

Board's Legal Environment in India

Lawyer and board member Haigreve Khaitan shares what directors should be aware of

As part of the Directors Development Program, Egon Zehnder hosted a session titled “The Board’s Legal Environment” that focused on legal considerations and responsibilities for board directors. The featured speaker was Haigreve Khaitan, senior partner at Khaitan & Co, one of the leading law firms in India. Khaitan serves on several boards, including Tech Mahindra, Jio Platforms, and Torrent Pharmaceuticals Ltd.

Rising shareholder activism and the influence of proxy advisors

Khaitan highlighted the theme of shareholder activism - often seen through the increased presence of proxy advisors, who have influenced voting in many public companies.

“Boards have to consider, with increased responsibility, what proxy advisors are thinking and how they will react,” Khaitan said. “Boards have to be prepared for greater scrutiny in terms of every transaction the board is doing and manage conflicts very carefully.”

Khaitan brought up several examples of companies where performance was suffering and proxy advisors influenced a vote to oust the CEO. The lesson was about communication and being able to discuss with these proxy advisors why growth is lagging and what the company is doing about it.

Khaitan noted that the influence of proxy advisors should be balanced and their requests, guidelines and voice should further good governance – for example, stimulating debate and highlighting relevant issues as the case may be.

Boards have more legal responsibilities than ever before

Decades ago, board meetings were less oriented towards discussing strategy and company performance. Khaitan reflected that there has been positive change over the years – in agenda setting, documentation, and discussion around performance and strategy.

Board meetings now contain intricate analyses of company performance, days-long agendas, and comprehensive pre-reads. From a legal standpoint, responsibilities have gotten codified – from a general responsibility of the board to specific responsibilities and duties, including mainstays such as operating in good faith, avoiding conflicts, reporting unethical behavior, etc.

This evolution has not just sharpened boards' responsibilities, but also raised their legal liabilities. At the same time, the ultimate view is that the people in charge of the management of the company and those in control should be responsible.

There are examples of corporates that have seen executives, non-executives, and independent directors get arrested when forensic reports showed irregularities and misappropriation. Directors' legal accountability means they must speak up and record their dissent when such damaging information is presented. Independent directors cannot be mute spectators; the role requires constructive and active questioning and engagement.

A new era of disclosure and accountability

In recent years, the corporate world has undergone an evolution with ESG (“environmental, social, and governance”) and CSR (“corporate social responsibility”) standards. These stakeholder-focused metrics are redefining how companies engage with the world outside their boardroom and shareholders—and with them comes a new form of legal accountability.

“Institutions have a code of conduct, and the code of conduct is very wide,” said Khaitan. “It doesn’t apply to just the individual, but connected persons, applies to relatives...It’s a deep subject that has expanded the scope of related party transactions.” Making appropriate disclosures (e.g. of conflicts of interest) is key in this era of accountability, which sees regulators as well as society at large keeping the flag of governance flying.

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