

# STARBoards

## Workshop on Board Compliance

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**BOMBAY CHAMBER OF COMMERCE AND INDUSTRY**  
*CORPORATE AS A CITIZEN*

**Team Legasis**  
**Dec 14, 2017**



# STAR Boards Agenda

# On the Agenda

STAR Boards 10.00 AM to 10.15 AM: Introductions

STAR Boards 10.15 AM to 11.15 AM: Outline of Legal Landscape: An Eagle's Eye

STAR Boards 11.15 AM to 11.20 AM: Break

STAR Boards 11.20 AM to 11.45 AM: Are Boards Effective?

STAR Boards 11.45 AM to 12.10 PM: Directors Responsibilities:

STAR Boards 12.10 PM to 12.50 PM: Some Recent Challenges

STAR Boards 12.50PM to 1.00 PM : Q& A / Take Away

# Introductions



# STARBoards The Fiduciary Duty

## STARBoards Origin of the Governance is Fiduciary Duty / Responsibility

### STARBoards Loyalty ... Act in the Interest of the Company

STARBoards Consequential aspect: “Conflict of Interest”

STARBoards Consequential aspect: Independent Directors”

STARBoards Consequential aspect : “Related Party Transactions”

### STARBoards Care ..... Duty to pay attention and take due care

STARBoards Consequential aspect: Oversight Duty

STARBoards Consequential aspect : Committees / Financial Controls/ Compliance

STARBoards Consequential aspect: Best Judgement Rule

### STARBoards Disclosure ..... Disclose all material information

STARBoards Consequential aspect: Mandated Disclosures v Material

STARBoards Consequential aspect: Information Asymmetry

STARBoards Consequential aspect: Policy and then delegate

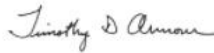
### STARBoards Extra Care..... Careful Scrutiny of Decision Event Based.

STARBoards Consequential aspect : No clear test ...Criminal Liability

# STARBoards - The Governance

STARBoards Board's Responsibility to set up

STARBoards Commonsense Approach & Principles



Tim Armour  
CAPITAL GROUP



Mary Barra  
GENERAL MOTORS  
COMPANY



Warren Buffett  
BERKSHIRE  
HATHAWAY INC.



Jamie Dimon  
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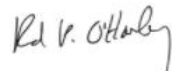
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CPP INVESTMENT  
BOARD



Lowell McAdam  
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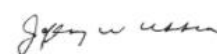
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GLOBAL ADVISORS



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Jeff Ubben  
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# STARBoards -The Risk

## STARBoards Board's Oversight : Management's Risk Appetite

### Risk Fitness Quiz: How Do You Score?



#### Risk Assessment

1. How well do we identify, measure and document the threats/risks that could impact on the achievement of our business objectives?

SCORE /10

#### Risk Treatment

2. How well and how often do we reevaluate the effectiveness of our risk treatment strategies?

SCORE /10

#### Risk Treatment Optimization

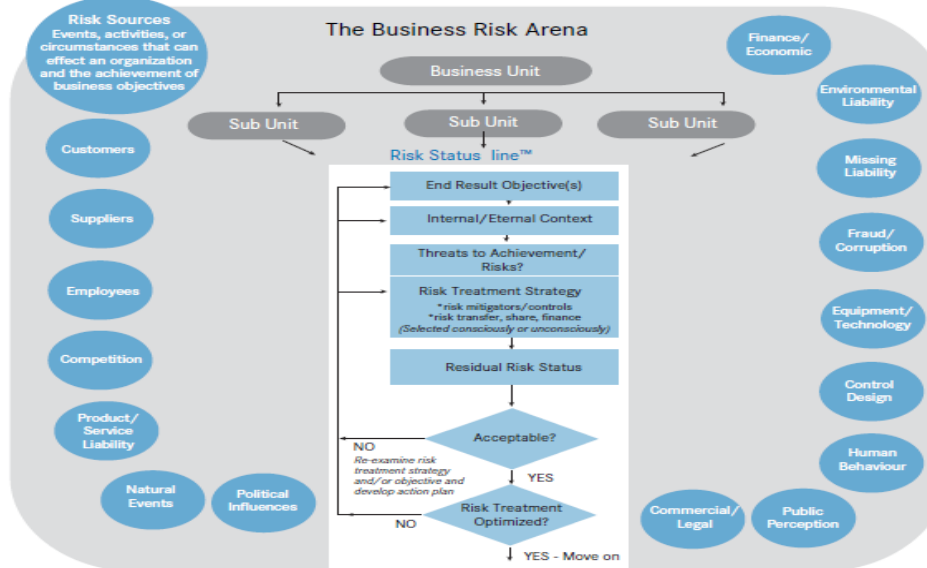
3. How good are we at identifying opportunities to eliminate expensive risk treatments while still maintaining an acceptable residual risk level at a lower overall cost?

SCORE /10

#### Risk Testing the Future

4. How good are we at documenting and evaluating risks when making important business decisions, launching new products/services, and preparing strategic business plans?

SCORE /10



#### Planning for Serious Risk Situations

5. Do we have contingency plans in place to deal with potentially high risk but low probability situations that could cripple business units or the organization? Do we periodically revisit these plans to reassess their adequacy?

SCORE /10

#### Worst Case Scenarios

6. How good are we at considering the possibility of high risk situations, which, if they occurred together, could have a devastating impact on the organization?

SCORE /10

#### Risk Oversight Process

10. How well briefed is the Board of Directors and Senior Management on the company's significant residual risks? Have they taken steps to ensure work units are identifying, measuring, treating and monitoring significant risks?

SCORE /10

#### Regular Risk Re-evaluation

9. How effective is our corporate process to reassess the effectiveness of our risk management processes and periodically reassess the acceptability of risk acceptance decisions?

SCORE /10

#### Risk Transfer/Financing Options

8. How effective are we at identifying risk sharing and insurance options to avoid or reduce the consequences of specific threats/risks to business objectives?

SCORE /10

#### Early Warning Systems

7. How good are we at regularly monitoring our risk status using early warning signs that indicate changes might be needed to risk treatments and/or objectives?

SCORE /10

TOTAL RISK FITNESS SCORE /100

# STAR Boards - The Compliance

## Hallmarks

Commitment from senior management

Code of Conduct and Compliance Policies and Procedures

Oversight, Autonomy, and Resources

Risk Assessment

Training and Continuing Advice

Incentives and Disciplinary Measures

Third-Party Due Diligence

Confidential Reporting and Internal Investigation

Continuous Improvement: Periodic Testing and Review

STAR Boards Compliance with ALL laws

STAR Boards "Proper System....Adequate & Operating Effectively

STAR Boards Non Prosecution

STAR Boards Deferred Prosecution

STAR Boards Risk Based Approach

STAR Boards Business Continuity vs Prosecution

STAR Boards Standards of Systems

STAR Boards ISO 19600

STAR Boards ISO 37001

STAR Boards Oft Quoted and Relied :The Chairman, SEBI

Shriram Mutual Fund : "The penalty is attracted as soon as contravention of the statutory obligations as contemplated by the [Competition] Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not."

# STARBoards Companies Act 2013



## EVALUATION

“134. Financial statement, Board’s report, etc.—  
(3)(p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a **statement indicating the manner** in which formal annual evaluation has been made by the **Board of its own performance** and that of its **committees and individual directors.**”

Requirement	Relevant Provision
Performance evaluation of the Board	Section 149 & Schedule IV
Formal Annual Evaluation Disclosure	Section 134(3)(p)
Nomination and Remuneration Committee	Section 178



# STARBoards SEBI LODR

## EVALUATION

The Role of NRC shall include formulation of criteria for evaluation of performance of independent directors and the board of directors and

Whether to extend or continue the term of appointment of the independent director, on the basis of the report of performance evaluation of independent directors



# STARBoards Secretarial Standards

## EVALUATION

In case of appointment of Independent Directors, the justification for choosing the appointees for appointment as Independent Directors shall be disclosed and in case of re-appointment of Independent Directors, performance evaluation report of such Director or summary thereof shall be included in the explanatory statement.



# Are Boards Effective?



STARBoards Setting The Culture

STARBoards Tone At The Top

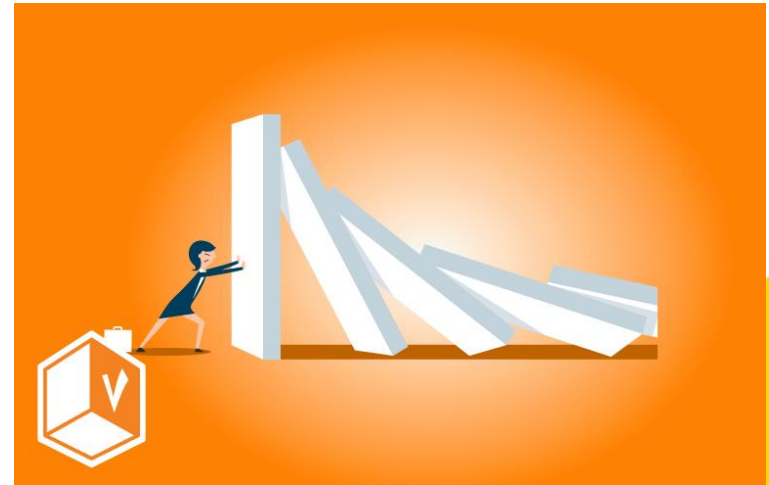
STARBoards Understanding Business Insight

STARBoards Delivering Oversight

STARBoards Decision Making

STARBoards Legal Obligations

STARBoards Protection of Good Faith



STARBoards Direct Messages : Zero Tolerance

STARBoards Direct Actions : Vigil Mechanism ,Voluntary Disclosures of Interest

STARBoards In direct Messages : Encouraging the Dissent

STARBoards Subtle Messages : "Walk The Talk"

STARBoards Tone At The Top is critical to exhibit for any legal defense



### STARBoards Fiduciary Responsibility

### STARBoards Obligations under CA 2013 & Other Laws

- Discharging Obligations through proper delegation
- Delegation in absence of Authority & Budget
- Governance through Committees

### STARBoards Conflict of Interest

### STARBoards Related Party Transactions

### STARBoards Documentation

- Minutes & Notes
- Committee Recommendations & Decision making
- KMP Assurances



STARBoards Fiduciary Responsibility

STARBoards Business Judgment Decision Making

- Statutory Provisions of Australian Laws
- Adverse Effect on Stakeholders

STARBoards Good Faith

- Implies acting in the interest of the Company's best interests
- Absence of Bad Faith

STARBoards D&O Liability Insurance

STARBoards Indemnification in the AoA



# Directors' Responsibilities







# Changing Mindset to Compliance by Choice



# STAR Boards Effective Delegation Master Form Example

STAR Boards Is the return filed by the Manager or Occupier?

STAR Boards Is there any “Liability Shield” for the occupier?

STAR Boards Are there any disadvantages of a single return?

STAR Boards Are there any data reconciliation issues?

STAR Boards Is this administrative or legislative change?

STAR Boards Does this fit into delegated legislation principles?



# Some recent Challenges



# STARBoards SC Judgement Independent Directors

*SC- “Neither the independent directors nor the promoter directors shall alienate their personal properties or assets in any manner, and if they do so, they will not only be liable for criminal prosecution but contempt of the Court.”*



# Board Evaluations



# STAR Boards

... Boards should **regularly carry out evaluations** to appraise their performance and assess whether they **possess the right mix of background and competence...**



G20/OECD Principles of Corporate Governance

Chapter on Sixth Principle – The Responsibilities of the Boards

<https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>

# STAR Boards

... “If the chair and the Board perceive Board **evaluation as an opportunity** to get the Board to think smarter and work more effectively, **Board evaluation can achieve great things!**” ...



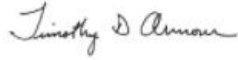
Board Evaluations: Insights from India and Beyond

~ Mary Jo Larson and Chris Pierce

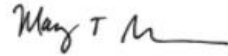
[https://www.ifc.org/wps/wcm/connect/8609e800488e1bc0b549f5299ede9589/IFC\\_Board\\_Evaluation\\_Booklet\\_v9-PR-Lo-Res.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/8609e800488e1bc0b549f5299ede9589/IFC_Board_Evaluation_Booklet_v9-PR-Lo-Res.pdf?MOD=AJPERES)



# Commonsense Corporate Governance Principles | Authored by ...



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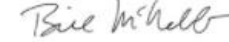
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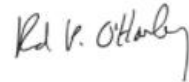
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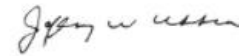
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# STAR Boards

Boards should have a **robust process to evaluate themselves** on a regular basis, led by the non-executive chair, lead independent director or appropriate committee chair. The board should have the fortitude to replace ineffective directors.



Commonsense Corporate Governance Principles

Point g: Director Effectiveness

Para 1: Board of Directors – Composition and Internal Governance

<http://www.governanceprinciples.org/>

# STARBoards

... evaluation of Board members is in a germane stage in India. It is necessary to have a robust process in place for such evaluation...



Narayan Murthy Committee Report 2003.pdf

Report of the SEBI Committee on Corporate Governance February 8, 2003

<http://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-12986.html>

# STARBoards

...Companies would benefit from an honest evaluation of how their boardroom functions and a roadmap for improving deficiencies...



Survey on Board of Directors  
Evaluation & Effectiveness | 2016

<https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/cgri-survey-board-directors-evaluation-effectiveness-2016.pdf>

“All listed entities may consider the following as a part of their disclosures on board evaluation :

- a) Observations of board evaluation carried out for the year
- b) Previous year’s observations and actions taken
- c) Proposed actions based on current year observations.”



# Why Online Board Evaluation?



# STAR Boards

## “3. Method of evaluation:

Effective use of **Information Technology** through use of **board evaluation software**, applications, etc. can also play a facilitating role.”

SEBI - Guidance Note on Board Evaluation (January 5th, 2017)

[http://www.sebi.gov.in/legal/circulars/jan-2017/guidance-note-on-board-evaluation\\_33961.html](http://www.sebi.gov.in/legal/circulars/jan-2017/guidance-note-on-board-evaluation_33961.html)

# STARBoards Why Online Board Evaluation?

STARBoards Centralized research by Legasis deployed online

STARBoards Anonymity / Confidentiality – Encryption, role based access.

STARBoards Anonymity encourages better feedback

STARBoards Best-Practice Workflow is automated

STARBoards Ease of use

STARBoards Time savings

Process approach with systematic way to back up your evaluations are backed up through a process





“**Online Board Evaluation**” and promoting Corporate Governance through:

STARBoards A best-practice framework incorporating industry best practices and based on regulatory requirements

STARBoards Vetted by **Industry Leaders and regulators.**

STARBoards Delivered online: Confidentiality, transparency, quick analysis, record of the past evaluations

STARBoards A distinguished panel of **independent evaluators.**

STARBoards Covering **all evaluations** as mandated by Law.



# STARBoards Board Evaluation Methodology

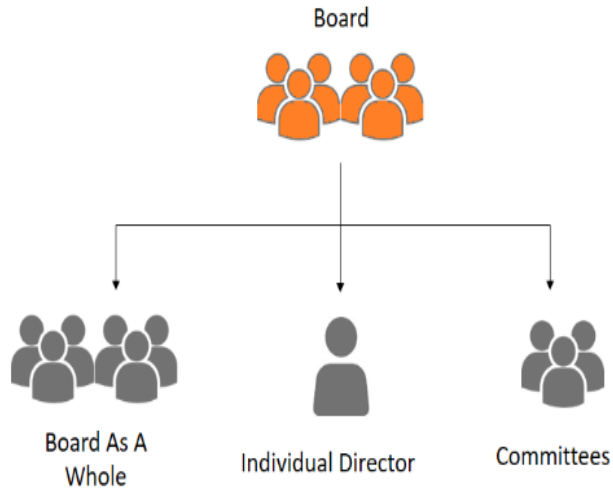
In-House Evaluation

In-House Evaluation  
facilitated by external  
expert

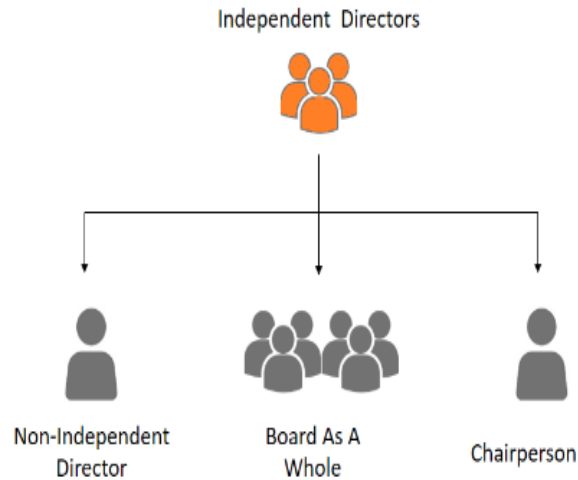
External Evaluation



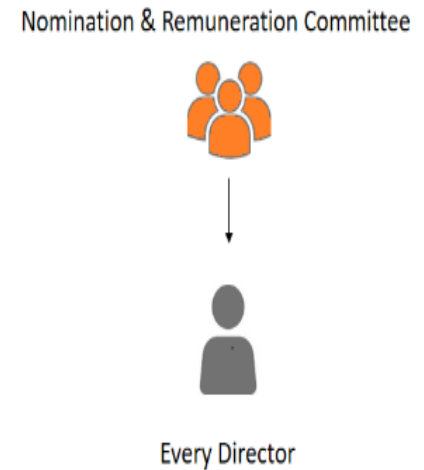
### Section 134



### Section 149



### Section 179





“StarBoards”, would help in conducting a ‘Strategic Evaluation’ based on the following factors:

**STARBoards** Contribution to the overall Business Strategy

**STARBoards** Contribution in the overall Business Performance of the Company

**STARBoards** Interaction with other Internal as well as External Stakeholders and assuring them of Business Stability

**STARBoards** Peer Evaluation to ensure smooth functioning of the Board and its Committees

**STARBoards** Ensuring efficient Feedback Mechanism to ensure Training and Sensitization

# STARBoards

## The StarBoards 'Advantage'



**STARBoards** Benchmark solution for assessment of Board performance

**STARBoards** Secure platform for Directors to express their views, concerns and ensure effective discharge of duties.

**STARBoards** Promoting a continuous evaluation and engagement policy with the Board.

**STARBoards** Well-researched questionnaires for each evaluation to ensure maximum output and analysis.

**STARBoards** Assuring Stakeholders of a competent Board Evaluation.

# STARBoards

DID YOU  
**KNOW**



To know more about StarBoards, please click the following link:

[https://www.youtube.com/watch?v=GHLIUtfYHM4&list=PL\\_hBMQs1OJg1taTYxeDzqdjIGZ3RvfW\\_6](https://www.youtube.com/watch?v=GHLIUtfYHM4&list=PL_hBMQs1OJg1taTYxeDzqdjIGZ3RvfW_6)

Q&A

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# Thank You!

