



Independent judgement

Board Leadership Center (India)

Independent judgement is a core requisite for both executive and non-executive directors. But what does it mean in practice and how can directors assure themselves and others that the processes they adopt are appropriate? To help directors address this challenge, Sir Andrew Likierman, Professor of Management Practice at the London Business School and experienced non-executive director, has authored, 'The 12 elements of independent judgement for a board: A guide for directors'.

A lack of independent judgement sits at the heart of most corporate failures around the world. These corporate failures always lead to questions as to whether the board members were closely looking and asking the right questions about what was really going on.

Section 166, Duties of Directors under the Companies Act 2013 (2013 Act), *inter alia*, requires a director of a company to exercise his duties with due and reasonable care, skill and diligence and to exercise independent judgement.

Additionally, Schedule IV of the 2013 Act, Code for Independent Directors (the code), among other things, prescribes role and functions of Independent Directors (IDs). In accordance with the code, the IDs should help in bringing an independent judgement to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct.

Sir Andrew breaks independent judgement into two parts. 'Judgement' is being able to form opinions

and make decisions based on combining personal qualities with relevant knowledge and experience. 'Independent judgement' has not been defined in the 2013 Act. However, reliance could be made on United Kingdom Companies Act, 2006 since Indian company legislation has closely followed the UK Corporate legislation. The duties of directors are almost similar in both the countries (except the provision of codifying the common law duties of directors in the U.K.). 'Independent' is defined by the law and the U.K. corporate governance code. It includes not being dependent on outside interests and avoiding excessive dependence on the knowledge of others as well as providing fresh perspectives and holding management to account.

With this in mind, Sir Andrew articulates a framework comprising the quality of what is taken in by reading, seeing and listening; the trustworthiness of people and information; the relevance of experience and knowledge; the role of feelings and beliefs in affecting choice; the way the options are presented; and the feasibility, for decisions, of delivery.



12 elements of independent judgement applied to a board and its committees



The raw material

- Giving full attention to the written and spoken material presented.

Independent judgement is exercised by identifying information needs and choosing from the mass of material, what is important to the matter at hand.

- Checking and where necessary questioning, the information provided, including measures and assumptions used.

Independent judgement is exercised by assessing what needs to be questioned in the best interests of the organisation.

- Avoiding undue reliance on an individual's expertise or the majority view.

Independent judgement means building a level of knowledge to understand the key issues as well as who and what to trust. It also means being willing to speak where necessary, including bringing a fresh perspective.

- Taking account of context – objectives, precedents, relevant comparisons, legal requirements and ethical issues.

Independent judgement means knowing enough to be able to identify omissions in providing the context for discussion and decisions. It also means making sure that the implications of the choice are clear and that it can be defended, if necessary, in public.



Attitudes and feelings

- Developing an informed view based on the appropriate method of challenge.

Independent judgement means knowing enough to identify any gaps in what is required for an informed choice and finding the right way to challenge to obtain it.

- Freedom from undue influence by sectional interests or agendas.

Independent judgement means being able to identify the dividing line between the interests of the organisation and those of an individual or part of an organisation for their own. This may be particularly difficult in certain contexts – a private family-owned company and particularly important in others – executive remuneration for a public company.

- Awareness of one's own biases, agendas and emotions as well as collective values, such as fairness.

Independent judgement means being aware of, and mitigating as far as possible, the elements that will sway a choice in pursuing or fulfilling personal agendas rather than furthering the interests of the organisation. Values and personal agendas need to be made explicit by the individual and within the group.

- Understanding risk and uncertainty and how to mitigate them.

Independent judgement involves probing for the key risks and uncertainties included in the options offered, particularly those where there is a danger that risks have been downplayed or exaggerated to give emphasis to a desired outcome.



The choice

- An environment where diverse views are encouraged and dissent is seen as safe.

Independent judgement means intervening, and allowing others to intervene, even when the majority is actively or passively of a different view.

- Inspecting, how options have been framed and if something major has been excluded from the consideration.

Independent judgement means considering the way choices are framed to ensure that the process considers the appropriate options, including others that have been eliminated, and that the presentation does not obscure the choice.

- Appreciation of the implications of trade-offs in the choice, including timing, consequences and feasibility.

Independent judgement means a fresh look at the implications of the choice, not only financial aspects but factors such as risk and reputation, making use of the directors' experience and knowledge, whether from the company or other organisations.

- Awareness of the need for any consultation on the choice with relevant stakeholders and other interested parties.

Independent judgement is applied when a director uses knowledge and experience, including who to consult, to provide new perspectives that add to the quality of the choice. Note that consultation of this kind is very different to being dependent on others.

How to improve independent judgement

A wide variety of means are available for an individual to improve independent judgement. This might be getting a better understanding of the organisation, so that challenge can be better-informed. It might be guidance in observation or personal awareness of the dynamics of groups. Boards may also collectively get guidance on aspects of independent judgement, such as handling disagreement or awareness of biases.

With this in mind, the paper concludes by looking at how independent judgement might be improved through robust induction processes, in meetings, in appraisal and through continuous development, including training.



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