Perspectives From Thought Leaders

Revisiting Board Composition & Roles and Relationships Between Directors Inter Se and With Management

JY Pillay, Chairman
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The issue of the human trait of culture was raised in the Editor's Note in the first Perspectives From Thought Leaders in Issue 2/2009 of this Directors' Bulletin. Broadly picking up on that concept, I had opportunity to speak with Mr JY Pillay, Chairman of the Singapore Exchange on his take about putting together an effective Board, the interactions between the different directors, with a focus on the role of the Chairman, and the role of the Board as a whole. What became evident very quickly was that all said and done, it boiled down to the individual, the skills, ability, business acumen and well, emotional quotient of the individual were critical elements. However, having a very good individual by itself was insufficient, and it was necessary to ensure that the group of individuals were able to work effectively together. This is not always easy to achieve.

Mr Pillay shared his thoughts on this and various other issues including, importantly the roles of the Board and management and how the two should best interact. There has been no clearer articulation in my view of this to date. He saw the role of the Board as being one to make decisions on critical matters that the Board determined was important. It was not for the Board to formulate policies, nor to strategise, nor of course, to manage. It was for the Board to challenge, review, discuss and arrive at a decision based on options that have been provided to it by the Board. Ultimately the Board was accountable to shareholders and so needed to ensure that decisions could withstand challenges on any major decision it took.

By way of background, Mr Pillay has enjoyed the privilege of having served on the boards of Government linked companies as a civil servant (before the introduction of the Code of Corporate Governance), as well as one board in the private sector, OCBC Ltd, and now the Singapore Exchange. He was also instrumental in introducing the Code of Corporate Governance as it currently stands, and was the Chairperson of the Council on Corporate Disclosure and Governance, which has since been disbanded.

We set out here some of Mr Pillay's thinking.

Question 1

What would in your view be the ideal Board?

The way SGX constitutes its Board may be peculiar to SGX. We do not look specifically for directors with speciality expertise, whether this be in IT, derivatives, a profession, etc. We are not hung up on getting directors from representative countries around the globe either. The reason for not requiring experience in a speciality is that this may be an ephemeral requirement; and second, the company can always hire the requisite expertise; or engage a consultant. So what is it that we look for? Essentially experience in running and managing a company. The key is really about understanding what makes a company tick. This does not mean that all the Board members have to be CEOs of companies. For SGX, there will be some partiality for people with broad financial experience as well. Of course, there is no objection if the director has specialised knowledge, which all members of the SGX Board do possess. We have, for example, one member with vast experience in regulatory work. He is particularly useful for the risk management committee and conflicts committee, which seeks to reconcile our regulatory accountability with our commercial interests. It is interesting to note that that director runs a small commercial organisation, and so has management skills as well.

Yes, experience can matter. For example, in a bank, you may want directors with similar characteristics. Perhaps, there is a need for experience in consumer banking. A person with such experience could also be useful in SGX as it deals with a very large number of retail customers, in our Depository.

Question 2

Should the Chairman of the Board always be an independent director?

Ideally the Chairman should be truly independent, particularly where there is a dominant shareholder, a situation that SGX is happily free of. He plays a crucial role; he sets the tone. If the Chairman feels that he serves at the will of the majority shareholder, and is concerned about his longevity, he will be constrained. However, if the Chairman is willing to tough it out, then he can set the right tone in the Board and the committees, particularly the NC and the RC. If so, the Board will have a secure foundation.

Question 3

What advantages are there to the Chairman being an Executive Chairman? Does this compromise the oversight function of the Board?

An Executive Chairman now is not a natural state of affairs in a company. A classic example for a long time was Keppel Corporation. Nonetheless they were a very well run company. What they did to ameliorate the situation was to appoint a lead independent director, since the Chairman's and CEO's roles were fused. This now has changed, and Keppel has separated the roles of Chairman and CEO.

Question 4

What is the role of the Chairman in managing the Board?

There usually is a variety of views from Directors on the Board on any issue. Some Directors may speak up more passionately and firmly on some issues, whilst others, take a more reticent approach. And on other issues, the positions may be reversed. The Chairman's role in such circumstances is really to allow every Director to express his views freely, for example, by calling upon the Directors one by one. Directors can occasionally be very passionate and push their views, but they never cower the other directors. Where the issues are of some complexity, management could be asked to provide more information, and the matter discussed at the following meeting.

Another key role of the Chairman is to ensure that all the Directors gel as a whole. Having a team of very well balanced individuals does not logically produce a well balanced Board. The role of the Chairman is to try and glue the varied personalities together. If he succeeds in managing to achieve accord in the Board, with things working well, that process will percolate down to the rest of the company.

Question 5

Do you see the Board's key role as one of oversight or as a combination of oversight and strategising and managing?

I don't believe it is the function of the Board to manage, to strategise or to oversee, whatever that means. The Board has a set of accountabilities, which does not allow directors the luxury of just overseeing. The Board must be involved in intensive discussions relating to matters brought to the Board and be responsible for taking decisions. It is up to management to formulate the policies. The Board may disagree; but they must never tell the management to undertake 'Y' when they had brought 'X' to the table. Instead, the Board should say that they have decided not to accept 'X', and ask management please consider alternative 'Y', or to make appropriate revisions to 'X' for reconsideration. But this is not to say that when management eventually comes back with 'Y', the Board should accept that blindly.

The Board should query why and how the recommendations had changed and whether any further alternatives should be considered. The Board should ensure that management understands that they are not there to please the Board or to look over the shoulders of the Board to ascertain what the Board prefers. The objective is eventually to make decisions. One may call this oversight – but the focus is really on the discussion followed by a decision. The Board is there to help management formulate and crystallise their thoughts. All said, the Board cannot place oversight above accountability – accountability to shareholders.

The Board must ensure that all important items are brought up to it for discussion and decision. If it is not important, then the matter can be left to management to decide and act upon. In determining what is important, it is what the Board deems as being important which is key.

On strategy, it must be remembered that this is a collaborative effort. Strategy is not something for a genius, such as Albert Einstein, to come up with, after cogitating in a cubby-hole. It needs to be discussed and allowed to bubble upwards and downwards.

Question 6

What mix of independent, non-executive and executive directors would effectively contribute to the effectiveness of the board? Do non-executive and independent directors really make for a more effective Board?

No one really knows what the right mix of independent, non-executive and other directors ought to be for the effectiveness of the Board. In a company where you have a dominant shareholder, how independent would the independent directors really be?

Independent directors may not always be able to candidly express their views at Board meetings. Where there is a dominant shareholder, how independent can the NC be, for example? Yet, this is a matter of evolution. In larger companies, on which there is a greater focus by the media, and a large number of shareholders exist, there tends to be a process whereby the shareholders progressively flex their muscles and require accountability from the independents and others. In smaller companies, one cannot expect that there will be a substantial degree of independence in the Board.

Interestingly most of the GLCs then (ie before the introduction of the Code of Corporate Governance and before Corporate Governance became a buzz) had primarily non-executive civil servants on the Boards, and maybe only the CEO, if at all. Now you hardly see a Government 'walla' in a GLC. But these companies are now run by Temasek Holdings, which, as the dominant shareholder, may be able to determine the composition of the Board.

Question 7

Should the mix of directors on a Board change according to whether the the company was riding an economic high or in the troughs of a recession as is the case now?

I am intrigued by this question. When everything is running smoothly, the board may have a more detached approach, as may the CEO. When a Tsunami hits, then the CEO typically switches to a command and control mode, to seize the hours as it were. But it is not desirable or possible to operate in such a mode indefinitely. There may be a requirement for the board to monitor management more closely; but this does not mean it may usurp the authority of management. There may well be a need for more meetings of the Board. Of course, this is assuming that the Board is competent. Sometimes, the Board is not very effective, and the Board itself may not know that it isn't. In such a case, it may not be advisable to call too many meetings, or to have the board too involved. Then, the CEO has to persuade the Chairman not to convene too many meetings; this of course assumes that the CEO at least is a sensible chap. Other than this caveat, if you do have a good Board, there is no particular reason to change the composition of the Board in a Tsunami. But the modus operandi of the Board could change as the circumstances warrant.

Question 8

How frequently should the Board be renewed? And why?

There are two perspectives here: the perspective of the company and the perspective of the individual. For stability, 2 terms of 3 years, and maybe one further extension as may be necessary. On the SGX Board, there are 3 directors, including myself, who have been on the Board for 10 years. The reason is the demutualisation exercise, which was very difficult, and the Company needed time to stabilise. SGX was very fortunate with a good CEO in Fu Hua, and things took off, so that now the systems are robust and the organisation is sound. The very well balanced Board comprising partly of longer serving directors helped. That was necessary. From the perspective of the individual, there is the element of possible staleness – the opposite of freshness – to reckon with. ■