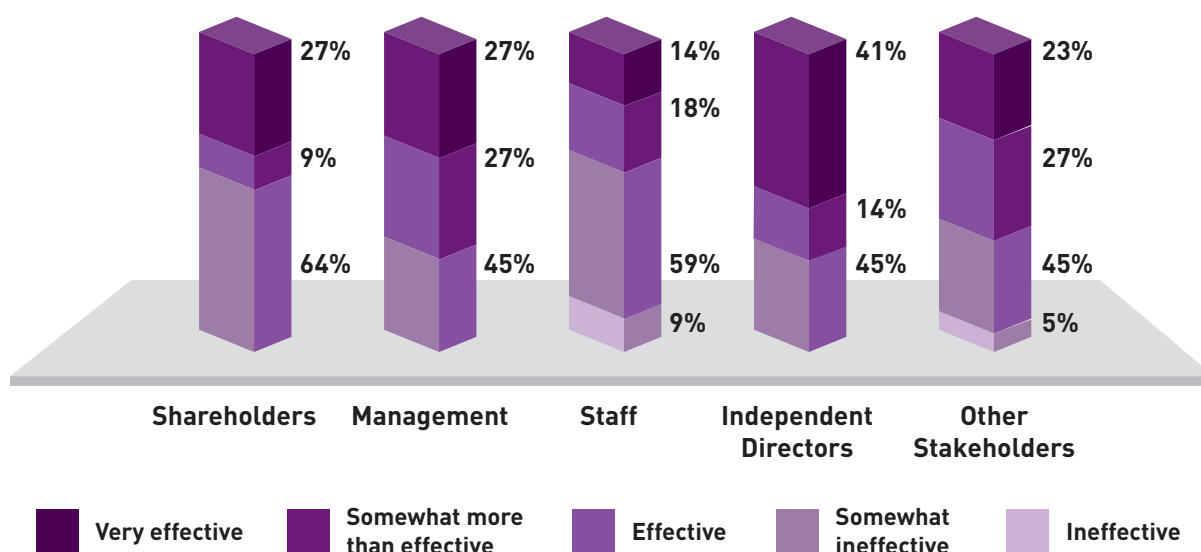


The focus on monitoring and enforcement will be a game changer. While India has had good norms on governance, enhanced monitoring and strict enforcement will make the real difference in the level of compliance and manner of implementation.

**Sai Venkateshwaran**  
Partner & Head, Accounting Advisory Services  
KPMG India

**Source:** [1] [Corporate Governance – 3.6 Board Leadership: Should We Separate the Chairman and CEO Positions](#)

## Quality of the Chairperson's Relationship and Communication



A Chairperson promotes effective relationships and open communication, and creates an environment that facilitates constructive debates and challenges, both inside and outside the Boardroom, between Non-Executive Directors and the Management.

All of the Independent Directors approached for the survey claimed that the quality of their relationship and communication with the Chairperson is effective. 9% of the IDs believe that the relationship between the staff and Chairperson is low, which calls for improvement in this area.

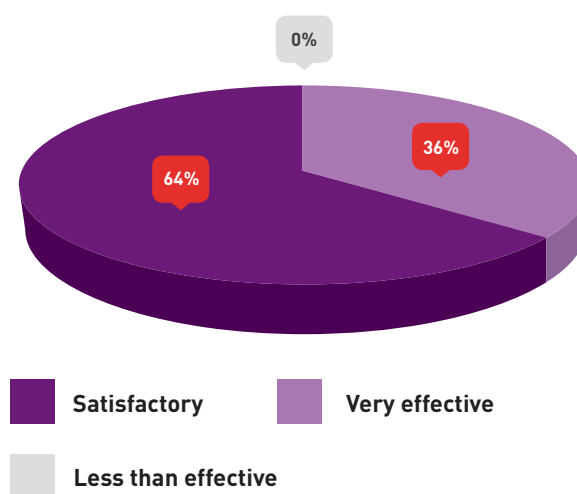
An effective and experienced Board Chairperson can be instrumental in managing the behavior of Board Directors and in resolving disputes between the Board and the Management, as well as conflicts within the Board. The Board Chair needs to assess the topics for discussion and quickly sort through agenda items, especially in cases of unanimous agreement or minor conflicts. This strategy allows the Board more time to thoroughly vet other issues where different Directors have varying perspectives to offer.

It is also important for the Board Chair to enlist the participation of the entire Board as early as possible on issues of potential conflict. The Chair should also ensure that every Director is given

equal opportunity to form an opinion and to offer their perspective without feeling overpowered by the other Directors.

According to the Independent Directors interviewed, 64% were of the opinion that the Chairperson is able to manage conflict within the Board satisfactorily, while 36% have rated the ability of conflict management as "very effective".

## Chairperson's Ability to Manage Conflict within the Board







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Independent  
Directors and  
Better Board  
Governance

# Controls and Procedures— Improving Board Efficiency

## Overview

Independent Directors have emerged as the torchbearers of the worldwide Corporate Governance movement. Their increased presence in the Boardroom has been hailed as an effective deterrent to fraud and mismanagement, the inefficient use of resources and the inequality and unaccountability of decisions. Their role in ensuring the right balance between individual, economic and social interests has been widely acknowledged and applauded.



Is the Media and the Regulator expectation from Independent Directors an over expectation! Who all sit around the table should be the focus? It is the collective role of the Board which determines the governance. The key to effectiveness of the Board lies with the promoter and the CEO expectations. The Chairperson must have confidence in the Board and recognize its Power and must encourage open and constructive discussion involving all the members to enhance Board effectiveness.

### Subodh Bhargava

**Former Group Chairman of Eicher Group, TCS  
Independent Director on Boards**

## Lead Independent Director (LID)— Role, Structure, and Impact

Currently, there is no mandatory requirement of a Lead Independent Director, either in the Companies Act, or in the SEBI LODR Regulations.

The Committee on Corporate Governance, SEBI, acknowledges that while IDs have equal fiduciary responsibilities as the other Directors on the Board, their role is more defined and distinct, and places emphasis on better internal coordination to improve effectiveness. In alignment with this need, it was felt that the appointment of a Lead ID

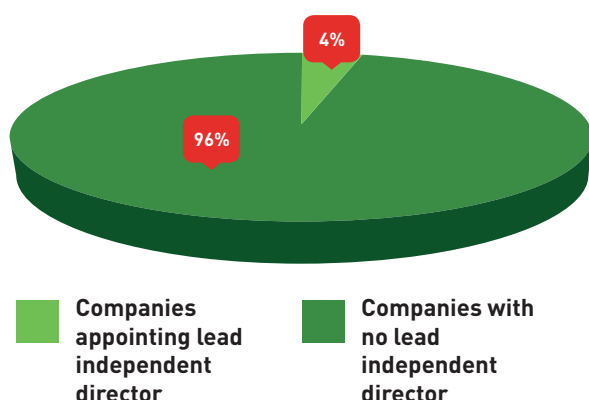
may facilitate better engagement of, and by, the IDs. Globally, several countries currently adopt the concept of Lead IDs in their jurisdictions. The Lead ID is expected to assist in coordinating the activities and decisions of the other Non-Executive and/or Independent Directors to chair the meetings of the IDs.

The position of Lead ID becomes especially crucial where the Chairperson is non-independent.

The Committee on Corporate Governance, SEBI, also recommends the following:

1. All listed entities where the Chairperson is not independent should designate an ID as the Lead ID;
2. The Lead ID should be a member of the NRC;
3. The Lead ID shall:
  - a) Lead exclusive meetings of the IDs and provide feedback to the Chairperson/Board of Directors after such meetings;
  - b) Serve as the liaison between the Chairperson of the Board and the IDs;
  - c) Preside over meetings of the Board at which the Chairperson or Vice-Chairperson is not present, including executive sessions of the IDs;
  - d) Have the authority to call meetings of the IDs; and
  - e) If requested by a significant number of shareholders, be available for consultation and direct communication.

### Companies with Lead Independent Director



**Merely 4% of the companies in India have appointed a Lead Independent Director (LID).**

Where the Board Chair is not independent, including when the role is combined with that of the Chief Executive Officer (CEO), an LID's presence on the Board is vital to ensure that there is an independent counter-balance to the Chair.

### Roles and Responsibilities of the Lead Independent Director (LID)

- a) **Serving as an objective and efficient intermediary:** The LID is a highly versatile intermediary between the Chair, the Board, and the Board's stakeholders. In conditions of normalcy, they contribute to the maintenance of good relationships and functions of the Board, but in periods of stress, the LID is expected to facilitate the speedy resolution of any situation. Investors value the Lead Independent Director Role.
- b) **As the Board Chair is to the CEO, so is the LID to the Chair of the Board:** The LID serves an important point of contact for principal shareholders to raise issues and concerns in conditions of normalcy, or when contact through the channels of the Board's Chair, CEO, or other Executive Directors has failed to resolve conflict; or where such contact is deemed inappropriate.

c) **Supporting the Chair of the Board:** The role of the LID is to support the Chair. The LID is an alternative communication channel for board members. This can prove especially useful when Independent Directors have concerns which they believe have not been properly considered by the Chair, or the Board as a whole. The LID should also act as a mediator to facilitate the resolution of any disputes involving the Chair of the Board.

d) **Appraising the Performance of the Chair of the Board:** The LID must continually keep a keen eye on the Board's Chair to assess whether the latter is performing their role to the Board's satisfaction, without losing objectivity or independence. The LID monitors the relationship between the Chair and the CEO, and ensures that it is a well-functioning, working relationship, without becoming too close or powerful. One of the LID's key responsibilities is to lead the performance evaluation of the Chair. This includes ensuring regular evaluation by an external entity. Legal & General Investment Management (LGIM) also encourages the LID to actively seek the views of the IDs by meeting them separately, along with scheduling meetings annually to appraise the performance of the Chair, taking into account the views of the Executive Directors.<sup>[1]</sup>

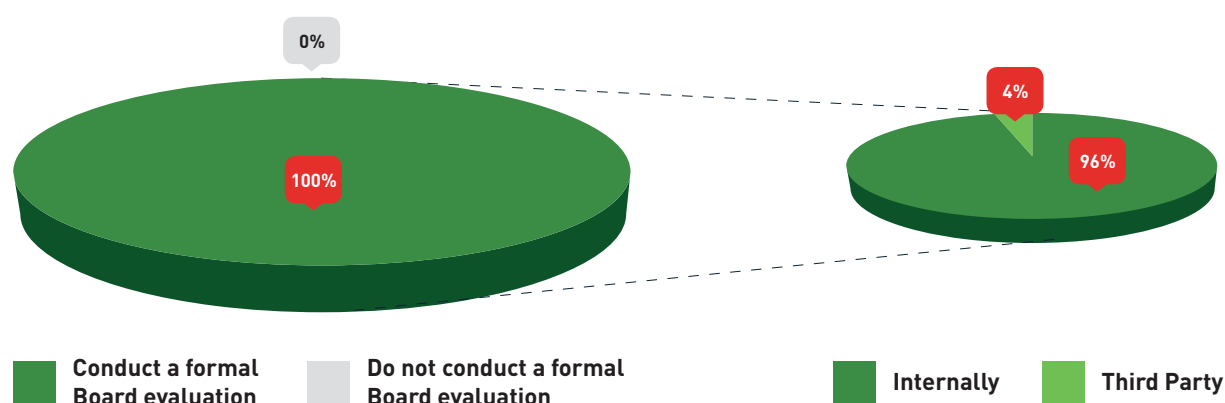
**Sources:** [1] [The Role of the Lead Independent Director](#)

### Performance Evaluation: Ensuring Efficiency of the Board and IDs

The Companies Act, 2013, and SEBI LODR Regulations, 2015, contain broad provisions on Board Evaluation, i.e. evaluation of the performance of:

1. The Board as a whole
2. Individual Directors, including Independent Directors and the Chairperson, and
3. Various Committees of the Board

## Formal Board Evaluation Process and Mode of Evaluation



The provisions also specify the responsibilities of various persons and committees for conducting such evaluations, and lay down certain disclosure requirements as part of the listed entity's Corporate Governance obligations.

All companies surveyed stated that they regularly carry out a formal Board evaluation procedure. Almost all of them have their internal teams evaluate the Board; very few among them prefer processes conducted by external third parties.

The performance and effectiveness of the Board can be measured by the following "Four Dimensions":

- Quality of monitoring of risk, risk management, and independence
- Procedures & controls, quality of strategic guidance, and other business-related advice
- Board dynamics and board members' proactive participation
- Board composition and diversity

Examining how the Board operates along these four dimensions is key to conducting an efficient Board evaluation. Since evaluations like these also help improve the effectiveness of a Board, countries are increasingly implementing rules and regulations on the subject of Board evaluations.

### Preferred Method for Board Evaluation

Most of the countries examined provide recommendations in their Corporate Governance codes based on a 'Comply-or-Explain' principle.

Therefore, deviations from the recommendations to assess Boards, Committees, and Board members, are possible, if explained in an accurate manner.



Apart from CEO evaluation for performance and ethics, Succession Planning for both KMP and Board are important agenda items for the Board to start taking seriously. Moving from clubby "don't rock the boat" behaviour to true and responsible independence is an urgent agenda item for Independent Directors.

**Rama Bijapurkar**  
Chairperson of People Research on India's  
Consumer Economy  
Independent Director on Boards

Certain countries like India, the United Kingdom, Spain, and the United States are under legal obligation to conduct annual Board evaluations. In Spain and the United States, Board effectiveness assessments are a common practice among major listed companies. In the United States, listed companies are required to conduct an annual performance evaluation of the Board under the NYSE listing rules, which state that the "Board should conduct a self-evaluation at least annually to determine whether the Board itself and its Committees are functioning effectively." The UK mandates an external Board evaluation once every three years.

The audit, compensation, nomination and governance committees must also conduct an annual performance evaluation. It is interesting to note that companies listed on NASDAQ are not required to engage in self-evaluation, but still do so as a matter of good practice. Interestingly, in a recent circular, SEBI has mandated that the tenure of Public Interest Directors, appointed to the governing Boards of Stock Exchanges, Clearing Corporations & Depositories (jointly referred to as MIs) can be extended for another term, subject to a performance review through both internal & external evaluation.<sup>[1]</sup>

**Sources:** [1] [OECD \(2018\), Board Evaluation: Overview of International Practices](#)

### Ensuring Independence in the Selection of IDs

Section 149(6) of the Companies Act and Regulation 16(1) (b) of the SEBI LODR Regulations set out certain objective criteria for determining the independence of a Director. Under Section 149(7) of the Companies Act, every Independent Director is required to provide a declaration that

they meet the legal criteria of independence. This declaration is not restricted to just the first meeting of the relevant Board in which they participate as Director, but extends thereafter to the first meeting of the Board in every financial year, or whenever there is any change in the circumstances which may affect their status as an Independent Director.

Further, at the time of appointment of an Independent Director, the Board needs to certify that in its opinion, the ID proposed to be appointed fulfils the conditions specified in the Companies Act and the rules made thereunder, and that the proposed ID is independent of the Management.

As stated above, the appointment process of Independent Directors is independent of the company management. During the selection process, the Board ensures that there is an appropriate balance of skills, experience, and knowledge amongst its members, thereby enabling it to discharge its functions and duties effectively.

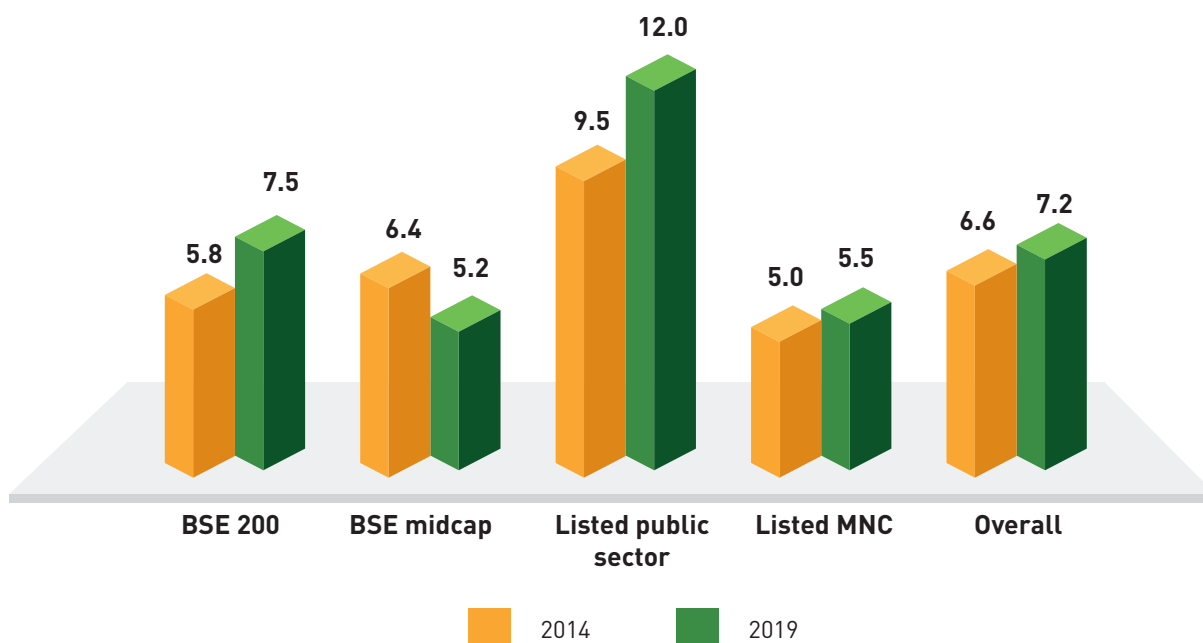
## Current Commitment to Board and Board Meetings

### Days Committed to Board





### Board Meetings Held Annually by Company Category (2014 and 2019)



Interestingly, the minimum stipulation notwithstanding, PSUs on average were found to hold the highest number of meetings per year (12 in 2018-19), while BSE midcap companies held the least number of meetings per year (5 in 2018-19).

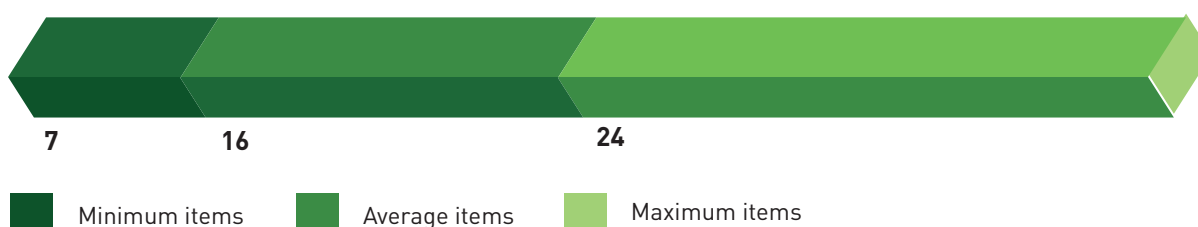
Currently, both the Companies Act and the SEBI LODR Regulations require a minimum of 4 meetings of the Board every year, with a maximum gap of 120 days between any two meetings. Data shows that the highest number of board meetings held by a company annually was 14, while the least number of meetings met the minimum requirement of 4.



Global Boards usually have more meetings—six in a year and four to six conference calls. The expectation, time commitment, and remuneration are higher.

**Vinita Bali, Ex CEO & MD, Britannia**

### Number of Items on a Board Meeting Agenda by Company Category



As per the survey conducted, the average number of items on board meeting agendas is 16, the maximum number is 24, and the minimum number of items covered is 7. It is also noticed that among the company categories, the listed public sector companies have the most items (24) on the agenda.

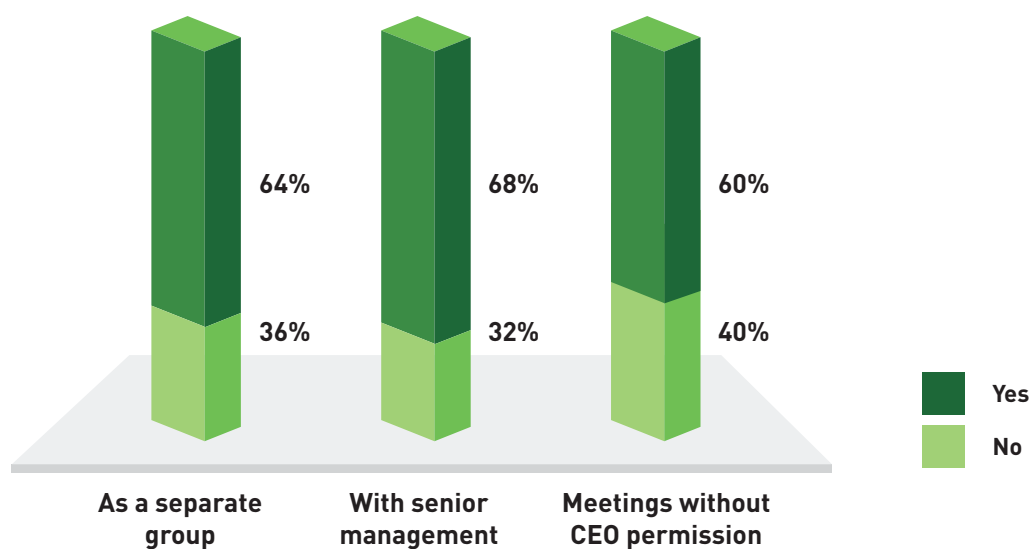
### Attendance Rate of Independent Directors by Company Category



Our recent survey has shed light on certain interesting patterns with relation to attendance rates: The Independent Directors of corporate India attend the majority (87%) of board meetings. Among the different categories of companies surveyed, the attendance rate of Independent Directors on listed public sector company Boards was the highest, standing at 94%, while those on BSE mid cap clocked the lowest rate at 79%.

Currently, the Companies Act provides for automatic removal from the office of Director if the said Director is absent from all meetings of the Board of Directors held during a 12-month period. There is no requirement for minimum attendance of Directors in meetings of the Board of Directors under the SEBI LODR Regulations.

### Meetings of Independent Directors



The Companies Act and the SEBI LODR Regulations mandates that every year, at least one meeting should be conducted that comprises only the IDs, without the presence of other Directors. All the Independent Directors of the company shall strive to be present at this meeting.

#### The meeting shall:

- Review the performance of Non-independent Directors and the Board as a whole;
- Review the performance of the Chairperson of the company, taking into account the views of Executive Directors and Non-Executive Directors;

- c) Assess the quality, quantity, and timeliness of the flow of information between the Management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

The Committee on Corporate Governance, SEBI, observed that given the inherent information asymmetry between IDs and Executive/Promoter Directors, exclusive meetings for IDs encourage free-flowing discussions and facilitate higher preparedness for effective participation by the IDs. Further, such meetings assume greater

importance in view of the proposed introduction of the concept of a Lead Independent Director. Therefore, the Committee recommends that such meetings be held more than once at the discretion of the IDs.

#### Efforts of Independent Directors to Source Third-Party Information



IDs take efforts to source additional information

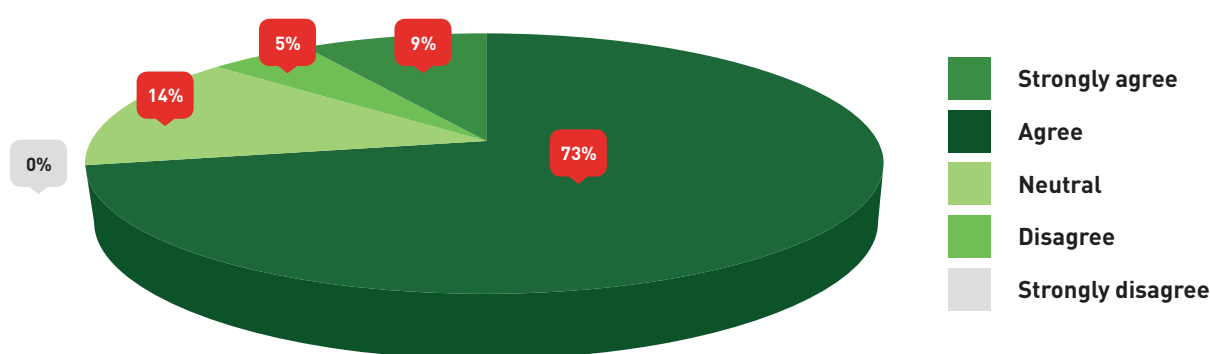
IDs don't take efforts to source additional information

As seen from the accompanying graph, our survey reveals that 45% of Independent Directors make an effort to source information from various third-party sources like reports, vendors, employees, etc.

**Currently, 68% of Independent Directors regularly meet senior management outside of board meetings. Also, in our survey, a majority (60%) of the Independent Directors who met senior Management said that they did not need the permission of the CEO for these meetings.**

## Parameters Influencing Board Effectiveness

### Correlation of Time Committed to Board Duties with 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, 5% disagreed on the correlation, since despite their presence on Board meetings, their opinions were very frequently disregarded. Some Independent Directors also cast doubt on the real motive behind appointing an Executive to this role, since they assume companies really only want people who will 'toe the line.'

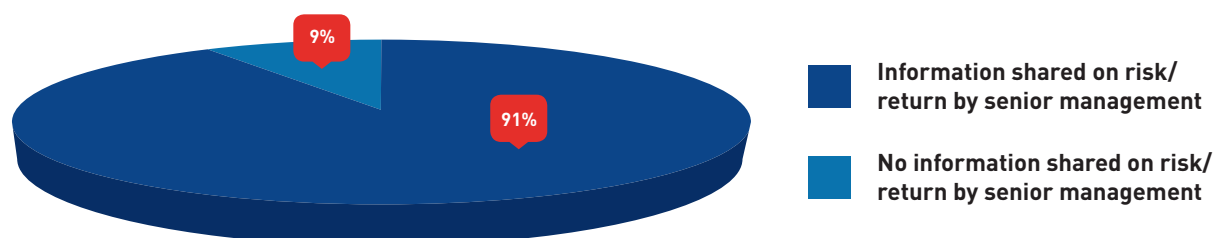


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Independent  
Directors  
**Supplementary  
Expectations**

## Communication, Relationships, and Regulations

### Information shared by Senior Management on Risk/Return in Investor Meetings

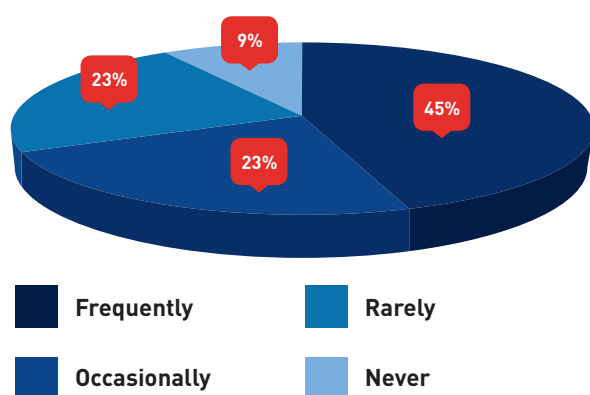


The Committee on Corporate Governance, SEBI, has noted the lack of uniformity regarding disclosures of commodity risks and hedging activities by listed companies.

In order to bring benefit to the shareholders and additional clarity to disclosures made in annual reports by listed companies, the Committee is of the view that listed companies should disclose the risk management activities carried out during the year, including their commodity hedging positions, in a more transparent, detailed, and uniform manner, facilitating easy understanding and appreciation by the shareholders.

As per our survey, 91% of the companies do share detailed information on risk/return at investor meetings, while a mere 9% refrained from sharing this information with their investors.

### Discussion of Health and Safety Violations in Board Meetings



Our survey reveals that 45% of the companies frequently engage in discussions on Health and Safety Violations in their board meetings, while 9% of the companies never discuss it. These

two categories of companies—i.e. those which occasionally discuss Health and Safety Violations, and those which rarely do so during their board meetings—each individually make up 23% of the total companies surveyed. It is important to bring such violations to the notice of the Board, as safety standards need to be implemented and reinforced to prevent incidents in the future.



Continuous improvements in Corporate governance are essential for increasing the competitiveness of Indian industry. The biennial IBR enables an assessment being made of the changes happening, and in the context of management structures in India, where further improvements and modifications are required to be made. In that context this Report would play a very important role in helping both policy makers and managements.

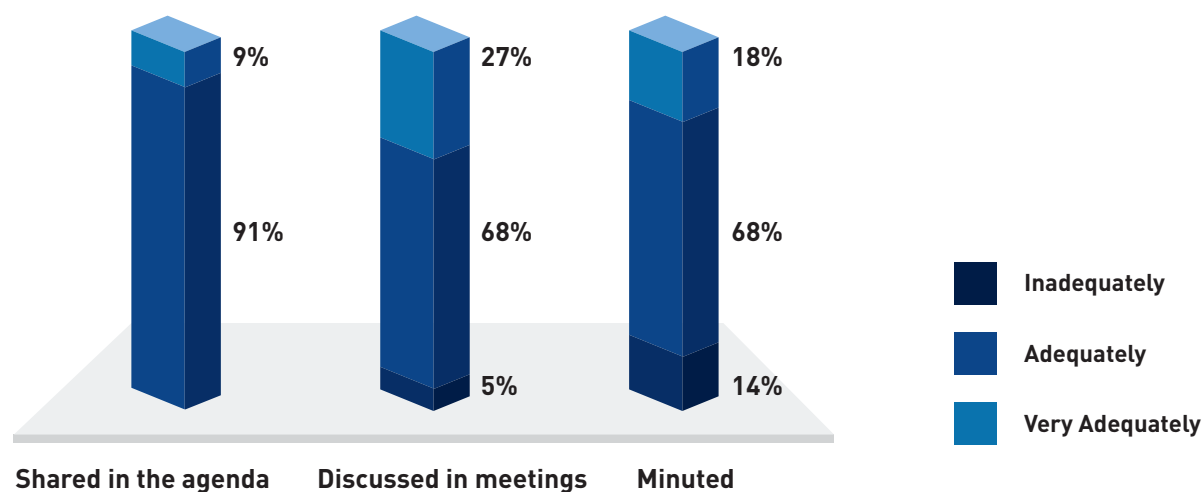
**Mr. R C Bhargava**  
Chairman, Maruti Suzuki

If we shift our attention outside of India to New Zealand, for example, a Health and Safety governance policy is the formal mode of communication that demonstrates the Board's commitment to the Management on issues of health and safety. This represents a long-term view that should set the tone for how everyone in the organization behaves.

**Source:** *Health and Safety Guide: Good Governance for Directors, 2016, by WorkSafe New Zealand*



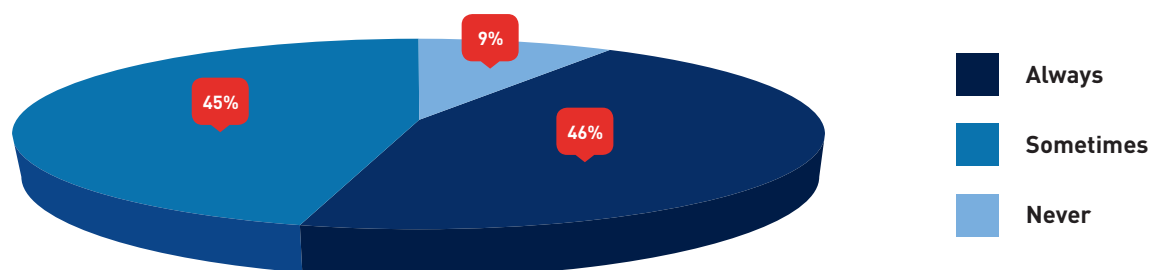
## Discussion and Recording of Sensitive Items in Board Meetings



Scheduling regular in-camera Board sessions are an important principle of good governance worldwide, particularly in the current environment where Governance Evaluators are witnessing a growing number of new Directors on Boards. These sessions serve as the perfect means by which new Directors can voice their opinions without the fear of disrupting the official board meeting.<sup>[1]</sup>

According to our survey, Independent Directors in India believe that sensitive items are adequately shared in the agenda, along with proper discussion and minuted meetings. Few of the Directors (5%) feel that these discussions are inadequate, while a significant percentage (14%) believe that it is inadequately minuted.

## Recording Dissent of Independent Directors

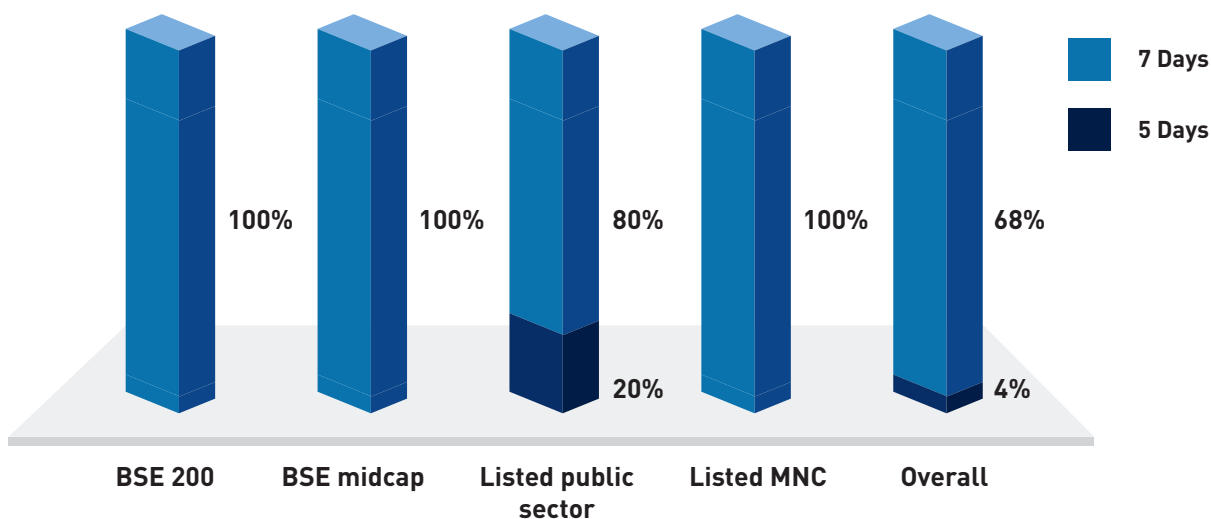


According to the Companies Second Amendment Rules (Meetings of Board and its Powers), 2017, at the end of the discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decisions taken on the item, along with the names of the Directors, if any, who dissented from the decision taken by the majority.

**While 46% of the Directors confirm that their dissent is always recorded, 45% say they are recorded only in few instances. As few as 9% of the Directors said that their dissent is never minuted, leaving them vulnerable to risks.**

**Source:** [1] [Using board in camera sessions for good – www.governanceevaluator.com](http://www.governanceevaluator.com)  
[Companies Second Amendment Rule 2017 - www.taxguru.in](http://www.taxguru.in)

### Gap between Receipt of Documents and Successive Board Meeting

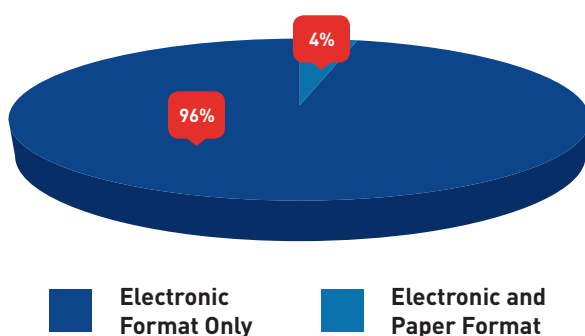


The Company Secretary sends out a 'Board Packet' to all those who will be attending the meeting, between one to three weeks before the meeting, This gives Board Directors sufficient time to review the minutes of past meetings, the agenda, the reports, and other hand-outs, and prepare relevant questions for the meeting. Getting materials to Board Directors ahead of time prevents an impromptu reading session in the Boardroom.<sup>[1]</sup>

The Company Secretary should allow Directors and Officers to request amendments to the minutes. The Secretary should also be prepared to bring a final draft of the previous minutes to the meeting, so that the Board can approve them quickly. The Board Directors should have a final copy of the corrected minutes before the commencement of the board meeting. All companies surveyed follow the new norm and send board meeting documents at least seven days prior to the meeting.

**Source:** [1] [How to prepare for Board Meetings Before Meetings—www.insights.diligent.com](http://www.insights.diligent.com)

### Format of the 'Board Packs'



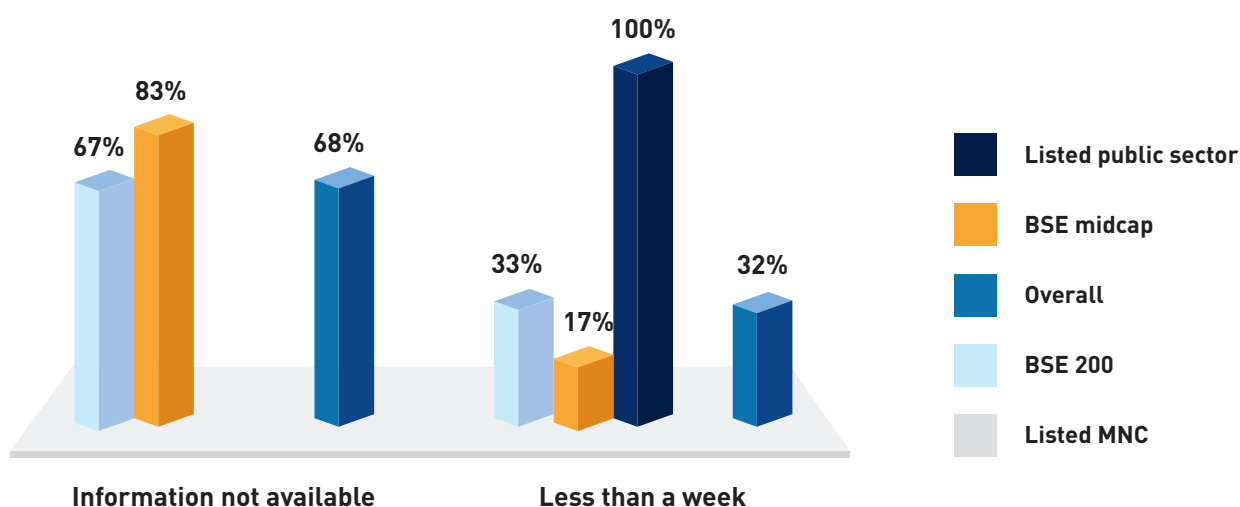
Until a few decades ago, the mere idea of using an electronic Boardroom tool in an organization would have sounded like something straight out of a science fiction novel. However, thanks to the rapid progress of disruptive technology in recent times, this idea is no longer the stuff of fiction.

In fact, today, digital Boardroom solutions are at the forefront of the digital revolution sweeping across every organization. The most noted advantages of electronic board papers are: Security, low cost and zero wastage of resources, easy updating and portability.<sup>[1]</sup>

**Considering the advantages of using electronic applications, 96% of the companies prefer to send Board Packs through an electronic medium as opposed to printed paper copies.**

**Source:** [1] [4 Reasons to say goodbye to paper board meetings – www.insights.diligent.com](http://www.insights.diligent.com)

## Days Taken to Release Financial Results

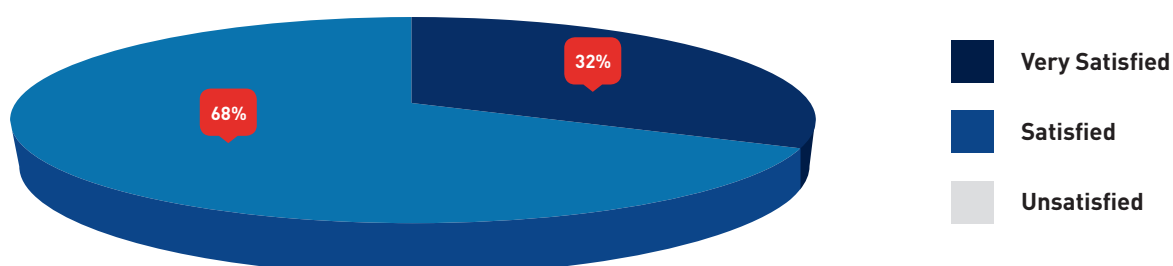


According to SEBI's Equity Listing Agreement, Clause 41, the company should, within 48 hours of the conclusion of the Board or Committee meeting at which the financial results were approved, publish a copy of the financial results which were submitted to the stock exchange. These results should be published in at least one English daily newspaper circulating in almost all regions of India, and in one daily newspaper published in the language of the region that houses the registered office of the company.

**Currently, 32% of the companies publish the results within less than a week of releasing them to the exchanges, while 12% of the companies publish the result within the prescribed 48 hours.**

Going forward, companies that take more than 48 hours to publish their financial results will need to revamp their systems to be able to publish within the stipulated time period.

## Public Disclosure of Sensitive Information



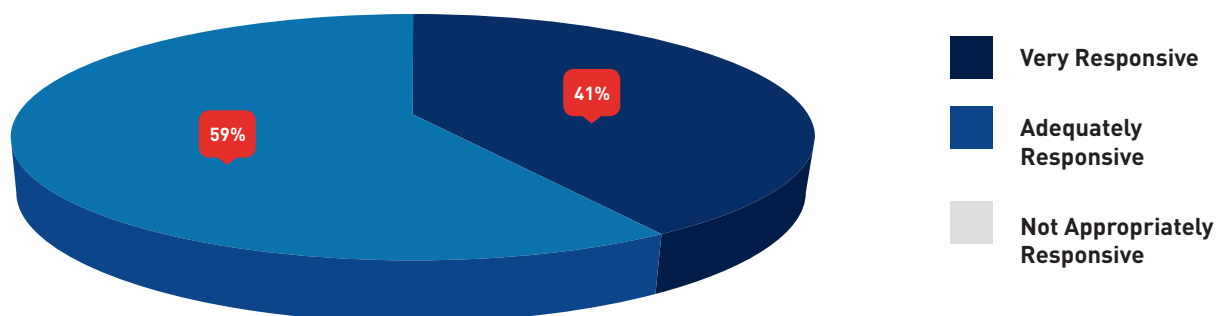
According to SEBI's clause of Equity Listing Agreement, in order to ensure fairness and efficiency in the market, two factors generally apply:

- Timely disclosure of relevant information by listed companies to investors
- Adequacy of the information disclosed

Thus, 'timely and adequate disclosure' is one of the defining characteristics of efficient securities markets across the globe.

According to our survey, all Directors revealed that they were satisfied with the disclosure of the major market-sensitive information made by the companies.

## Responsiveness of Management in Clarifying Information



With Management being more deeply involved in the detail and operations of the organization, Board members rely on them to share all material information needed to make decisions in a timely manner, allowing them to effectively fulfil their obligations as Directors.<sup>[1]</sup>

In India, all Directors surveyed unanimously agreed that the Management is responsive towards the requests for clarifications and amplification of information. While a large percentage of the Directors (59%) consider the Management of the company to be adequately responsive, a larger portion of the Directors (41%) said that they, on their part, are very responsive to such requests.

**Source:** [1] [4 Reasons to say goodbye to paper board meetings – www.insights.diligent.com](http://www.insights.diligent.com)

## The Independence of Independent Directors

The independence of Independent Directors has, for long, been a subject of discussion and debate, and the Kotak Committee that examined the issue has remarked that, “Independent Directors are expected to bring objectivity to the functioning of the Board and improve its effectiveness.”



Both in the US and the UK, being an Independent Director is a profession by itself. Directors are incentivized to exercise their independence for the sake of their reputation.

**Roddy Martin**  
Partner & India Head  
Herbert Smith Freehills

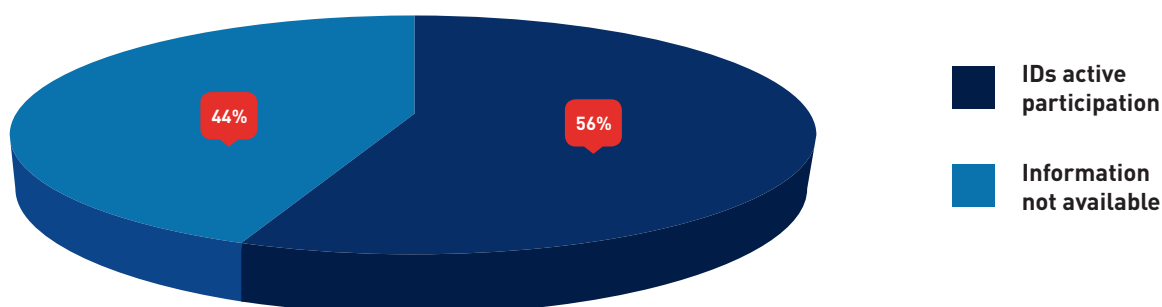
order to identify and remove persons who, in any way, fall in the category of the ‘promoter group’. It also recommended that the Independent Director sign an undertaking stating that they are not aware of any factor that could negatively impact their judgment.

These latest moves by the government are being widely welcomed by experts, who believe that these will surely go a long way in maintaining the independence of an Independent Director by ensuring that they are not influenced by the promoter or the company in any way.<sup>[1]</sup>

**Source:** [1] [New Rules to Ensure Independence of Independent Directors—www.cfo-india.in](http://www.cfo-india.in)

In its report, the Kotak panel has recommended several measures, including changes to the eligibility criteria of Independent Directors, in

### Active Participation of Independent Directors in AGMs



The Kotak Committee has laid down the following guidelines concerning the participation of Independent Directors in AGMs and investor meetings, with the objectives:

1. The meetings should ensure independence in spirit of the Independent Directors and their active participation in the functioning of the company
2. The meetings should address issues faced by investors on voting and participation in general meetings

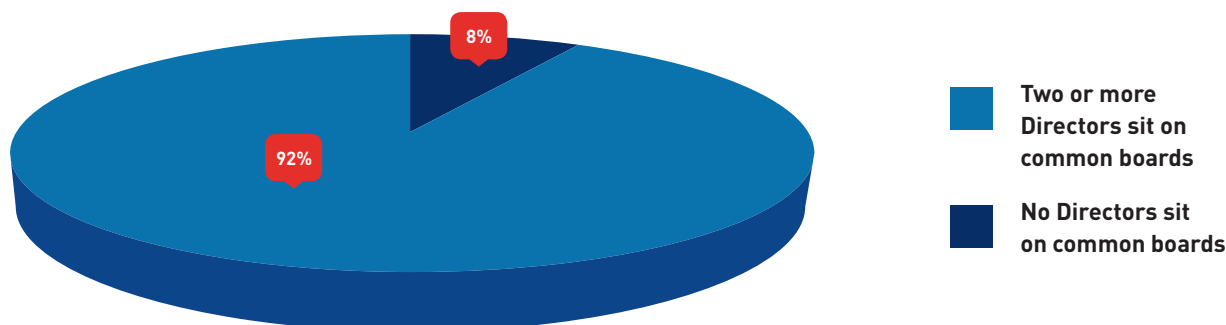
The survey found that Independent Directors of most companies, that is 56% of IDs, actively participate in AGMs.

### Interlocking Directorates

Interlocking directorates, also referred to as inter-board relationships, are a business practice where a member of one company's Board of Directors also serves on another company's Board, or within another company's management. Under the anti-trust legislation, interlocking directorates are not illegal as long as the corporations involved do not compete with each other.

Interlocking directorates were outlawed in specific instances where they gave a few Board members an inordinate amount of control over an industry. In some cases, this paved the way for synchronized pricing changes, labour negotiations, and more. Interlocking directorates do not prevent a Board Director from serving on a client's Board.

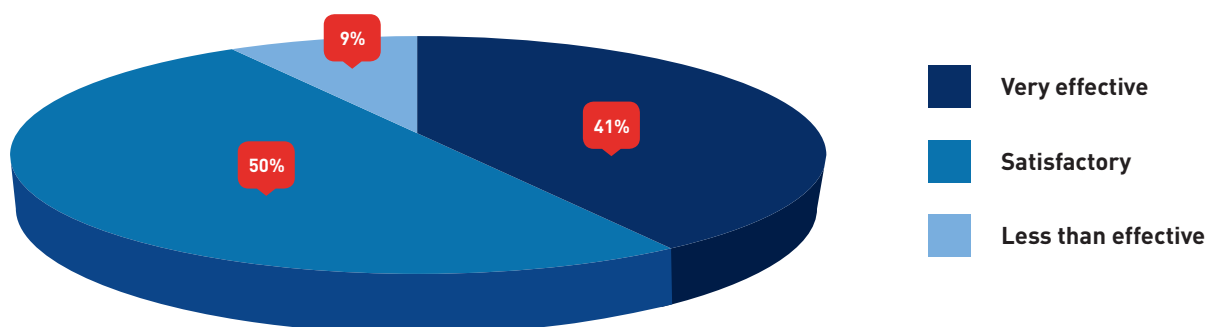
### Board Members on Common Boards



92% of the Independent Directors surveyed have mentioned that 2 or more Directors sit on common Boards. However, 8% have also stated that there are no common Directors on some Boards.



## Board Members' Working Relationships Within and Outside Board Meetings



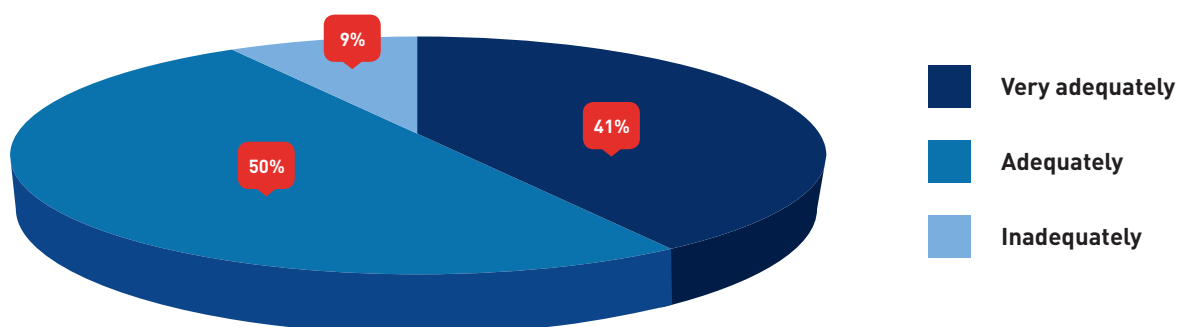
It is important to view the Board and the staff in the light of a team or an equal partnership, as well as from the lens of an employer-employee relationship. To reduce friction and introduce smooth functioning, clarity in communication, transparency, and trust between teams and partnerships is crucial. This calls for two things: 1) Clear ground rules need to be enforced, and 2) There must be sufficient clarity on roles and relationships. The Board, directly or through the CEO, must ensure there are clear and relevant job descriptions, sound policies and procedures, and a system of compliance monitoring.

According to the findings of our survey, almost all Directors (91%) are satisfied with their working relationship with other Directors and consider it to be effective.

**Source:** [Board-StaffRelations—www.reprolineplus.org](http://www.reprolineplus.org)

## Regulations and Compliances

### The Board's Awareness of Developments in the Regulatory Environment



Currently, the Companies Act contains general provisions pertaining to the induction of Independent Directors.

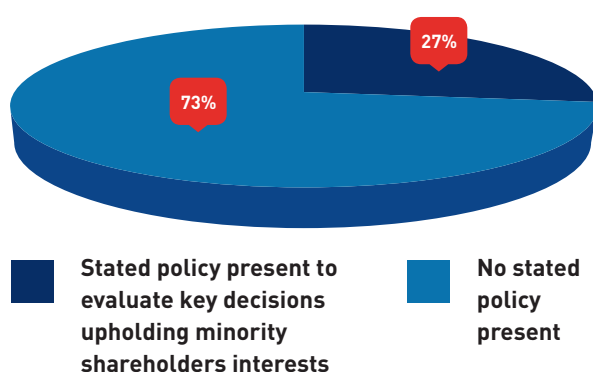
In order for Independent Directors to exercise their judgment and discharge their duties knowledgeably and efficiently, they need to be kept abreast of changes in laws, regulations, relevant judicial or regulatory orders, and compliance requirements. To fill this information gap, it is recommended that the Board of Directors be updated on regulatory and compliance changes at least once a year.

According to our survey, 91% of Independent Directors and Company Boards are adequately aware of the developments in regulatory changes specific to their industry.

## Minority Investors and Related Party Transactions

### Minority Investors

#### Key Decisions Evaluated from the Minority Shareholder's Perspective



According to the SEBI Committee on Corporate Governance, Independent Directors bring an unbiased perspective to the proceedings of committee/board meetings, improving the quality of governance and decision-making.

Statutorily, such meetings require the presence of at least one Independent Director. In order to protect the interests of all stakeholders, especially minority shareholders, it is further recommended that the presence of at least one Independent Director be made mandatory for attaining quorum at such meetings.

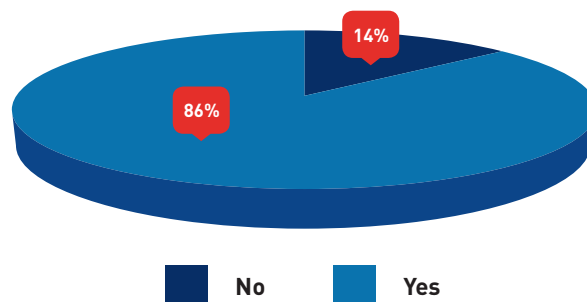
**Data gathered from our survey shows that only 27% of the companies possessed a stated policy to evaluate all key decisions from the perspective of minority shareholders, revealing that the importance of protecting these shareholders is still low in India.**

### Related Party Transactions

According to the recommendations laid down by the Kotak Committee, companies will have

to make half-yearly disclosures of related party transactions on a consolidated basis. Strict penalties should be imposed on those failing to do so. Any entity belonging to the promoter group of the listed entity, holding 20% or more of shareholders in the listed entity, shall also be considered a related party.

#### Disclosures on Related Party Transactions



The Kotak Committee has also added that:

- Related party transactions should be conducted according to market practices in terms of deadlines and rates, and should be reflected in the organization's reports. They should be approved and conducted in a manner that ensures proper management of conflict of interest, while protecting the interests of the company and its shareholders. Conflicts of interest inherent to related party transactions should be addressed through proper monitoring and disclosures.
- In most jurisdictions, emphasis is now to be placed on Board approval, often with a prominent participatory role reserved for Independent Board members, or enforcements upon the Board to justify the value of the transaction for the company. Shareholders, excluding those with a direct interest in the transaction, are now also given a say in approving certain transactions.

In the past, several transactions with promoter/promoter group entities were not being disclosed, mainly because these entities were not classified as 'related parties'. As of April 1st, 2018, all promoters/promoter group entities, that hold 20% or above in a listed company, will be considered as 'related parties'. All related party transactions,

as well as transactions with promoters/promoter group entities holding 10% or more, will need to be disclosed on a half-yearly, consolidated basis. Further, related parties will now be allowed to cast a negative vote on related party transactions requiring shareholders' approval, since such a vote cannot amount to a conflict of interest.

Recent cases like IL&FS and Interglobe serve as a timely reminder of the need to better understand these important and sensitive governance matters, and accordingly lay down the correct approaches to handle them.

## Insurance for Directors and Officers

The Directors and Officers (D&O) Insurance Policy provides cover for the personal liability of Directors and Officers applicable in the case of any wrongful acts committed in the performance of their managerial duties. This policy provides protection for claims brought against Directors, officers, and employees for actual or alleged breach of duty, neglect, misstatements, or errors committed in their managerial capacity.

The Companies Act states that the letter of appointment of IDs shall specify the provision for D&O insurance, if any. However, it is not mandatory

under the Companies Act for a company to provide such D&O insurance.



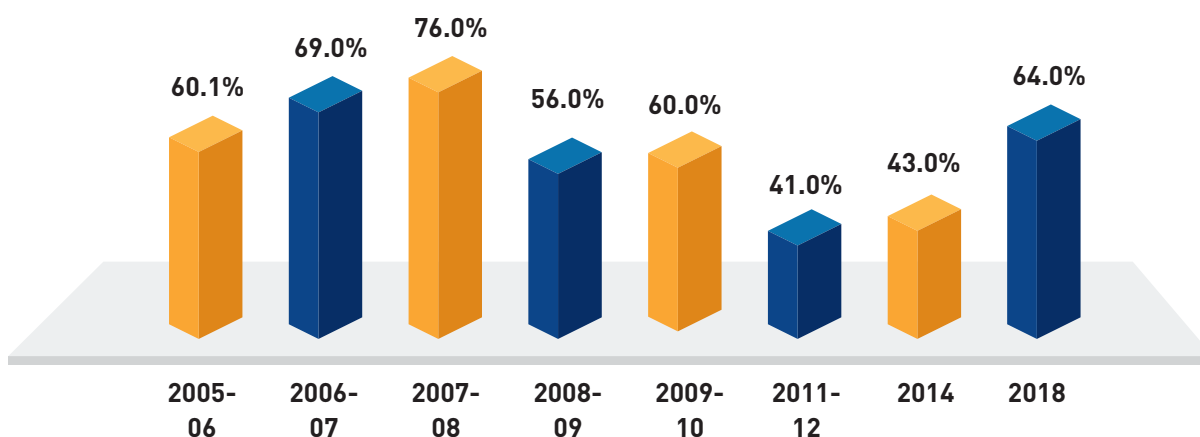
An increasing number of boards the world over find themselves challenged by crisis. This is not an accident. Societal demand for greater transparency and accountability, whistleblowers, activist investors, leadership misdemeanors, promoter transitions, and technology disruptions are coming together to create a near-perfect storm for many companies. Boards must be designed to weather the storm, or they will surely capsize. In normal times when the environment is stable, boards need not do much beyond ensuring compliance, and providing advice to the management. In times of great change or turbulence, however, "peacetime boards" frequently find themselves overwhelmed—as we have seen repeatedly; they must proactively swing into a more engaged role with the management and become active in critical areas such as strategy, risk, organization development, and investor engagement—roles that traditionally are firmly in the realm of management.

**Ravi Venkatesan**

**Ex Chairman of Bank of Baroda, Microsoft India & Cummins India and Independent Director**

## Regulations and Compliances

### D&O Insurance Cover (2005 to 2019)



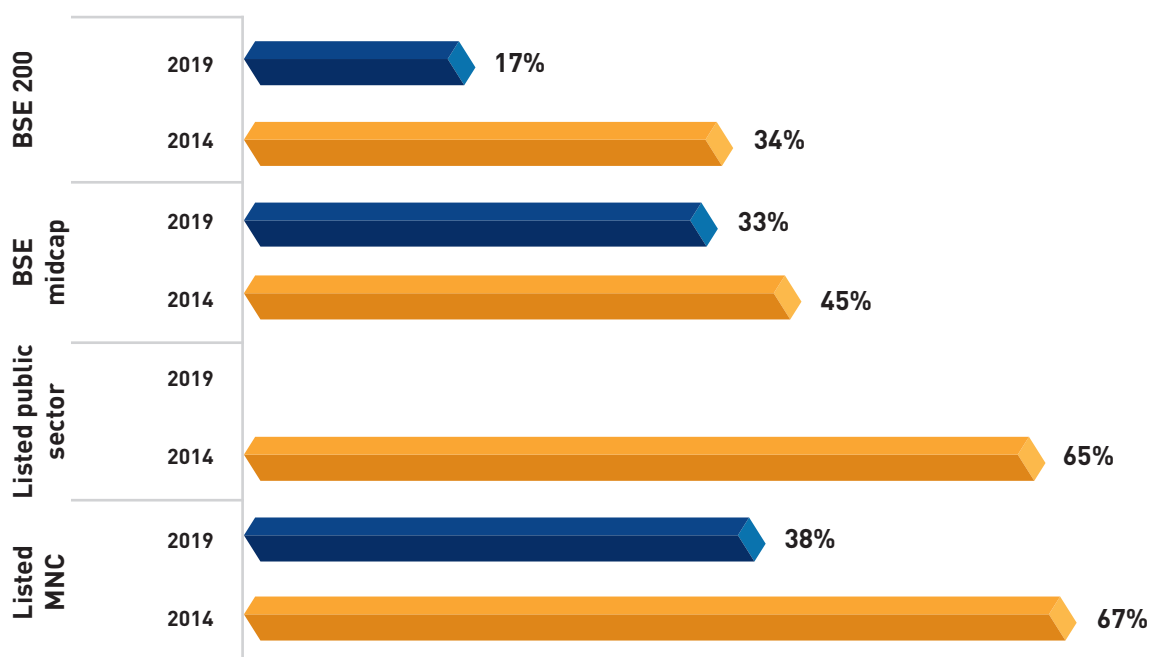
Source: India Board Report 2007, 2009 and 2011, 2014

Our survey threw up interesting insights:

With increasing responsibilities being placed on Independent Directors, industry experts foresee more companies following suit by providing the D&O insurance policy to Directors.

**2007-2008 saw the highest percentage of companies providing the D&O insurance to their stakeholders. In 2018-19, this number stood at 64%, an increase by 21% as compared to the previous survey conducted in 2014.**

#### Company-wise D&O Insurance Cover



In the survey we conducted, a majority of the Independent Directors stated that nearly 90% of the listed MNCs have provided D&O insurance cover, this category having the highest percentage in 2014. BSE midcap companies seem to have the lowest company-wise D&O insurance cover (34%) in the same year.

If market capitalization had been calculated as on 31st March of the preceding financial year for determining the top 500 listed entities, companies would have complied with the D&O Insurance requirement with effect from 1st October 2018.

## Effectiveness of Committees

Board Committees: Sections 135, 177, and 178 of the Companies Act, 2013, mandate companies to set up Audit, Nomination, Shareholder Relations, and CSR committees.

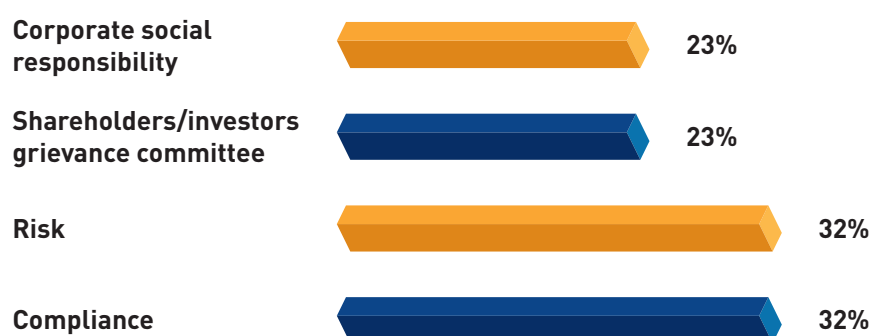
The following graph reveals that, by the end of 2018, almost every company has created a Nomination and Remuneration Committee (NRC), along with the Shareholders and Audit Committees. Close to 90% of the companies have a CSR Committee, while one-third of the companies have a Finance/Business Review Committee.

SEBI has widened the scope of the Stakeholders Relationship Committee, which hitherto was limited to the redressal of grievances of shareholders, debenture holders etc. The Committee will now also examine various other aspects of the interests of stakeholders, such as measures taken for the effective exercise of voting rights, services related to the Registrar & Transfer (R&T) agent, the review of various steps for reducing the quantum of unclaimed dividends, etc.

The role of the Audit Committee has been enhanced, and now includes the review of how the subsidiary company has utilized loans, advances, or investments made by the holding company. This provision will now be applied in cases where the aggregate amount exceeds INR 100 crores, or 10% of the asset size of the subsidiary, whichever is lower, and will include any loans, advances, or investments existing as of the date on which this provision comes into force. In case the company has subsidiaries, it will be mandatory to publish quarterly consolidated financial statements, prior to which at least 80% of consolidated revenue, assets and profits should have been audited or reviewed. Moreover, in the last quarter of the financial year, if any material adjustments have been made, which relate to an earlier period, they will have to be disclosed. Cash flow statements are required to be made and disclosed every six months, as part of the company's standalone and consolidated financial results.<sup>[1]</sup>

**Source:** [1] [SEBI revises LODR Regulations for better corporate governance and transparency](http://www.lawstreetindia.com)  
[www.lawstreetindia.com](http://www.lawstreetindia.com)

### Committees Required



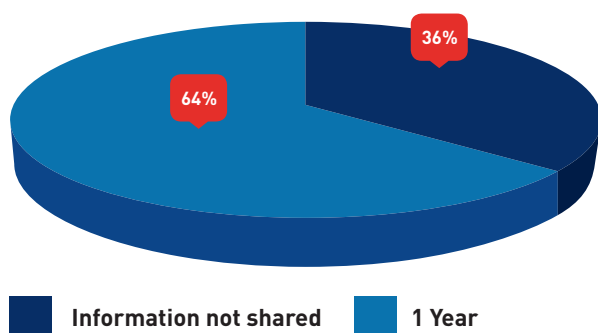
As Audit, Nomination & Remuneration, and Shareholder Committees are mandatory, most companies have put these in place. Compliance Committees and Risk Committees are the most sought-after, with around one-third of the independent Directors recommending the creation of both these Committees.

To enable a Board of Directors to discharge its duties effectively, members need to understand their individual responsibilities and organize themselves to perform the required tasks efficiently. Committees or working groups are the answer to this problem.

Through committees, work can be divided in such a way that far more can be accomplished than if the entire Board acted on all matters. Committees provide organizational structure, and at the same time, allow enough flexibility for the Board to adapt quickly to the changing demands of the environment. Committees can deal with specific tasks for which the Board is responsible, but which it does not necessarily have sufficient time and resources to manage. By delegating tasks to committees, Boards can spend their time more efficiently.



### Frequency of Rotation of Committee Members



The rationale behind rotating committee members is to avoid overworking some members, while neglecting to enlist the participation of new members. Committee leadership rotations, on the other hand, offer more Directors a chance to lead, while ensuring that the workload is evenly distributed amongst them.

In 2018-19, close to two-thirds of the companies had a yearly rotation policy.

A committee that is functioning poorly because the committee Chair is disengaged will surely improve once the Chair is rotated.

Some Boards are also looking at the concept of committee rotation with the same goal: To bring in fresh and, in some cases, diverse perspectives, into a committee. According to the results of our survey, several Directors saw benefit in periodic change, and had a rule of thumb for rotation, often ranging from three to five years.

On the same note, both groups of Audit Chairs and Lead Directors surveyed stated that extremely frequent rotations of their roles would be damaging. Some Directors oppose the rotation of committee members as they are of the conviction that if something is working well for the Board, then rotating members for the sake of compliance is unnecessary, as it introduces inconsistency in Board performance.

The company, however, should remain up-to-date regarding any evolving legal and regulatory considerations, and must ensure that a rotation would not cause the company to run afoul of listing, or other requirements.<sup>[1]</sup>

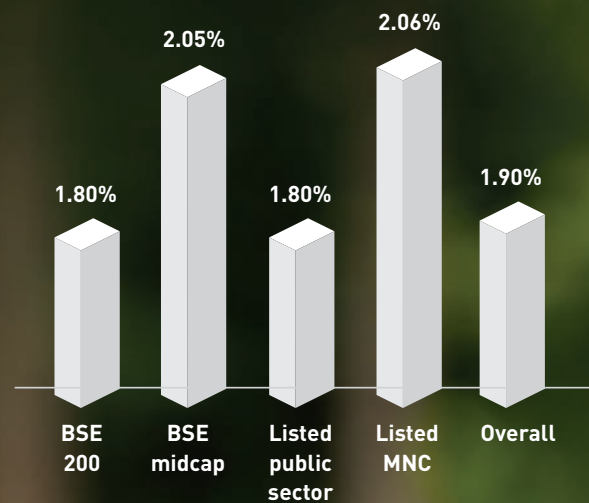
**Source:** [1] [Board Refreshment and Committee Rotation: A Sensible Approach](#)  
[www.woodruffsawyer.com](http://www.woodruffsawyer.com)

## CSR Activities

### Profit Contribution for CSR Activities by Company Category

Incidentally, all companies approached in the survey had been spending around 1.9% of profit, on average, on CSR activities. The CSR provision requires companies to spend at least 2% of their average net profits, made in the preceding three years, on CSR.<sup>[1]</sup>

**Source:** [1] [An overview of CSR Rules under Companies Act, 2013—www.business-standard.com](http://www.business-standard.com)





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Compensation  
**Rules and  
Trends**



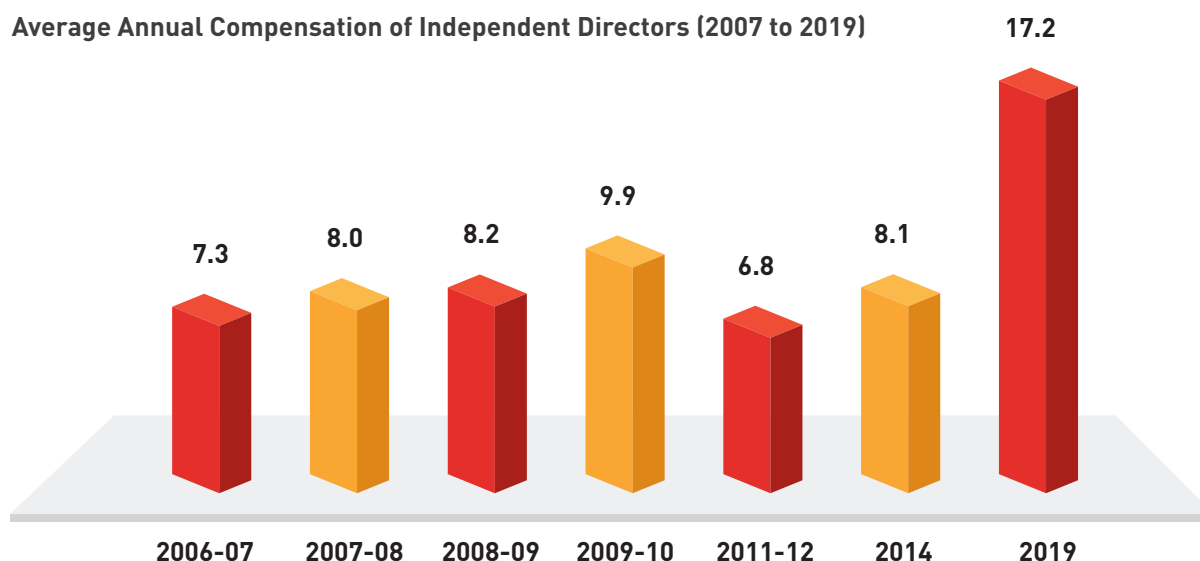
## Compensation Disclosures

According to Rule 5 of The Companies Act (Appointment and Remuneration of Managerial Personnel) Rules, 2015, every listed company shall make the following disclosures in their Board's report:

- Ratio of the remuneration of each Director to the median remuneration of the employees
- Percentage increase in the remuneration of each Director, Key Management Personnel (KMP), and the percentage increase in the median remuneration of employees
- Explanation of the relationship between average increase in remuneration and company performance
- Comparison of the remuneration of each KMP against performance of the company
- Variation in market cap or net worth of the company
- Justification for the increase in managerial remuneration, as compared to the increase in remuneration of other employees
- Key parameters for any variable remuneration of Directors
- Ratio of the remuneration of the highest-paid Director to the remuneration of any other employee who is paid more than the highest-paid Director
- Affirmation that remuneration is as per the remuneration policy of the Company

## Independent Directors' Compensation

Average Annual Compensation of Independent Directors (2007 to 2019)



Source: India Board Report 2007, 2009 and 2011, 2014

Value in Lakhs

The average annual compensation received by Independent Directors declined to an all-time low of INR 6.8 lakh in 2011-12. Until then, 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.

**In the year 2018-19, the average annual compensation has risen to INR 17.2 lakh. The number of Independent Directors taking home over INR 1 crore annually is also on the rise.**

Experts have attributed this to a shortage of experienced hands, which has prompted corporate India to loosen its purse strings. This trend is observed at a time when the government is looking to cap the remuneration of Independent Directors to ensure that they remain impartial.

While some groups support a healthy increase in Director compensation, there is an opposing school of thought that believes that higher compensation has a tendency to dilute the effectiveness of Independent Directors. There is no doubt that this is a sensitive subject which will continue to draw plenty of interest from all camps.



Compensation of Independent Directors in India is still modest compared to their contribution, the increased risk that they undertake and the time required to discharge their duties, which have increased significantly.

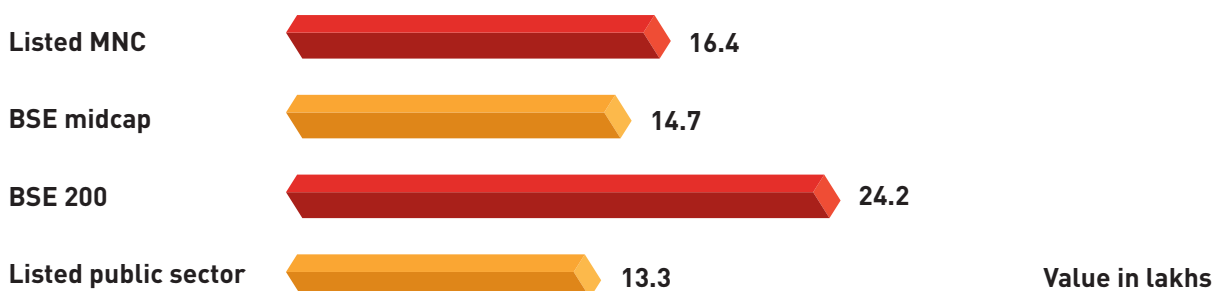
**Arun Duggal**  
Chairman, ICRA



One needs to provide adequate compensation to get good people, particularly when the pool is limited. Pay-out to Independent Directors in India is not something outrageous and neither companies nor investors have any issue with suitably compensating someone of calibre.

**Shriram Subramanian**  
Managing Director, InGovern

#### Annual Compensation of Independent Directors by Company Category

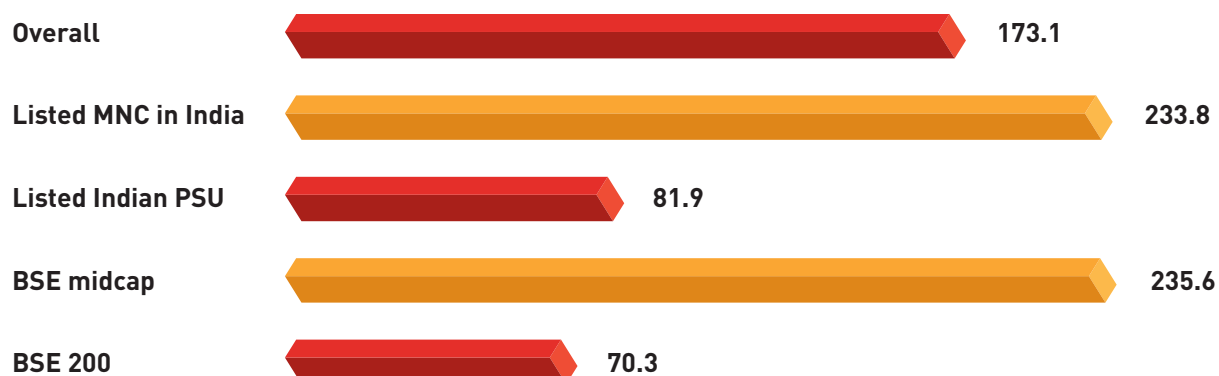


As per the 2018-19 survey data, the average annual compensation of Independent Directors was INR 17.2 lakh, which has received a boost as compared to the previous years' numbers. In 2018-19, their remuneration ranged from as low as INR 3.96 lakh per annum to as high as INR 44.0 lakh per annum.

Interestingly, the lowest annual compensation for IDs was paid by a listed MNC—INR 3.96 lakh annually. Of the four company categories, a few Directors in BSE 200 companies received the maximum compensation of INR 44.0 lakh annually.



### Annual Compensation of Board Chairperson by Company Category



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

In 2018-19, the average annual compensation earned by the Board Chairperson (Executive or Non-Executive) was INR 173.1 lakh. Listed MNCs recorded the highest compensation, while BSE 200s recorded the lowest compensation among the surveyed Company Secretaries.

Among the companies surveyed, very few had appointed an Independent Director as the Chairperson of the Board.

# Acknowledgements





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ADVOCATES & SOLICITORS

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**Board Certification:** Hunt Partners in partnership with Global Governance Services Ltd., UK, have designed and launched a first of its kind initiative in India, “Director Education Workshop”, a unique accredited certification program directed towards training and familiarizing aspiring Directors in effective execution and running of boards, by engaging the best in class faculty from across the globe.

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to instill in participants the global best practices in corporate governance, enabling them to become highly effective members of the Board. Participants comprise directors—-independent, executive and nominee—and company executives.

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