NSE

Edited Transcript of the Seminar on

Board Evaluation: An Imperative for Corporate Governance

Mumbai, March 30, 2015

BOARD EVALUATION:

An Imperative for Corporate Governance

Venue:

National Stock Exchange of India

Exchange Plaza, BKC, Bandra (E), Mumbai 400 051

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Preface

Historically, board evaluation practices have been extremely rare in India relative to advanced countries and even some emerging market economies. Not surprisingly, listed Indian companies have very little knowledge about the content, frequency, methodology or outcomes of 'board evaluation'. The situation however is set to change with the enactment of the Companies Act 2013, which has made it compulsory for Indian companies to conduct independent evaluations of the board, board committees and board directors on an annual basis. So, board evaluation is no longer a choice. The question therefore is not whether or not to have board evaluation--but, whether we should do the minimum required for compliance or is it worth investing in a more ambitious approach that has the potential to improve our boards' effectiveness.

Against this backdrop, the National Stock Exchange of India Limited (NSE) organized a seminar on 'Board Evaluation: An Imperative for Corporate Governance' at its office premises in Mumbai on March 30, 2015. The broad objective of this seminar was to familiarize the directors of its listed companies, who constituted bulk of the audience, about the relevance of board evaluation exercises, the various options available for the same and their respective implementation issues.

The conference inter alia involved a keynote speech by Dr Chris Pierce, CEO, Global Governance Services Limited and a panel discussion. In his speech, Dr Pierce highlighted the opportunities and challenges of board evaluation; his wide international experience in this area provided several new perspectives to the participants of the seminar. In the panel discussion, the panellists deliberated on some of the potential challenges faced by corporates during board evaluation, in the Indian context. They also shared with the audience some good practices relating to board evaluations. The overall view that emerged was that if we do the bare minimum just for the sake of compliance, we would squander one of the best opportunities we will ever have to genuinely improve the board effectiveness.

I thank Dr. Pierce for his brilliant speech and all the panellists (Prof. N. Balasubramanian, Dr. Chris Pierce, Mr. Deepak Satwalekar and Mr. Cyril Shroff) for their valuable contribution. I am also grateful to Mr. Nawshir Mirza for playing wonderfully the role of moderator in the panel discussion.

The reflections of the seminar have been captured in this edited transcript and we believe that the transcript would be useful for various stakeholders such as directors of Indian corporate boards, industry participants and policy makers.

Nirmal Mohanty

Chief Economist and Vice President

National Stock Exchange of India Limited

Welcome Remarks
Ms. Chitra Ramkrishna, MD & CEO, NSE

Good evening. Let me extend a very warm welcome to all of you on my personal behalf and on behalf of NSE. It is truly an honor to have such a distinguished gathering for this seminar, because the kind of discussions that we will have in a seminar like this is, to a large measure, dependent on the kind of participants present, who are expected to raise issues and questions that they deal with on a day-to-day basis. This would make the whole proceedings so much more productive.

To a gathering like this I certainly do not need to emphasize or talk about the importance of governance in overall corporate investment climate. I shall, however, attempt just a little bit to set the context for today's seminar. Since 2013, there has been a fundamental shift in the regulatory and the legislative thinking in India about who should be responsible for corporate performance. As is evident in all the changes made in the Companies Act as well as in Clause 49 of the Listing Agreement, Boards are increasingly held directly responsible for organizational performance and compliances. Regulations in India have mandated Board evaluations and there are specific provisions in this regard in both the Companies Act and the SEBI requirements. They lay down some structure for Board evaluation: who should be evaluated, who should evaluate whom and so on, which certainly bring us closer to international standards.

In contrast to the Indian situation, a research report in 2012 revealed that the Board evaluation -- as a standard practice in major listed companies -- ranges from 44% in Germany to about 98% in UK and US to about 100% in Canada and France. In many jurisdictions, Board evaluation as a process gained momentum from 2000 onwards. In India, however, it is only during the last couple of years that we have made some confident strides in this matter. In fact I was struck by a recent article which highlights the transformation that the corporate governance norms have unleashed over the last couple of years. What is it that these norms are trying to achieve? I think at the heart of it, the change is about moving from passive Boards to proactive and empowered Boards. But how do we go about effectively achieving this movement from passive boards to empowered Boards? In fact, the article talks about five critical elements that empowered Boards focus upon and I will just articulate these five elements and leave it as a framework for all of us when we think about effective Boards.

The five elements are: how do Boards ensure legal and ethical conduct of officers; how do Boards involve themselves in formulation of strategy or the evaluation of the strategy's implementation; how do they involve themselves in selecting, evaluating, rewarding the senior leadership teams; how do they ensure that top management succession plans are in place and above all how do they evaluate themselves.

If we look at these five pillars and see how much each Board moves in respect of each of these without going into an exposition on this, I think we can get a clearer sense of what is the increased role that we want to see Boards to perform. It is in this context that today's discussion is of tremendous relevance to all of us.

We have heard and read about Board evaluations. In very simple terms, the objective of Board evaluation is to help the Board in the first instance to improve the way in which the board members work together and to improve the way in which they can contribute to the company in achieving its goals and strategies. The process also helps Board members understand each other's roles and responsibilities better and in bringing together closer-knit teams among Boards than an informal process would encourage.

Where does NSE fit into all of this? As an exchange, over the last few years we have tried to be a catalyst and create forums for discussion and for helping listed companies to move up the compliance chain from a tick-box exercise to what we would all consider a desirable level of compliance in spirit. This is an ongoing effort. Recently, for example, we engaged in discussions with companies across India on the business responsibility reporting. So whenever there are topics which are breaking new ground or new territory, which requires a significant amount of engagement between market participants, exchanges, and regulators, we facilitate a lot of that with the aim that we can come out with a more crystallized and a more concrete action plan -- if I may put it that way -- for the companies.

It is in this tone and tenor that we have brought this seminar on Board Evaluation for the benefit of our listed companies. We certainly see this exercise as a key milestone. We see this exercise as a milestone not just because it is necessary for all corporates to comply with this mandate within the year that we are in but also from the perspective of how can we help our Board members and leading companies to use this tool much more effectively to their own benefit.

As part of the corporate governance research work over the last couple of years, we have also put in place an annual conference on corporate governance and we also have an interesting Quarterly Briefing which goes out on topics of great interest such as CSR, RPT and so on. I must say that the time at which we have started this exercise and the time at which the amendments in the Acts have happened, there has been a very fortunate coincidence. So there is definitely no dearth of the areas in which we can engage and hopefully, we can jointly provide value as well.

We have in the audience today many executive as well as independent directors. I am sure this forum will benefit from your experience in board evaluation and from the challenges that you have faced in going through this process.

Many people asked me why this program is being held on the last day of March. Certainly this program is not about a compliance calendar. But the idea was that by conducting this exercise toward the end of the financial year, we are likely to have a lot more interesting ground level feedback from some of you sitting in the audience today than we would have otherwise and that is really the idea of having this seminar today. So I am hoping that we will be able to gain insights from many of you through your experience of implementing this and likewise from our very experienced speakers who are here today, international and local, who have had the benefit of being part of this process in other companies or in other jurisdictions. I urge that we take the benefit of their presence to make this very productive for all of us. I wish the seminar all the very best and thank you once again for coming here and making this so special to us.

Keynote Speech
Dr. Chris Pierce, CEO, Global Governance Services Ltd.

It is an absolute pleasure to be here and to share my experiences of Board evaluation with you. I have been involved in evaluations in over 60 different countries and it is very encouraging to see that in India the Companies Act 2013, the SEBI circulars, etc., are now creating a momentum in terms of improving effectiveness of Boards.

I am going to start-off on a positive note. I wish to quote Professor David Beatty from Canada who has stated that "all Boards can improve their effectiveness". The problem is how can Boards improve their effectiveness? I think the main solution has got to be in terms of Board evaluation. We must first evaluate performance before we can move on to improve performance. And there is an important word here, Board effectiveness.

Let me begin with a story about effectiveness and efficiency. A well-known construction and demolition company had got a project in England, which involved construction of a shopping mall on a site that already had a number of buildings. So they brought in the demolition firm and the demolition firm started at 9 o'clock on Monday morning and by mid-day they had demolished 50 houses, and everything had been smashed to smithereens and they had done it in a very efficient way. The problem was that they had done the work on the wrong side of the street: instead of doing it on the right hand side, they had done it on the left hand side. So it does not matter how efficient you are; if you are doing the wrong thing, you have got problems.

Here I want to focus upon what Board performance is about. Do we actually know what the Board is meant to be doing? Do we know what the roles of the committees are? Do we know what the roles of independent directors, non-executive directors are and how they are contributing to the processes? I want to provide an overview of this. I am not looking at Board evaluation from a mandatory perspective. We have got to do it as per the Companies Act. SEBI through its circulars has been very clear as to what needs to be done in terms of the processes. So we are going to do it anyway but there are benefits of Board evaluation and in my presentation to you I want to create a positive message in terms of evaluation since I fundamentally believe all Boards can improve their effectiveness.

If I look at how the world sees India Inc., then the situation is perhaps less good than you would perhaps think. Each year the World Economic Forum produces global competitiveness statistics and one statistic that is particularly of interest is the efficacy of Boards; it is one out of 119 indicators that are measured for over 140 countries. When we look at the statistics in 2013-2014, India ranks 65th out of 148 countries. If you look at the 2014-2015 statistics, India is placed at 94th out of 144 countries. In other words, India is now in the lowest-third of countries and slipping down the league table! Now the indication is not necessarily that Indian Boards are getting worse. I think the main message is that other countries are focusing upon corporate governance, particularly Board evaluation, very seriously and I am hoping that as a result of the recommendations and the requirements in the new Companies Act concerning Board evaluation, Indian companies will start to rise again. But the situation is one that you should not be complacent about. International opinion is of the fact that you are 94th at the moment and you do need to think about improving Board performance.

Before I really get into the meat of the subject, I will quote Professor Jeffrey Solomon. He states that "I cannot think of a single work group whose performance gets assessed less rigorously than Boards". Within an organization you are evaluating the performance of every manager and for some reason the idea that you cannot or do not evaluate your own board's performance seems very strange to me, indeed, and so to many corporate governance practitioners.

Ms. Ramkrishna, MD & CEO of NSE, had earlier mentioned the European data and the global data on evaluation. The figures in the 28 countries in Europe may change country by country, but around 70% of listed companies are evaluating the performance of their Boards each and every year and in some cases that is much higher. In the UK, it is 98% or 100% depending upon which segment of the Stock Exchange you look at. According to the UK Corporate Governance Code (2014), all of the top 350 companies in the UK are recommended to evaluate their Board, committees and directors on an annual basis and use an independent professional external evaluator at least once every three years. A recent Heidrick & Struggles survey identified that listed companies were using consultants and facilitators external to the organization to evaluate the Board because there is a feeling that boards are marking their own examination sheets if they are managing the process all by themselves. The external facilitator can come in to a board and based on other knowledge acquired from other evaluations can provide a competitive benchmark in terms of some of the figures and some of the data that might be used.

Corporate governance practitioners recognize that board evaluation is still a relatively new phenomenon but we are working on how to improve it. What I am sharing with you this afternoon in my presentation is my international experience as well as an Indian experience on board evaluation.

So, why are we introducing Board evaluation? Well firstly it is a legal requirement, but in general terms it can improve the performance of the Board. Secondly, it can improve your decision making at Board level. Thirdly, it allows the Chairman to provide more effective leadership because the role of the Chairman is very clearly defined. Fourthly, it allows personal development of Board members because the Board members can see what their development needs actually are and it can be forward looking as opposed to focusing upon past performance. Further, it can improve accountability because one of the issues I am going to be looking at is how do you report on evaluation. Do you put it in your annual report? And if so, what do you put in your annual report concerning the evaluation?

I am sure, a number of your organizations have already gone through evaluation and some for the first time. The first and the most important thing is to do it right. If you do it wrong and you design it poorly or inadequately you probably only have one bite of the cherry. If your first attempt is unsuccessful everybody will say it does not work; it did not work then, it will not work in the future, and the skeptical members of your Board will make sure that it does not work in the future. So you have got to get it absolutely right in terms of the design and the process and that involves getting the buy-in from the members of the Board. So they need to be very clear and understand and agree to the process that is going to be used.

Is it going to be an internal evaluation? When you are running the evaluation for the first time, I would always recommend you to do an internal evaluation, not an external one. And in terms of the internal process, what are you going to use? Are you going to just have a discussion at the end of the Board meeting? Are you going to use questionnaires? Are you going to use interviews, and who is going to do it?Is it going to be the committee members, or the Independent Directors, or the Chairman, or the Company Secretary? You have got to think who is going to be involved and how they are going to do it, what mechanisms, what instruments are going to be used and perhaps we will be discussing those instruments in more detail later today.

There is an issue over ownership of Indian companies. Many of the companies that I work with in India have a highly concentrated -- as opposed to a highly dispersed -- share-ownership. This creates problems when you are dealing with promoters, block shareholders and other significant shareholders of one sort or another. It creates problem in terms of the nomination process. Also, the promoters and the directors related to them often cannot see particular benefits associated with evaluation. I often find that the organisation with a dispersed ownership has a much easier chance of succeeding first time around with the evaluation than the organization with a concentrated ownership.

In India, some of the issues associated with Board evaluation are cultural in nature. Southern Asia has a particular issue associated with commenting--more particularly commenting unfavorably-- on colleagues, on friends, and particularly on superiors. In the evaluation process they will be required to comment on the Chairman and evaluate their fellow directors. This can be very difficult. There are many academic studies which suggest that South Asia (including India) and South-East Asia have distinct cultures. Therefore, one cannot just transplant or export what works in America to India. It just does not work!

The next challenge is associated with cost, not just financial cost but also time. When carrying out evaluation, I normally have problems associated with meeting the Chief Executive. The Chief Executive will often say: “My job is to run the business; the Chairman’s job is to run the Board. I am focusing my time on the business itself; I do not want to spend time on evaluation.” As a consequence I have often experienced problems as an external evaluator dealing with the executive directors rather than the non-executive directors. Also, in general, there can be a direct resistance to the unknown; many directors have not been evaluated before and they think that it is going to be quite critical. One of the ways in which to overcome this might be to focus on the developmental aspect and also focus not on the past but on the future and doing things smartly and more effectively.

I think evaluation should focus upon areas that are important and you are going to see many different frameworks being produced and discussed this afternoon. I think the starting point has got to be the composition and the structure of the Board. You already have Articles of Association, Laws, Board charter and you have terms of reference of the committees and so on. To a certain extent, you have already defined what these bodies are going to do within the organization. So the evaluation should focus upon what your actual documentation is stating.

One thing which is critical to evaluation is the caliber of directors. Does the board have the right mix of directors in terms of knowledge, expertise, and general competencies? Again in India, as across the world, there is a growing tendency towards greater diversity. For example, we now have this requirement of one woman on every Board as per the Companies Act, 2013. So there is more diversity coming through and during the evaluation, an evaluator may well talk about the caliber of directors on some of the committees or on some of the Boards.

Often the Board meetings do not discuss the quality of the papers the Boards have. By doing an evaluation you can focus on how user friendly the information is. Do you actually need 120 pages of spreadsheets? Can you focus on exceptional items? Can you summarize the data? Can you use graphics rather than spread sheets? Can you use score cards and dashboards? Some very big breakthroughs have taken place in terms of Board papers coming to the Board as a result of evaluation.

In an evaluation, you will be able to talk about how often the Board meetings take place, and what has been the quality of the discussions and how the Chairman has actually managed those discussions. And then there will be other things that typically come up in Board evaluation: How are you in terms of governing risk? Are there discussions taking place about risk appetite and the risk tolerance? Are these being discussed either at a committee level or a Board level? What level of exposure does the Board perceive they have? Also, what sort of involvement does the board have in terms of strategy formulation? Some Boards are typically just there to ratify what the executives are recommending. In other cases, the directors are more hands-on and there are strategy retreats, strategy away-days and so forth. Do the Board members want a strategy retreat and away-day to discuss governance and strategy with the Executive?

There is a lot coming through at the moment in terms of governance of information and I will mention particularly the COBIT 5 framework by ISACA if you are not familiar with the debate that is taking place on how information is used within the organization.

And the other thing that keeps coming up again and again in evaluations is how does Board relate to the key stakeholders of the company? How does the Board relate to the management team? How does it relate to the shareholder? How does it relate to the regulator? The management of key stakeholder relationships is extremely important. After you have those initial discussions, the evaluation is likely to focus on the tasks of the Board.

I am giving you here a model of four tasks of the Board. Professor Bob Tricker has produced a similar model in Hong Kong and John Carver has produced a similar model in the US. Research indicates that a Board should be concerned with the vision of the organization (what I am calling foresight) which looks at: Where is the organization going? What are the values of the organization? What is the culture of the organization? What business should we be in? Second, 'strategy' is how the organization is going to attain its vision. Do we have a strategy? The third task is concerned with the inter-relationship between the Board and the management and finally the fourth task focuses upon accountability to the shareholders, to regulator and so forth and acting responsibly. Board evaluation will probably raise these issues: Are we spending sufficient time in all four of these areas? And if not, we should change the priority and begin to focus on these four areas because these are fundamentally what the Board is expected to do.

So my experience in terms of Board evaluations is if you have got a Board that is focused on governance and managing the business, if they know what their tasks are, if they are thinking smartly about how to improve their performance then their Board meetings will go more smoothly and better decisions will be made. In particular, the independent directors will feel more confident about their role, have greater influence and there will be a well-governed company. There will probably be a greater emphasis upon strategy and there will certainly be better relationships between the Board, the CEO and the shareholders in general because that is one of the development areas that evaluators will look at.

So, ladies and gentlemen, I commend board evaluation to you Thank you very much.

Legal Underpinnings of Board Evaluation
Mr. Cyril Shroff, Managing Partner, Amarchand & Mangaldas[1]

Thank you very much for having me here today.

Board evaluation, or the broader theme of corporate governance, has really engaged the legislators, the regulators, and corporate India itself for a long time, especially over the last few years. These years have been characterized by a lot of corporate incidents, an increased focus on the requirements of different varieties of intelligent capital who are laying down expectations in terms of what they really expect from business, what they expect from the private sector and marrying the different sorts of, if I can call it, cultural translations between more western markets and many of the points that Dr. Pierce made in our own unique context. In the challenges section, one of the points that was made -- and I think it is a very important point -- is the issue of concentrated ownership in India and what really sets it apart as a market. Whether it is the SEBI framework which dictates (from the day a company gets listed) that there shall be a promoter with a passport, photograph and a driving license and you really have to abide by that or whether right from the day the company is born, so to speak in the public markets, there is an identification of an individual or a family or a group with a side entity and presence in the capital markets.

If the vital connection between a promoter and a concentrated shareholder is so integral to its existence, I think it carries with it both a sense of privilege -- which the concentrated or the major shareholder feels -- and a sense of greater responsibility as well. In my experience and according to studies of how this theme is evolving in different jurisdictions, probably what sets things apart in the Indian context more than any other is this particular feature of how concentrated ownership plays out with the expectation of other stakeholders.

If corporate India has to work efficiently and has to create trust, I think it has to be a trust with which boards will have to function; because apart from the regulators who are doing their job -- at a sort of delegated level or at a self-regulatory level -- it is the boards of private sector India or corporate India in general that has this great responsibility of delivering.

Now I have been given the job of going through some of the regulations in terms of particularly pointing you to: what are the legal underpinnings of board evaluation? Where does this come from? Is it just a cultural thing or is it also a legal thing? I think it is a bit of both but the crux of it is legal. I think we are living in an era where Board evaluation is a legal requirement. It is not just that the boards think it is required to have a better run in the capital markets but it is something which is mandated by law both from the Companies Act perspective as well as from Listing Agreement's point of view.

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[1] Now, 'Cyril Amarchand Mangaldas.'

So I will point out to you the relevant provisions and what they mean. But fortunately there is enough flexibility in terms of what those expectations are which allow us a little bit of license in interpreting. I shall also share experience from across borders as well as from here in terms of what they mean and how boards can actually innovate in terms of setting out their own standards of how they can really apply these expectations and evolve something which is appropriate for themselves.

So I have boiled it down really into a few key questions: who is to be evaluated? Who does the evaluation? What is the basis for the evaluation? And finally what are the consequences of this evaluation which we may explore in more detail in the moderated session at the end.

The starting point is the legislation because this is something which the legislative body through its various iterations was very focused on. And the core foundation which then subsequently gets adopted in the Listing Agreement is to be found in a number of places in the Companies Act. We find it in section 134 of the Companies Act which talks about financial statements and board reports, and one of the requirements in sub-section (3)(p) of section 134 is that there should be a statement indicating the manner in which formal annual board evaluation has been made by the board of its own performance and that of committees and individual directors.

So as we look at who is to be evaluated, we find that it is not only the board and its different components, the chairman, non-executive directors and independent directors but also the committees who are roped into this. An interesting nuance worth noting over here is that it is not merely for listed companies. One would have thought that while sitting in the proceedings of this seminar conducted by the National Stock Exchange, one will be talking of only listed companies. That is not true because there is an expectation that public companies -- which are now defined in the Companies Act with reference to certain levels of capital turnover or indebtedness -- will be evaluated as well. So the broader idea is that board of public interest companies are to be evaluated -- that is, not merely listed companies but where there is a broader stakeholder interest in capital from the markets whether it is debt or whether it is just investment which is lying in unlisted firms. So public companies that are unlisted, but still in public context, too are expected to be covered by this provision.

The other reference to board evaluation is Section 178 of the Companies Act which talks about the composition of a Nomination and Remuneration Committee ("**NRC**"). The early stage of what I am seeing with some of my clients is that the NRC is in a sense the emergence of a new power center. So, one of the things that is happening in boards now is that there are multiple power centers that are developing in companies. The board, of course, is the most important one and has always been so. But the NRC is itself becoming a fairly significant body. It needs to have a majority of independent directors; the chairperson of the company, whether executive or non-executive, can be on the committee but he shall not chair such a committee.

Now what is the NRC doing? It is still in its early stages and is still finding its feet and exploring the boundaries of its own powers. But from my experience, I am finding that it is becoming a fairly significant entity because it is in a position to really comment upon the performance of other organizations and institutions of the company. So, I think Section 178 lays down the foundation for the

NRC from the perspective of the roles to be performed in the evaluation process. And if you go a little further down to sub-section 2, it really talks about part of the role of the NRC being to recommend to the board the appointment and removal of directors, and to carry out an evaluation of every director's performance. The Listing Agreement which mirrors the wording of the Companies Act 2013 is very similar and I think it points us in the same direction because it really gives a listing flavor to the expectations laid down in the Companies Act.

The nominations committee is required to formulate policies and to lay down the boundaries of what criteria it is going to employ for the determination of qualifications, positive attributes and recommendations to the board and that is required to be published as well. You can find it or expect to find it on the company's website.

Section 178 also starts building the connections between the evaluation of directors to their remuneration both from a short-term and long-term perspective -- Connections like those for any employee or professional of a company. Moving on, I think the other big place where one finds references to evaluation of boards and roles and goals of behavior is *Schedule IV*tothe Companies Act 2013. It is a fairly unique instrument because there are not too many markets in the world which have something so prescriptive; one would usually find it either in Listing Agreements or manuals but not in the legislation itself. Well, in a technical sense it may be directory and not mandatory, but the fact that it exists on the statute and is part of the legislation, gives it a certain level of seriousness and formality that otherwise would not be there. It lays down a number of things including the guidelines for professional conduct, role and functions of boards and independent directors, their duties etc. Paragraph VII of *Schedule IV* is a fairly interesting provision because it refers to the fact that independent directors must meet at least once a year without the attendance of the non-independent directors. All the independent directors should try to remain present and they are required to review the performance of the non-independent directors, the chairman and the board as a whole.

So, there are really three types of evaluation levels - how the board as a whole governs itself, how it behaves, how often it meets and the quality of debate which is more generic. Then there are different aspectsof the board functioning which are evaluated as well which are: the role of the non-independent directors, the role of the chairman and generally the quality of performance. The evaluation of the chairperson of the company must also be taken into account. And finally as part of the expectation of the role of independent directors in the schedule, the entire board will separately evaluate the independent directors in the presence of all the other members except the one who is being been evaluated.

So, it is a peer group type of system where we evaluate each other and we proceed on the basis that we will all do the right thing. We have the guidance derived broadly from the new Companies Act and the Listing Agreement which mirrors several of these requirements.

Further, there is a sort of a check and balance. It is possible to rig the system wherein everybody can cooperate to give each other sort of ten on ten. But I think generally speaking, that is unlikely to happen especially because someone would eventually get caught and that is not expected. So on a more positive note, I think it sets forth a reasonable framework and a fairly powerful system which would elicit positive performance.

What I am hearing from a number of my clients is that initially there was a lot of trepidation: there was so much to do, audit committees have become practically full time committees, the NRC has become another power center. So a lot of that negative feedback was coming through initially. But in the past several weeks, I have seen a change in that tone and I think after having gone through some amount of initial experience with this, the feedback is now more positive. And I think, it is being really seen as more of a self-development tool. This is not the time when consequences have flowed in terms of either directors being asked to leave the boards or the directors' compensation being affected, it is being seen much more positively as a tool for improvement and getting genuine feedback so long as it has been properly delivered.

While on the one hand there is an expectation that performance evaluations will take place taking into account a broad set of expected factors; no specific micro-criteria are required to be followed. That is just as well because the needs of each company, the ownership composition of each company, the nature of the conflicts of interest that may arise in relation to the unique composition of the company, all are different for different companies and no two companies are alike. And in that context, I think it is fair that companies are required to be given the liberty and the flexibility to lay down their own set of criteria so long as they publish them and are willing to hold themselves up to what they publicly demonstrate as the criteria on which they would like to measure their own performance.

The shareholder model is the traditional model of governance and I think it still continues to be the dominant theory, because it is ultimately about the final owners of the company. But what has moved on this, in terms of intellectual thinking, is that the risk capital is perhaps just one of the inputs and not necessarily the most important input that goes into the creation of a successful business enterprise and there are so many other stakeholders involved: employees, customers, society; and in India now we even refer to the environment and the broader community as well as stakeholders. So, it is just as well that we have started laying the foundation of a stakeholder model. The doubt that I have at this stage is whether this is going to enter the thinking on Board Evaluation as well. Are you going to evaluate boards on stakeholders' governance? Are you going to ask independent directors to go through an evaluation process on how they performed on broader stakeholder governance? And we are getting into very qualitative territory over there for which there are no defined metrics today. I am not sure and probably Dr. Pierce can guide us later as to whether there are interesting relevant metrics internationally which would allow measurement of how boards perform on broader stakeholder governance rather than on shareholder governance.

Among the various bodies that are responsible for evaluation, namely the NRC, the independent directors, and the board, the language that the regulations use is not exactly the same which actually sets it up, perhaps for different set of criteria being used depending on who is the evaluator and for whom the evaluation is meant for. I do not know whether it is a drafting gap or whether it is intentional. So, it is sort of a lawyers' paradise there because it sets it up for different definitions and different criteria and also all of it finally is going to be reflected in that piece of paper called the board report that will get published. So, it becomes a very legal document in the end which the market and activist shareholders will see. When activist hedge fund shareholders take matters to court or there are class action suits, that piece of paper will be seen. These interesting nuances and expressions might have legal connotations that are a bit beyond what we might currently have envisaged. My guess is that it is somewhat unintentional because it has come from different sources. But it is there and we just have to learn how to deal with it and find the market practice which will allow harmonization of their different expressions.

Again a question which I know we are going to discuss in the panel is: are you going to use Schedule IV of the new Companies Act as the bible for really evaluating the performance or are they going to do something which is more broader, what tools will we use, will there be questionnaires, interviews or just really a board conversation where -- as Dr. Pierce said -- initially it should be much more internal. At this point of time, it is too premature for the company to have consultants come in and impose standards.

Finally a little bit on consequences of evaluation and we will pick it up in more detail in the rest of the moderated session. What happens with evaluation? What is the consequence of it? There is no point in doing something which has no consequence at the end of it. So, could it be that the NRC may recommend removal of a director from the board? Though it is unlikely that there will be somebody so bad, but it is theoretically possible.

In terms of the listing agreement, one of the consequences of 'board evaluation' which is prescribed is whether to extend directors for a second term or not. This is because of the need to maintain continuing independence. Further, there is now a finite number of years in which a director can stay on the board. So, continuance and renewal of directors maybe one of the consequences. This is a relatively easier consequence to implement. Composition and re-composition of board committees and compensation could also be tied to performance. An important consequence-- particularly if you have taken people of integrity and reputation on board -- is the reputational impact on them, as a result of which market valuations would be affected. The business media would probably carry some references to director performance, and this would have an implication on fund raising not only from equity but even from a debt perspective. And lastly if there are annual reports coming with a lot of negative comments and they land up before SEBI or they land up before the stock exchange, I am sure you will do something about it.

I am quite hopeful that because of the broad vein in which this has been drafted, it would set the stage for a fairly interesting conversation in a little while from now when we can explore how different regulatory instruments have set expectations and when we can examine whether it is really an opportunity for better performance or finding excuses for lack of performance.

Thank you.

Q & A

Participant: What is your idea of a self-evaluation by directors themselves because that would give a true account of themselves if you are assuming that all the directors are men of integrity, brevity, and honesty?

Cyril Shroff: I think that's a great question, but I do not think it ticks the legal box. So I think it can be a good starting point, especially if your starting assumptions are that you are a person of integrity. I know I would give a very lousy evaluation of myself, not just because I am trying to say I am a person of integrity but even otherwise. I think one always tends to be a bit more critical about oneself but that does not tick the legal box. I think you need the institutions which are being set up under a Companies Act or listing agreement to provide that. So it can be one of the inputs and I think in a good conversation at a board, it would be perfectly fair for a director to say this is what he thinks about himself, do you agree?

Participant: You mentioned about board compensation or remuneration based on performance. Now as far as I know, you have fixed fees for board and fixed fees for committees. So would not that be something sort of very novel, very different that different directors, even independent directors, may have different levels of compensation over this? Have I misunderstood that point?

Cyril Shroff: No, you haven't because I think in terms of the new framework you are allowed to have a fixed and variable component and in another section, I think it allows for both a fixed and a variable fee to be awarded as well. It could be linked to performance, whether it comes in the form of commissions or just a separate fee which is decided or a reward that is decided by the board.. But it will ultimately come down to having a set of criteria against which performance is measured, so it does not become an arbitrary instrument.

Can an independent director become responsible under the new Anti-Money Laundering (AML) Act? Answer is yes. I think it could of course depend upon the level of knowledge that one has of the act being committed but *prima facie* if there was an anti-money laundering investigation, I would not be surprised if a notice were to come to the entire board. That is what we are experiencing as well that the entire board would get picked up or would get a notice first and then you would be able to discharge that burden by showing that you really had no knowledge or that you had taken care to ensure that there were proper processes and systems in the company. So you would have good defenses if you are innocent. But the fact that you might face an investigation cannot be ruled out and this might be a particularly sensitive issue in financial services companies or broadly those in the financial services sector because this is a high risk in the financial industry.

There is another provision in the Companies Act which refers to liability of directors. After some of the incidents that happened in the past, I think there has been some relaxation in the sense that it has to be made sure that genuine independent people who conduct themselves with some amount of diligence are not hauled up. You are liable only for what comes to your knowledge in the course of board deliberations through the board papers. The weakness is that the Section -- because it is a part of the Companies Act -- only applies to offences or breaches of the Companies Act. AML would not be picked up and there was actually a big debate that the criminal procedure court itself should be amended to provide for innocent directors, who had no knowledge, to be exonerated from or at least have a prima facie defense from facing these warrants and show-cause notices, that come without any actual awareness of what is going on. That was not taken into account when the Companies Act 2013 was made because it involved a fairly different political process.

So as things stand today, the Companies Act provides for a reasonable defense for Companies Act violations as a practical matter at the registrar or the companies level or where they are launching prosecutions or at public prosecutor level. If you do show that there is an innocence and lack of awareness and that you have been a diligent director then mostly you should be fine. But there are also high risk areas some of which can be picked up by D&O insurance (Directors and Officers Liability Insurance). So it is one of the occupational hazards of accepting directorships on Indian companies.

Participant: You mentioned that in certain areas there is a lack of clarity: for example, the criteria on which boards have to be evaluated and so on. As we are now going to complete one full year of this process, has there been any pressure on the government to rectify this lacuna? Do you get any information on that?

Cyril Shroff: There has been a lot of complaining about RPTs, which has been one of the biggest areas of resistance, and again what will the roles of boards and audit committees be on that. There has been some amount of complaining in terms of some of the more qualitative areas on shareholder versus stakeholder;what does Section 166 really mean and are you going to evaluate beyond that. But from my knowledge of what is going on in Delhi, I do not think there is any movement to amend the process for board evaluation. I think they will probably wait for a bundle of issues to pile up and then they will make an amendment all together. So, I do not think there is any movement on that, there will just be a new normal that will evolve.

Participant: The new Companies Act contemplates that there should be an evaluation inter se. In other words, one director has to evaluate the other directors in the board.

Assuming the board consists of directors with different areas of specialization such as lawyers, chartered accountants etc., then, how an accountant can evaluate a lawyer and how both of them would evaluate an HR person or a market specialist or a technical director. So, it will be a mockery to say that I am competent to evaluate a lawyer or a market man or HR official.

Cyril Shroff: I think the perception on this is worse than the reality. I think most of it is common sense. And on what are you evaluating people? I do not think you are evaluating a lawyer on the board on the quality of his legal input or an accountant on the quality of his accounting input or a scientist on the quality of his scientific input. You are evaluating them in terms of how they really bring judgment and independence to the board and participating in strategy and that is mostly commonsense in terms of being able to evaluate. So I do not think it is as bad as you make it sound.

Linking Evaluation with Remuneration, Continuation and Improvement
Mr. Ryan Lowe, Partner, Ernst & Young

Good evening ladies and gentlemen. It is a great pleasure to be here in such an august gathering amongst the representatives of leading organizations of India. We have already heard some very interesting and thought provoking speeches from Chris and Cyril and in my presentation today, I propose to cover three elements. Board evaluation, as we are aware, can potentially impact three levers of board functioning; they are: Remuneration, Improvement and Continuation. These three have been alluded to in the presentations that have already been covered. So, given the fact that the Indian experience on Board Remuneration, Improvement and Continuation is very limited, what I intent to cover really is some international experiences on how these things are done, what the experience has been, what the success rates have been and is there any learning from these experiences that can be used for implementing these provisions in India.

Let's look at each one in sequence. The first one that we will talk about is the impact of Board evaluation on remuneration. Interestingly, India is actually one of the few countries in the world where explicitly it has been mentioned that the linkage of Board evaluation should be on director's remuneration. In our research what we have found is that globally there is no linkage between Board evaluation and a director's remuneration. As you are aware, most leading companies in developed markets are already doing some form of Board evaluation; however, we have not observed instances of linking director remuneration with the Board evaluation outcomes in these developed markets.

It is interesting to note that the UK Corporate Governance Code states that a significant proportion of executive director (ED) remuneration should be linked to performance, but no specific linkage to Board evaluation outcomes have been mentioned there. Incidentally, the King III Report in South Africa also specifically mentions that non-executive director remuneration should not include any share options or incentives of any kind. So again in that sense what we are doing here in India is something slightly different and probably a step ahead of what is happening in most other parts of the world.

The ED remuneration is certainly linked with various performance metrics. However, the focus of Board evaluation globally is one on compliance because it is necessary to do it. It is also necessary to disclose the compliance status as part of the annual report. It is certainly an improvement which as Dr. Chris Pierce mentioned earlier is probably the focus area of having this provision in the first place. Let's take a look at what the global experience has been on the three elements of Board Remuneration, Improvement and Continuity.

Let's look at some of the current remuneration practices, and this is something we all know. ED remuneration typically has two components: (a) the fixed component which comprises of the salary, benefits, and pensions, and (b) the variable component which comprises of total bonus and long-term incentives. This is consistent around the world and India is no exception. The variable component of the ED remuneration is typically linked with both business performance and individual performance.

On the other hand, as we have heard from Cyril's presentation a little earlier, non-executive director remuneration typically comprises of fixed elements. So there are sitting fees which are a base fee plus an attendance component; there are also committee chairmanship fees and committee membership fees. If I had to ask you, which committee chairmanship and membership fees attracted the highest remuneration, any guesses? It is Audit Committee. Our research in the UK bears that out as well. So audit committee chairmanship and membership fees are a notch higher than those of the other committees. However, it is interesting to note that in the last couple of years, given the rising importance of the NRC, NRC fees or fees related to NRC chairmanship and membership have been increasing in the UK.

Let's look a little bit more closely at some of these global trends. In the UK, Ernst & Young brings out the Future Horizons Report on director remuneration and what we found in that report is that 'profit target' is typically the most prevalent performance metric on which executive director's variable remuneration is paid. Not surprising, right? There are several other parameters that are used as performance metrics including cash flow targets, EPS, sales or revenues, EBITDA targets etc. What is again an interesting trend to note is that a growing number of companies are now including at least one non-financial metric in their executive plans. What are these non-financial metrics? They are typically related to health, safety, environment (HSE) index or customer satisfaction. So, just a point to consider here; do we think that at some stage, the results of Board evaluation could be another non-financial metric on which director remuneration or variable remuneration can be pegged? This is just some food for thought going forward.

Again, I want to reiterate that there is no movement really to link ED remuneration with the outcomes of Board evaluation. What is the focus of shareholder activism in the UK? You have all heard about this and Chris mentioned it a little earlier as well that there is a large amount of focus on very detailed disclosures and higher shareholders' '*say on pay*'. So what is happening as a part of this initiative or this series of initiatives in the UK? Shareholders now are expecting to see a very high level of detailed disclosures on director remuneration as part of annual reports. The norm now in the annual reports in terms of the director's remuneration report has reached 20 pages.

Interestingly, some recent guidelines also put a binding vote on directors' remuneration policy to the shareholders. Earlier it was non-binding, now it has been made binding. So the director's remuneration policy has to be put for a vote in the AGM and the vote is binding.

What are some of the other initiatives that we have seen as part of executive director remuneration? There is a much larger focus now on deferred bonuses as shareholders want to ensure that the metrics on the basis of which executive directors are being paid actually are sustainable and not arrived at on the basis of short term measures whatever those maybe.

The other aspect is that a higher quantum of bonus is now being deferred. There is also a longer holding period for shares post vesting and in most cases now, there are claw back and malus clauses. Claw back clauses are related to the ability of organizations to take back variable remuneration that has been paid out on the basis of certain metrics if those metrics are not sustained over a period of time; and malus clauses are related to basically holding back deferred remuneration whether it is cash, shares, etc., in the event of performance targets not being met.

So these are all initiatives aimed at bringing a better alignment between performance metrics of business and director remuneration. However, again I want to reiterate that there is no linkage specifically to Board evaluation results.

Let's look at a case study from one of the leading FMCG companies in the world. Interestingly as Dr. Chris Pierce mentioned, the role of the chairman in any Board evaluation process becomes absolutely critical. And in this case as well, the chairman leads the process whereby the board assesses its own performance. So it is an internal Board evaluation process that is in place. Additionally, there is an external evaluation that is done once in three years. Each year the chairman conducts the process of evaluating the performance and contribution of each director and this includes a one-on-one feedback session between the chairman and each director. So this is basically taking what we have got as rules and guidelines, and really living it in the spirit of true governance.

So the executive director remuneration has six components - base salary, fixed allowances, pension, a very significant performance linked element which comprises of an annual bonus, a management co-investment plan, and a global share incentive plan. The annual bonus is dependent on achievement of metrics like sales and volume growth and margin improvement. There are also long-term incentive plans where the quantum of shares awarded and the vesting period are dependent on sales growth, profitability, cash flow, and total shareholder return. It is interesting to note here that besides these fairly quantifiable metrics, the NRC also considers certain other elements when they are deciding on the final award especially of the annual bonus. These include the quality of performance, leadership, corporate social responsibility, and delivery of specific goals related to a sustainable living project that the organization is undertaking.

This organization has been able to implement all the critical elements of the UK corporate governance code, and seems to be complying with it both in letter and in spirit.

Let's now take a quick look at what it does on the non-executive director (NED) remuneration front. Here again, as is the norm, it applies a modular fees structure for NEDs. The chairman and vice chairman basically get an all-inclusive fee and other board members receive a basic fee and additional fees for chairing or membership of various committees. It is interesting again to notice that non-executive directors are encouraged to build up a personal shareholding of at least 100% of their total annual fees over a five-year period from the date of appointment and here again non-executive directors are not entitled to participate in any of the group's incentive plans.

Similar practices are applicable in South Africa, Australia, and some other parts of the world. So, if we are going to be able to do things differently in India, it would be fairly daunting, and we will have to see how best to make these things work in the Indian context with the challenges that have already been defined.

What could potentially be at stake? For executive directors, some proportion of their bonus, deferred bonus or LTI could be linked to the outcomes of Board evaluations and for non-executive directors, we should probably be thinking about how to link the evaluation results to some component of the sitting fee, or we could have an add-on fee that comes on top of the sitting fees that are payable. Again, these are some initial thoughts given where we are in this journey.

So that covers the Remuneration front. Let's now move on to Continuation. We talked about this a little earlier. So what has been the global experience on this issue? Of course, linkage to board member continuation is still in early stages of evolution. However, it is interesting to see the results of a survey where I found that in the UK, one in five chairmen attributed changes in board membership at least partly to Board evaluation results, though certainly it is very difficult to infer from this a very direct linkage.

But what does Board evaluation do that helps this process? In many cases, "It acts as a catalyst to confirm the strength of feeling" amongst several members of the board. It helps bring difficult issues regarding membership or contribution into focus. So yes, this is a structured process that will help bring some of these underlying elements really on to the table and that really has been the value that Board evaluation has brought into the issue of director continuation. How will it pan out in India? Anyone can guess that really. But there is some evidence to show that, yes it can be a positive.

Moving on to Improvement – the answer to the question "Have Board evaluations led to actual improvements?" has been an overwhelming 'Yes'. Again Chris in his speech said that there is a positive spin to it and certainly the surveys in the UK, in Australia, in South Africa have said that, Board evaluation can be extremely effective in enhancing effectiveness of boards.

The most common approach is really a project management one wherein there are processes to conduct the evaluation to identify gaps, issues are tabled, discussed and debated during a full meeting of the board and clear action plans chalked out. So giving adequate time to the process is absolutely critical. Then there is a process to track and monitor these action plans and finally report back to shareholders the outcomes of the continuous improvement process. However, it is interesting to note that most of the improvements have been related to the overall functioning of the board as a whole.

There is another survey which talks about which specific aspects of functioning of the board have been improved. In this survey, most respondents believe that the individual director evaluation process needs to mature quite significantly even in leading organizations, before benefits can accrue on a consistent basis. So yes, there is a positive impact on the overall performance of the board but whether this can lead to specific consequences for individual directors is a moot point. I suppose it is possible but we need to build in some amount of maturity into the process before the linkages become tighter.

We spoke about the need to report back the outcomes of Board Evaluation to shareholders. Here is an extract from an annual report of a company in the UK, showing what were some of the recommendations of the Board evaluation process and what actions were taken based on those recommendations. (Please see the box given below)

Box: Some best practices of improvement actions – (Annual Report Extract – Company 1, UK)

Recommendation	Action
• More specialist presentations and training sessions to be included in the board agenda.	• Directors received detailed presentations during the year and also training on areas including food technology and the UK Bribery Act.
• More opportunity to interact with a broader range of employees.	• A programme of independent visits was implemented during the year which enables the directors to meet more employees around the Group.
• A board diversity strategy should be developed.	• The Chairman is leading the project to develop the board diversity strategy
• Personal development plans should be developed for each of the non-executive directors and the Chairman.	• Personal development plans are being established.
• It would be useful for the Board to have a series of 'deep dive' sessions every year.	• Deep dive topics are being identified and will be included in the board agenda.

Source: ABI Board Effectiveness Report, UK, EY Primary and Secondary Research, Annual Reports

I suppose this is a direction in which we would like the organizations to move to. So one should be fairly specific about what are the action areas that have been identified and then follow it up with saying that yes those actions have actually been taken.

I spoke about a survey that was done in terms of what were the specific improvement areas that board members have seen. A lot of these surveys have been done in UK because it is the most advanced and most documented market of the lot. It is important to note that the improvement impact has been primarily on *board mechanics* rather than *board dynamics*. Board mechanics covers issues related to board agenda and time, the visibility of management to the board members, processes related to the board or functioning of the committees.Improvement in these areas has been higher. In contrast, only very small impact has actually been seen on behavior, quality of decisions and technical competence, which are manifestations of board dynamics.

The same group of people was asked to share where they would consider the future focus areas for improvement. The future focus areas are all tilted towards the behavior or the dynamics of the Board. Individual director's behavior is another key focus area while team behavior and cohesion, quality of decisions are other such areas. Additionally, more ground work needs to be done in terms of process, agendas, time, etc. The visibility of management certainly needs to continue and improve further.

So what does the road ahead really hold in terms of Board evaluations? Board evaluation is now a mainstream activity in leading organizations in developed economies. There is a clear movement from letter of implementation of the law or the code to the spirit. Many organizations now are doing more to try and live the spirit.

I already talked about the focus of evaluation and improvement in shifting from mechanics of board operation to dynamics and in that context chairman and evaluation service providers are striving to find the right solution to the behavioral assessment and development issue. How do we effectively assess director's behavior and how can that be ploughed back into development planning, into technical competence, into team cohesion and dynamics?

The other element is focused on the role of the Board to create an environment of evaluation across the organization. As the Board sets the tone for the entire organization, so some extremely progressive organizations are trying to build in certain performance management systems which are integrated right from board all the way down to the last man standing with a common set of business objectives and development objectives that cascade right from the board all the way down across the organization. These integrated metrics ensure greater alignment and cohesion in such organizations, with everyone speaking a common language.

But what does that mean for us in India? We have been told that we do need to link Board evaluation with director remuneration. I want to reiterate some of the critical pre-requisites for ensuring that this can be done in a transparent manner. First and foremost, is the need of a chairman who is committed to the process of Board evaluation and believes in its ability to add real value to the board functioning. Second, there is a need for a clearly stated board agenda for the year formed at the beginning of the year. This is important because directors on the board need to know very clearly what their accountabilities are in a matter. If the agenda is clearly decided upon at the start of the year, and there are roles and responsibilities articulated for each director, then there is higher opportunity for directors to deliver on those roles and responsibilities. As part of this process, the buy-in from all board members in the process to be followed is very critical because unless there is buy-in, the propensity to really go whole-hog into these evaluations in the right spirit could be missing. The linkages of the outcome of Board Evaluation to Director Remuneration and Continuation should be stated upfront, so that there is no ambiguity.

Finally, it is a long journey. I think in most developed economies as well, this has been a journey that has taken the better part of a decade. We are just at the start of this journey. So we do believe that in India, we need to start off by clearly identifying the objectives of Board Evaluation, what are going to be the linkages (to remuneration) and these can vary from company to company. So, within each organization we need to take these calls. We need to decide on the process of evaluation, and how much an external facilitator should help. So probably you should start conducting the evaluation internally and then over a period of time, once a process matures, go external. Communicate to and get buy-in from all the Board members, conduct workshops with the Board at the start of the year clarifying the agenda, clarify the roles and responsibilities of each member of the Board, create remuneration plans in alignment with these accountabilities, do the evaluation, and enable the right depth of reporting and feedback and create developmental plans. Of course, there needs to be a support mechanism to really act on the outcomes of the Board Evaluation process. So the Continuation part in my view is a long way off here in India, but we can certainly start on the evaluation andlink it with improvements and remuneration in the short run.

Thank you very much.

Panel Discussion on "Board Evaluation"

Panellists: **Chris Pierce,** CEO, Global Governance Services Ltd.

Cyril Shroff, Managing Partner, Amarchand & Mangaldas[1]

Deepak Satwalekar, Former MD & CEO, HDFC Standard Life Insurance Company Ltd.

N Balasubramanian, Adjunct Faculty, IIM-Ahmedabad

Moderator: **Nawshir Mirza,** Professional Independent Director

Nawshir Mirza: Good evening friends and welcome to this last session of the seminar. What we have agreed between the five of us is to do this in broadly three parts. The first part is the philosophical underpinning, the second part is the legal issues and the final is all the other stuff which was dealt with by Chris as to how do we do this board evaluation, but specific to the Indian context.

How do we do board evaluation? What are the outcomes of it? How do we deal with the outcome? How do we derive the maximum advantage? While we may sound negative in some of what we are going to be saying, I think the consistent message so far has been -- and I would like to contribute to that same message -- that it's a thing we need to embrace. If all of us want to be on boards that we are proud to belong to, then indeed board evaluation is an important part of achieving those wishes that each of us has.

So with that brief introduction, let me begin the discussion by first asking Prof. Bala for his comments. Bala, you have been in the corporate sector for many years; you have been a professor of governance; you have sat on company boards and you have been in top level executive management. From your own experience, what are the advantages you see that would flow to Indian companies out of evaluations of the board in general and individual directors in particular.

N. Balasubramanian: Thank you Nawshir. I think we should start with a premise that there is a purpose involved in any mechanism or any instrument of management. Often I had wondered why companies have boards at a philosophical level. What is the point? You have promoters, you have sponsors, you have people with a passion to start a business partly for making money, partly to fulfill an inspiration, and ambition in life to do something. So why not let them do

[1] Now, 'Cyril Amarchand Mangaldas'.

it and the ultimate market place decides whether it is worth subscribing to be part of it. If they think it's not worth it, it goes out of the window. What is the big deal about having a board as such and with all the formalities that are involved in having a board? This question assumed more significance in my mind when one looked at the performance or the stories about how many companies' boards were really functioning not only in the private sector but perhaps even more importantly in the public sector.

Board is an expensive proposition and it costs a lot of money. Having said that, since the boards have survived for almost 200 years, there must be some purpose behind them. If we reconcile to that principle, we ought to have a board of people who will oversee, control and contribute to the functioning of an operation. That seems fair. Now, if they have a responsibility and power to carry out that responsibility, they must be accountable too. Then, who are they accountable to? If they are not accountable to anybody else, at least they should be accountable to themselves. They should reflect on what has been done in the last 12 months, in the last 6 months, or in the last 5 years they have been on the board. I think that itself is a good enough reason for having an evaluation of the performance of a board. We do that all the time for everybody other than the board members. Every employee gets his/ her performance evaluated and why not board members; they also have a job to do. Whether the job is well done or not, is something definitely worth looking at.

The second part of it – which Chris was emphasizing and I entirely agree with him – is that if there is a developmental aspect to this, everybody wants to do something worthwhile. Thomas Becket has said if a job is worth doing it, it is worth doing well; if it is not worth doing well, then it is not worth doing at all, and then why are you doing it. So from that point of view, I think it makes sense to see at the end of the year, how other people evaluate us in terms of our performance.

Board is such a secretive institution that everything is confidential. So who can evaluate the board? I think it is only they themselves who can evaluate the board and the directors. When we talk about external consultants coming in and evaluating, I tend to look at them as facilitators for board evaluation, and not evaluators themselves. If I am asked to go and sit to evaluate a board in a pharmaceutical company, what do I know about them and their business and, if I do not have that knowledge, how can I do that evaluation. It is they themselves who have to peer evaluate themselves. Yes, external consultants can help by telling them what happens elsewhere These are the things that people have been looking at, would you like to look at these things? The consultant can be a facilitator, who can be a catalyst to improve the processes of board evaluation. However, it is only the board and its individual members as a group who can evaluate themselves. So, I think the philosophy is: can I learn something from others in my group; whether there are any areas where I can improve myself and thereby be a better member of that group rather than be a free rider.

Nawshir Mirza: Deepak would you like to add to that?

Deepak Satwalekar: I think Bala asked why the board should be evaluated. The board should be evaluated for the reasons that he gave saying that as a board member, we sit and evaluate just about everybody else. A lot of us have been in executive roles where we have been evaluated. But as soon as we get on to the board, either as independent directors or as non-executive directors, we believe we are above the law and we don't need to be evaluated. I think that is a big mistake. The only justification that I can find for directors not being evaluated is if directors believe that they are not responsible for delivering anything. But if they are required to deliver something, whether it is governance or giving advice actively or otherwise or contribute to strategy, then I think the role that they have to play is critical and therefore, they need to be evaluated.

I think there is this resistance in India. Why? I think it is a huge cultural issue and this is something which Chris alluded to in his presentation. The Indian society is not a confrontational society. So in a board meeting, it's unlikely that someone is going to speak up and say something contrary to a statement that the Chairman has already made. The Chairman's statement is taken as gospel truth and it doesn't get debated or discussed at all and that is one of the reasons. The other reason is that people ask, "hey you invited me on to your board, now what do you want to evaluate me for? I didn't come and seek to be on your board."

I think those days have gone when you were looking for iconic leaders to come on to the board. I think the dynamics of companies themselves have undergone such rapid changes that the attributes and the skills that you want from independent directors are changing, and that is one of the things which an evaluation will throw up.

Is the evaluation in the first year in India going to give you the desired results? I don't think so. I think it's going to be a work-in-progress for a few years. Is it done the right way? I think evaluation in that sense is a wrong term. I think if we were to use this as a development tool where this whole thing is being done to improve the effectiveness of boards and the efficiency with which we conduct board meetings, then there is a strong possibility that there will be a buy-in. The other way you can get the buy-in is really discussing it with the whole board over a longer period of time. I know in one of the boards we have discussed this over a nine month period and we were going to do the evaluation through a questionnaire . The questionnaire was circulated to all the directors for their comments and suggestions. I think getting a buy-in from everyone, saying that may be this is the way to do it, is important. And I think if the net result of that is going to be an improvement in the way we perform as a board, it's a huge positive. I think there was a reference made to it by one of the speakers earlier in this seminar. My experience in this one exercise has been that board members have behaved with tremendous maturity;irrespective of what their personal feelings and relations have been, they have rated their colleagues impartially on the various attributes that were spelt out.

The other thing which can contribute to significant improvement in board functioning and board evaluation is the requirement that independent directors should meet separately once a year. I don't know why they said once a year because in some of the boards, I found it very useful when we met every quarter before the board meeting or after the board meeting. It's not essential that you meet before the board meeting because what you discuss is not necessarily going to be acted on in that board meeting. And whenever I have suggested this, there have been lots of opposition to it, saying "We have such an open board where we can discuss everything. There are no secrets."

So why do you want the independent directors to meet separately? There are many instances when they finally gave in and agreed to meet for 15 minutes. However, eventually, those meetings went on for two hours, because everybody then wanted to say something about it. And then at the end of the meeting -- that I have had in couple of boards -- you come up with 7 or 8 suggestions, saying that these are items that we want to put on the board agenda. Let's not do it all in one meeting, instead let's sequence it for the year. And let's get a board calendar drawn out and say these are items which we want to deep dive on so that we have a better understanding on them.

Nawshir Mirza: Yes; Deepak, I think the reason is, is this going to be another power center? The promoters or management often feel a little threatened that what these guys are discussing behind those closed doors. So, there is a certain concern on that.

Chris, you have done evaluation for so long. We have got a positive picture on board evaluation. In your experience, where have things gone wrong and what can we learn from those, or where could they go wrong? Maybe you haven't seen them go wrong. But what should we do to avoid this whole evaluation process running into the sand.

Chris Pierce: I think the very fact that time is being made available to the board to think about their processes, about their tasks, about how to improve things, is a step in the right direction. I think one of the questions that you can legitimately ask, in terms of the board evaluation, to the independent directors and the other non-executive directors is whether you had enough time for the board meeting discussions. What would you want to discuss in an additional hour? What has been squeezed out over the years on a regular basis? What are the things that are worrying you that perhaps the board hasn't looked at?

The question I would ask when I am doing evaluation of individual directors is if you had not been at the board in any of the board meetings the last year, what would have been the difference? Would there have been any difference? How had you actually added value and made a difference to board proceedings? If you as an individual director can't identify where you have made a difference, then there is something wrong with the board process that is taking place; either you are not the right person to be on the board or the board is not maximizing the talents, the qualities and the competencies that you have on the board.

So I would suggest that you think in terms of where you have added value to the board in the last year. Where have you just agreed with the Chairman? Where have you just agreed with the CEO or simply voted in favor of something? Where have you made a difference? Where have you been influential in making a significant difference to the board and its proceedings? This is what board evaluation is all about: looking at effectiveness, looking at making a difference to performance of the company.

Nawshir Mirza: I think there is an excellent single self-evaluation question. Whatever little experience I have had of this, somebody up there wanted to know whether people who have done self-evaluation, have rated themselves far higher than their peers have rated them. In such cases, I think, the feedback one receives through self-evaluation involves an exaggerated opinion of his own contribution.

Chris Pierce: I have got a very brief example which is based on research on South African Chairmen. Typically the Chairmen were consistently evaluating their performance very highly. However, when you got the rest of the board to evaluate the chairman on the same criteria, the chairman was typically evaluated at a much lower level! So the chairman who thought that everything was rosy, begins to wonder why the rest of the board thinking privately and confidentially is of the view that the board could be improved. I think the board evaluation process is an opportunity to see whether or not the chairman is realistic on how the board is operating.

Nawshir Mirza: I have heard two arguments against this board evaluation. One, Deepak mentioned that you invited me and so why are you evaluating me? Of course my comment to those individuals, is that you have completely misunderstood your role because your role is to be independent and indeed to represent the people who didn't invite you to the board. You are not supposed to be representing the person who invited you. So using this as the measure of why you should remain on that board, you're your question is completely off-track.

The other argument made is, it will destroy the atmosphere and congeniality within the board. When peer evaluation is done, we will all end up fighting with each other. Well, I don't know if there is truth in that or not.

Bala, can you provide your take on what you think should be done to reduce the probability of something like that happening. If you have people with egos who evaluate themselves at near perfect and their peers think they are only half as good, you certainly are setting up for some amount of distress within the board room.

N. Balasubramanian: My experience tells me that when people are asked to self-evaluate themselves,by and large I have found they are much tougher on themselves than what others are. That is one point.

The second point which I want to make is when you have 10 members in a board, if 9 members are being evaluated by one then you get 9 different evaluations. That is one set of evaluation results you get. The other one is that let us take out the independent directors and see what independent directors feel about the rest of the board members. And then take the whole board and see what they think about the independent directors. The criteria are the same but you use the inputs to analyze it from different angles.

Generally, I found that when executive directors evaluate other executive directors or non-independent directors, they are very tough on them. And when the same non-independent directors are evaluated by a group of independent directors in the same company and the same year, I found them to be much more generous in evaluating them. It throws up different possibilities as to what could be the reason for this.

Since a point was made that the ownership structure in India is largely concentrated, it's quite likely that the owner, i.e. the executive manager, understandably is very tough on his subordinates or people who are non-executive, non-independent directors, because he wants value for money. He thinks that I am getting you on the board for what reason. So they are much tougher whereas the same people when they are evaluated by independent directors, they have nothing to lose. So they are perhaps taking a very balanced objective view.

Nawshir Mirza: I think, Bala, you used balanced view as a euphemism, you don't mean balanced view.

If we can now move on to the legal aspects, Cyril, you know there has been a fair amount of discussion -- in the early part in your session and in Ryan's session -- on compensation of executive directors. Now we have, as required by the law, the independent directors have to go-off and sit together and assess the performance of the executive directors. I will leave out Chairman and other nominee directors for the present and focus only on executive directors. The NRC is also to evaluate the same lot and to determine what their compensation should be. Now, my own experience is that a thorough NRC spends a fair amount of time at the beginning of the year determining what are the KRAs, the targets, the balance score card, the way you are going to access your MD and your finance director and so on. You do an interim mid-year appraisal and give those individuals feedback from the NRC. At the end of the year, you do an assessment and then determine what kind of bonus the man or the woman should receive.

The independent directors' group meets once a year and it is not involved in setting the goals. It perhaps doesn't even have the understanding, or the depth to which it needs to go to make the kind of assessment the NRC does. So is it necessary that the independent directors do their assessment and the NRC also gives its feedback? Then, should the independent directors' assessment alone determine what bonus is paid to the executive management? Remember, the independent directors' group can override the NRC's opinions. So if they think this guy is excellent, should you give him a good bonus? Or can the NRCcan say no, we actually looked at detailed performance against several targets and we have come to a different conclusion.

Cyril Shroff: I think there is a flaw in the process because ultimately the data is comingfrom the depths of the company. The independent directors really have no independent basis. But it does probably provide a mechanism where some amount of bias is removed and there is perhaps an overview of comparing performance with reference to some general goals that might have been fixed in the beginning. So it's an approximate process and I don't think it's a full proof process which will always deliver this sort of right outcome. But it has a sort of self-correcting mechanism which will ensure that there is no abuse of the compensation system in the company. So to that extent, I think, it's a good blunt instrument to use but it's not nuanced enough to deliver specific outcomes.

Nawshir Mirza: So it should influence the NRC's decision but it should not be the sole determinant?

Cyril Shroff: Correct. Because does it have the right wherewithal to make that precise assessment? It can only be done inside the company.

Deepak Satwalekar: I would put it, the other way round. I think a well-functioning NRC, as you said very rightly, will at the beginning of the year have the KRA spelt out for all the executive directors.

Possibly some companies have mid-year reviews, some may not have, and at the end of the year, there is an assessment against those KRAs. I think there is much greater depth in the analysis of the evaluation that is done by the NRC because that is what it is charged with in its charter. I think, the input that they can give is much more valuable and unbiased because it is based on data. The independent directors at best can say that this guy presents well but the comments they make will not be backed by data. At the end of the day, you want to try and remove as much of the personal biases that you can, in making the decisions.

Cyril Shroff: That is the bias correction mechanism.

Nawshir Mirza: A good point. What you are saying is the NRC should indeed first do the assessment and that can be provided to the independent directors' meeting.

Nawshir Mirza: Bala, you want to say something?

N. Balasubramanian: Just one comment. When it comes to executive directors, I include CEOs and Managing Directors. I see their performance evaluation in two parts – one part is an executive which is where you have your targets set by the board and so on and so forth. There I think the decision of the NRC should be really final. There is a second cap that these ladies and gentlemen who are executive wear; that is the role of a board member, like any other non-executive director. After all, those very same Managing Directors also sit as non-executive independent directors on other boards. So, in the same way, they have a supplementary role to play as a board member in the company where they are Managing Directors; the traditional role with duties of care, loyalty and so on and so forth. So I think they should be evaluated on that basis like any other director and these two roles should be reconciled.

Nawshir Mirza: Yes. I agree entirely that ultimately it's the board that approves it, but in reality what happens is that most boards accept the NRC's recommendation unless there is a major reason not to do so. Did you have a question?

Participant: Yes. So we are all here because board evaluation is part of corporate governance. Chris this question is for you, let's study two companies. At the Apple company, you had an entrepreneur who created one of the greatest companies and he decides to hire somebody from the Pepsi company. The guy is the chairman and he comes on board. The private equity guys had put money in the game. So it was in their interest that financially the company should do well. Yet they made a wrong call, they asked Steve Jobs to go. Company goes down the tubes, they decide to get Steve Jobs back, Steve decides to get everybody off the board and takes full control of the company.

We can follow all the forms and do all the check list and other things, but this guy had intuition. He believed in himself, he believed in guts and ended up creating world's most valuable company. If you read his book, you may not agree with lot of things, but he ended up creating wealth. So that is one question, where do you fit intuition in to this framework?

On the other side, you look at one of the world's most admired company called General Electric. Why is it that in 10 years there has not been a change either in the chairman or the CEO of one of the world's most admired company? What's your take?

Chris Pierce: Okay, you have made a number of comments there. Firstly in terms of Apple,I think it is a very good example of a visionary organization. When I did my presentation, I identified four main tasks of the board. The first task was foresight which included vision, and the vision of Steve Jobs was "to dent the universe" with his products. So it was quite ambitious in terms of the Mac, in terms of iPod, in terms of iPad, the iWatch and so on. These are fairly iconic products with very clear vision and high levels of product development. Apple is a very forward-looking organization. There is a role for the board to be entrepreneurial and visionary and to support the Chief Executive like that. At times it may not be easy to do this!

You gave the example of GE, having problems in terms of succession after Jack Welch left. Executive directors have got two hats or two roles: One is the executive role to implement what the board has decided and another is the role as a director on the board looking after the interest of the companies. Now one of my colleagues, Professor Bob Garrett, has written quite extensively on this and suggests a radical solution. If you are an executive director, Bob Garrett recommends you have two contracts – one a contract to be employed as an executive manager and another contract which is a director's contract for services and is very similar to the non-executive director's letter of appointment.

By making two separate contracts, you are saying there are two different jobs. There are two different roles for which you are going to be evaluated. One is on your implementation role as part of the management contract. But when you are on the board, you are going to be evaluated in the same sort of way as all of the non-executive directors in terms of your contribution, your behavior, your impact and your general role of supplying information to the non-executive directors and having a rigorous debate and discussion.

Nawshir Mirza: If I can bring the conversation back to remuneration. Note that Section 178(4) doesn't make a distinction between executive and non-executive directors. It says that for *all* directors the remuneration should consist of a fixed and a variable component and should be based on short and long term performance. Now I am not talking of executive directors where these kinds of measures are regularly applied; but since the Act has made no distinction, a plain reading would seem to conclude that even for non-executive directors, remuneration should be based on short and long-term performance and have a fixed and variable component.

Let me take the second part first - the fixed and variable component. There was a fair amount of discussion in this room earlier and people talked about sitting fees but the variable component is the commission and I don't know why most people in the room seem to be oblivious to the fact. I am not aware of companies where there is a distinction in sitting fees. So anyone who turns up for the meeting receives the same fee. Well, if they are Chairmen, they get something more sometimes. In case of commissions, there are many companies which give the same commission to all the non-executive directors. But there are a number of companies who have made a distinction in the commission paid to non-executive directors.

Cyril Shroff: At one level it would seem that the commission is a variable component and from my experience of seeing a few boards, I think even now it's a very inexact science. So the variable portion sometimes depends on the number of meetings you attend or may be the number of sub-committees you are on. So it's not really a qualitative instrument which may just be utilized to reward qualitative performance. It's still more mathematical in terms of the level of attendance and the presumption that contributions were made at these meetings.

Nawshir Mirza: It's only deferred sitting fee then?

Cyril Shroff: It is actually just like deferred sitting fee but I think this is changing and Ithink part of the reason why it's changing is due to the changing nature of conversations in boards. I think you are having the beginning of strategy discussions; you are having the beginning of succession related discussions and that is where I think a lot of the real value comes in terms of getting boards to play their role.

I think I will go back to Prof. Bala's initial question of why boards should be there in the first place. I think this is one of the aspects which we have probably missed at a conscious level. But it is increasingly becoming relevant that the board is actually a support group. It's actually a great to have a set of people around you in terms of the kind of ideas that they bring and the kind of outreach you can have in society or with regulators or with the market place.

The realization that your independent director and your board communities are actually a support, I think, that is changing as well, and that is partly entering the reward discussion as well.

The conversation in terms of evaluating all of that qualitative input that you bring in, translating into remuneration-- that connection has not been made.

But I have seen Deepak's action on a couple of boards and I think part of what he does is he keeps the company out of risk in so many situations. I have seen him question and push back on decisions which the management wants to implement and that is real value that I have seen him add, and I am sure there are lot of people in this room who do the same. But the evaluation of that qualitative input and treating them as broader resources --as people who come with ideas and solutions-- and not just as a check and balance is one chain that has not received enough weightage.

Nawshir Mirza: And Cyril regarding the short versus long term performance, I have still not been able to comprehend how in the context of non-executive directors, that can be used. First of all, whose performance, are we considering? Is it companies' or their own and if it's their own, then what's the meaning of long term performance?

Cyril Shroff: Long term performance, I guess, would be strategy, succession, broader macro issues. But, it is very hard to evaluate short term performance for non-executive directors. What do you evaluate them on? Number of meetings attended?

Nawshir Mirza: I think it's only if they have contributed in the meeting.

Cyril Shroff: Yes, but that is usually if it's more strategic, it's more long term by definition.

Nawshir Mirza: Yes, Deepak you have any idea on this?

Deepak Satwalekar: I think this is an idea and a concept that needs to get socialized amongst directors. You cannot issue an executive order and say, I am going to now start linking your remuneration - to your performance --whether short term or long term.

I think it's too much of a shock treatment in India! It's not going to happen this year or the next year. But I think if boards engage in this conversation saying that this is what we would like to do, then there may be a bit of a ripple in this congeniality that we have built up. I think at the board just being congenial and convivial is not necessarily a good thing. I think we need to welcome differences in opinion, and if you are not going to get it, then have just one independent director and listen to him. Don't force it, because if you do it in a ham-handed manner you are going to get many more people opposing it than supporting it. This can be done in a board meeting or even offline.

Cyril Shroff: If you treat the board members as part of your sort of broader support team you get the best out of the board. But if you treat them as opponents, then you don't get the best.

Nawshir Mirza: I can share with you all my experiences from one of the group companies where I sit on the board. The board of one of those companies of that group which has had this linking of performance to commissions for over 10 years and I will tell you briefly how this process works. The NRC determines every year what will be the pool of commission for that year to be distributed to the non-executive directors. We have reference to what was paid last year and what is being paid by some of the other companies of equivalent size and effort. So, you determine a number and having determined that number, what that company does is it then breaks it into three parts. The first 40% of that number is distributed purely on the basis of attendance; so it is a deferred sitting fee. The next 40% is distributed based on the NRC, as a body, assessing the contribution of every non-executive director in meetings, board committees, etc. So they do a fair amount of discussion and they give a weightage to each of the directors; multiply that by the attendance and you get a weightage of that. So the second 40% is distributed on this contribution multiplied by attendance basis in meetings. And the last 20% is the kind of thing Cyril was referring to, what is the contribution that the directors have made outside of the meeting. Now for that 20%, the NRC is not aware of what is the contribution each of their colleagues has made outside of meetings. The only people who are aware of this are the executive management. So the chairman of the NRC spends time with the top executive management, the CEO, the CFO, maybe somebody else and makes an assessment and identifies three or four of the directors, because the idea is not to distribute this to everyone. Everyone is expected to do a little bit of work outside of the meetings. It is not enough to say, I went and visited a factory where none of my colleagues went. You do not get anything for that. But if you have made consistent contribution outside then that assessment by executive management comes back in the NRC. If concurrence is achieved by the NRC members, then the last 20% is distributed on that basis. So there are companies which have now for over 10 years been distributing their commissions based on the assessment of the performance, not of the company, but of each individual director inside and outside the boardroom.

So I mentioned this to let you know that there is a variable component too. What we heard from Ryan's presentation is there is no other country which seems to be doing it. So there are some things which we are leading the world in; at least some of the companies are leading the world in.

Well, I will stop here. Any comments now on this whole compensation thing before we move away from this topic. Any questions?

Participant: I do not want to talk on compensation but on something entirely different which incidentally has not figured right through the evening. So what I was mentioning was the quality of the minutes of meetings. There are certain boards, which mention that that Mr. A said this, Mr. B said this, so and so said this. There are certain other boards which just mention without giving anybody's name on it and there are certain boards which make a summary of that and just mention it.

What I am trying to say is that when the minutes are given, that is one of the ways which shows a member's participation and his contribution to the meeting. What I am asking is why should evaluation be merely a perception of a person on how he is participating, when there is data to prove that he/she has participated and how. So the quality of minutes, the method in which minutes are taken, I think this is something which needs to be looked into.

Nawshir Mirza: Well, that is an excellent point. Cyril, if I can ask you to take that question. But ifI can expand that question to say there is also a fear that these are discoverable documents. So, many companies are taking the view that the documentation in the minutes of the different meetings and so on should only be of the process and it should not be of specific conclusions. So I am adding to what she said that the minutes of the meeting need only say what the process was and that they evaluated every individual, the committees and so on and so forth; and *not* what the outcome was. Would that meet the requirements of law?

Just to add to what Ranjana is asking is that whether the minutes should invariably mention who said what, because a lot of who said what is more sound than light. You just talk for the heck of talking and so the minutes get filled up with who said what. There is a risk of that. Or did anyone say anything that changed the course of what the board was going to do which needs to be captured in the minutes.

Cyril Shroff: I think there are two issues here, one is the issue of liability and secondly let's be clear on who is writing the minutes. It is not the independent director who is making these points. It is either the company secretary or somebody else on the secretarial department with the chairman's signature. Consequently, I do not think we should let that enter into the discussion really in terms of evaluation of using it as a data point. In hindsight on whether you made a particular point at a meeting or not, that is a factor which is largely outside your control and you only get a chance to look at it next time around when the draft minutes come to you for approval.

I think the question of whether boards or individual directors are qualitatively participating and making contribution will have to be judged outside of what is the record keeping in the minutes. It will really have to be evaluated from people's impressions, chairman's impression, and other directors' impression of how the conversation proceeded in the meeting..

From a compensation point of view, I think it is irrelevant. It may generally help if your name is in the minutes 20 times in the year. It is at least a good evidence that yes you have been an active director, but I do not think it really makes a difference when there is a final evaluation or whether you are an effective director or not.

Participant: So the first question is that today when we are talking about a mandated framework for Board evaluation, I want to get a sense of how evolved a framework already exists or precedes the regime of formal, mandated board evaluation in the form of setting the expectations and KRAs of, for example, the boards and committees in the Indian context?

The second question I have is that when we are looking at an evaluation framework is it the arithmetic mean to look at a numerical evaluation framework or is there a set of zero-one questions which shows whether or not we have achieved what we set out to achieve in the year. And if it is a default numerical framework then what kind of safeguards can you use to ensure that a default number three or number four option does not exist. Because, people typically give you either three or four if you do not have any serious compliance issues one way or another, right?

So the point is that if the numerical framework is the one that is normally used then what are some simple effective ways to ensure that people just do not take default options of three and four and finish off that evaluation. So these are just a couple of questions.

Chris Pierce: Well I will begin by answering these questions but I am sure my colleagues will have much to add. The first thing I would say is that there has to be buy-in from every individual concerned for it to be an effective process. So, if you are going down an evaluation route, I would normally recommend that the chairman initiate the discussion in terms of How should we do it? Should we do it as a discussion in the board? Should we do it with questionnaires? Should we do it with interviews? And there should be a general agreement from the board on the best way forward. If questionnaires are to be used as one of the routes, then I would normally recommend a drafting to take place and the questionnaire to be shown to all of the individuals before it is circulated. All of the directors should understand why certain questions are being asked and whether or not it is a fair method of evaluation.

Now if you are going down a questionnaire route, there is atendency to use objective criteria: yes or no, 1 to 5 and so on. Some of these objective criteria actually move into pseudo-scientific area of what does a 4.2 mean and a 3.7 mean and so on. It gives a quantifiable status that it does not actually deserve. I believe that questionnaires can be used in terms of much more open-ended questions. For example, as an independent director you may well have been on other boards. How do the other boards' performance compare with the existing board that you are on? Are there any particular strengths that these boards have compared with your current board? Are there any particular development areas or anything else we can learn from these experiences else where? There can be many such open-ended questions like these which can provide very valuable information to the chairman and to the board members that can be used. So do not just think about questionnaires as quantifiable, scientific and objective, there is nothing wrong with open-ended questions, in my opinion. If you have only got a board of 10-12 members, it is a relatively easy thing to analyze open-ended questions.

Nawshir Mirza: Bala, you want to add to it?

N. Balasubramanian: Chitra, I understand the first question that you asked is how do you set the expectation against which you are going to assess the performance? I think it is a great question because our practice in India has been to get directors on board, more or less on grounds of their individual popularity or whatever perceived value that they bring to the board and so on and so forth. There are two things which I would suggest may happen in future. One is to look at what a director is expected to do. Anyway, as a director you have the duty of care, and you have duty of loyalty to the company. Care would mean: are you adequately briefed about your company, about your industry; are you attending meetings; are you participating in meetings and so on. So, that is one part of it.

But the other part of it is based on the resource dependent theory. When you ask somebody to join a board, the question to ask is what he or she brings to the table and what resource is that person adding to your board's skill sets. In that case if you are thinking of somebody bringing some expert knowledge and wisdom relating to your industry or if you think the person is highly networked, highly connected, he is going to get more business or he can wadethrough bureaucracy and get permissions more quickly and less expensively, then those are the things you begin to expect from that individual. And I just want to add a word of caution. This board and individual directors' evaluation should always be seen with specific reference to a particular board. Somebody maybe a fantastic director in company A and the same individual may not be as great in company B. It may be a question of complete misfit. He brings something to the table, your requirements are different but you are getting that person because he is already well-known; so it is nice to have him or her on the board. So in those cases I think sooner or later the gaps would surface.

Deepak Satwalekar: I think on a very broad basis, every company was required to issue an appointment letter. Now what the companies did with that framing of the appointment letter is a different matter. They put it in very broad terms. But I do not think anyone would put very specific things,such as you will open up doors for me, you will increase my sales, you will look at my HR; it does not happen. By and large, I think anyone joining a board would know what his responsibilities are. How you engage in it is a different thing.

There has to be a complete buy-in from the board from the very beginning to a view that it will not engage in tick-the-box exercise. However imperfect our assessments would be, we will start the evolutionary process for a formal individual director and board evaluation. We will start that journey this year and progress along it.

At the end of these specific questions, there can be open-ended questions, such as what are the three things that you would like to suggest that the board should do to improve its efficiency or what are the three things that you would like to do to improve your contribution to the board. And I think it is important that people begin to think on these issues and my experience over here has been excellent. People have really thought, applied their mind, and done it.

Nawshir Mirza: I will tell you my experience from two of the boards I am on. We had quite a simple thing, and this is drawn from how employees are evaluated. We asked every member of the board to just evaluate each of their colleagues on 3 criteria – a) what each individual does well and should hopefully continue doing, b) where they could improve and c) what they should stop doing. And we got some good inputs on that. Indeed, I will tell you, in one of the boards we got an input saying the chairman should take care of his health which I think is a profound thing because it is important for the chairman of the board to be a healthy individual. So all sorts of inputs came in.

And I want to make one more statement about evaluating people. I draw my inspiration from the hierarchy of knowledge. You have data, information, knowledge, and wisdom and when against that you put the hierarchy in the company you go up the line and indeed the top executive management is expected to have the knowledge. But what do you want from your board? It does not depend on which company you are on: from your board you want wisdom. Why do you have directors from the outside? You have them because they are able to bring foresight, and foresight requires wisdom. Remunerate them for their wisdom. And when you reflect back, it is wisdom that actually changes the course of companies or board decisions. That is what you are measured for.

Participant: Sometimes we tend to spend more time on evaluation of individual directors but we should also focus on the evaluation of the board as a whole, whether the board is effective or not. The whole objective of evaluation is how we can make our boards more effective; how we can improve the functioning of the board. So apart from individual directors' evaluation, the board of directors as a body should focus on how effective they are, how much time they are focusing on different items on the operations, on the strategy, on regulatory aspect, on marketing; are they focusing adequate time on different areas; are they ignoring certain areas altogether since some items do not come to the discussion of the board at all during the whole year.

Nawshir Mirza: Quite right, and the same on committees too.

So let me now conclude this panel discussion. We had far too much focus on individual evaluations but I think there was a reason for that. Most people are not so uncomfortable with evaluation of the full board and committees. They are all pretty okay with that. It is when you come to individual evaluations that there has been the maximum of distress. And so I think I cannot blame my panel for that, I decided to keep a focus upon that. If next time we meet and that lasts the entire day, we will certainly cover a lot more topics.

I think we started with Chris saying that we need to look at this positively, we need to embrace it. And I agree with that because of my own experience of companies where we have evaluated board performance and I think it has been of enormous value. Perhaps it is the first time we are doing individual evaluations and we are still waiting for individual feedbacks to be given because I think there are some directors who have to be told about some things that they need to stop doing. Many of us, when we get together outside the boardroom, will say this guy has got to stop doing this or stop doing that, but nobody has told them that. And so it is difficult for the board chairperson or the NRC chairman or the two of them sitting together to give this feedback to those particular individuals and say, you've got to stop doing this.

Also I think there is enormous value in every board recognizing how you can improve the board performance, which everyone agrees, but has never been focused on. And this indeed gives an action plan to the chairman and the management to improve the board performance next year.

I thank all of you for being so patient in listening to this session and participating in it and to my colleagues on this panel who have made fantastic contributions.

Thank you all.

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