New custodians of corporate governance

By Vikram Singh Mehta

More than a decade back, I moved from being a full time member of the corporate fraternity to a part time, non-executive, independent director (ID). I have since gained insight into the functioning of Boards across a broad spectrum of industries including FMCG, Auto, Hospitality, health and aviation. This article contains my reflections on the profile of ID's best suited to support management navigate current and emergent risks.

Corporate India will need to fill approx 800 ID's over the next 9 to 12 months. This is because of the SEBI regulation that ID's can stay on a Board for no more than 2 five year terms. This ruling came into effect on April 1, 2014. The magnitude of the churn offers the custodians of corporate governance the opportunity to undertake a transformative change. They can stay with the tried and tested model of filling the vacancies from a pool of retired, relatively distinguished senior citizens or they can look for individuals who have less work experience (and a fuller head of hair) but with domain knowledge better aligned to tackle future uncertainties ?

I can think of three reasons why the latter might be worth contemplating.

The first relates to the complex of cross cutting, geo-political, geo-economic, geo-social, geo -environmental and geo - technical forces that currently mark the Global and by osmotic impact, the national business environment. Boards have hitherto considered the impact of these "geos' separately. What is however becoming clear is that these geo's are interconnected and the impact of the whole is greater than the sum of the parts. The contrasting impact of the two "cold wars" on corporates is illustrative in this regard.

In the first Cold War (1945- 1989), corporate interests were scarcely impacted. This is because the conflict was predominantly about military security and ideology. In the current phase, the adversaries have locked horns over geo politics (Ukraine; Taiwan); geo-economics (gas supplies; supply chain resilience; trade protectionism) and geo technology ("chip wars"). Corporates have however interests in each others economy and cannot simply hew the political line. The CEO of NVidia - the worlds' most valuable semiconductor company with a market cap of USd 1 trillion, has, for instance, forewarned that US sanctions on the export of semiconductors to China will cause "enormous damage" to the US tech industry. The CEO of Siemens has "vowed" that rather than disengage from China, his company will work "to expand" market share.

The point is that whilst the buck for managing and mitigating the impact of these cross cutting "poly geos" stops at the desk of the CEO, the Board must help management walk the tight rope between geopolitical correctness; geo-economic interests and geo technology nationalism. Its members should, therefore, have a strategic and international bent.

The second relates to the manifold consequences of technology. There has been much discussion at the Board level, at least in my experience, on issues related to the impact of digitisation on jobs and the organizational structure; the flow of information and the ethics of data privacy; cyber security and the guard rails that companies are putting in place to stay ahead of the hackers ; and even the consequences of generative AI (albeit to a lesser extent). But like with the " geo's, these discussions have been siloed and unidirectional with management presenting to the Board. Directors do not, in the main, have the expertise to do more than listen and learn. And ask clarificatory questions.

Technology will fundamentally alter the strategic contours of future business. On that there is no debate. Responsibility and Accountability for managing the consequential fallout cannot, therefore, be the exclusive remit of management. Boards must also help in the crafting of appropriate strategic and policy responses. They can do so constructively only if they have the relevant technical capability and experience.

Finally, there is the issue of sustainability. Three letters of the alphabet " E " " S " and " G " (environment , social and Governance) currently represent the short hand metrics for determining a Companies commitment to sustainable business . Most reputed corporates have incorporated these letters into their dictionary. There are many, however, whose rhetoric runs ahead of their actions. This is because, in part at least, ESG are non-financial metrics and do not fit neatly into the existing framework of governance and incentives. Companies need to bridge this gap. They cannot afford allegations of "ESG washing". It would hit their reputation and erode their market value. Boards must ensure management delivers what they promise. And here too expertise is required.

The roles and responsibilities of IDs have altered substantively over the years. Earlier and before I became an ID, ID's were , perhaps unjustifiably so in many cases, regarded as appendages of the management / promoter who exercised their fiduciary responsibility with both eyes cocked towards the latter. Matters changed when in the aftermath of some high profile corporate bankruptcies, SEBI tightened the sanctions against ID's for wilful negligence of their fiduciary responsibility. They made clear that such breach would place ID's in not only the cross hairs of the regulator but also that of the enforcement Directorate (and therefore under threat of imprisonment). ID's have since become diligent. I, for one, have nothing but praise for the Directors with whom I have shared the Directorial table.

There is no one size fits all shape to a board. Every company will have its own particular requirement and the selection of ID's will be strongly influenced by these bespoke factors. But the fact remains. Corporate India is at a potentially transformative inflection point. At least regards governance. It could continue down the same path as before and fill the vacancies with "people like me "(retired, experienced, in some cases distinguished). Or determine to change the profile by considering individuals who are relatively youthful; whose experience has taken them somewhat off the beaten track; who are technically savvy and for whom there is no trade-off between profits and sustainability.

For reasons given above, I suggest the latter be contemplated.

(*Views / facts mentioned in the article are not the views of IICA.*)