

From the boardroom: What ails independent directors?

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ask questions, or do so outside the boardroom. But asking the right questions, while being seated at the high table, fosters debate and encourages other equally-diffident directors to speak.

Many directors believe that as families have skin in the game, they consequently have the most to lose, or win. This leads to a mindset where the directors believe they should advise and nudge, but not insist.

Take the case of the real estate boom-and-bust cycle. Companies, in their quest to grow, acquired more and more land, and announced more projects. Homebuyers, debtors, lenders, equity holders — everyone lost. Should the board have behaved differently? Even assuming they lacked extensive domain knowledge, they should have been questioning the management on the assumptions and execution capability.

Once in the boardroom, all directors are equal; and the controlling shareholders' view is not the only one. But some directors miss the wood for trees. Companies have other stakeholders, not just the controlling shareholder, and the board needs to find a balance between the divergent interests — controlling versus minority investors, customers, suppliers, employees, et al. The objectives are not always aligned or linear, and the choices are not always straightforward, so the trade-offs are hard to make.

Moving from family business to multi-national companies (MNCs), the challenge is different, mainly because of the matrix structure MNCs usually follow. Under this structure, each business reports to the global or regional business head. Often, the local entity is no more than an accounting unit. This gives independent directors very little say in the operations — it can be argued that often even the CEO has little control over the entire business, so how can the board?

For public sector undertakings (PSUs), the situation has not materially changed from when the directors of Coal India obtained a Presidential directive to protect them from taking actions that a significant outside shareholder had vehemently opposed, for not being in the interest of the company.

Can India Inc then attract the right skills to its boards? According to me, not all independent directors are cut from the same cloth — else India Inc would not attract the capital that it does. The problem is there are enough of them not staring back, which gives all independent directors a bad name.

How can one ensure that spirited individuals volunteer to join corporate boards? The Kotak Committee (disclosure: I was a member), suggested stepping up the sitting fee — to balance risk and reward, and getting companies to take D&O (directors and officers liability insurance). We also need all stakeholders — promoters, institutional investors, institutional investors, small shareholders, regulators, and given the recent pronouncements, the directors themselves — to have clear expectations about what is required of them. This will help change the landscape.

Corporate India's greatest strength is that most businesses are family owned. Make no mistake, family businesses are started by entrepreneurs with the vision to spot the opportunity, and the skills to execute. Family ownership means those running the business have skin in the game; it means taking a generational view of business, instead of focusing on the coming quarter.

However, this generational shift can be tricky — enough families get it wrong for it to be seen as a business risk. Family ownership also often leads to entrenched shareholder-managers misusing their dominant shareholding to line their pockets.

Family ownership also explains how the minds of several independent directors work.

Few companies are run by their founders. These, often-charismatic, leaders have built the business from scratch, and know each nook and cranny of the company. Independent directors may believe they lack the founder's instincts. In these companies, the independent director is not expected to blindly follow the leader, but channel the animal spirit to do the right thing. However, they are often reluctant to