Preparing Boards For the 21st Century
(In collaboration with Department of Public Enterprise, GoI, New Delhi)

By
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Presentation Path

- Objectives
- Public Enterprise and Private Sector Boards
- Functions
- Selection Process
- Types of Boards
- Employee or Labour Representation
- Recommendations
- Tenure
- Remuneration of Board Members
- Legal and Regulatory Framework
- Suggestions
- Mishra’s Approach for Board Excellence
- Value Driven Boards
Objectives

- To ensure that a PE is managed properly at the technocratic level to secure efficient resource use and profitability
- Conform that the society’s objectives and values, and
- Achieve a proper balance among various interest groups.
Public Enterprise and Private Sector Boards

- Appointed by Government and not by shareholders
- Allegiance to political entity
- Governed by special provisions in Indian Constitution and Company Act
Control in PE Boards

Board of Directors Control

Governance Control

High

Low
Government Sector Boards

The company appoints and delegates powers to the MD of the subsidiary company. It also appoints the other directors.

The Managing Director decides what powers he can devolve to the Subsidiary Board.
Private Sector Boards

The company appoints and delegates powers to the MD of the subsidiary company; it also appoints the other directors.

The Managing Director decides what powers he can devolve to the Subsidiary Board.
Functions

- Trusteeship
  - Efficient operation satisfying stakeholders

- Entrepreneurial
  - Efficient Decision making-contriving, discovering and promoting innovation
  - Executive: Carrying out policies

- Four Categories of functions
  - Establishment of basic policies including questions of general strategy
  - Decisions on major financial matters
  - Selection of key personnel and
  - Receiving reports on the working of the enterprise and passing judgment upon them

- Mishra’s mix
  - Providing strategic direction and values
  - Approval of planning
  - Monitoring and control of performance
  - Ensuring organizational capability
  - Awareness and compliance with legal responsibility
Selection Process

- PESB: Full-Time Chairman, Three Full-Time members
- Ministry
- ACC
Types of Boards

- Functional
- Policy
- Mixed
Employee or Labour Representation

- Consumer
- Various Academic Disciplines
- Various Expertise

Qualifications for Appointment

- Negative Qualifications
  - ‘Best man for the job’
Recommendations

- Krishna Menon Committee
- ARC
- Jha Commission
- Arjun Sengupta Commission
Mr. Henri Fayol, “Much time is needed indeed to get to know men and things in a large concern in order to be in a position to decide on a plan of action, to gain confidence in oneself, and inspire it in others. Hence it has often been recorded that a mediocre manager who stays is infinitely preferable to outstanding managers who merely come and go.”

- Career appointment
- Appointment till further orders
- Tenure as per letter of appointment
- Tenure of part-time directors
- Size of the Board
  - > 1 or < 8
  - > 8 or < 15
  - 15 and above
## Remuneration of Board Members

<table>
<thead>
<tr>
<th>Category</th>
<th>Range</th>
</tr>
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<tbody>
<tr>
<td>Category-A</td>
<td>Rs.27,750-750-31,500</td>
</tr>
<tr>
<td>Category-B</td>
<td>Rs.25,750-650-30,950</td>
</tr>
<tr>
<td>Category-C</td>
<td>Rs.22,500-600-27,300</td>
</tr>
<tr>
<td>Category-D</td>
<td>Rs.20,500-500-25,000</td>
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</tbody>
</table>
Laws/Regulations governing Composition of BoD

- Currently composition not specified under Companies Act excepting that
  - Public Company: minimum 3, maximum 12 directors
  - Private company: minimum 2, maximum 12 directors

- Proposed changes under Companies Amendment Bill, 2003 [Sec.252(1)]
  - Public Company: minimum 7 directors (paid up capital >= Rs.5 Cr or turnover >= Rs.50 Cr)
    - maximum 15 without Central Govt. approval
    - majority of them shall be independent
    - women directors shall be prescribed

- New guidelines under Listing Agreement, Clause 49
  - Non Executive Directors > 50% of the Board
  - Non Executive Chairman: 1/3 of the Board should comprise of Independent Directors
  - Executive Chairman: 1/2 of the Board should comprise of Independent Directors
Qualifications/Disqualifications of Directors

- **Companies Act:**
  - does not prescribe any educational qualification for a director.

- **Clause 49 of Listing Agreement (w.e.f. 31st March 2004):**
  - Audit Committee members shall be *financially literate*, and at least one member shall have *accounting or related financial management expertise*.

- **Disqualification of Directors U/s 274(1) of the Companies Act.**
  - has not filed the annual account and annual return for any continuous three financial years commencing on and after 1.04.99 or
  - has failed to repay its deposit or interest thereon on due date or redeemed its debenture on due date or pay dividend and such failure continues for one year or more.

- **Retirement age of 75 years proposed U/s 280, as per the Amendment Bill.**
Typical Composition of Board of Directors

- Executive or Non Executive Chairman
- Executive Directors
- Non Executive Directors – At least 50%
- Independent Directors
  - Amendment Bill 2003: majority of directors to be independent
  - Clause 49: Min. 50% from 1 January 2006

- Nominee Directors:
  - Not Independent as per Companies Amendment Bill
  - Independent Director as per clause 49 of Listing Agreement

- Women Directors
  - As may be prescribed under Companies Amendment Bill, 2003

- Reservation being talked about
  - Employee/Worker Director
  - Minority Shareholders Director
Committees of the Board

- Audit Committee
  - comprising of minimum 3 Non Executive Directors
  - majority of them to be Independent Directors

- Shareholders / Investors Grievance Committee, with Non-Executive Director as Chairman

- Remuneration Committee (Non mandatory)
  - minimum 3 Non Executive Directors
  - chairman needs to be an Independent Director
Essential qualities of Board of Directors

- Individual directors should have
  - Highest standards of personal integrity
  - Excellent judgment and an ability to make informed decisions within time constraints
  - Professional credibility
  - Capacity to think strategically
  - Demonstrate sound communication skills
  - Sound interpersonal skills
  - Team orientation

- The board, as a whole should ideally have
  - Strategic thinking
  - Analytical skills, appropriate professional experience
  - Effective communication skills
  - Knowledge of the organization and the industry

Contd…..
Board should have a mix of Directors with skills in

- Law
- Finance, including accounting expertise
- Marketing
- Operations relevant to the Company’s activities including other key industries in which the company operates
- Corporate Governance
- Human Resources
- Risk Management
- Merger and Acquisitions
- Other specific matters relevant to the company
## Independent Director – Definition

<table>
<thead>
<tr>
<th>Under Companies Amendment Bill, 2003</th>
<th>As per Clause 49 of Listing Agreement (effective 31.03.04)</th>
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<tr>
<td>Should not be relative of Chairman or MD or Whole Time Director or Secretary</td>
<td>Should not be related to promoters or management at the Board level or at one level below the Board</td>
</tr>
<tr>
<td>Should not have been an auditor, internal auditor or legal advisor or consultant of the company during any of the 3 proceeding financial years</td>
<td>Should not have been a partner or an executive of the statutory audit firm or an internal audit firm or legal and consultancy firm, during last 3 years</td>
</tr>
<tr>
<td>Should not have been a supplier, vendor or customer</td>
<td>Should not have been a supplier, service provider or customer of the company</td>
</tr>
<tr>
<td>Should not hold 2% or more shares of the company, presently or in past</td>
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</tr>
<tr>
<td>Should not have hold any position in the Company, i.e. ex-employee</td>
<td>Should not have been an executive of the Company in the immediately proceeding 3 financial years</td>
</tr>
<tr>
<td>Should not have been a Director for continuous period of 9 years</td>
<td>Appointment of Non Executive Director beyond continuous period of 9 years not permissible</td>
</tr>
<tr>
<td>Nominee Directors of Bank or FIs will <strong>not</strong> be considered as Independent Directors</td>
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Sitting Fees and Managerial Remuneration

- **Sitting Fees [Sec.310]:**
  - Rs.20,000 per meeting (for companies with paid up capital $\geq$ Rs.10 Cr or Turnover $\geq$ Rs.50 Cr)
  - Rs.10,000 per meeting (for other Companies)

- **Commission to NEDs [Sec. 309]:**
  - Not to exceed 1\% of Net Profits if the Company has a MD or WTD or a Manager
  - Not to exceed 3\% of Net Profits, in any other case

Contd....
- Remuneration to Executive Directors [Schedule XIII]:
  - Shall not exceed 5% of Net Profit if only one ED in the board
    - Shall not exceed 10% in aggregate if there is more than one ED
    - In case of No profits or inadequate profits, all inclusive remuneration should not
      - exceed Rs.2 lac p.m.
      - Different slabs based on effective capital of the company
  - Remuneration in excess of ceiling can be paid only with Central Govt. approval
  - Compensation for loss of office [Sec.318]:
    - Admissible for Managing or Whole Time Directors
    - (limited to remuneration of un-expired period or 3 yrs, whichever is less).
Key Issues on Composition of Board

- Retirement age of 75 years for Directors
- Desirability of gender based reservation,
- Independent directors would lead to promoters loosing control of the Company (best managed companies are those having promoter stake)

- Definition of Independent Directors raises some very fundamental issues
  - Different definition of Independent Director in Companies Amendment Bill and in Listing Agreement
  - Disqualification of any person as Independent Director if he has been a Director or Independent Director of the Company for a consecutive period of NINE years
  - Persons having “any transaction” with the company to not to qualify as an Independent Director – a sweeping disqualification
  - Training related provisions

- Application of provisions relating to composition of the Board for holding company to subsidiary company
Suggestions

- The tenure of the Board members should be five years at a time
- Dynamic and outstanding performers be continued
- The existing incumbent be continued till the new appointee takes over
- New appointee should work as an understudy for one to three months before he takes over the charge.

Contd....
To avoid ‘in-charge’ or ‘acting’ arrangements for long periods, a well-thought out plan is absolutely necessary.

About 50 per cent of the Board should comprise full-time specialists in various areas.

Not more than one or two nominees should be appointed from amongst the government officials

One-third of the Board should comprise outstanding part-time professionals

Sitting MPs and MLAs should in no case be appointed on the Boards
Mishra’s Approach for Board Excellence

- Our People
- Customer Service
- Sales Success
- Risk Management
- People Management Community Involvement
Value Driven Boards

- Communication
- Teamwork
- Trust
- Innovation
- Recognition
- Growth
Monitoring and Assessing the Function and Structure of the Board

- Devolution within the company, corporate vision and strategy
- Monitoring, control and risk assessment functions of the board
- Board subcommittees:
  - role of the Audit Committee
  - Remuneration Committee and other subcommittees of the board
- Shareholder relationships:
  - Keeping key shareholders informed
  - Succession planning for key shareholders
- Assessing the performance of the board of directors as a board
Main Board Responsibilities

- Approving a corporate philosophy and mission (Providing Strategic Direction and Values)
- Selecting, monitoring, evaluating, compensating, replacing the CEO and other senior executives, ensuring management succession (Ensuring Organizational Capability)
- Reviewing and approving management’s strategic and business plans (Approval of Planning)
- Reviewing and approving Financial objectives and material transactions (Approval of Planning)
- Monitoring Corporate Performance against strategic and business plans (Monitoring and Control of Performance)
- Ensuring ethical behaviour and legal compliance (Monitoring and Control of Performance)
- Ensuring that the board is effective (Ensuring Organisational Capability)