

# Board Evaluation Practices in India

*A Study of Top 100 Companies in 2015*

*“A Bud with the  
Potential to Bloom”*



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**General Information:** *CimplyFive Corporate Secretarial Services (“CimplyFive”) and InGovern Research Services (“InGovern”) have prepared this report to identify new trends, practices and lessons emerging out of the Board Evaluation practices with the intent of disseminating it to all Corporates in general and the Company Secretaries and Chartered Accountants in particular. This report is not intended to act as a recommendation or condemnation of any practice, company or firm covered in this report.*

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**Limitations:** *Corporate professional with adequate experience have undertaken this study. Further, a due process of checks and verifications to ensure accuracy of this report has been followed. This should have eliminated errors from this report. If any points in the nature of errors are brought to our notice and we agree with the same, CimplyFive and InGovern will rectify the report at the earliest and have the revised report available on their respective websites- [www.cimplyfive.com](http://www.cimplyfive.com) and [www.ingovern.com](http://www.ingovern.com). Neither CimplyFive nor InGovern accept any loss or damage caused to any individual, company, professional or institution by use of this Report.*

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**Supplementary Report of 'Extracts of Board Evaluation from the Directors' Report of the top 100 Companies' (Available only on our websites i.e. [www.cimplyfive.com](http://www.cimplyfive.com) & [www.ingovern.com](http://www.ingovern.com))**

## EDITORIAL NOTE: WHY, WHAT AND WHO

Dear Reader,

Corporate Board Evaluation is a new concept in India. SEBI Committee on Corporate Governance in 2003 recommended it as a non-mandatory provision for listed companies. However, it is only with the advent of the Companies Act, 2013 that it became mandatory for all listed companies and all public companies with paid-up share capital of Rs.25 crores or more, for it to be practiced in India.

Board Evaluation conducted with the aim of self-introspection and a desire to identify improvement areas is a valuable tool in any corporate arsenal as it displays a culture of excellence at the very top as an ideal to be emulated by others in the organization. Further, transparent and action oriented disclosures emanating from the outcome of Board Evaluation sets the right tone for corporate governance practices. Though this benefit is unanimously conceded, in practice it is yet to be realized by majority of firms as many companies are complying only with the letter of law and missing out on the intrinsic desire to conduct a free and frank Board Evaluation. This is true not just in India where it is in a nascent stage but also in other countries where it is mandated.

Looking at the global practices on Board Evaluation, we found the most mature practices in the UK. Even in the UK, the practice is not uniform and the range of compliance is wide. Looking at the top-end of best practices, we see corporates use Board Evaluation not as an end in itself but as a means to constantly improve board effectiveness. Further disclosures to their shareholders were not only transparent but also self-critical and constructive by identifying areas for improvement and defining action plans to remedy the deficiencies.

Given the early stage of Board Evaluation in India and the potential for it to evolve, we have outlined a 5-star rating system for Board Evaluation with the objective of defining a roadmap for corporate practices to evolve and realize their potential. At the base level is compliance with the letter of law that ensures immunity from penal action, and at its peak, a board that is focussed on striving for excellence in its own functioning and effectiveness.

We have evaluated the disclosures on Board Evaluation made by the top 100 companies in India by rating them on our 5-star scale. The result reconfirms the nascent state of Board Evaluation practices in India with the highest ranked company getting only 3-stars and more important it reveals the potential that can be realized by these companies.

This study is undertaken by CimplifyFive Corporate Secretarial Services Private Limited, a company with the vision to 'leverage research and technology to eliminate procedural non-compliance for entities incorporated under the Companies Act, 2013' and InGovern Research Services, India's first proxy advisory and a premier corporate governance research and consulting firm. We look forward to your feedback to enrich this study. Please share your feedback with us at [contact@cimplifyfive.com](mailto:contact@cimplifyfive.com) or [info@ingovern.com](mailto:info@ingovern.com).

Yours sincerely,

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## BOARD EVALUATION: THE GENESIS

Board Evaluation is a relatively recent concept that emerged only in the 1990s. Its emergence and wide spread adoption followed the process of most other governance mechanism, where a voluntary practice followed by a few was soon identified and advocated by a regulator for wide spread adoption.

Earliest reference to the practice of voluntary adoption of Board Evaluation is in the Business Week's first ranking of the best and worst Board in Corporate America carried in their November 25, 1996 issue. Titled 'The Best and Worst Boards' this article listed Campbell Soup Co., at the top of the list as the best run Board. Among the many innovative practices of good governance was the adoption of a Code of Corporate Governance in 1992. Business Week's article reports that Campbell Soup Co. not only publicly disclosed the fact that it conducted Board Evaluation but also shared the improvement areas identified therein. Among the issues identified for improvement were that it was not devoting enough time to long-range strategic planning, some colleagues did not speak up enough in the meetings, quality of some committee reports needed upgrading and the company had to spend more time broadening and diversifying the skills of directors.

Around the same time in Canada, Toronto Stock Exchange adopted fourteen governance practices in 1995 titled the *Guidelines for Improved Corporate Governance*. These guidelines were not mandatory, but only required a company to comply or explain their reasons for non-compliance. These guidelines were the recommendations of a report titled '*Where were the Directors?*' given by a committee under the stewardship of Peter Dey, more popularly called the Dey Report, 1994. The trigger for setting up the Dey Commission was a series of corporate failures in the life insurance sector in Canada in the early 1990s. The fifth recommendation of the Dey Report read

*"Every board of directors should implement a process to be carried out by the nominating committee or other appropriate committee for assessing the effectiveness of the board as a whole and of the committees of the board and for assessing the contribution of individual directors." (paragraph 5.28)*

Soon the idea of Board Evaluation caught on with Corporate Governance Committees advocating it and Regulators recommending it. In UK the 1998 Hampel Report on Corporate Governance advocated it with the Combined Code on Corporate Governance, 2003 accepting it. In the US, National Association of Corporate Directors (NACD) advocated it in its *Report of the NACD Blue Ribbon Commission on Board Evaluation: Improving Director Effectiveness* in the year 2001. In India too, the Report of the SEBI Committee on Corporate Governance, more popularly known as the Narayana Murthy Committee Report in 2003 recommended the evaluation of non-executive directors to be done by the board excluding the member being evaluated. It was prescribed as a non-mandatory recommendation.

Commenting on the reasons for making Board Evaluation of non-executive directors a non-mandatory requirement, the committee noted,

*"...evaluation of Board Members is in a germane stage in India. It is necessary to have a robust process in place for such evaluation. It is also necessary to ensure continuity of top leadership, including CEO succession planning. However, the committee believes that this should be of a recommendatory nature at first before becoming a mandatory requirement. This will help the companies develop robust processes for Board evaluation. This may be made mandatory after a period of 4-5 years."*

**Table 1: Evolution of Corporate Board Evaluation**

<b>Voluntary adoption</b>	<b>Select Regulatory recommendations</b>	<b>Mandatory provisions</b>
<i>First half 1990s</i>	<i>The next Decade</i>	<i>21<sup>st</sup> Century</i>
Campbell Soup Co., Bank of Montreal	1994 Dey Report, Canada 1998 Hampel Report, UK 2001 NACD Report, US 2003, SEBI Report on Corporate Governance	Combined Code on Corporate Governance, 2003 (UK) NYSE: Corporate Governance Guide, 2003 (US) The Companies Act, 2013 (India)

A decade later, the Companies Act, 2013 that came into force from April 1, 2014 for the first time in India mandated Board Evaluation, for every listed company and public companies having a paid up capital of Rs. 25 crores or more. It required these companies to evaluate its board, the sub-committees and their directors and to report on the evaluation in their Directors' Report to members every year.

## GLOBAL BEST PRACTICES IN BOARD EVALUATION

*'By three methods we learn wisdom: First, by reflection, which is noblest; Second, by imitation, which is easiest; and third by experience, which is the bitterest.'*

**Confucius**

### Highlights

- ✚ Review of the Board Evaluation disclosures by select companies in Australia, Canada, Netherlands, Singapore, UK and USA, shows UK companies to have the most mature practices
- ✚ UK Companies with the most informative disclosures on Board Evaluation are driven less by the mandate and more by an intrinsic desire to improve.
- ✚ Periodic external evaluation by independent agencies is emerging as a valuable practice to enhance the value of Board Evaluation, with some companies voluntarily adopting it
- ✚ Comprehensive disclosures on Board Evaluation covers information pertaining to the Process, Attributes, Outcome, Action plans for improvement areas and Status reports on prior year action plan

India is not unique in mandating Board Evaluation with the practice being adopted by different countries in the world. However, the level of maturity in Board Evaluation practices vary from country to country, and even within a country it varies from company to company. Two critical factors influencing this variance is the length of their experience for countries and within a country, the intrinsic drive for good governance.

We reviewed Board Evaluation practices as deciphered from their Annual Report disclosures in countries like Australia, Canada, Netherlands, Singapore, South Africa, UK and the USA. Our selection was limited to select companies that are considered best in class for disclosures. Our review indicates three levels of maturity for companies that have gone beyond the letter of law and have embraced the spirit of law in conducting and reporting on Board Evaluation.

**Table 2: Three Levels of Maturity in Board Evaluation Disclosure Practices**

Maturity	Nature of Disclosure	Examples
<b>Level 1</b>	Companies disclosing the <u>conclusions positive in nature</u> from their Board Evaluation exercise	<ol style="list-style-type: none"> <li>1. Akzo Nobel nv, (Netherlands)</li> <li>2. Suncor Energy Inc. (Canada)</li> <li>3. CLP Holdings, (Hong Kong)</li> <li>4. BP plc (UK)</li> </ol>
<b>Level 2</b>	Companies disclosing the <u>conclusions both positive findings and areas requiring improvements</u> from their Board Evaluation exercise	<ol style="list-style-type: none"> <li>1. Astra Zeneca plc (UK)</li> <li>2. Koninklijke Philips nv (Netherlands)</li> <li>3. Qinetiq plc (UK)</li> <li>4. Unilever nv (Netherlands)</li> </ol>
<b>Level 3</b>	Companies in addition to disclosing the conclusions from their Board Evaluation exercise, both positive findings and areas requiring improvements, also <u>sharing their action plan to rectify the improvement areas</u>	<ol style="list-style-type: none"> <li>1. BHP Billiton Ltd (Australia)</li> <li>2. Barclays plc (UK)</li> <li>3. British American Tobacco plc (UK)</li> <li>4. GlaxoSmithKline plc (UK)</li> <li>5. Impala Platinum Holdings (SA)</li> <li>6. Marks and Spencer plc (UK)</li> <li>7. Randstand Holding nv (Netherlands)</li> </ol>

## Good Board Evaluation Practices from Global Companies

### 1. Calendar for Board Evaluation

#### Marks and Spencer Group (UK)

##### *Stage 1*

'A comprehensive brief was given to the assessment team by the Chairman, Robert Swannell, and Group Secretary, Amanda Mellor, in December 2014. The evaluation team also observed Board and committee meetings in December 2014, and January and March 2015. Copies of all Board papers were provided to the team for briefing purposes prior to the meeting.'

In January and February, detailed interviews were conducted with every Board member. All participants were interviewed according to a clear agenda, tailored for the Board. In addition, the team spoke to the Director of HR, the Interim Chief Finance Officer, Head of Internal Audit & Risk, the Group Secretary, the Company's external remuneration consultants, PwC, and the Company's lead Audit Partner from Deloitte.

##### *Stage 2*

The report was compiled by the evaluation team based on information and views supplied by the Board and those interviewed. All recommendations were based on best practice as described in the UK Corporate Governance Code and other current corporate governance guidelines.

##### *Stage 3*

Draft conclusions were discussed with the Chairman and subsequently discussed with the whole Board at its meeting in April, with Ffion Hague [consultant] present.'

#### **Our Learnings**

Meaningful Board Evaluation needs time as three distinct phases are involved. At stage 1, the brief for Board Evaluation needs to be agreed upon. In the second stage, feedback needs to be obtained from the participants and in the third stage a draft report needs to be drafted for deliberation by the Board of Directors.

In practice, Board Evaluation needs to span two board meetings with end to end timeline of four calendar months.

### 2. Process of Board Evaluation

#### Akzo Nobel nv (Netherlands)

'The approach to the assessment was two-fold: all members of the Supervisory Board were asked to complete a questionnaire; subsequently, a personal interview was conducted with each individual by an external consultant, using the results of the questionnaire as a platform for a more in-depth discussion regarding the effectiveness and performance of the Board, its committees, the Chairman and the chairmen of the relevant committees.'

#### BHP Billiton Limited (Australia)

'The Board evaluates its performance through a combination of both internal peer and externally facilitated assessments. Contemporary performance measures are considered an important part

of this process. Directors' performance is also measured against their individual development plans.'

### **Astra Zeneca plc (UK)**

'The 2015 evaluation involved each Board member responding to a web-based questionnaire prepared by Lintstock Ltd (Lintstock), a London-based corporate advisory firm that provides objective and independent counsel to leading European companies.'

### **Barclays plc (UK)**

'The review process involved the consultant, Ffion Hague, attending certain Board and Board Committee meetings in November and December 2015 as an observer, alongside detailed interviews conducted according to a set agenda with Directors, members of the Group Executive Committee, the Company Secretary and other members of the executive and senior management. Feedback was also sought from external stakeholders.'

'In addition, the Chairman was provided with a report and feedback on the performance of each of the Directors and the Senior Independent Director received a report on the Chairman.'

#### **Our Learnings**

A comprehensive process of Board Evaluation includes the use of questionnaires to seek individual feedback, web-based questionnaires for assuring confidentiality, personal interviews and discussions in the board.

Use of external consultants to facilitate the Evaluation Process, Peer-review of individual directors and Senior Independent Director receiving the performance feedback on the Chairman are some evolved practices.

### **3. Criteria for Board Evaluation**

#### **BP plc (UK)**

'The evaluation tested key areas of the board's work including its participation in the formation of strategy, succession and composition, and its oversight of business performance, risk and governance processes. The effectiveness of the committees in alleviating the oversight task of the board was also tested and focus was given to whether the board added value.'

#### **Suncor Energy Inc. (Canada)**

'(ii) a peer feedback survey (the "Peer Survey") that explores the directors' views and solicits feedback on their assessment of other directors' performance, including their contributions and participation in Board discussions and debate, accountability, knowledge, experience, demonstration of high ethical standards and communication and persuasion skills.'

#### **Our Learnings**

Evaluation criteria for the full board included its role and participation in strategy formulation, succession planning, review of board composition, business oversight and governance process. Evaluation of individual directors covered personal attributes like knowledge, experience, ethical standards, communication, and persuasion skills with application tested through attendance, participation and contribution in board discussions.

#### 4. Role of Company Secretary in Board Evaluation

##### CLP Holding Limited (Hong Kong)

'A performance evaluation of the CLP Holdings Board and its Board Committees for 2014 was conducted by the Company Secretary in the form of a questionnaire to all Directors individually, with a focus on the implementation of the recommendations of the previous year's board performance evaluation.'

##### Suncor Energy Inc. (Canada)

'Confidential responses are tabulated and analysed by the Corporate Secretary and presented in a report which is circulated to the chair of the Governance Committee and Board chair, who then work with the Corporate Secretary to summarize key items and recommendations for enhancing or strengthening effectiveness (including any recommendations arising from the one-on-one meetings described under "Peer Review" below).'

##### **Our Learnings**

Though not widely prevalent, Company Secretaries can play a pivotal role by coordinating and supporting the Board Evaluation process, as seen in the two companies identified above.

#### 5. Disclosing Conclusions Positive in nature

##### Akzo Nobel nv (Netherlands)

'The evaluation was positive about the competence and capabilities of the Supervisory Board Chairman and those of the committees' chairmen. Certain areas for improvement were identified. These improvement areas will be taken forward in 2016.'

'The Audit Committee is pleased to confirm that the results of the evaluation were such that the Audit Committee was found to be operating effectively. The evaluation determined that Audit Committee discussions are appropriately focused and that the Audit Committee's composition provides a good framework for new impetus and discussion. The reporting of matters by the Audit Committee to the Supervisory Board was similarly found to be clear and adequate.'

##### Qinetiq plc (UK)

'In terms of the fulfilment of its governance responsibilities, the overall conclusion of the 2014 review had been that the Board was satisfied that it continued to be effective in executing its duties and that progress had been made in a number of areas since the last review.'

##### **Our Learnings**

Reporting on conclusions arrived at by the Board Evaluation process is a logical step. Comprehensive evaluations result in reassurances on what is going right and identification of areas where improvement is required.

Reassurance on positive aspects identified by the Board Evaluation included competencies and capabilities of Board members, Committee Chairpersons and Board Chairperson and satisfaction with the functioning of the Committees and the Board.

## 6. Disclosing Conclusions that identify areas for improvement

### **BHP Billiton Limited (Australia)**

‘The review also noted that as the Board continues to progress through this period of transition, the willingness to speak up, and effective working relationships, will continue to be areas of focus.’

‘Potential enhancements related to continuing to ensure that the Board, the Group and its systems and processes are right-sized for a simplified BHP Billiton following the demerger of South32.’

### **Astra Zeneca plc (UK)**

‘Board members’ wish to spend more time as a full Board considering succession planning for the key senior Board and executive roles in the Company – Chairman, CEO and CFO – in addition to the work done on CEO and CFO succession planning during 2014 and 2015 by the Nomination and Governance Committee.’

### **Qinetiq plc (UK)**

‘Strategy and succession remained key priorities for the Board. With regard to strategy, the Board required improved reporting of daily activity implementing the strategy, with the preparation of a note of achievement against strategy by the use of milestones and the preparation of key objectives against which plans are measured. These details have since been included in the regular updates on progress against strategic targets provided to the Board by the Group Strategy Director;

‘Board operations – to continue to focus on improving Board operations, including disciplined use of time and making papers ‘fit for purpose’, recognising that papers for issue resolution or decisions might differ from those intended to update or inform the Board;’

### **Barclays plc (UK)**

‘To ensure that the Board agenda is optimised, including time for ‘blue-sky’ discussion of major risks.’

#### **Our Learnings**

The primary objective of any Board Evaluation is to identify areas for improvement that can be addressed to improve Board efficiency and effectiveness. Disclosure on the improvement areas reflects confidence and transparency that indicate good governance.

Some of the improvement areas identified are right sizing the board, encouraging members to speak-up, supplement the work on succession planning done by a committee, closer monitoring of strategy formulation and implementation, disciplined use of time in Board meetings and categorizing papers circulated to the Board between those required for decision making and those that are for being kept informed.

## 7. Identifying Action Plan for improvement areas

### Barclays plc (UK)

'We will provide opportunities for Board Committee Chairmen to provide more detailed briefings to non-Committee members on the work of their Committee.'

'We will develop a revised Board succession plan for discussion by the Board Nominations Committee, including planning for succession to key roles, considering the optimum size of the Board and the balance of UK and overseas Directors.'

### GlaxoSmithKline plc (UK)

'The composition of the Board is due to change over the next two to three years which will require a carefully planned and thoughtfully executed refreshment programme.'

'The Directors have identified gaps in the Board's current composition relating to US pricing and healthcare, emerging markets and consumer healthcare knowledge.'

'Consideration should be given to enhancing the Non-Executive Director evaluation process.'

The Chairman Designate will lead this process and consider best practice techniques, such as a combination of annual individual and peer evaluations.'

### Marks and Spencer Group plc (UK)

'The Board review was conducted in December 2014 and January 2015 when M&S's performance was under particular scrutiny, with operational issues affecting the Castle Donington distribution centre and M&S.com. Given this context, members were particularly open, objective and critical with respect to Board performance and the potential changes that should be implemented to improve overall Board effectiveness. A number of these improvements have featured in previous years and primarily relate to information context, content and consistency, and debate around business and strategic risk. These now form the core of the 2015/16 Board action plan.'

#### **Our Learning**

Communicating on Action Plan for remedying an improvement area is critical and valuable. However what gets communicated depends on the action identified. Giving specific details like 'consider best practice technique, such as a combination of annual individual and peer evaluations' to enhance Non-Executive Director evaluation process is desirable. Likewise indicating a timeline for the action communicates seriousness and commitment to the action identified.

## EVALUATING THE BOARD EVALUATION OF INDIAN COMPANIES

*'The most effective way to achieve reform in governance is to convince companies that the reform will create value.'*

**Peter Dey**

### Evaluation Methodology

Ethics and Corporate Governance go hand in hand for governance is as much about intent as it is about practice. Often the only factor that reveals intent is disclosure. Our evaluation methodology is based on the Indian mandate and global best practices. We have assigned the base score of one star for companies complying with the mandate, as mandate only specifies the minimum information that needs to be disclosed to avoid penal action, which is to disclose the manner of Board Evaluation. We have assigned 5-star rating to a company that discloses all the relevant information on Board Evaluation, i.e., process, attributes, outcome-both positive and improvement areas, in addition to the action plan for addressing the shortfalls identified.

Considering the ground reality in India, in addition to the 5-star rating we have added two more categories for companies that are exempt from Board Evaluation being majority government owned companies and companies that did not undertake Board Evaluation despite the mandate.

**Table 3: 5-Star Rating Methodology**

Rating	Criteria for the rating
E	Companies exempt from the mandate
0	Board evaluation not conducted
★	Basic disclosure that a Board Evaluation was conducted and details of the process <b>or</b> criteria used for evaluation are disclosed.
★★	Details of the process <b>and</b> criteria used for Board evaluation are disclosed.
★★★	In addition to the requirements for 2-star rating, findings that are positive in nature are disclosed
★★★★	In addition to the requirements for 2-star rating, findings both positive and improvement areas are disclosed
★★★★★	Comprehensive disclosures including action plan to redress the improvement areas identified in the evaluation, along with the process followed.

Based on the 5-star rating methodology, the results of our evaluation of the top 100 Indian companies consisting of Nifty50 and the Nifty Next50 based on their disclosure of Board Evaluation is tabulated in Table 4.

Nine companies have voluntarily used external consultants in their Board Evaluation process. They are Ashok Leyland, Bharti Airtel, Bharti Infratel, Cipla, Dr. Reddy's Lab, Godrej Consumer, Kotak Mahindra, Reliance Industries and Shree Cements.

- 1. Eighteen companies were exempt from reporting on Board Evaluation** as they were government owned companies. Of the eighteen, fifteen were public sector undertakings and the remaining three were public sector banks.

Interesting to note that three public sector undertaking BHEL, Container Corporation and Rural Electrification Corporation reported on the Board Evaluation process followed, despite the exemption available to them. BHEL and Rural Electrification Corporation reported only the process, and were assigned one star, while Container Corporation was

assigned three stars as it had reported in brief the positive outcome of its evaluation, in addition to the process and attributes. Voluntary reporting is a commendable practice, worthy of emulation by other public sector companies.

**Table 4: Rating of the Top 100 Indian Companies**

Rating	# of Companies	Disclosures - Exempt companies	Use of External Consultants
E	15		-
0	3		1
*	26 <sup>#</sup>	(2)	2
**	51 <sup>@</sup>		6
***	5	(1)	-
****	-		-
*****	-		-
<b>Total</b>	<b>100</b>	<b>(3)</b>	<b>9</b>

<sup>#</sup> Includes two companies that have disclosed the outcome without sharing the process or the criteria.

<sup>@</sup> Includes one company that has disclosed the outcome and criteria without disclosing the process followed.

**2. Castrol, Eicher Motors and Kotak Mahindra Bank were the three companies that did not conduct a Board Evaluation despite the mandate.**

- Castrol disclosed that it has ‘conducted the evaluation of non-executive directors and is in the process of implementing comprehensive evaluation mechanism.’
- Eicher Motors disclosed that ‘separate meeting of independent directors will be held, inter alia, to review the performance of non-Independent Directors, the Chairman and the Board.’
- Kotak Mahindra Bank disclosed that based on recommendations of Independent Directors in September 2014, it has appointed an external agency to finalize the criteria for evaluation and it was awaiting the recommendation.

**3. Twenty-six companies were assigned a single star rating.** Of these companies, twenty-four companies have disclosed either the Board Evaluation process or the criteria used for Board Evaluation or neither, with two companies disclosing only the outcome of the Board Evaluation without disclosing either the process or the criteria. Examples of this category from the 24 companies

- **Neither the process nor the criteria disclosed:**

**ABB India**

‘The Board of Directors has carried out an annual evaluation of its own performance, its Committees and individual Directors pursuant to the requirements of the Act and the Listing Regulations. Further, the Independent Directors, at their exclusive meeting held during the year reviewed the performance of the Board, its Chairman and Non-Executive Directors and other items as stipulated under the Listing Regulations.’

- **Evaluation process disclosed but not the criteria:**

- **Bosch**

- 'Pursuant to the provisions of the Companies Act, 2013 and Clause 49 of the Listing Agreement, the Board has carried out the annual performance evaluation of the Board as a whole, the Directors individually as well as the working of the Board and its Committees.

- A structured questionnaire was circulated to the Board members in this connection. The feedback from the Directors was summarized and ideas for further improving effectiveness of the Board processes, etc. were discussed.'

- **Evaluation criteria disclosed but not the process followed:**

- **Idea Cellular**

- 'In compliance with the provisions of the Companies Act, 2013 and Clause 49 of the Listing Agreement with Stock Exchanges, the Nomination and Remuneration Committee has laid down the criteria for performance evaluation of the Board, Committees and individual directors.

- Performance of the Board and Committees were evaluated on various parameters such as structure and composition, effectiveness of Board processes, and quality of decision making etc. Performance of individual directors was evaluated on parameters such as, preparedness on the issues to be discussed, external expertise and independent judgement and constructive contribution and inputs in meetings. The Directors expressed their satisfaction with the evaluation process.'

- **Disclosed the outcome of evaluation without disclosing the criteria or the process :**

- **Procter & Gamble Hygiene and Healthcare**

- 'The Board is happy to report that the result thereof shows that the company is well-equipped in the management as well as the governance aspects.'

- **Pidilite**

- 'The results of the evaluation is satisfactory and adequate and meets the requirement of the Company.'

4. **Fifty-one companies were assigned 2-star rating.** Of these two companies had disclosed criteria and outcome of the Board Evaluation, while forty nine companies had disclosed both the process and the criteria used in Board Evaluation. The detail in which they disclosed the process and the criteria did not influence the rating. An example of 2-star rated company

- **Criteria and process of Evaluation disclosed**

- **Marico**

- 'Marico's Board is committed to assessing its own performance as a Board in order to identify its strengths and areas in which it may improve its functioning. Towards this end, the Corporate Governance Committee in the NR policy had laid down criteria and processes for performance evaluation of Individual Directors, Chairperson of the Board, the Board as a whole and the Committees of the Board.

- A structured questionnaire was prepared after taking into consideration inputs received from the Directors, covering various aspects of the Board's functioning such

as adequacy of the composition of the Board and its Committees, Members strengths and contribution, execution and performance of specific duties, obligations and governance.

The annual performance evaluation was organised by the Chairperson of the Corporate Governance Committee in the following manner based on the feedback received from all the Directors:

- A meeting of the Corporate Governance Committee was first held to conduct evaluation of all Directors.
- Such meeting was followed by the meeting of the Independent Director wherein performance of Non-Independent Directors, Chairman of the Board and of the entire Board was evaluated.
- The entire Board met to discuss the findings of the evaluation with the Independent Directors. The Board then evaluated the performance of the Chairman of the Board, the Board as a whole and its individual Committees.

The Directors have expressed their satisfaction with the evaluation process.'

- **Criteria and outcome of Evaluation disclosed, but not the process**

- **Hindustan Zinc**

'After deliberation, the Committee of Independent Directors expressed its overall satisfaction.' This observation is with reference to the Board of Directors.

- **Shriram Transport Finance**

'The Board expressed its satisfaction of the performance of all the Directors, Board and its Committee, which reflected the overall engagement of the Board and its Committees with the Company.'

5. **Five companies were assigned three star ratings**, the highest rating that any Indian Company got for their 2015 disclosures for disclosing the positive results of Board Evaluation. In assigning this three star rating, we have ignored companies that provided positive assurance reported on the evaluation process itself. The reports of the five companies on the result of their Board Evaluation is reproduced here for ready reference

- **Ambuja Cements:**

'The Directors were satisfied with the evaluation results, which reflected the overall engagement and effectiveness of the Board and its Committees.'

- **Container Corporation:**

'The independent directors have also evaluated all the board members of the company and the same was found to be satisfactory.'

- **Federal Bank:**

'The structure and composition of the Board is appropriate with adequate number of Directors and a good balance of diverse professional backgrounds, business experience, industry knowledge, skills and expertise in areas vital to the Bank's success in it's current and future position; The proportion of independent to non-independent directors is good; The Board demonstrates integrity, credibility, trustworthiness, active and effective participation at Board & Committee meetings which are held at reasonable and regular intervals;

The Board and committee processes and procedures are good with different committees reviewing different functional areas of the Bank's operations. The Board and its Committees also reviews Bank's performance, risk management, financial reporting, compliances, technology, operations with adequate frequency of meetings etc.

The flow of information to the Board and its committees is generally good.

- **HDFC:**  
'Subsequently at the meeting of the Board of Directors, the consolidated report of the responses received from the directors was tabled. The board reviewed the performance of each of the directors of the corporation and the board as a whole and expressed its satisfaction on the same.'
- **Hero MotoCorp:**  
'The performance of each committee has been evaluated by its members and found to be highly satisfactory.'

On the basis of this exercise, the NR Committee and the Board, after recognizing the important contribution being made by each Independent Directors have decided that all Independent Directors should continue to be on the Board.'

6. **No Indian company has disclosed improvement areas** identified by their Board Evaluation process. In this context it is worth recollecting the observations of Beverly Behan a corporate governance practitioner 'Effective design for board assessment typically uncover three to five major issues, generate good discussion about them, yield useful ideas for improving the board's performance.'
7. In the absence of disclosure on improvement areas identified by Indian Companies, a question does arise about the effectiveness of Board Evaluation design. However, this question cannot be answered with certainty as it is not clear if issues were not identified or the identified issues were not disclosed.
8. On a deeper scrutiny, it appears that improvement areas have been identified by some companies as can be inferred by their reference to action plans. Examples of references to action plans are:
  - **ACC**  
'Based on the valuable inputs received from the Directors, an action plan has been drawn up to encourage greater engagement of Independent Directors with the Company.'
  - **Dr. Reddy's Laboratories**  
'The feedback obtained from the interventions was discussed in detail and, where required, independent and collective action points for improvement put in place.'
  - **Hindustan Unilever**  
'The results of the Evaluation were shared with the Board, Chairman of Respective Committees and individual Directors. Based on the outcome of the Evaluation, the Board and the Committees have agreed on the action plan to improve on the identified parameters.'

- **IndusInd Bank**  
‘The Chairman of the Board provided feedback to the Directors on an individual basis as appropriate. Significant highlights, learning and action points with respect to the evaluation were presented to the Board.’
- **Tata Power**  
‘Feedback was provided to the Directors as appropriate. Significant highlights, learnings and action points arising out of the evaluation were presented to the Board.’
- **Bharti Airtel**  
‘The Board Members noted the suggestions / inputs of Independent Directors, HR and Nomination Committee and respective Committee Chairmen and also discussed various initiatives to further strengthen Board effectiveness.’

## LISTING OF INDIAN COMPANIES WITH THEIR RATING

Name	Rating	External
ACC	**	
Adani Ports	*	
Ambuja Cements	***	
Asian Paints	*	
Aurobindo Pharma	*	
Axis Bank	**	
Bajaj Auto	**	
Bank of Baroda	E	
Bharti Airtel	**	Yes
Bharti Infratel	**	Yes
BHEL	*(E)	
Bosch	*	
BPCL	E	
Cipla	**	Yes
Coal India	E	
Dr Reddys Labs	**	Yes
Eicher Motors	0	
GAIL	E	
Grasim	*	
HCL Tech	**	
HDFC	***	
HDFC Bank	**	
Hero Motocorp	***	
Hindalco	**	
HUL	**	
ICICI Bank	**	
Idea Cellular	*	
IndusInd Bank	**	
Infosys	**	
ITC	**	
Kotak Mahindra	0	Yes
Larsen & Toubro	**	
Lupin	*	
M&M	**	
Maruti Suzuki	*	
NTPC	E	
ONGC	E	
Power Grid Corp	E	
Reliance	*	Yes
SBI	E	
Sun Pharmaceuticals	**	
Tata Motors	**	
Tata Power	**	
Tata Steel	**	
TCS	**	
Tech Mahindra	*	
UltraTech Cement	**	
Wipro	**	
Yes Bank	**	
Zee Entertainment	**	

Name	Rating	External
ABB	*	
Apollo Hospital	**	
Ashok Leyland	**	Yes
Bajaj Finserv	*	
Bajaj Finance	**	
Bharat Forge	*	
Britannia	**	
Cadila Healthcare	*	
Cairn	**	
Castrol India	0	
Colgate Palmolive	**	
Container Corporation	*** (E)	
Cummins	**	
Dabur India	**	
Divis Labs	**	
DLF	**	
Emami	**	
Federal Bank	***	
GlaxoSmithKline Pharma	**	
Glenmark	*	
Godrej Consumer	**	Yes
GlaxoSmith Consumer	**	
HPCL	E	
Hindustan Zinc	**	
Indiabulls Housing	*	
Indian Oil	(E)	
JSW Steel	**	
LIC Housing Finance	**	
Marico	**	
Motherson Sumi	*	
NHPC	E	
NMDC	E	
Oil India	**	
Oracle Financial Services	**	
Power Finance Corp	E	
Procter & Gamble Hygeine	*	
Pidilite	*	
Punjab National bank	E	
REC	*(E)	
Reliance Communications	*	
SAIL	E	
Shree Cements	*	Yes
Shriram Transport	**	
Siemens	*	
Titan Company	**	
Torrent Pharmaceuticals	**	
United Breweries	**	
United Spirits	*	
UPL	*	
Vedanta	**	

## Appendix i

### BOARD EVALUATION: THE LAW IN INDIA

#### **Companies Act, 2013**

The Companies Act, 2013, through multiple provisions, requires the Board of Directors of a Company to conduct an annual evaluation of the Boards performance, Sub-committees performance and the performance of their individual Directors. Listed below are the relevant provisions pertaining to this:

#### **Section 134 (3)**

There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include -

- (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;

#### **Rule 8 (4) of the Companies (Accounts) Rules, 2014**

Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, 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.

#### **Section 178 (2)**

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

#### **Schedule IV**

**(II)** The independent directors shall:

- (2) bring an objective view in the evaluation of the performance of board and management;

**(V)** The re-appointment of independent director shall be on the basis of report of performance evaluation

**(VII)** (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;

(3) The meeting shall:

- (a) review the performance of non-independent directors and the Board as a whole;
- (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;

**(VIII)** (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.

(2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

### **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

This regulation is applicable only to listed companies. It also requires Boards to conduct an annual performance evaluation and its disclosure in the annual report through the following provisions:

#### ***(4)(2)(f)(ii)(9)***

Key functions of the board of directors - Monitoring and reviewing board of director's evaluation framework.

#### ***(17)(10)***

The performance evaluation of independent directors shall be done by the entire board of directors:

Provided that in the above evaluation the directors who are subject to evaluation shall not participate.

#### ***Part D(A)***

Role of Nomination and Remuneration Committee: Role of committee shall, *inter-alia*, include the following:

(2) formulation of criteria for evaluation of performance of independent directors and the board of directors;

(5) 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.

#### ***Schedule V***

C. Corporate Governance Report: The following disclosures shall be made in the section on the corporate governance of the annual report.

(4) Nomination and Remuneration Committee:

(d) Performance evaluation criteria for independent directors.

\*\*\*\*\*

### **Report of the Companies Law Committee, February 2016**

The Companies Law Committee, through its report published in February 2016 to the Union Minister of Finance, Corporate Affairs and I&B recommended the following with respect to Board Evaluation:

#### ***Nomination and Remuneration Committee***

**12.7** As per the current provisions of Section 178(2), the Nomination & Remuneration Committee (NRC) is required to carry out evaluation of every director's performance. It is felt that, as Independent Directors are required to carry out review of performance of non-Independent Directors and the Board as a whole separately as per Schedule IV requirements, the Board is also required to carry out its evaluation (refer Section 134(3)(p)), carrying out another set of performance evaluations by the Nomination and Remuneration Committee is avoidable.

The Committee recommends that the NRC should instead 'prescribe a methodology to carry out evaluation of performance of individual Directors, Committee(s) of the Board and the Board as a whole', and the Board should carry out the performance evaluation as per the methodology either by itself, by the NRC or by an external party as laid down in the methodology. The performance review by the Independent Directors, as presently required in Schedule IV, may also form part of the methodology. Schedule IV may be amended accordingly. The provision may be reviewed after three years.

## Appendix ii

### A MODEL CORPORATE BOARD EVALUATION POLICY

*'Excellent firms don't believe in excellence –only in constant improvement and constant change.'*

**Tom Peters**

<b>Policy adopted on</b>	dd/mm/yyyy
<b>Policy Effective from</b>	dd/mm/yyyy
<b>Policy adopted by</b>	Unanimous/ Majority/ Dissent by (capture the key issues of dissent)
<b>Date of next review</b>	dd/mm/yyyy (not later than 3 years from the date of adoption)

#### Background

Leaders set example and in the corporate world, the Board of Directors by virtue of being at the helm of affairs, seeks to set an example of pursuing excellence by having a formal policy for periodic evaluation of the Board, its Committees and individual directors. The primary objective of this evaluation is to recognise the strengths, identify improvement areas and anticipate the emerging business needs that could help the Board, its Committees and individual directors meet the emerging business needs to realize the corporate vision and goals.

The Companies Act, 2013 and the SEBI (Listing Obligation and Disclosure Requirements) 2015 also recognize the need for constant improvement at the top by mandating annual Board Evaluation and reporting on the process of evaluation followed in their Annual Board of Directors Report to the Members of the Company.

Given the intrinsic need for self-evaluation to achieve business excellence and the external requirement to report on the evaluation process followed, this Corporate Board Evaluation Policy is adopted by the Board in its meeting held on dd/mm/yyyy. This policy shall come into effect with effect from dd/mm/yyyy.

#### I. Objective

The objective of this policy is to review the effectiveness of the Board's decision-making process by

- i. Defining a process for involving all the Directors of the Company in evaluating the Board's performance, its Sub-committees and individual directors.
- ii. Documenting the Board Evaluation process for recognizing the strengths, identifying the improvement areas and assessing the readiness of the Board composition to meet the emerging business challenges that confront the Company.
- iii. Generating information for shareholder and other legitimate stakeholders on the Board's functioning and its overall approach to corporate governance.

#### II. Guiding Principles

To derive the maximum benefit from Board Evaluation process, the following three guiding principles would be used in formulating this policy with the objective of promoting constructive, free, frank and participative engagement of all the directors:

- Issue based evaluation– to promote constructiveness
- Confidentiality to participants–To promote free and frank participation
- Anonymity of feedback – To promote participation

### III. Coverage

The Board Evaluation shall cover the following

- a. Board of Directors of the Company
- b. Sub-committees of the Board
- c. Chairperson of the Board
- d. Independent Directors
- e. Non-executive Directors
- f. Executive Directors, in their role as Directors

For each of the categories identified above, there shall be a defined process and criteria for evaluation.

### IV. Custodian

Chairperson of the Board along with the senior most independent director shall be personally responsible for carrying out the Board Evaluation. In this task they could be assisted by Nominations and Remuneration Committee or any other identified Board members or the Company Secretary or any external firm of consultants engaged to carry out this task.

To ensure independence, it is desirable that the external firm of consultants engaged to assist the Board in its evaluation does not provide any other service to the company to maintain its independence.

### V. Criteria

Different criteria need to be identified for the Board, its Sub-committees, Chairperson and individual directors, including Non-Executive Directors and Independent Directors. A comprehensive list of criteria is given in the table below for selection by the Board. Based on a review of the business environment and company performance, the Board may choose the set of criteria to be used for the year

Table 1: Criteria for Evaluation of the Board and Sub Committees

Sl.	Criteria	Board	Sub-committee
1	Charter: Clear and Comprehensive	Y	Y
2	Composition	Y	Y
3	Tenure of Members	Y	Y
4	Frequency of Meetings	Y	Y
5	Issues identified for discussion	Y	Y
6	Time allocated for the meetings	Y	Y
7	Adequacy of information flow	Y	Y
8	Shareholder Value Creation	Y	Y
9	Stakeholder Orientation	Y	Y
10	Follow-up actions on Board recommendations	Y	Y

Table 2: Criteria for Evaluation of Chairperson and Individual Directors

Sl.	Criteria	Chairperson	Individual Directors
1	Shareholder Value Creation	Y	Y
2	Stakeholder Orientation	Y	Y
3	Ethical Leadership	Y	Y
4	Independence of Judgment	Y	Y
5	Subject Matter expertise	Y	Y
6	Objectivity	Y	Y
7	Industry experience/ Exposure	Y	Y
8	Attendance	Y	Y

9	Participation in discussions	NA	Y
10	Listening Ability	Y	Y
11	Interpersonal skills	Y	Y
12	Stature in the Board	Y	Y
13	Conduct of the Meeting	Y	NA
14	Promoting active discussion	Y	NA
15	Encouraging diverse views	Y	NA
16	Dispute resolution skills	Y	NA
17	Resilience	Y	NA
18	Adherence to code of conduct	Y	Y
19	Standard of Conduct	Y	Y
20	Setting the tone at the top	Y	Y

## VI. Process

Rows in the table lists the various dimensions of evaluation and the third column provides the options available. The Board after deliberation to take decision on the preferred option for both the collective evaluation and individual evaluation.

Table 3: Dimensions of Board Evaluation and the Options available

Sl.	Dimension of Board Evaluation	Options Available	Choice made for Board & its Committees	Choice made for Directors & Chairperson
1	Evaluation method	i. Self-evaluation ii. External evaluation iii. Assisted self-evaluation		
2	Feedback gathering mechanism	i. Electronic survey tools ii. Administered questionnaire iii. Interviews iv. Group discussions		
3	Feedback to be obtained from	i. Self-assessment ii. Peer group assessment iii. Chairperson's assessment		
4	Rating system used	i. 3-point scale ii. 5-point scale iii. 7-point scale		
5	Sharing feedback	i. Group feedback shared ii. Individual feedback shared anonymously iii. Individual feedback shared with source individual		

## VII. Calendar

Board evaluation needs considerable investment of time and effort if it needs to go beyond a routine statutory compliance and provide insights for enhancing corporate performance. The Board is fully cognisant of this task and has planned the Board Evaluation spanning two Board Meetings.

In the initial Board meeting, discussions will focus on the principles, process and the schedule for collating feedback from the Board members. After the feedback has been obtained, a first cut report of the evaluation shall be prepared for discussion in the subsequent Board meeting. In the second Board meeting, the first cut report shall be shared with the members for a discussion, with one member of the Board, preferably the Chair of the Nominations and Remunerations Committee or the Company Secretary being entrusted with the task of summarizing the

discussions, preparing an action plan for implementation and providing a draft of the disclosures required to be made in the Report of Directors.

### **VIII. Disclosure**

Disclosure of the findings on Board Evaluation needs to be addressed in three parts:

- i.** Findings on functioning of the Board and Sub-committees
- ii.** Findings on the functioning of the Chairperson of the Board
- iii.** Findings on individual Board members

In reporting on the Board Evaluation of the Board and its Sub-committees, disclosures would be made of the process followed, the criteria used, evaluation calendar, the output of the evaluation both positives and the improvement areas along with an action plan to redress the deficiencies identified.

In reporting on the findings on the Chairperson and individual Board members, only the process, the criteria used and the calendar will be disclosed. As the results pertain to individuals and the objective of this evaluation is to promote constructive development, output of the evaluation, both positive and improvement areas will not be disclosed to anyone other than the individual concerned by the team involved in this process.

\*\*\*\*\*

### *Appendix iii*

## **MODEL BOARD EVALUATION CALENDAR**

*‘Take time to gather up the past so that you will be able to draw from your experience and invest them in the future.’*

**Jim Rohn**

A well designed Board Evaluation consists of three phases, in which a distinct set of activities need to be accomplished in each stage. While the time invested by the Board across the three stages may be of around 2 days for the first Evaluation, to get the best out of it, it may need to be spread across three days with the designated member and /or support team working in between the meetings.

In Phase 1, the following aspects of Board Evaluation needs to be debated and discussed in the Nominations and Remunerations Committee after which a draft Board Evaluation Policy needs to be submitted to the Board for consideration:

- i. Objectives
- ii. Guiding Principles
- iii. Custodian
- iv. Coverage
- v. Criteria
- vi. Process
- vii. Calendar
- viii. Disclosure

In Phase 2, feedback from the Directors needs to be obtained, after which a draft report / summary of the feedback received needs to be prepared to form the basis for discussion in the Board Meeting.

In Phase 3, each of the Sub-committees in their meetings and the Board in its meeting needs to debate the feedback received from its Members and identify areas where the performance meets or exceeds the requirement and areas where improvement is required. For the areas identified for improvement, the Board needs to consider the action required to address the deficiency, the person entrusted with this task and the time frame in which the action needs to be undertaken/completed.

As April 1-March 31 is fixed as the Financial Year for Indian companies and in practice at a minimum four Board meetings are held in one financial year, the first phase of Board Evaluation can be scheduled for the meeting held in the third quarter, i.e. the quarter beginning in October and third phase can be scheduled for the fourth quarter, i.e. the quarter beginning in January. Phase 2 activities can be carried on between the two board meetings.

The reason for not scheduling Board Evaluation in the first quarter, i.e. quarter beginning in April is due to the Audited Annual Accounts and Annual Report being approved in this meeting, which needs full attention. In the second quarter, the new Directors elected in the AGM may not have joined the Board or if they have joined will be yet to experience a full Board meeting and hence would not be able to participate in the Board Evaluation.

## **ABOUT CIMPLYFIVE**

CimplifyFive Corporate Secretarial Services Private Limited is a pioneer in offering research and technology based solutions for compliance with the Companies Act, 2013. Board Leaders Integrated Software Solution (BLISS) the company's first product eliminates procedural non-compliance risk for entities incorporated under the Indian Companies Act, 2013. More details about the company and its product BLISS can be obtained from [www.cimplifyfive.com](http://www.cimplifyfive.com).

CimplifyFive also provides a free to use website [www.ca2013.com](http://www.ca2013.com) that provides company law at your fingertips. This site uses hypertext to integrate rules, notifications, orders and circulars with the Act and provides real time, online access to the Companies Act as it stands on that day.

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