

Boards: Navigating regulation and reality

A board's composition is determined by an interplay between regulatory obligations and a company's own requirements. Over the last decade, boards have changed in both obvious and less apparent ways. This transformation has been driven by the Companies Act, 2013, the Securities and Exchange Board of India (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 20 directors was a woman. This ratio is now closer to one in five.

A recent study on board structures and composition for the NSE 500 companies places the proportion of women on boards at 18.2 per cent on March 31, 2023. This is not far from the 19.7 per cent on global boards in March 2021. However, this number has moved at a glacial pace, inching up by 1.5 per cent from 16.7 per cent 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 an embrace of gender diversity by companies for the benefits that it brings. More needs to be done by corporations themselves.

Juxtaposing the above study with one from October 2015 that also looked at board composition, we find that although the number of directors has remained broadly unchanged (4,724 in March 2023 compared to 4,654 in October 2015), the mix is tilting towards independent directors. There were 1,241 independent directors (26.7 per cent of the board) in 2015. This number is now at 2,066 (42.7 per cent).

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

Today, we are seeing a convergence of board demographics between the Nifty 500 companies and the S&P 500 (see table).

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 emphasise the primacy of the board. Further, expectations from corporate boards have been reinforced by investor demands — for the longest by foreign institutional investors. It is only now that domestic investors have started looking at the board composition more closely.

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 the US and UK, the role of the board stems from the disbursed institutional ownership and the 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 interests of the owner and 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 boards to eval-

MEMBER PROFILE

	NIFTY 500	S&P 500
Average board size	9.4	10.8
Independent directors (%)	52	86
Average director tenure (yrs)	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 (yrs)	45	50
Oldest average board age (yrs)	75	74

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

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

uate the performance of the directors and boards. Sebi, through its listing regulations, stipulated that entities should disclose in a chart or a matrix format the skills, expertise, and competence of the board of directors.

Both of these regulations in conjunction will assist the nomination and remuneration committees' need to balance compliance with the evaluation of skills needed to ensure an effective board, well-suited to dealing with the company's opportunities and threats.

As regulations 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.

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THE OCCASIONAL ASIDE

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