

# STARBoards

## Indian Independent Directors Independence Challenging Times

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

**Team Legasis**  
**Aug 22, 2019**



# STAR Boards

## Challenging Times

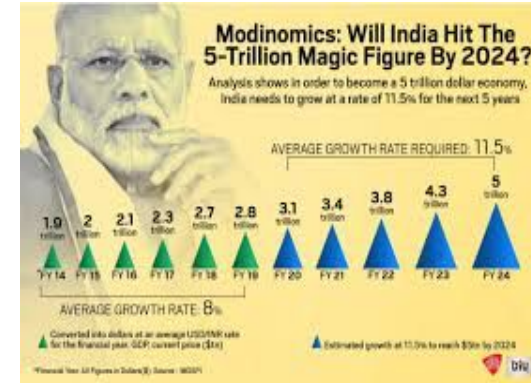
- **Challenging Times for Economy**
  - “Sure signal of worldwide recession being months away, but is India prepared?” 20th August 20<sup>th</sup> 2019 06:03 AM  
<http://www.newindianexpress.com>
- **Challenging Times for Businesses**
  - “Raghuram Rajan Sounds Alarm Bell For Indian Economy, Says Difficult Times Ahead” August 20th, 2019 / 4:13 PM  
<https://thelogicalindian.com>
- **Tough Times for the Company**
  - “If the growth is slowing down, you just have to worry about what you can do, Chandrasekaran said.” August 21<sup>st</sup> 2019 07.11 pm / <https://economictimes.indiatimes.com>



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## Challenging Times

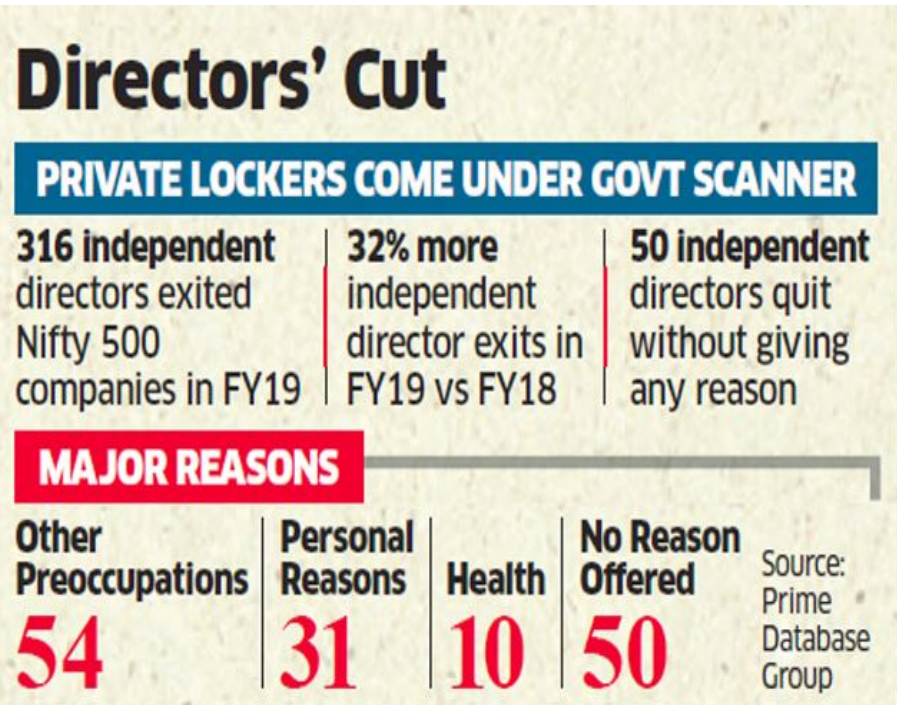
- Corporate Governance Failures
  - “India Stocks Review: Down as corporate governance concerns resurface” August 20<sup>th</sup> 2019 / <http://www.cogencis.com>
  - “The golden rule of investment is to pour money in stocks that are trading at attractive levels compared to their intrinsic value, thus allowing investors to create wealth over a period of time” .... ““For instance, apart from facing a slowdown in their respective industries, companies like Sun Pharma, Indiabulls Housing are also witnessing pressure due to on-going corporate governance issues and hence fresh investments at this juncture may not be a good decision,” Aug 21<sup>st</sup> , 2019 02:35 PM / <https://www.moneycontrol.com>



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## Contrasting Challenge

- India Inc needs over 25,000 Independent Directors ( 2000 NSE Listed have 7,900 IDs
  - 24,000 professionals are registered as aspiring IDs
- Capacity Building is a Major Challenge



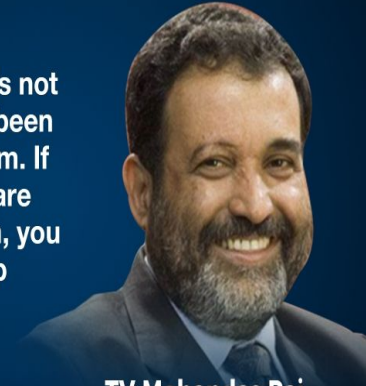
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## Is Resigning a solution?

- Kotak Committee recommended providing for & confirmation of reasons for resignations may solve the problem
- Effective April 2019, recording the reasons and confirming it is now a new norm
- Reading between the lines: Understanding what are true reasons for resignation and what is being informed
- LODR # 30 (7B)
  - Detailed reasons to be disclosed
  - ID to confirm
  - ID's confirmation to be disclosed



Resigning and going away is not a solution, because you've been appointed to solve a problem. If you (independent director) are unable to solve the problem, you go, when you must stand up and take decisions.



**TV Mohandas Pai**

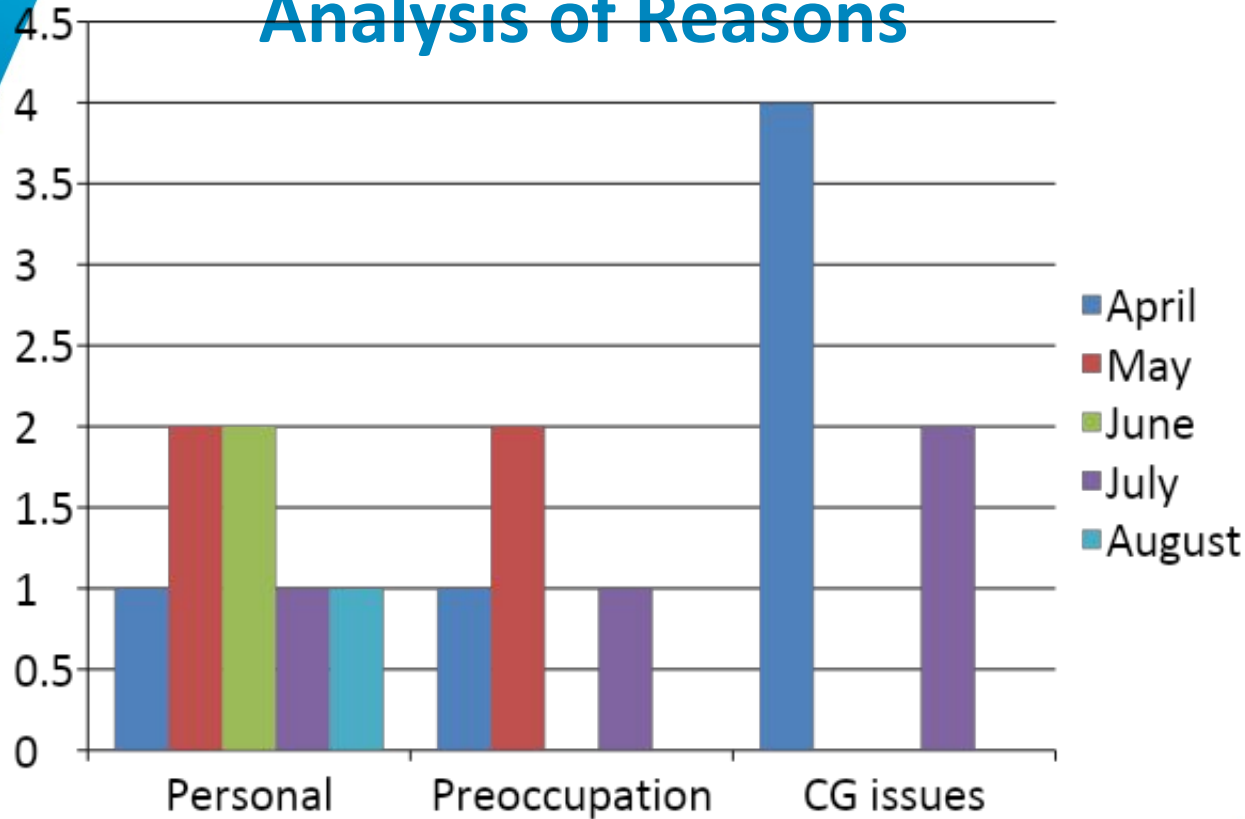
Chairman, Manipal Global Education  
Former CFO, Infosys

Bloomberg | Quint



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## Analysis of Reasons



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## Example of ID's reason

... , which about two years ago was indeed a game changer milestone event in the fifty years' history of our company. We all celebrated that event at the Board Meeting. Now the Board members hear, in bits and pieces, that this contract implementation has been passing through some serious impediments which can substantially impact company's revenue inflow for future years. Sir, the entire Board and, more particularly, its Risk Management Committee have to get into action and have to formulate a strategic action plan to mitigate all the adverse risks that the company will be exposed to in future years.

6. The above inadequacies \ irregularities impose limitations for independent directors and they are not able to discharge the functions expected from them under the provisions of the Companies Act 2013. More so I am, as a member of the audit committee, not able to implement good corporate governance practices and processes which would go a long way in building up strong internal controls as well. In view of the above, how so ever I tried to do so as a member of the audit committee but was unable to achieve the results as aforesaid in view of lack of support and strong supervision from senior management which would have made that happen.

- (vi) The audit committee had desired that as a sort of good control and reporting, each departmental head should report to the audit committee and update the committee about the functioning of the department, its difficulties and what issues are pending with them and how they are being sorted out. However, for the reason best known to the management except for one meeting no such reporting took place.
- (vii) The agenda of the audit committee is circulated without consultation with Audit Committee Chairman and / or the Chairman of the Board.

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## Criminal Liability is underlying cause



- “ I earned Rs. 10 lacs as ID’s remuneration. I am expected to read Board Pack that consists of minimum 1000 pages. And I am expected to take decisions after understanding every line item. Now the Investigating Agency ( with benefit of hindsight) is questioning my as though I am a criminal” ..... Lady ID in ILFS Case



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## ILFS Case: Making History

- SFIO Arrests- FOAK for India
- Moving from accomplice to co-accused
  - Auditors
  - KMPs
  - Directors
  - Independent Directors



- Direct Messages : Zero Tolerance
- Direct Actions : Vigil Mechanism , Voluntary Disclosures of Interest
- In direct Messages : Encouraging the Dissent
- Subtle Messages : "Walk The Talk"
- Tone At The Top is critical to exhibit for any legal defense



- Setting The Culture
- Tone At The Top
- Understanding Business Insight
- Delivering Oversight
- Decision Making
- Legal Obligations
- Protection of Good Faith



- Fiduciary Responsibility
- Obligations under CA 2013 & Other Laws
  - Discharging Obligations through proper delegation
  - Delegation in absence of Authority & Budget
  - Governance through Committees
- Conflict of Interest
- Related Party Transactions
- Documentation
  - Minutes & Notes
  - Committee Recommendations & Decision making
  - KMP Assurances



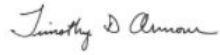
- Fiduciary Responsibility
- Business Judgment Decision Making
  - Statutory Provisions of Australian Laws
  - Adverse Effect on Stakeholders
- Good Faith
  - Implies acting in the interest of the Company's best interests
  - Absence of Bad Faith
- D&O Liability Insurance
- Indemnification in the AoA





# STARBoards - The Governance

- Board's Responsibility to set up
- Commonsense Approach & Principles



Tim Armour  
CAPITAL GROUP



Mary Barra  
GENERAL MOTORS  
COMPANY



Warren Buffett  
BERKSHIRE  
HATHAWAY INC.



Jamie Dimon  
JPMORGAN CHASE



Mary Erdoes  
J.P. MORGAN ASSET  
MANAGEMENT



Larry Fink  
BLACKROCK



Jeff Immelt  
GE



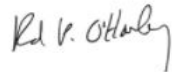
Mark Machin  
CPP INVESTMENT  
BOARD



Lowell McAdam  
VERIZON



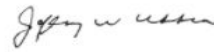
Bill McNabb  
VANGUARD



Ronald O'Hanley  
STATE STREET  
GLOBAL ADVISORS



Brian Rogers  
T. ROWE PRICE



Jeff Ubben  
VALUEACT CAPITAL

# STAR Boards -The Risk

- 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

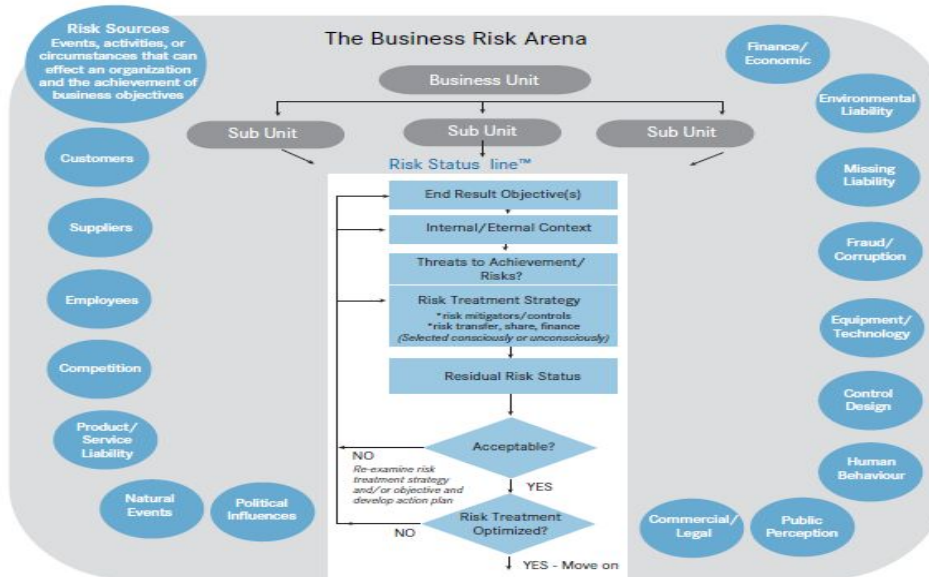
3. How good are we at identifying opportunities to eliminate expensive risk treatments while still maintaining an acceptable residual risk level at a lower overall cost?

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



- Compliance with ALL laws
- "Proper System....Adequate & Operating Effectively
- Non Prosecution
- Deferred Prosecution
- Risk Based Approach
  - Business Continuity vs Prosecution
- Standards of Systems
  - ISO 19600
  - ISO 37001

# 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

## 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 Board's Effective?



# Directors' Responsibilities





O&A



# Contact Us

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Thank  
You!

