

## Boards: Navigating regulations and reality

*As our regulations around board composition more prescriptive, businesses become more complex and investors more demanding, building a board that is fit-for-purpose will become more challenging, not less.*



A board's composition is determined by an interplay between regulatory obligations and a company's own requirements.

In the last decade boards have changed in both obvious and less apparent ways. This transformation has been driven by the Companies Act, 2013, the SEBI (Listing Obligations and Disclosure Requirement) Regulations, increased pressure from shareholders, and changes that boards themselves have initiated. The most noticeable change is the presence of women on boards. Just before the new Companies Act was rolled out in 2014, only one in twenty directors was a woman. This ratio is now closer to one in five.

A [recent study on board structures](#) and composition for the NSE500 companies places the number of women on boards at 18.2% on 31 March 2023. This is not far from the [19.7% on global boards](#) in March 2021. This number has however moved at a glacial pace, inching up by 1.5% from 16.7% in March 2020.

True regulations were the catalyst for this change, but they have not been the silver bullet for gender equality. The current numbers seem more compliance-driven than evidence of corporates embracing gender diversity for the benefits that it brings. More needs to be done by the companies themselves.

Juxtaposing the above study with one from [October 2015](#) that also looked at board composition, the mix is tilting towards independent directors. 26.7% of the board comprised independent directors in 2015 (1241 independent directors out of a total 4654 directors). This number is now at 42.7% (2066 independents out of 4724 directors in March 2023).

Several other parameters – board independence, non-independent chair, over-boarded directors all point towards change and a greater awareness at the board level of the increased expectations from boards by all stakeholders, including the investors and regulators.

Today, we are seeing a convergence of board demographics between the NIFTY 500 companies and the S+P 500. This is shown in the table below.

This should not surprise. Our regulations regarding the role of the board and board committees have evolved from those in the UK and US markets that emphasize the primacy of the board. Further, expectations from corporate boards have been reinforced by investor demands – for the longest by FII's. It is only now that domestic investors have started looking at the board composition more closely.

**Exhibit 1: Boards - NIFTY 500 vs. S&P 500**

Average board size	9.4	10.8
Independent Directors	52%	86%
Average director tenure	7.8	7.8
Average age of independent directors	63.3	63.1
Women as a % of all directors	18%	32%
Boards with at least one-woman director	99%	100%
Independent board chairs (%)	24%	36%
Independent Directors added	248	395
Directors aged 50 and younger	17%	6%
Youngest average board age	45	50
Oldest average board age	75	74

Source: IiAS Research, Spencer Stuart 2022 US Board Index; PRIME Database; IiAS Research

Notes: NIFTY 500 data as on 31 March 2023; S&P 500 data draws on the latest proxy statements from 489 companies filed between 1 May 2021, and 30 April 2022.

Should boards in India, with the presence of promoters, resemble those in the US? As the ownership is different, should not the boards also be different? In US and UK, the role of the board stems from the disbursed institutional ownership and absence of a 'promoter'. In these markets investors interact with the company management through its board. In India, the concentration of ownership suggests that the board needs to arbitrate between the interest of the owner from those of the 'minority' investors. Such differences need to be better understood.

While in large part, the changes that we have seen have been a consequence of regulations (– term limits, independence, diversity), boards must ensure that the company's own substantive needs are met. There are two sets of regulations that are critical to ensuring this.

The Companies Act 2013, asked the board to evaluate the performance of the directors and boards. SEBI, through its listing regulations, stipulated that entities should disclose in a chart or a matrix format, setting out the skills/ expertise/ competence of the board of directors.

Both regulations in conjunction will assist the nomination and remuneration committees need to balance between regulations and evaluating the skills that are needed to ensure an effective board, well suited to dealing with the company's opportunities and threats.

As regulations around board composition get more prescriptive, businesses become more complex and investors more demanding, building a board that is fit-for-purpose will become more challenging, not less.



*A modified version of this blog was published in Business Standard on 27 September 2023. Its subscribers can access the blog by clicking this [link](https://www.business-standard.com/opinion/columns/boards-navigating-regulation-and-reality-123092601386_1.html) or typing the following in your url: [https://www.business-standard.com/opinion/columns/boards-navigating-regulation-and-reality-123092601386\\_1.html](https://www.business-standard.com/opinion/columns/boards-navigating-regulation-and-reality-123092601386_1.html)*

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