

Preparing for the great refresh

As company's look to refresh their boards in 2024, what should prospective candidates know about the companies on whose board they are being asked to serve.



Image courtesy Financial Times.

Boards are heading for what I describe as *the great refresh*. The Companies Act 2013, which became operative from 2014, mainly defined independence for independent directors as being on the board for a maximum of 10 years. As this came with a concession that this 10-year clock will tick only from 2014 – all the prior year's being expunged, 2024 is when most boards are now due for a major makeover.

Given this impending change, I expect a few companies – at least the progressive ones, may have started hiring new directors or at least begun their search; it is clunky if all independent directors retire all at once, to say nothing that these companies will be left with very little institutional memory.

And while the years since the new Act was rolled out, there is a great deal of focus on board effectiveness, board evaluation and also on the skills needed to be a

good director, very little attention has been directed towards how potential directors should think about being invited to join a board.

It is in this context that a [blog](#) by Sara Brody And Jason T. Nichol, two lawyers at Sidley, Austin, makes helpful reading. They argue that in an increasingly “regulated and complex public company landscape, director candidates should conduct thoughtful and targeted due diligence on a company and its existing board practices before committing to a role that should be expected to extend over multiple years.” The two then list a series of questions that potential board members must ask before committing themselves to serving on a board. These are discussed below.

The starting point is for a prospective board candidate must be clear why are they being asked to join the board and whether they are the right fit. All too often, it is hard not to believe that that we walk on water and have the requisite skills. But it is good to be clear-eyed about why you are being invited to join the board. Do you have domain knowledge? Or the ability to open doors? Are you a friend of the promoter – or one of the other directors? Or do you tick some other box. Companies do issue a letter regarding the roles and responsibilities of joining a board, but a conversation with the chairman will help. It will bring clarity regarding know why the candidate has been invited and how they are likely to complement others on the board.

Closely linked to this is whether as a director you will have the sufficient time. Only the director can answer this, but a rough rule of thumb is the number of meetings in a year, multiplied by the time spent on reading and absorbing the agenda. Add committee meetings. This is discussed in detail in ‘[When less is more](#)’ my March column from earlier this year (https://www.business-standard.com/article/opinion/when-less-is-more-122031501522_1.html). And this is for when its business-as-usual. If there is a large transaction, an approaching IPO, or a crisis, the time-commitment will intensify. But even in normal circumstances, given how rapidly the burden of expectations from directors, is rising, one should expect to double the time commitment over a five-year period. Put differently, there will be time for being on fewer boards.

Peter Drucker is said to have remarked, “Culture eats strategy for breakfast,” signalling that the softer aspects of business are important. Given that businesses are (usually) family owned, having a reading of the family dynamics and cross-shareholding is important. These often enough will determine the path a company will take. The pre-existing board dynamics also

come into play, which means understanding who all on the board and who do they represent. The board culture will determine whether the board encourages penetrating questions, and the discussion is open, does the board get access to unfettered information or whether decisions are taken by consensus or diktat. This helps in determining whether the leadership seek guidance from the board or instead as the blog succinctly described it, “view the board as a group to be managed.”

There is the deep dive into the company and its operations. Potential candidates are expected to examine how the company is performing operationally and financially and what are the company’s most material risks. This means reviewing the company’s financial documents, outstanding litigations, and public filings (e.g., the “Risk Factors” and “Management’s Discussion and Analysis” sections of its periodic filings and registration statements) as well as analyst reports, news articles and consensus or “street” estimates. It will also be prudent to review the ‘promoters’ other business interests.

It is useful to look at resolutions placed before shareholders, how these have been voted on in the past, and how has the company dealt with shareholder dissent.

It is equally important to get a sense of the flow of information to the board and a large part of this is the equation between the board and senior management. Unfettered access to data and to senior management will help boards make their own assessment, and also gives board members the ability to form an opinion on the quality of people. Important for those seeing themselves being a part of the Nomination and Remuneration Committee. This will also give the entrant make a direct call on the company’s attitude to compliance and risk.

Companies now routinely disclose how they view conflict of interest, and the expectation from directors; it will be helpful to have a conversation regarding this. Infact, not just these, but also the other policies including the code of ethics, securities trading policies, restrictions on what you can and cannot do by virtue of joining a board.

Given the burden of expectations, potential directors must ask about the compensation and the D&O (Directors and officers) insurance, that the company offers.

Being clear about your own capabilities and spending time seeking answers to the questions listed above, will bring you the must needed clarity regarding whether you should join the board.



A modified version of this blog first appeared in Business Standard on 24 May 2022. To read the blog click this [link](https://www.business-standard.com/article/opinion/preparing-for-the-great-refresh-122071801427_1.html) or copy this url to your browser: https://www.business-standard.com/article/opinion/preparing-for-the-great-refresh-122071801427_1.html

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