Corporate Governance

Shareholders

The owners of an incorporated business are known as **shareholders**. The corporation must be operated in a manner that best benefits its shareholders.

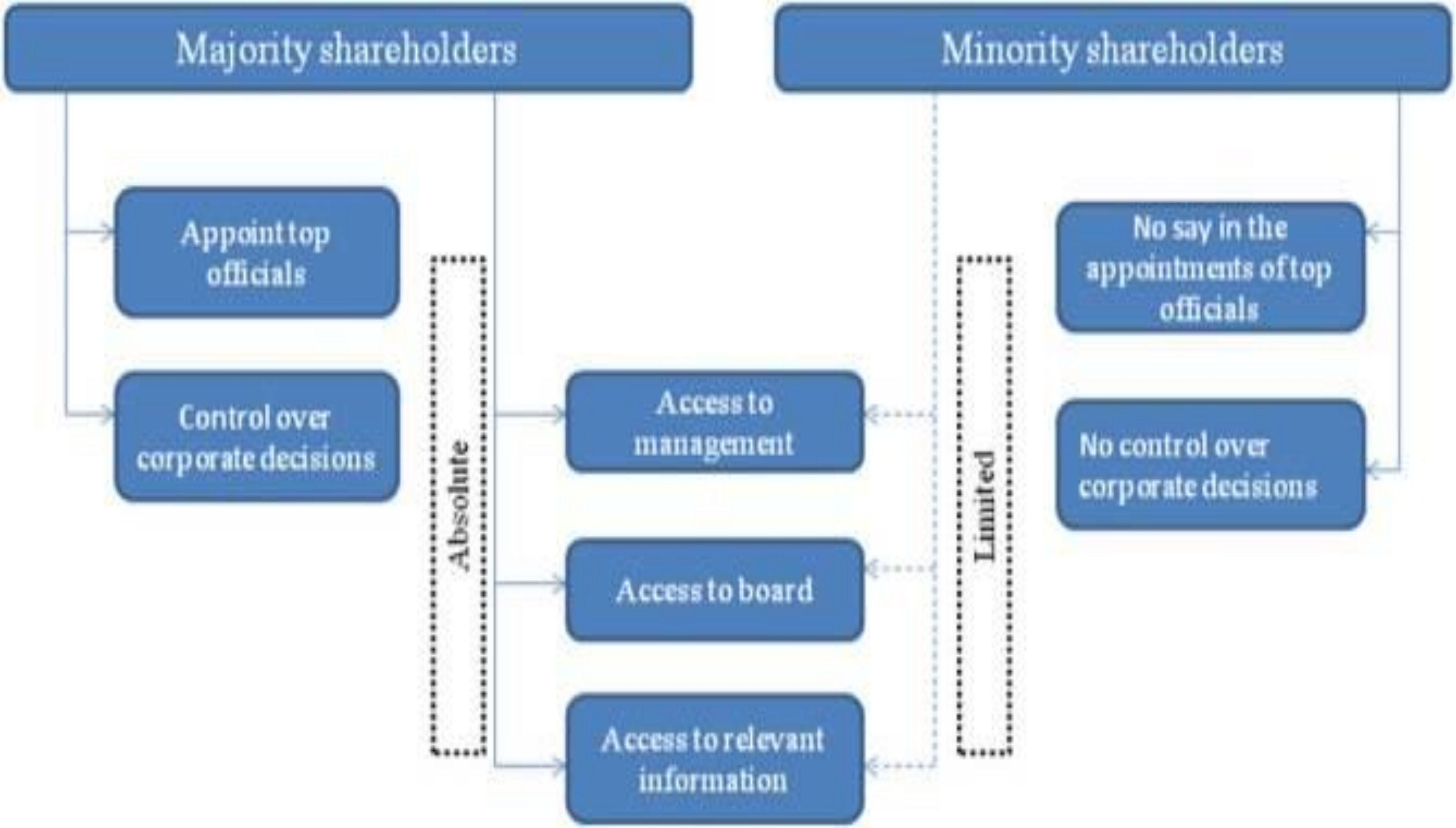
A shareholder can be a person, company or other entity. It's any entity that owns at least one share of a company's stock.

Although shareholders don't play an active role in the everyday business operations, they do have certain rights and duties that will be defined in the company's bylaws. Generally, shareholders have the right to:

Shareholders' Responsibilities

- ✓ **Attend general meetings** (AGM)
- ✓ Inspect the **corporation's books** and records
- ✓ Appointment of **directors** and **auditors**
- ✓ Sue the **corporation for wrongs** committed by directors or officers
- ✓ Approve **the sale of company's assets** and **participate in the proceeds** of the company liquidates
- ✓ Agree to **merger or consolidation deals**
- ✓ Receive a **portion of any dividends** issued by the company

Majority vs. Minority shareholders

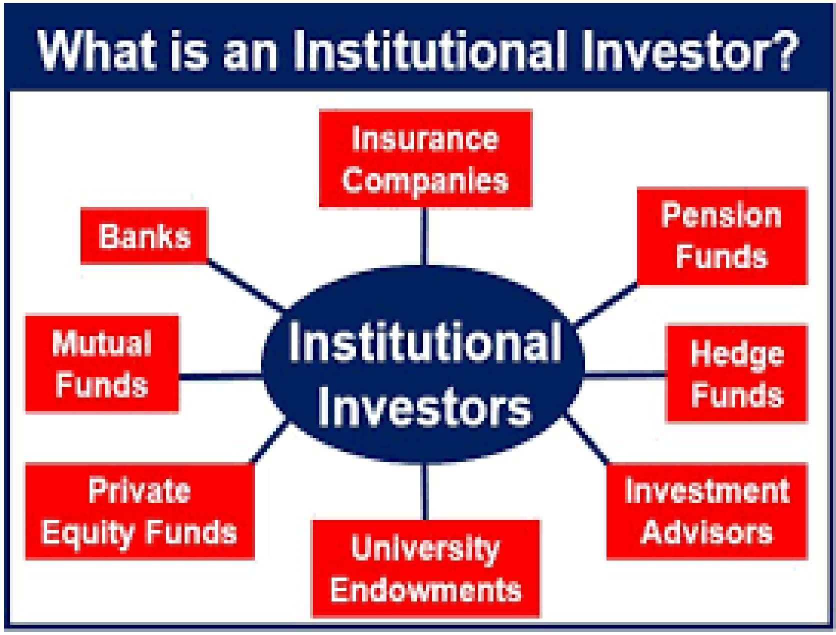


Majority vs. Minority shareholders

- **A minority shareholder** holds less than 50% of a corporation's shares of stock.
- A majority shareholder holds over 50% of the corporation's shares—and a majority of the power.
- Individual minority shareholders have little power because they lack majority control.
- On the other hand, a majority shareholder can often ignore the opinion of minority shareholders when major decisions require that the shareholders vote.

Institutional Investors

Are financial institutions that invest large amounts of money in securities, commodities and foreign exchange markets, on its own behalf or on the behalf of its customers



They are major players in the long-term investment market

Board of directors

A group of individuals elected to act as representatives of shareholders in establishing corporate management **related policies** and to make decisions on major company issues

Board of Directors roles and responsibilities

1. Governance:

Establishment of structures and processes to fulfill board responsibilities considering the investors, regulators and other stakeholders, and in aligned with company's strategy

2. Strategy:

Involved in the development of strategic priorities and plans that are aligned with organization's mission and vision

Ensure that strategy is in the best interest of shareholder and stakeholders

Monitor management's execution of the approved strategic plans as well as the transparency and adequacy of internal and external communication of strategic plans

Duties contd'

3. Performance:

They review and approve company's annual operating plans and financial plans

Monitors management execution against established budgets as well as alignment with strategic objectives of the organization

4. Integrity:

They set the ethical tone of the company; policies and procedures designed to promote legal compliance and appropriate standards of honesty, integrity and ethics throughout the organization

Duties condt’

5. Talent:

They select, evaluate and compensate the executive directors

They oversee the talent programs of the company, particularly those related to executive leadership and potential successors to the executive directors

6. Risk governance:

They set and appropriately monitor the company’s strategic, operational, financial and compliance risk exposures,

They set the risk appetite, tolerances and alignment with strategic priorities

Types of Board of Directors

Executive directors

Executive directors hold **a position** on the board of directors. They have "**executive responsibility**" for running the company's business. Executive directors are a **company employee**, usually a **senior executive**, and a board member. On top of their full-time executive position, they are appointed to the board, typically by the **Nomination Committee** or the Board of Directors itself.

The CEO, the Managing Director and the CFO are executives that are typically members of the board.

Types of Board of Directors

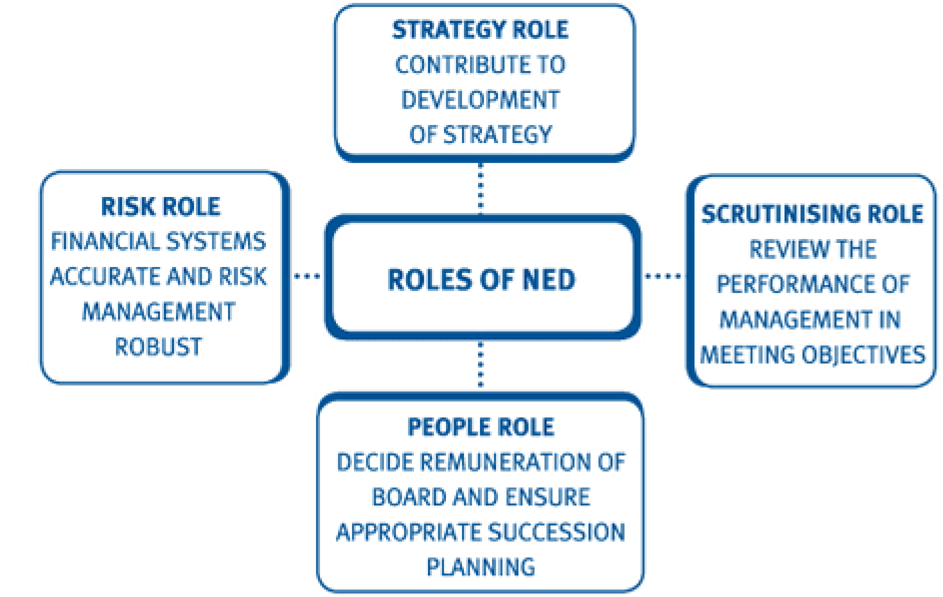
Non-executive directors

The demand for non-executive directors has increased in recent years and so as the demand for business leaders to transition to **non-executive roles** as retirement approaches or as NED and trustee roles offer attractive professional development opportunities.

Non-executive directors tend to be **selected and appointed for their personal qualities**, **experience** and **specialist knowledge**.

Good corporate governance mandates that Nomination Committee and Board of Directors will have assessed the skills, experience and expertise missing on the board prior to appointing a new NED and will have considered diversity aspects

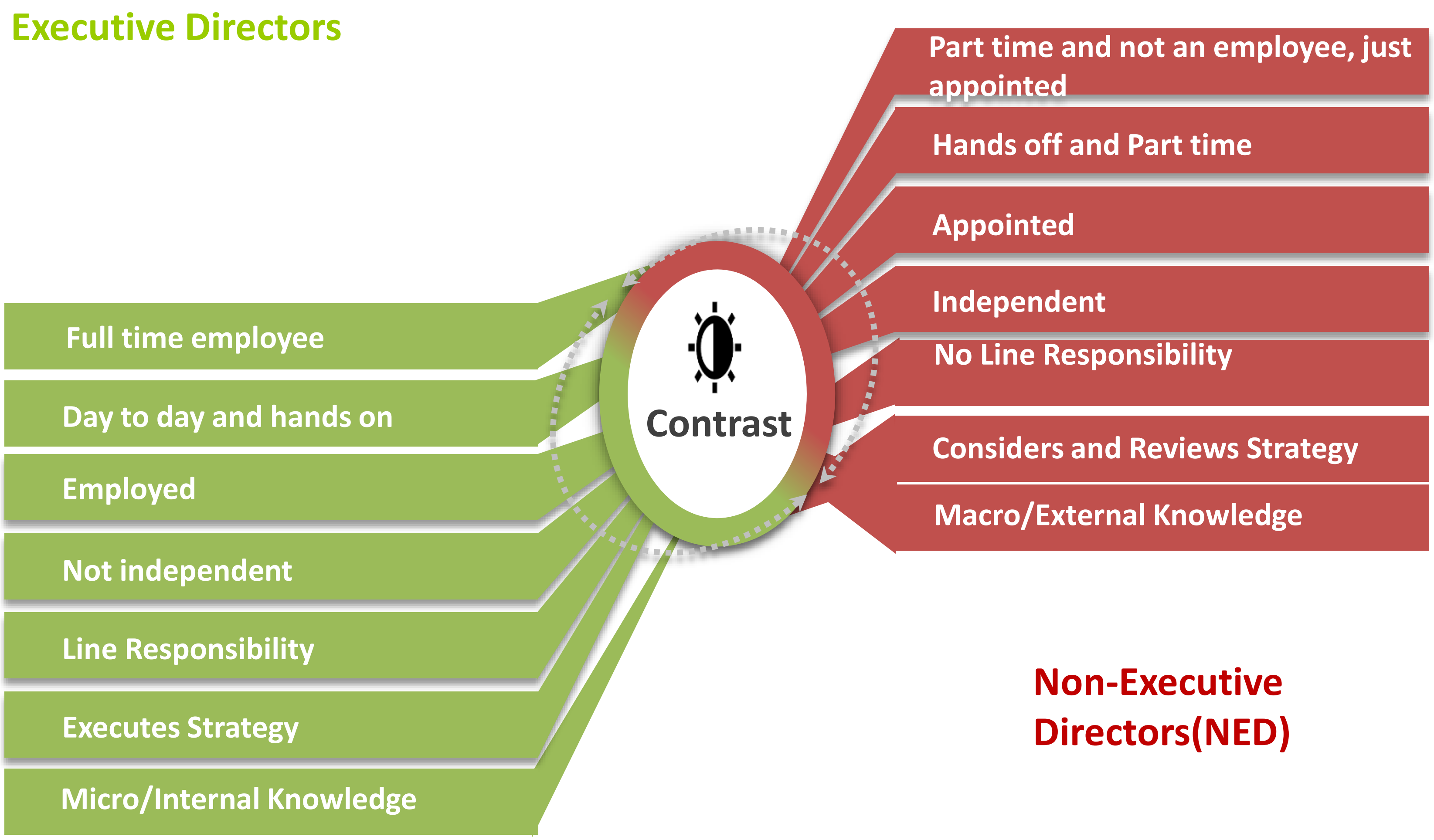
Non-Executive Directors



Non-Executive Directors - Need

- Play crucial role in implementing the principles of effective corporate governance.
- Counterbalance managerial infirmities in the Company.
- Ensure legal and ethical behavior of the Company.
- Source of well conceived long term decisions for the Company.
- Deemed to provide necessary personal and technical expertise in order abate fraud, misappropriation by the Company or its directors.

DIFFERENCE BETWEEN EXECUTIVE AND NON-EXECUTIVE DIRECTORS



ROLES AND ADVANTAGES OF NON-EXECUTIVE DIRECTORS IN THE BOARD

ROLES

- Ensure effective governance of the organisation
- Oversee recruitment and performance of the CEO
- Formulation of the organisation's strategic direction
- Reviewing, approving and monitoring the business plan and annual budget
- Contribution to the development of board and organisational policies
- Compliance with the legal requirements of being a director
- Compliance with legal and regulatory requirements of running a business
- Monitoring risks facing the organisation
- Involvement with a board sub-committee
- Identifying skills required by the board and potential candidates.

ADVANTAGES

- Monitoring role
- Expertise
- Institution and watchdog perception is enhanced because of their presence.
- Communication-the implied improvement in communication between shareholders' interests and the company.
- Discipline-Non executives directors may have a positive influence on the success or otherwise of takeovers.

TYPES OF DIRECTORS

TYPE OF DIRECTOR	CHARACTERISTICS	ROLES AND FUNCTIONS
Executive Director	• Have executive responsibility for running the company's business • Company employees	• strategic planning, working with board of directors and operating within the budget. • serve as the face and public spokesperson for the organization • serves as a link between the board and management
Non-executive Director	• appointed through a letter of appointment. • no executive (managerial) responsibilities • provide a balancing influence	• Strategic roles • People role • Risk role • Scrutinizing role
Independent Director	• non-executive director who is not a member of the organisation	• Bring balance.
Alternate Directors	• Representative appointed to appear on behalf of a director at board meetings	• Proxy
Shadow Directors	not appointed as a director of the company but they influences the decisions of the board.	• Organizational politics
Additional Directors	Person appointed to be a director either to fill a vacancy or as an additional director.	• Close gap measure
Nominee Director	Nominated by Stakeholders	• Represents stakeholder interests

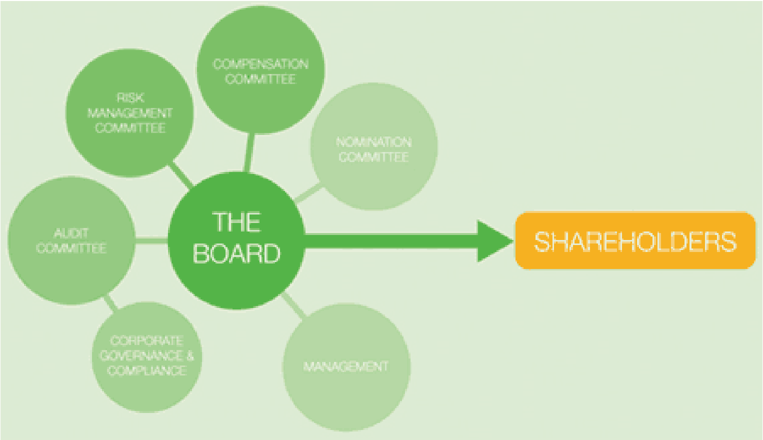
Board committees

The Board appoints Committees, among its members ,to help carry out its duties

They work on key issues in greater detail than would be possible at full Board meetings

They monitor progress under action plans developed by management

Each Committee reviews the results of its meetings with the full Board



BOARD COMMITTEES

- All committees have a combination of Executive, Non-Executive and Independent Directors
- Chairman of all the committees is an Independent Director
- committees deliberate on the matters referred to it by the Board.
- Recommendations of the committees are submitted to the Board to take decision

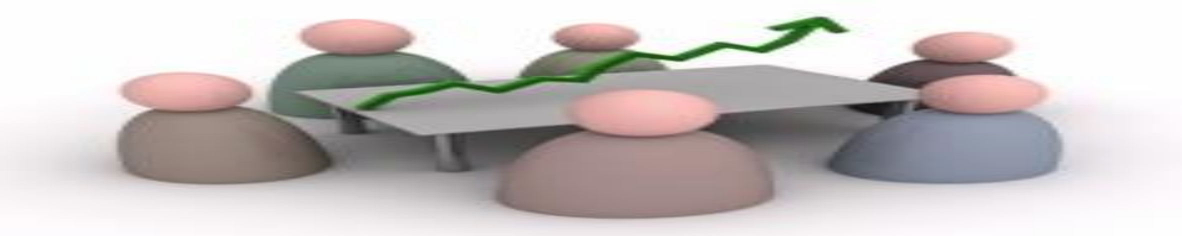
ADVANTAGES OF COMMITTEES

1. Pooling of opinions
2. Improved cooperation
3. Motivation
4. Representation
5. Dispersion of power
6. Executive training
7. Continuity
8. Communication
9. Better chances of recommendations to be accepted

DISADVANTAGES OF COMMITTEES

1. Time and cost
2. Compromise
3. Personal prejudice
4. Logrolling
5. Strain on interpersonal relations
6. Lack of effectiveness

BOARD COMMITT



Committee	Function
Executive	• Standing committee that often acts as a steering committee for the full board. • Provides organization with direction and acts on behalf of the board
Audit	• provide accountability for the organization's independent audit • oversees the independent audit process which often entails hiring and evaluating the independent auditor(s).
Stakeholder Relationship	• considers and resolve the grievances of the security holders of the company.
Compensating and Remuneration	• assists the board of directors by proposing a remuneration policy and general guidelines for incentive remuneration for the board of directors and the executive management and proposals on the targets for company-operated performance related incentive programs.
Risk Management	• assists the organization in understanding and managing risk • Advocate changes in legislation and regulation to properly control or allocate risk.
Nomination and Governance	• takes the lead in identifying director candidates, organizing board and committee membership, recommending governance principles and practices and takes the lead on board self-assessments
Corporate Social Responsibility	promotes a culture that emphasizes and sets high standards for corporate social responsibility and reviews corporate performance against those standards.

Board committees

Exhibit 3 Coca-Cola's Board of Director Committees, 1939–2003

Ongoing Committees		**Established**
Audit		August 5, 1939
Committee on Directors		May 5, 1981
Compensation		February 26, 1923
Executive		November 10, 1919
Finance		November 15, 1954
Public Issues & Diversity Review		1985

BOARD MEETINGS

Board meetings are meetings at the highest level, i.e. a meeting where board members or their representatives are present.

Requirements for Conducting a Valid Board Meeting

- ❑Right Convening Authority
- ❑Adequate Quorum
- ❑Proper Notice
- ❑Proper Presiding Officer
- ❑Proper Agenda

What is the board performance evaluation

- Recall, what is performance evaluation?
- It is the process of evaluating how employees are fulfilling their job responsibilities and contributing to the accomplishments of organization goals.
- What is board performance evaluation?
- Board evaluation is a mechanism to improve board effectiveness, maximize strengths and tackle weaknesses leading to an immediate improvement in the organizations' performance.

Benefits of board evaluation

- It improves the effectiveness of the board which leads to immediate improvement of the organization performance.
- Helps the directors to understand their roles and special skills needed.
- It helps the board committees and individual directors perform to their maximum capabilities.
- It leads to overall improvement of performance throughout the organization.

Contents of board evaluation

Strathmore UNIVERSITY

1. Identify attributes requires for any new appointments.
2. Review practices and processes to improve efficiency and effectiveness.
3. Consider the effectiveness of board's decision making.
4. Recognize the board's output and achievement.
5. How it operates within the mission and goals of the organization.
6. Board members' understanding of their roles and responsibilities.
7. Board job descriptions.
8. The work of committees and their terms of service.
9. Risk management policies and safeguards.
10. Accomplishments and actions taken that relate to the organizations strategic plans.

Standards that influence board evaluation

Strathmore UNIVERSITY

a) The presence of clear and precise job descriptions for the board.
b) Availability of corporate strategies.
c) Corporate governance that aligns with the vision of the organization.
d) Presence of a board chairman and competent senior staff.

Board remuneration

- It is the process by which directors of a company are compensation, either through fees, salary or the use of company’s property, with approval from the shareholders and the board of directors.
- This came about due to directors rewarding themselves large salaries despite the company having low profits.

Directors’ fees and remuneration

- Directors of a company may receive remuneration in form of salaries, directors fees and bonuses paid out to them.
- The fees define the upper limit which can be paid to the board of directors. The board then determines how they will split the fees amongst themselves.
- Salaries and bonuses are usually part of the director’s employment contract signed by the company.
- The rewards of the directors may vary according to the type of directorship; since they match the responsibilities of the directors.
- Shareholders have the rights to sue the directors if they pay excessive amounts that exceed the agreed payments or pay themselves disproportionately large amounts of profits instead of distributing as dividends to shareholders.

Remuneration committee

- It is created in order to set the director’s fees.
- It is formed by the board with prior approval from the shareholders .
- If they were already appointed before the shareholders could approve, the members must be presented to the shareholders during the AGM for approval.
- Its main purpose is to develop policies and practices for the remuneration of directors, the CEO and senior executives, to disclose this to the market and review the remuneration and the benefits paid.

Role of the remuneration committee

1. It develops policies and practices for the remuneration of directors.
2. It makes recommendations to the board on the appropriate level and structure of the fees.

- The responsibilities are captured in a charter that is approved by the full board.
- The charter should state that the committee does not have any authority for decision making delegated to it by the board, the board retains full responsibility for decision making.

Guidelines that govern remuneration committees

1. The committee must have at least two meetings in each calendar year to monitor the targets and performance.
2. The committee must be given authority to receive advice for setting remuneration from outside.
3. The committee must be given authority to establish remuneration packages for directors within the upper and lower limits. These ceiling and floors must be duly approved by the shareholders in the AGM in advance.

Factors to be considered when determining directors' fees.

i. Size, nature and profitability of the company.
ii. Complexity of operations.
iii. Industry sector
iv. Structure and responsibilities of board including the number of board committees.
v. Risks and challenges of the business.
vi. Shareholders' vote on remuneration at AGM.
vii. Qualifications and experience.
viii. Time commitment required.
ix. Additional responsibilities.
x. Supply and demand – the shrinking pool of non executive directors and the fact that such directors are taking on fewer board positions and increases workloads.

Remuneration policy

- The company must have a clear statement of its policy for remunerating directors whether executive or non executive.
- This eases the work of the remuneration committee.
- The policy should be properly disclosed before the shareholders in the AGM for approval.

Guidelines in the remuneration policy statement

Strathmore UNIVERSITY

1. A detailed summary of fixed remuneration and other benefits to be received by directors.
2. A detailed summary of any performance conditioned to which any entitlement of the director to share options or under a long term incentive scheme is subject.
3. An explanation as to why any such performance conditions were chosen.
4. A summary of methods used in assessing whether any such performance conditions are met.
5. If such performance conditions involve comparisons with external factors, a summary of the factors used.
6. A summary and explanation of the company's policy on the duration of the contracts with directors, notice periods and termination payments.

Remuneration of executive directors

a. Each executive director must be entitled to a fixed base salary.
b. Fringe benefits and other facilities provided at the company's expenses must also be clearly spelled out.
c. An incentive based on short term improved performance must be given to executives so that they are timely, motivated and rewarded for their actions.
d. An incentive based on long term improved performance must be given to executive so that they make decisions that are fruitful in the long run rather than increase performance merely in the short run.
e. The stock options must be given in large quantities at one point of time rather small quantities may be given over the period of time.

Remuneration of non executive directors

Strathmore UNIVERSITY

a. Within the limits set by the shareholders from time to time, remuneration should be sufficient to attract, motivate and retain non executive talent.
b. It should be set by the board and should be proportional to their contribution towards the interests of the company.
c. Remuneration practice should be consistent with recognized best practice standards for non executive directors' remuneration.
d. Remuneration should be in form of cash fees, payable monthly.
e. Non executive directors should not receive share options from the company.

Remuneration policy according to Capital Market Authority

- Executive pay provisions – the Code provides ‘Companies shall remunerate Board members fairly and responsibly. The board shall establish and approve formal and transparent remuneration policies and procedures that attract and retain the board members. The remuneration policy for board members shall clearly stipulate the elements of such remuneration including directors’ fees, bonuses and attendance allowances.’
- Level of remuneration – the code provides ‘the board shall determine the remuneration of the directors. The board of directors shall set up an independent remuneration committee or assign a mandate to a nomination committee or such other committee executing the functions of a nomination committee, consisting of mainly of independent and non executive directors to recommend to the board the remuneration of the directors and the structure of their compensation package.’

Disclosure of directors' remuneration

Strathmore UNIVERSITY

a. A broad statement of the company policy of remunerating directors.
b. A statement comparing the remuneration of the company's directors with near competitor in the market.
c. Disclosure on the information regarding the remuneration committee; members. Tenure, composition, number of meeting held and any substantial matter under reviewing setting director's remuneration.
d. An individual account of the remuneration of each executive of the company if the director receives remuneration in excess of some specified limit.
e. The amount payable or receivable whatever the case is from each executive for remuneration.
f. Details of the company's stock option package for executives, both individually and collectively. The stock option should not exceed 5% of the already outstanding shares.

Term limits for non executive board members

- Term limit is a statutory restriction on the number of terms an official may serve.
- Term limits for non executive directors means the time set for the board members and after expiry of the time they are expected to leave and replaced with new board members.
- Term limits for non executive directors varies from one company to another.
- Non executive directors should be aware of their term limit and that at one point they will be need to be replaced.

Reasons for time limits

a. It provides the best and polite way for the non executive board members who are underperforming to retire gracefully and automatically without embarrassing them.
b. It leads to healthier boards as it reduces cases of dominance.
c. It prevents the board members from being stale since there is continuous flow of ideas.
d. It helps to prevent self interests and threats.

Advantages of having time limits

1. Allows the board to serve the organization and bring new ideas which would have not been possible if they were under a long term commitment.
2. It enables an organization to attract active and involved members who are not able to make long term commitments and work best within a given time frame.
3. The members are more effective since there is no perpetual concentration of power within a small group.
4. New members will feel less threatened b the long standing members who may be conservative.
5. It makes it easier to remove the passive, inefficient or troublesome board members and replace them with more agile board members.

Limitations of term limits

1. Organizations spend more time and resources in recruiting and educating new directors after the expiry of a term.
2. The board may lose cohesion that is one the main characteristics of people who have worked together for a long time.
3. The board may end up losing board members who are very competent and who are fervent supporters of the organization mission and vision.

Succession planning

- https://youtu.be/MjJlX05IFdI
- There should be a policy that facilitates succession planning. It outlines the process that boards and committees need to use for planning to replace board members, a board chair and executive directors, either because of an existing vacancy or to plan for the future vacancy of a position.

Reasons for succession planning

1. It sets them up to obtain the top talent.
2. It prevents group thinking on the board.
3. It ensures a diverse board composition.
4. It maintains the balance of institutional knowledge.
5. It enhances trust with shareholders and stakeholders.
6. It maintains the balance of power on the board.
7. It ensures that shareholders and stakeholders will be unaffected by changes in leadership.

The end!

Thank you