Increasing effectiveness of the board-improving quality of information and preventing overload

Dr.Ashok Haldia
Former Secretary ICAI

Focus of the Companies Act ,2013, had been on reforms ,amongst others ,aimed at increasing effectiveness of board of directors of the companies and enhancing quality of governance with in the board. This was following the concerns arising out of collapse of Satyam and other corporate failures in India and in other countries post fall of corporate jewel Enron owing to frauds perpetrated by those charged with governance and sheer failure of governance system including the board of directors .

Far ranging changes brought in by the Companies Act ,2013 in the board room governance included composition of board and its committees particularly audit committee and nomination and remuneration committee, larger and onerous responsibilities of independent directors ,and ,an exacting framework for ensuring accountability of the board, its members and key management personnel (KMPs).The reform measures laid out a holistic and comprehensive legal framework.

Whether the aforesaid reform measures have achieved the intended purpose is a matter of debate. The fact, however, remains that post the Companies Act the corporates continue to fail and the cases of corporate fraud are unabated. Case ILFS,DHFL,PNB, PMC are few example to cite. The Government and the regulators like SEBI and RBI are proactively responding from time to time to the realities of the corporate governance through range of administrative,institutional,legal and regulatory measures. In the background of collapse of Satyam , the penal provisions under the Companies Act, 2013 were made deterrent. It was later claimed that excessive deterrence is adversely effecting ease of doing business and quality of corporate governance itself. Accordingly, the Act has been amended to relax a large number penal provisions relating to corporate governance

The larger question that remains to be answered is whether the legal framework by in itself can improve the quality of board room governance.The quality of directors and their effective participation is key to board room governance . There has been continuing debate on ensuring independence of independent directors, effectiveness of audit committees , separation of position of chairman and managing director , and so on.What has not received attention so far is conduct of the board meeting and, towards that end , quality and timeliness of information provided to the board members.This also include the manner in which the board meetings are organised and conducted to enable effective participation and contribution by the board members. One of the key challenge in this regard is information overload for the board.How to ensure that board members get the information that they need to perform ?

The board's responsibility extends to strategic direction , overall superintendence and control over affairs of the company.It has to exercise strategic oversight , ensure robust risk management system and monitor management performance.Further the board has to ensure compliance with the legal framework, integrity of financial accounting ,reporting and control systems , and credibility of disclosures made to stakeholders.In case of banks and financial institutions in addition RBI has emphasised on supervisory role of boards and their functioning vis-a-vis compliance, transparency, disclosure and minimising risks.The boards of the companies in india thus have wholesome responsibilities to discharge, evaluate their own performance and subject themselves for penal provisions in case of failure, ignorance, negligence or lack of diligence.

With such expectations and onerous responsibilities, the board is greatly at risk if quality, quantity and timeliness of flow of information between the company management and the board is not ensured.The board meets generally once in a quarter and in most case on a pre- lunch or post -lunch basis and at the most for a day.The agenda papers are made available nearer to the day of the meeting or during the meeting in the pretext of matters requiring urgent attention or of confidential or classified in nature.Ironically the Companies Act requires minimum 7 days notice for holding the meeting and not for circulation of agenda papers.The board members are required to go through agenda papers with limitation on their domain expertise on diversified matters placed before the board.

As per a study carried by the ICAEW on information load in boardrooms in companies in the financial services observed that board agendas are continuing to increase in size, sometimes breaching 1,000 pages. It is not humanly possible for a director to read, understand and digest this level of information in the limited time available for consideration to be able to exercise their judgment .Increasing size is not only making board papers difficult to read, leading to important information , relevant facts and key risks ignored. Moreover it make the directors to hunt for relevant details in the maze of agenda papers. Bigger is not necessarily better. The

board members have limited time available for reading, absorbing and challenging the content.

The tendency at executive level ,at times, is to provide unfiltered information ,indiscriminate sharing of papers in the absence of clearly defined responsibility.The executive may also have incentive to share it all so as to avoid accountability or escape from blame of hiding information.It is also not uncommon that some board members prefer all the details and data.The digitisation of board agenda has also attributed to overload as it has taken away the psychological and logistic barrier against bigger size agenda.

Quality of information includes its relevance, completeness, authenticity. It need to be comprehensive ,concise and clear.As regards quantity, information should neither be too less nor too much resulting in an information overload. Normally agenda should have an executive summary which is supplemented by detailed notes and where necessary with back-up papers as annexes .The agenda papers should clearly bring out facts, issues, views and recommendations of the management.

The Boards as a whole, its chair and members ,companies secretaries and the executives all have to blame themselves for poor quality of information made available to the board and take responsibility to rectify the situation collectively and individually.The board and its members do not have to accept the agenda papers as given to them and question ,if not satisfied, size ,quality and focus of the agenda.They need to define clearly and insist what they need .The chair of the board has responsibility for proper conduct of the board meetings and board room governance.He with the support of the company secretary should work with executives to ensure that agenda papers includes what is needed ,no more or no less.The agenda should be better prepared and presented clearly setting out context, issues, alternatives ,recommendations of the executives and expectations from the board.

Board evaluation required to be undertaken under the Companies Act should assess whether board is provided with appropriate timely information - not unwieldy and overwhelming-and whether the board communicate to the management what information it needs ,and provide feedback on quality of information provided.The managing director and other functional directors should also be evaluated on quality of information provided by them to the board.

Effectiveness of the board depends on the quality of information provided to the board and participation of the board members . To facilitate this the Companies Act gives the directors right to receive and call for quality information .Information over load or quality there of can not be an excuse for them for failing to read and understand.In Australia way back in 2011 in the famous case , namely,ASIC v Healey & Ors it was held that the board can control the information it receives, prevent information overload and take more time to read and understand The complexity and volume of information that boards receive cannot be used as an excuse for failing to properly read and understand financial statements.

The action lies with and at the board level.With increasing accountability of the board and its members they can ill afford not address the processes around the board for ensuring timely and quality information.