CONVERSATIONS WITH INDEPENDENT DIRECTORS

CA. Dr. Sangeeta Pandit is an Independent Director in Indian Card Clothing Ltd. was a partner in a CA firm of repute. Retired and diversified to academics and training. Head of Department of Finance at Sydenham B-School and associated with other highly rated B-schools. Written various research papers in reputed journals relating to corporate governance, leadership, and diversity and is a popular corporate trainer.

Below are excerpts of her **conversations with Independent Directors**, who have shared their views candidly.

Chapter X1 and Chapter XII, sections 149 to 195 of the Companies Act, 2013 regulate the Appointment & Qualification of Directors, Meetings of Board and its Powers. Schedule IV to the Act, gives the Code of Conduct for Independent Directors. The SEBI (LODR) regulations have provisions governing Independent Directors.

Interviewees responses will help aspiring Independent Directors to truly understand applicability of the law, the process, woes, contribution, role, responsibilities and risks of Independent Directors. These are a holistic or 360-degree view of Independent Directors who have been on various Boards across sectors for long and have seen the role of Independent Directors evolving.

CA Rupa Vora- *Independent Director-J M Financials, InCred, Advanced Enzymes…..*
Former Group Director of IDFC Alternatives; former CFO of Indian operations of Antwerp Diamond Bank N.V. and KBC Bank N.V. Worked with Calyon Bank and Oman International Bank S.A.O.G. Member of the National Committee on Financial Reporting of CII. Featured among India's 10 most influential women in finance by Rediff.com in 2012. Involved in working for the cause of education.

Q: Why is there so much talk about Diversity?

A: Diversity and Inclusion are not just good to have, they are a must have and it is proved time and again that Diversity makes economic sense! We limit the discussion today just to gender diversity, as the need for gender diversity is so apparent!

With risks changing so rapidly, a balanced board that considers different perspectives and has representatives from 50% of the workforce that make about 80% of the consumption decisions; is definitely more equipped to make better decisions to build a sustainable enterprise that lasts!

Q: The economic case for Women on Boards is proven by research. In spite of this, why did we need regulation to get at least one woman on corporate boards?

A: Corporate Boards have been old boys' clubs! Board seats were for life! The Companies Act 2013 has changed that. Boards are forced to look out for woman directors. So, are these women directors, relatives of Board members/promoters who play a subdued role on the Board? Just compliance by letter and not by spirit? Are these women with the right skill sets and an independent mindset that could have their voice heard at the table and help in sound decision making?

Women Independent Directors is the way forward and it can't be just a One on Board Club! For balanced decision making at least 1/3rd of the Board should be women! Be the first woman on the Board, but be an advocate for change!

Q. If having women on Board makes economic sense and even the law mandates it, still why are there so few women on Boards?

A: We find some women are on multiple Boards and others still waiting to get in! Could it be lack of networking or not enough rigour in the Board process of inducting new board members? Is the Nomination and Remuneration committee doing its bit in mapping skill sets of the board members, identifying complementing skill sets and searching for the right candidate with as much fervour as you would for a C-Suite recruitment?

Q: Could it be that the risk reward is so skewed that women are not ready to take up board positions?

A: Schedule IV to the Companies Act 2013, for the first time codifies the duties and responsibilities of Independent Directors and is onerous! It is only after a lot of representations, that in March 2020, the Ministry of Corporate Affairs issued a standard operating procedure for prosecution of Independent Directors (IDs) and Non-Executive Directors (NEDs) in respect of non-compliance with the provisions of the Companies Act, 2013 and prescribed that all care must be taken to ensure that civil or criminal proceedings are not unnecessarily initiated against the IDs or the NEDs unless sufficient evidence exists to the contrary. This is a step in the right direction!

An Independent Director must have an "Independent" mindset, he/she must have no conflict of interest or pecuniary relationship with the company other than the directors sitting fees and commission. The Code of Conduct for Independent Directors is very onerous and one must read the Code, understand and implement it.

Q: As responsibility is onerous, should woman CAs shy away from Board positions?
A: Definitely not! As Chartered Accountants we have the skill sets that are required to contribute as a board member so let's join corporate boards but with our eyes open!,

Q: It is said Fools rush, where angels fear to tread, why should women CAs scramble to become IDs and expose themselves to great risk?
A: Before joining a Board do a thorough due diligence on:

- The Purpose, Vision and Mission of the company.
- Understand the business of the company and the value drivers.
- The current composition of the Board and the reason for the vacancy.
- The Management team - meet with the Chief Financial Officer, Q: Chief Risk Officer, Internal Auditor – the conscience keepers of the company.
- Check if the company is Private Equity (PE) backed, generally the governance level is defined in PE backed companies.
- Check who the auditors are, the audit reports for any qualifications, any legal cases pending, related party transactions etc.
- Check out news reports.
- Get a sense of the culture of the organisation.
- Check the Directors & Officers' insurance policy of the company.
- Check the letter of appointment of other IDs etc.

Q: How can one be Board ready?

A: Get your DIN. Register yourself with the Independent Directors’ Data Bank. Assess if you need to go through the online proficiency test for appointment as an ID. Join networking groups of Board Directors that discuss board issues.

Introspect if you have the passion for corporate governance and have an independent mind set, can contribute time and be prepared for board meetings, and most important can influence change to ensure the company moves up on the corporate governance ladder. Remember, the Risk Reward is skewed! Ensure you join the right boards! The Reputation Risk is high.

Don’t shy away from board directorships; just take informed decisions!

Board directorships give you a chance to network with a diverse set of people, get their perspectives on risks and their perception about the future.

Directorships enhance your leadership skills as it is all about collaborative decision making in the best interest of all the stakeholders.

You need to be a good listener and influence change without being a roadblock!

So, Be Board Ready, Take up board directorships and contribute to good corporate governance!

Sangeeta Singh -Independent Director- Alkem Laboratories Limited; S H Kelkar Limited; Laxmi Organic Industries Ltd…………

Master's Degree in Behavioural Psychology, certification in Strategic Human Resource Management from Harvard Business School. Formerly associated with KPMG, PwC, Ambit RSM and currently works closely with various bodies for the cause of corporate governance and building women leaders. Founding partner at Sanguine Consultancy.

Q: Regulations make it mandatory to have Independent Directors on Board, do they really serve any purpose?

A: Mahatma Gandhi said "everyone who wills can hear the inner voice. It is within everyone." Possibly, if this was practiced there would be no need for Independent Directors at all. But like a lot of things said by Mahatma Gandhi we ignore this too!
The role of Independent Directors (IDs) has come into sharp focus over the past few years and not always for the right reasons. Their need has been relooked and debated. Scams and corporation's negligence or complete failure has brought about detailed discussions on the role, responsibilities, liabilities and accountability of IDs. The Satyam crisis was probably the starting point of the media focus on the role of Independent Directors and with Saradha, DHFL and so many in regular succession the focus has only sharpened.

Q: What according to you, is the role of Independent Directors?

A: Much has been said and written about the role, often in complicated and legally and laden words! But at its simplest it is basically ensuring that the Company does the right thing, using the right methodology and at the right time!
Independent Directors are facilitators to ensure compliance, governance and equitable fair practices whilst ensuring that shareholder value is delivered. It is important for Independent Directors to be facilitators to a company’s growth vision and ambition allowing the Management and executive Directors to gallop to growth while they keep a strict vigil on the things they are supposed to do!

Q: What are the skill sets needed for an Independent Director?

A: I always challenge myself as to how I can be a better or exceptional Independent Director. There are some accepted norms and they hold even in these turbulent times. Someone who has the depth and breadth of knowledge, good communication skills, ability to connect with a diverse section of people, a good listener, and mostly someone who is a student for life – learning new skills, new technologies, new businesses. Most of all the person must have the courage to stand by the right things and implement the intent of the law. This effectiveness is required from all Independent Directors irrespective of their gender.

Q: Do you think we specifically need Women on Board of Directors, are they relevant, was the mandatory participation law required and is it effective?

A: Organizations with inclusive and diverse boards, management teams and employees outperform those without. (Source Forbes, Erik Larson September 2017, 2-year study based on teams in 600 companies). Almost all managements agree that diversity and inclusion is critical to the culture and success of the organization. Clearly, an old boys’ network of like-minded men will not serve the purpose of modern organizations. Therefore, a law was needed to help change mindsets and drive a best practice. The need of the law has also been proved by a host of global research supporting the importance of having diversity in the Boardroom. Women add very different dimensions to a Boardroom discussion – moving the needle from "what needs to be done" to include "how it should be done" – a focus on the path to the goal rather than a "just reach the goal" approach. It is interesting that along with an increase in women in Boardrooms topics such as Corporate Social Responsibility (CSR), Environment Social & Governance (ESG), Geopolitics and Risk Management have come centre-stage. Stakeholders are no longer looking at companies only for their profits – although that is critical – but also at what is the prevalent culture that got to the profit line.

Q: What is your future perspective of the role of Women Independent Directors?

A: Millennials will comprise 75% of the workforce by 2025 (Source Forbes Voice How Millennials are shaping the office of the future, 2017). They want to work for diverse and inclusive organizations that better understand and address the needs of a diverse customer base. Legislation and investor pressure have ensured that Managements and Boardrooms are increasingly alert to diversity and inclusion in the workforce. Innovative ideas are not inspired by someone echoing our own voice, the landscape requires new ways of thinking therefore diversity is important. Women on Board bring the much-needed diversity and definitely women participation in Boards will increase.

CA Jyotin Mehta- Independent Director- Linde India Limited, Suryoday Small Finance Bank, Mahindra Rural Housing Finance Ltd; ICICI Prudential Trust Ltd.; Monnet Ispat & Energy Ltd………

An avid writer, passionate trainer and mentor. 4 decades of experience in Finance, Secretarial, Enterprise Risk Management and Internal Audit. Was associated with ICICI Group and Voltas. Led excellence initiatives and has good leadership skills. Fellow Member of Institute of Company Secretaries and Institute of Management Accountants of India. Has done a certificate program from IIM A in General Management and is a member of Leaders Excellence Harvard Square.

Q: Can you share your journey as an Independent Director

A: I have been a non-executive director for over 20 years now, and there has been a sea-change in governance culture globally as also in India over this period. Importantly, corporate incidents have influenced the government, regulators and investors to an extent that a rather disproportionate portion of the governance agenda has been loaded onto the independent directors. Whilst this is understandable, because independence is what can act as an antidote to governance mishaps, I feel that the obligations thrust by statutes and regulators are onerous enough to make many professionals wary of accepting board position as an independent director.

However, things are not that bad either. My experience in the boardroom as also from information gathered from informal, often casual, conversations with peers prompts me to advocate to young promising professionals to take the plunge and accept board positions but with some caution and required due diligence.

Q: What is your message to those aspiring to be Independent Directors?

A: I will refrain from quoting and dwelling on legal and regulatory matters but will share some candid thoughts with those aspiring to hold board positions. I refer to this collection of thoughts and advice as soft issues relating to board positions.

One must contemplate the following issues before considering Board positions.

1. What are the basic qualifications for being eligible for a board position?
2. What is the type of due diligence I need to do before accepting a board position?
3. Once I accept, what are the immediate steps I should take?
4. How should be my behaviour in the boardroom and outside?
5. What are the implicit rules I need to follow?
6. Who are my friends and who do I stand for?
7. How do I handle ethical/ governance dilemmas in board proceedings?

Quite a list and as I mentioned in my opening remarks, I will refrain from quoting law because in the age of the internet, Google is always ahead than most of us….

Q: Besides the statutory provisions, what are the desirable Qualifications of Directors?

A: A professional with relevant experience and some achievements and reasonable networking is sought after. The Old Boys Club is a thing of past in most of the companies, though network recommendations do work. Finally, what you can bring to the table is what clinches the deal.
Management and Boards look for mature, experienced professionals who can bring in fresh perspectives and contemporary thinking in the boardroom. Financial literacy is a given – after all, performance measurement and monitoring is all numbers! Technology awareness and risks associated with technology are now a must as most companies are in the process of ushering in digitization and deployment of Artificial Intelligence. Knowledge of business environment and/ or functional experience like Finance, Regulatory expertise or People Management – one of these must be underscored in your profile. Finally, no negatives on ethics, conduct or regulatory lapses are a key requirement. I always urge young professionals to be responsible in their posts on Social Media.

Q: How does one do a Due Diligence exercise before accepting any Board position?

A: Most of the information will be in public domain if the company is public or listed. But I always recommend review of websites, posts on social media and a thorough read of the company's annual reports for the past three years as a 'must do' part of your due diligence. If the company is a regulated entity, search the regulator website for regulatory breaches, if any, and also look up the Fitness criteria that most of the regulators prescribe for appointment of directors. Use your informal network to get more information, but take it with a pinch of salt to account for intended or unintentional bias that may come in. Check out the profiles of Key Management Personnel and existing Board members on LinkedIn. Most likely, you may have an informal introductory meeting with the CEO or Chairman or Lead Independent Director – this gives you an opportunity to ask questions and also pick up the culture of the company and the boardroom. Please also check out on the Directors and Officers Insurance Policy available to protect the directors in case of legal proceedings arising out of the board proceedings. Also find out the reason why the vacancy has arisen.

Q: What can one expect after being appointed to the Board and what are the steps one needs to take?

A: Most companies have an induction process that takes care of compliance formalities as also familiarization with the Company/s business and organization. One cannot emphasize more about being thorough on matters like Code of Conduct and Code for Prevention of Insider Trading as also the requirements on disclosures of interest/ shareholdings/ other board positions etc., most of which are also required to be resubmitted annually. The induction process is to understand more about the company and its people and less about showing off what you know. Please do not hesitate to ask all possible questions without fear of embarrassment – it is better not to be embarrassed in the boardroom. Please carry an appropriate device – tablet or physical diary to make your notes and remember key people who are repositories of information. And initiate your personal filing for the new company right away – electronic or physical depending on your preference – so that you always have information and chronology handy for each directorship that you hold.

Q: Can you give some tips on boardroom protocol.

A: Make sure that you have received all necessary information and agenda papers and spend adequate time preparing for the meeting. Carry your papers or the tablet in case of a soft copy agenda that has been adopted by many companies. Make your notes and keep them handy to help you discuss and contribute at the meeting.

Two very important qualities that can hold any one in good stead are listening and punctuality. Arrive at the boardroom at least 15 minutes before the scheduled start of the meeting. The half an hour before the meeting often witnesses informal pre-deliberations happening over a cup of tea and, at times, you can pick up important signals for the formal meeting. Dress formally unless the dress code has been shared as informal.

Usually, the agenda starts with compliance matters and moves on to key items within half an hour. Be attentive from the start. If you have done your pre-work well you will be able to contribute to the deliberations, especially for matters relating to your field of expertise. Make your notes during the meeting too and put down questions that you may like to take off-line. Most importantly, raise relevant questions and where necessary, get yourself heard. In extreme cases where your view is divergent and you believe it is important, politely request your divergent view to be taken on record. Being firm without aggression is the key – it underscores your maturity in dealing with difficult issues.

Be always attentive, avoid distraction and keep your cell phone on airplane mode. Do not leave the meeting before it concludes formally and hence plan for your travel or commute accordingly.

Usually, meetings of sub-committees of the Board precede or follow the main board meeting and may lead to delays – budget for the same adequately. Further, depending on your expertise, you will be inducted in one or more sub-committees. At sub-committees, your presence and contribution must be more visible.

Informal discussions and polite socializing continue outside the boardroom over tea or lunch. Be relaxed but be observant and rely on your listening skills to pick up useful information.

At times, board members may get invited to investor presentations or town hall meetings to give them a flavour of different stakeholder profiles. It is advisable to be more of a listener and observer on such occasions and let the Management manage the show unless you are called in for a brief address.

Usually, many companies have adopted the format of annual off-site business strategy meetings. This is one of the most important events as business strategy is revisited at such meetings and more detailed deliberations take place. One level down below the CEO/ Business heads often get invited to these meetings giving the board members an opportunity to assess depth of talent and insights for succession planning. The offsite meeting also presents an opportunity for social and informal interaction amongst board colleagues and with the management team.

Q: How important is it to treat information with confidentiality?

A: Confidentiality of information is extremely important. I have overheard discussions in public places like airports or restaurants where there is a risk of breach of confidentiality. Equally important is the process for handling agenda and board papers after the meeting, especially where these are in physical form. The best option is to return these to the company and retain only what you consider necessary for future reference – e.g., Business Plan or policy documents etc. Thankfully, digitization has been extremely convenient with secured access to information available all time so long as you remain a board member.

Q: Do you as an Independent Director adopt any implicit rules

A: I generally adhere to three rules – abide by code of conduct, always ensure confidentiality and err on the side of caution when it comes to the disclosure requirements like potential conflict of interest as also annual declarations. I have witnessed embarrassing situations when a board member reflects a casual approach in submitting such declarations. Further, in regulated entities, impact of errors in disclosures can be even more serious.
A board member is for strategic inputs and oversight – so avoid the temptation to getting into operational matters unless your intervention is specifically requested either by the Chairman or CEO.

Q: What should my attitude be towards non-Board members?

A: Your friends are not only your colleagues on the Board but also the statutory auditors, the internal auditors, the CFO, heads of business, head of human resources and the head of enterprise risk management, not to forget the company secretary and the compliance head. Yes, you must have free flow of information across these channels if you have to succeed as a director and also sleep peacefully at night! The internal auditor remains the most subtle and underutilized channel. Through the audit committee, you need to leverage internal audit effectively to support the board agenda. The other oft-understated role is of the Chief People Officer – you need to leverage the functioning of Nomination and Remuneration Committee to get information on human resources and talent management, which is key to robust succession planning.

As an independent director, you represent all the stakeholders including society and minority shareholders. You have the responsibility of fair play with all stakeholders, with the right governance framework in place. The governance framework encompasses the board and committee structure and board processes – flow of information, deliberations, decision making and recording as also dissemination of information to the external world – all of this in compliance with applicable law and regulations.

Q: What are your thoughts on the Boardroom dilemma as regards ethical choices?

A: These situations do not arise that often, but when it happens, I strongly recommend that you think and articulate with clarity. Step back, take a break of five minutes and thereafter, if you are convinced you need to stand firm, go ahead and express your view dispassionately. If the issue is serious, be ready to step down from the board rather than acquiesce to what you believe is not right. Of course, such situations are usually preceded with long deliberations – you see it coming, and, in all probability, the Chairman will see reason and step in to avert the crisis.

Q: You have been a director in various companies for more than 20 years, any message to the women aspiring to be Independent Directors?

A: Law enforcing agencies and regulators are going to be more demanding and precise so remaining aware of the regulatory and legal framework is important. The statutory auditors in their quarterly presentations to the Audit Committee always highlight such information so sharing this with the full board is useful. Of course, the Management will also proactively keep the board updated.

Technology deployment, work from home and digitization are all a reality and with these come the risks. You necessarily need to acknowledge and deal with this by ensuring that right resources are available within the organization and external expertise is tapped in time to avoid risks associated with these activities.

Succession planning and Crisis management are at the fore, more so, after 2020. The Board will have to play a constructive role of facilitator in ensuring that the company is ready and the business continuity plans and contingency plans are indeed working and continuously reviewed.

Agility and change management have always been key requirements but never has the need been felt as emphatically as we see now. Moreover, after the pandemic, focus on people resources is important with regard to employee health, stress management, providing infrastructure support and reinforcing employability – all of these may need to be reviewed by the Board.

My favourite view is on Enterprise Risk Management which I like to refer to as Strategic Risk Management. Please do not feel assured that this is an annual exercise because risks come unexpectedly and do not wait for annual assessments. Further, inherently business enterprises will take calculated risks and reap rewards so a strong risk culture does not mean risk-averse culture!

Q: Do you believe that Boards mandatorily must have at least one women Director

A: Diversity and inclusion – not only for gender but also for age and culture is becoming critical and the board will have to embrace the change. Encourage young talent with the organization and when filling up board positions, induct gender and age diversity in the boardroom.

Q: What is the challenge to the Board of a start-up?

A: Investors' agenda – we are in the age where start-ups grow into monoliths nurtured with a new breed of risk-taking investors who also rightfully feel entitled to hefty returns – balancing sustainable growth with this agenda is a challenge that boards are grappling with.

Q: What is the often referred to -ESG agenda

A: Responsibility on sustainable growth that protects the environment, which thrives on bedrock of governance and is inclusive to share benefits with the society. Boards will have to be extremely sensitive towards this responsibility by blending this objective when deliberating on the strategy for growth.

Q: What are your reflections on decisions taken by the Board?

A: The actions and decisions of board members will have to stand the test of scrutiny by touchstone of ethics and fair play.
My objective and intent in sharing these reflections is not to deter young aspiring professionals to take up board positions but to get them Future Ready for handling the responsibilities that go with that position.

CA Milind Sarwate-Independent Director- Mahindra Finance, Metropolis, SeQuent, Matrimony.com, Hexaware, OmniActive Health, Eternis & WheelsEMI.

Has been on boards since 2005 (Mindtree, Geometric, Glenmark, International Paper, House of Anita Dongre, CARE Ratings). 37-year experience includes CFO, CHRO roles in Marico & Godrej. Founder & CEO, Increate Value Advisors LLP. Provides advice & mentorship in business & social value creation, governance, capability building. Invests in promising business/ social enterprises. Chartered Accountant, Cost Accountant, Company Secretary, CII-Fulbright Fellow (Carnegie Mellon). ICAI CFO Award (2011), CNBC TV-18 CFO Award (2012) & CFO India Hall of Fame induction (2013).

Q: Statutory pronouncements- Circulars, notifications, amendments - are constantly being issued. Particularly SEBI LODR & RBI circulars. How do you, as an Independent director, ensure compliance?

A: There are several ways in which an independent director can remain abreast of statutory developments.

The first is by tracking all legal and statutory pronouncements personally. This is not an easy task for an independent director especially if the director is not attached to any large organization that provides this information readily. However, to a large extent one can achieve the same effect by subscribing to search websites and publications that provide updates. Being on mailing lists is easy but one needs to be judicious as to what one will read and what one will avoid. The flow of statutory pronouncements is fast and wide and therefore one must decide one's reading priorities carefully.

Director must develop some keys to the prioritization of what to track and what not. This key can be derived from the list of priorities and business ambience of the company. E.g., if you are on a Pharmaceuticals company board, you need to track the statutory developments in the pharma industry. Such a priority-based approach usually leads to a short list of "trackable".

Another source of the statutory pronouncement update is industry publications. Research analysis reports are also good sources. These could be equity analyst or industry analyst reports. These give a good industry view, and invariably include the current and likely developments affecting that industry. Being in touch with some analysts from time to time is also a good idea.

Most of this material is freely available on the Internet. One can develop one's customised database and subscribe or register at the relevant websites. It may be worth sometimes to even pay for some material.

Networking with other independent directors is also useful as it builds different perspectives.

The independent director can insist that the agenda of each board meeting includes an item relating to statutory updates. Good company secretaries provide this information on their own to their board and certainly would provide it when sought by a director.

Statutory pronouncements do not usually arise overnight. Usually, there is a draft published and debate takes place in the intelligentsia on the draft. If the pronouncement is expected to be a major one, seminars or webinars are held to discuss the implications of the impending legislation. An example is the law relating to data privacy that is slated to be effective soon.

As a responsible independent director, it makes a lot of sense for the director to be proactive and to keep looking for the impending legislation rather than the one that has already been announced.

Q. Despite good people on board, companies have taken decisions against principles of ethics and good governance. Against that backdrop, how can IDs be effective and play their role well.

A: This paradox of good people effectively participating in bad decisions is not new or unique to modern day corporations. Our ancient scripture "Mahabharat" also contains instances where despite the presence of many elderly and wise people, decisions and actions against all principles of ethics were indeed taken. The danger of evil overcoming good at the board table is an eternal real peril and must be guarded against.

The guarding process begins much earlier than the likely manifestation of evil.

An independent director must be on guard all through and not only at board meetings. It is important for the independent director to track the company from several angles all through the year, in the context of board governance. Such tracking may appear a daunting task but in fact it is not.

This is because most of the information about the industry or about the specific business of the company is available in some form or the other in public domain, on the Internet. If you install a Google alert around the name of the company or of the individuals in leadership positions or around the specific issues prevalent in the company, you will be elegantly kept posted by Google, effortlessly all through the year.

It is also important for independent directors to be alert at meetings and figure out if the optics are misleading and the reality is something else. Most independent directors are experienced enough, with at least 20 years of experience. They are usually able to tell a correct statement from a wrong one, based just on a prima facie scrutiny.

Human behaviour, especially deviant one, falls into certain common patterns which are industry-agnostic. Thus, if someone is lying to you, he or she would give enough cues- through body language or by the absence of logic. These cues would be the same across industries and may not need much investigative work. At the least you can have enough prior notice through a doubt about what could be going on.

Apart from such being on the guard, there is one more important perspective to deal with likely mis-governance. That perspective is of value creation. An independent director is most effective when he or she focuses on the creation of value for the company and on ensuring that there is sufficient de-risking of the company's strategy and operations.

If these focused objectives of the independent director are well understood, he or she can develop enough courage of conviction "to ask the right questions and know the wrong answers".

Based on my own experience, I do believe that companies (including the evil ones) take a "constructive questioning" director far more seriously than a silent spectator who accepts information at face value. Of course, the process of asking questions must be handled diplomatically and gracefully.

Constancy of the perspective is also crucial. Contrary to popular desire, the role of the independent director is a 24 by 7 by 52 role. It is NOT a role to be played only 4 times a year at board meetings. The Company's business keeps running all through the year and therefore bad governance or wrongdoing can also take place all through the year. Usually, approvals from the board are not required at the operational level. If therefore there is any muck at that level, matters will be apparent to the board only after substantial damage has been caused. It is therefore advisable that the independent director stays in touch with the company, its business and its leaders even in between two board meetings.

This is not as difficult as it seems. A simple process could be set up- to have a monthly call with the CFO or the CEO or both. There can also be a call that involves all directors including the non-independent directors. One can also seek a customised information pack every month. The only care to be taken when one gets involved in such monthly MIS or calls is that the non-executive nature of the independent director's role must be always preserved. The Company's executive directors should be left to do their job and the independent director should not meddle into the day-to-day affairs.

Coming to dissent “at” meetings, I do appreciate that it could become difficult for an independent director to make too many sharp points at a meeting. Many times, the promoters at the helm may be senior figures and it may be difficult to counter them at the meeting. In such cases, separate email communication comes in very handy. Well written emails can serve as an excellent intervention by an independent director. Also, in case things go wrong, and the independent director is called upon to prove his or her diligence, the email trail helps.

In general, I feel that independent directors should ask questions through a recorded means like an email and not just orally at the meeting.

Reasoning with the likely wrong doers is also important. In most cases of wrongdoing or misgovernance by a company’s promoters, the promoters lose the most. This follows the simple mathematical logic that if a company loses value, the promoters by virtue of their dominant shareholding lose much more than other shareholders. This commonsensical logic is however uncommon. It can be deployed by independent directors, to convince the promoter shareholders or the people in management that the road to value destruction would be most tedious for the promoters or managers themselves.

My experience is that commercial business logic pointing out impending value destruction works more powerfully than any arguments based sheerly on a stance of upholding ethics.

After all governance has an important objective of sustained value creation. Governance is not an end. Therefore, if the requirements of good governance are positioned as requirements of good business value creation, they are received better and acted upon.

Q: Responsibilities of IDs are indeed onerous. What are your thoughts on the risk’s IDs are exposed to? Insurance is normally there, but it cannot cover loss of reputation.

A: My first thought in this space is that people who take up independent directorship need to be clear of what they are doing. They do have a choice as regards whether to take up the role or not. There would be perhaps no case of anyone who took up an independent directorship because someone forced him or her. We must keep this in mind all the time that one has taken this role voluntarily and on the flip side, one also should remember that one has complete freedom to give up that role any time. Once an independent director owns up the responsibility of having taken up the role, the issues about the risk can be handled in a mature manner, without any whining about there being so many risks and responsibilities in that role.

Yes, indeed, the independent director role carries humongous responsibilities, including some unfair ones. However, one can handle these responsibilities much better if one takes up the role as a serious business role and not as a statutory placeholder role, or as a "time-pass" role after retirement from a professional career.

To my mind, an independent directorship is a career in business and not something which can be done peacefully after retirement. This is because, over the past decade, the expectations from independent directors, both, statutory expectations and business expectations of companies, have gone up significantly.

Therefore, the first countermeasure, against the danger of responsibilities overwhelming the independent director, is that sufficient time, attention and share of mind must be given to meeting the expectations of the independent director role.

The second measure is the practical realisation that the role is a business role. Therefore, understanding the business of the company is very critical. Independent directors are leaders of the company and therefore custodians of its business. Their independence positions them as logical and constructive controllers over the promoter directors and managers. At the same time, independent directors are not leaders of the opposition or constant critics. They must maintain grace and constructive approach.

My experience is that if an independent director understands the business of the company and the process by which Corporate value is created, he or she can contribute immensely to that value creation. Such contribution of that independent director is invariably valued by the promoters and the rest of the board. Once the director understands the business context, his or her efforts in discharging responsibilities are received much better by the board.

I believe that the solution to the issue of having many responsibilities does not lie in the independent director running away from those responsibility areas in the business. It lies in engaging more with the business so that it is easier to discharge those responsibilities.

An example is the audit committee chairmanship. (I have been holding Audit Committee Chairmanship in one or more companies since 2005). I have found that by engaging more and more with the CFO, the statutory auditor and the internal auditor as also understanding the process of financial reporting, risk management, and statutory compliance, I am able to discharge my responsibilities well, and add significant value to the business through these processes. As a result, my role as the audit committee chairman is both appreciated and taken seriously. This helps me strengthen the process by which I ensure diligence in my work as a director.

In the answer to the previous question, I have highlighted some of the techniques for tracking proactively the possibility of misgovernance in the company. That process helps also in managing responsibilities. My experience is that if one takes an annual view of the role as an independent director, one can set up milestones and checkpoints for ensuring that one plays one’s role well. This also brings predictability in one’s interactions with the company and its leadership. They also welcome it because they are then prepared. When they know that a non -executive independent director will need something from them, they can prepare it better than when the director suddenly starts asking questions.

Setting up a good work ethic and a good operational rhythm is thus one way of ensuring that you handle your responsibilities well and are thereby ready for mitigation of risks if any come your way.

Q: When CAs are invited to be on Board they are assumed to have the right skill sets to be on the audit committee. Which laws & sections, one must be mindful of, before becoming Audit Committee member

A: I believe that the knowledge and the skills typically possessed by a chartered accountant are good enough for an individual to become a member of the audit committee of a public company.

It would require a separate forum, time and space to list out all the laws and sections to be kept in mind before taking up an audit committee membership. I say this because this forum is one for sharing insights and not just knowledge or information. These laws and sections would be readily available even on the Internet and therefore I am not burdening readers with that as a part of this answer

The knowledge and skills base requirements arise principally from corporate laws. If the company is listed there is the additional requirement to comply with the regulations issued by SEBI from time to time. Acquiring knowledge in this space is not difficult. For a chartered accountant it would require a little bit of brushing up of knowledge to be on top of the requirements. In many cases, especially of Chartered Accountants working in the industry, they would be already aware of most of the duties of the audit committee simply because they have played roles either as CFO or senior members of the finance team.

The audit committee role can be stratified under a few broad buckets. I have found that It makes more sense to view the role in terms of those buckets, rather than through the lens of a checklist of sections of some laws.

The first bucket relates to financial reporting. This includes accounting and reporting to shareholders every quarter in case of a listed company. This bucket includes interaction with the statutory auditors because they are an integral player in the finalization of the accounts for reporting. Therefore, a broad knowledge and overview of how accounts are closed, and financial reports generated is critical. It is also important to understand the statutory auditor's role and responsibilities, so that you can ensure high quality.

The second bucket is of risk management and related actions. In some companies, there may be a separate risk committee, but in any case, the output of that committee, in the form of a Risk Register, would come to the audit committee only. This is because the Audit Committee's statutory role is to ensure that risks are being managed properly. Internal audit is a major risk mitigation tool. The audit committee members need to be aware of the strategy, structure and processes in the internal audit area. They can then get the best out of the internal auditors and ensure that internal audit emerges as an effective and sustained risk mitigation tool for the company.

The third bucket relates to compliance and vigil mechanisms. This area is specific and can be understood and operationally managed through checklists. We need to keep in mind that operational excellence in this area does not guarantee full compliance effectiveness. This area could also contain tricky grey issues that escape the operational compliance framework. Such issues may not be easily resolvable. For reaching such issues, that may not be formally reported, one has to wear two hats- one of a compliance auditor and the other of a businessperson. This helps in understanding whether the grey area is likely to be fatal to the company or not.

This approach also helps to understand whether the grey area will ever turn white and acceptable. If you conclude that it will always stay grey, you may want to decide whether you will continue as an audit committee member or not.

For an average chartered accountant, these three buckets are easily manageable if he or she follows a meticulous and methodical organized approach.

Q: The effectiveness of Board & quality of decisions to a great extent depends on the Chairperson conducting the meeting. As chairperson of say and Audit Committee, how would you conduct it?

A: I strongly believe that high quality decisions by a board depend only partly on what goes on at the periodic meetings. I feel that Board "happens" all through the year. Roots of good decisions taken and implemented by the board are spread all over the year rather than only at a particular meeting. Therefore, it is important for the audit committee chairperson to make sure that the pre-work and post-work for the decisions is handled competently, correctly and completely.

Let me describe to you the typical way I handle audit committee meetings as the Chairperson.

The audit committee meeting preparation begins 3-4 weeks before the actual meeting. This is when I set up meetings for preparation for the audit committee. These meetings are with the following.

The first meeting with the CFO to understand the issues that have come up or are coming up during the quarter- business issues, or statutory audit issues or internal audit issues. At this meeting I also check in an open-ended manner if there are any other issues that are bothering the CFO. This gives me an early notice of the impending problems if any.

The second meeting is with the internal auditors, to review the reports for the audits completed during the quarter and the plan for the next quarter. Periodically, the entire year's internal audit plan is also discussed along with other related issues such as evaluation of the internal auditor's performance, and any other open-ended issues that the internal auditor may have.

The third meeting is with the Statutory Auditors to figure out the issues that will come up as regards financial reporting for the quarter. Typically, the statutory auditors discuss the top 3 or 5 issues with me and the CFO in a tripartite meeting.

These preparatory meetings help a lot. They give enough assurance to me as the chairman to be on top of the agenda for the audit committee meeting, having prepared and got involved personally into all critical issues. The other part of the preparation lies in calendarizing the audit committee agenda correctly and comprehensively across the year. Several duties and responsibilities have been assigned to the audit committee by the company law and SEBI regulations. I get these listed and allocated over 4 to 6 meetings of the audit committee through the year. This ensures that every aspect of the audit committee responsibility is covered at some meeting or the other. Then, if you aggregate the agenda for all the meetings in a year, all the responsibilities of the audit committee are adequately covered by a discussion at audit committee meetings. This comprehensiveness check ensures that we have a competent process to discharge the responsibilities of the audit committee. This also ensures due diligence.

At the Audit Committee meeting, having thus prepared very thoroughly, the task is easy. Yet as the chairperson, there is that important task of involving other members of the audit committee and ensuring that the views expressed by all are taken on board and properly dealt with.

The final part is the tracking of agreed action points through periodic checks and follow ups.

Q: Women today are on board, could be, due to their qualification but more so as the law requires it. Do you think that women on Board can bring a better or different perspective to issues & help in better decision making?

A: Women members on a board of directors certainly add enormous value through the following:

First is the value of sheer diversity. Women bring a different perspective to the board. Typical boards are male dominated. Women bring to such boards a better understanding of human behaviour, better empathy and in general better understanding of grey areas involving human dynamics.

My experience is that a male dominated board tends to become excessively closure-oriented and the focus can shift from better decisions to early and quick decisions without adequate deliberation and involvement of all parties. Women can influence such boards to be more deliberative and generative.

Secondly, women bring a sharper sense of ethics and fairness. They can play a great role in overseeing vigil mechanisms that are now mandated by law.

Thirdly, women bring tremendous value simply because they constitute 50% of humanity. They would usually constitute 50% of the immediate or eventual consumers of the company's products or services. The actual number would vary from industry to industry, but I come from the perspective of the FMCG industry, where I worked for long. In that industry, buying decisions are made very largely by women and their presence on the board helps the business significantly, as they also represent the consumers of that company.

Lastly, and on a lighter note, there is a very practical "decorum-related" benefit that a board derives from having women members. The tone and tenor of the conversation around the board table certainly improves and becomes more civil and constructive when there is a woman in the room!

Kalpana Unadkat-Independent director- Avenue Supermarts Limited (DMart), Eris Lifesciences Ltd., TVS Housing Finance Pvt Ltd……..
Partner at Khaitan & Co (Mumbai). On the corporate governance committee of CII (Western Region) and Indian Merchant Chamber of Commerce and Industry. Awarded the Corporate Governance Lawyer of the year, India - in 2019, 2018 and The Rising Women of the Year Award in 2019 by the Economic Times and Spencer Stuart. Co-authored research paper titled "Women on Board" and has been frequently quoted in newspapers on corporate governance and M&A deals in India. Has conducted several workshops on Corporate Governance and worked with Corporates for Board effectiveness.

Q: Some people are eying directorships as a source of revenue. Would that dilute independence?

A: In an ideal scenario, independence should not be affected by the revenue. Unfortunately, that is not the reality. My view is that if your paycheck or source of revenue is mainly sitting fees or commission based on profits, then there is a real risk that independence is compromised and directors need to make a conscious effort to ensure that their independence is beyond doubt.

Q: What exactly are related party transactions (RPTs)? Aren't Companies free to transact with their sister concerns, relatives of management? Why should Independent Directors (IDs) be so careful of RPTs?

A: In my view, Related party transactions are not bad per se. Section 188 of the Companies Act, 2013 requires prior approval of the audit committee, board and, in certain circumstances, the shareholders for certain RPTs and these need to be disclosed in the Board report with a justification.

The IDs should ensure that the RPT are fair and are conducted on an arm's-length basis which are supported by expert opinions. The IDs should be careful while approving with RPTs as there are consequences against directors for such non-compliance.

Q: Impact of a wrong decision is felt much later? How can ID be responsible for decisions not taken in his or her tenure though he /she may be aware of it?

A: The test is not whether the decision was right or not but whether the directors acted in the best interest of the stakeholders given what they knew at the time. IDs will only be liable if they knew and were negligent or reckless. If IDs took care while making a decision and exercised diligence, they shouldn't be held liable for adverse outcomes. It is a risk of doing business that some decisions will go against a company but that doesn't automatically result in IDs being liable. IDs should record their disapproval in the minutes of the meeting so that if there are decisions which result in loss to the company, they will not be held responsible.

Q: If a woman ID is tolerated & perceived as a person appointed to just comply with the law, what should a woman ID do?

A: This is likely to happen to many women in a patriarchal society, but I see it as a challenge to women to demonstrate their value and in time, their contribution to the company will be such that it is recognised.

Q: Companies Act 2013 created ripples, it changed the age-old act of 1956. What are the provisions you feel good for corporate governance?

A: The Companies Act 2013 brought a plethora of changes for the corporate lawyers. The most important provision (my favourite and rightly so) is - the introduction of a requirement for women directors. Other key changes were in respect of greater transparency, recognition of independent directors, more power to minority shareholders and the acknowledgement of the existence of stakeholders and the purpose of the company to be wider than mere profit.

Q: Should some provisions be amended so that talented people do not shy away from accepting directorships?

A: I think we have enough laws in India. What we need to do is create a corporate governance environment so that companies are incentivised to seek out talented and skilful people who are in turn, motivated to take up directorship roles. Perhaps, the Nomination and Remuneration Committee should play a bigger role and be more selective to see if the Director can add value. Laws prescribe qualifications and skill sets of directors; it is the Board and shareholders responsibility to create an environment to get the right talent on board.

Q: How can one be an effective ID?

A: Think and behave "independently" in the best interests of all stakeholders. This will no doubt bring effectiveness.