Independent Judgement

KPMG Nigeria Board Governance Centre

Independent judgement in the boardroom refers to the ability of directors to make decisions and provide input based on their unbiased assessment of the situation, free from undue influence or conflicts of interest. There is a fundamental duty on directors to exercise independent judgement when carrying out their responsibilities. However, what does this mean in practice, and how can directors ensure that their decision-making processes are appropriate and provide assurance to stakeholders?

A lack of independent judgement is often identified as a key factor contributing to corporate failures. When companies fail, there is heightened attention on the level of diligence exhibited by board members in overseeing and seeking sufficient clarification regarding the company's true operational state. The Lehman Brothers scandal serves as a prime example of the severe consequences that can arise when directors fail to exercise independent judgement, a pivotal factor that contributed to the firm's collapse.

In the legal context, Section 305 (3) of the Companies and Allied Matters Act 2020 outlines the duty of a director to act at all times in what they believe to be the best interests of the Company and in such manner as a faithful, diligent, careful and ordinarily skillful director

This legal provision underscores the importance of independent judgement in the decision-making process of directors.

Furthermore, the Nigeria Code of Corporate Governance 2018 provides specific recommendations related to independent judgement.

Principle 1.1 suggests that a board charter should outline the board's responsibilities, including exercising judgement in its oversight and control of the company to achieve its continued survival and prosperity.

Principle 6 emphasizes the crucial role of non-executive directors (NEDs) in bringing their knowledge, expertise, and independent judgement to the board, particularly in addressing issues related to strategy and performance. Furthermore, Principle 7.1 recommends that an independent non-executive director (INED) should demonstrate independence in judgement, further highlighting the significance of this attribute in the corporate governance code

Bearing this in mind, Sir Andrew Likierman, Professor of Management Practice at the London Business School and experienced non-executive director articulates a framework in his book, 'The 12 Elements of Independent Judgement for a UK board' A guide for directors 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

The raw material

1. 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.

2. 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 Company.

3. Avoiding undue reliance on a single 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.

4. 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.

Attitude and feelings

1. 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 and obtain it.

2. Freedom from undue influence by sectional interests or agendas.
   Independent judgement means being able to identify the dividing line between the interests of the Company and those of an individual or part of an organisation for their ends. This may be particularly difficult in certain contexts – a private family-owned company or within a group setting and particularly important in other situation -determining remuneration for directors in a public company.

3. 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 Board.

4. Understanding risk and uncertainty and how to mitigate them.
   Independent judgement involves probing for the key risks and uncertainties included in the options offered, in particular those where there is a danger that risks have been downplayed or exaggerated to emphasize a desired outcome.

The Choice

1. 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.

2. Checking for the way options have been framed, including those that might have been excluded from 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.

3. 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.

4. 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.
   It is worthy of note that consultation of this kind is very different from being dependent on others.

How to improve independent judgement

A wide variety of means are available for directors to improve independent judgement. This could involve a better understanding of the organisation's business and its environment, such as market conditions, regulatory changes, and internal processes, in order to make more informed decisions. It could also involve guidance in observing and becoming more aware of group dynamics. Boards may collectively seek training on aspects of independent judgement, such as handling disagreements or awareness of biases.

In conclusion, independent judgement can be fostered through robust director induction processes, during meetings, checked during the board and director evaluation process, and through ongoing development initiatives such as board training.

About the KPMG Board Governance Centre

The KPMG Board Governance Centre (BGC) is a dedicated forum that provides Board members with insights and resources to keep abreast of current and emerging governance issues.

The KPMG BGC offers periodic thought leadership resources including periodic seminars and round tables to host the exchange of views and support Board members (including Board sub-committee members) in clarifying and enhancing their governance practices amid rapidly evolving corporate governance landscape in Nigeria.

Learn more: http://bit.ly/Board-governance-centre

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