The Effective Board

INDEPENDENT AUDIT
BOARD REVIEW

January 2019

The Ins and Outs of Private Sessions

Non-executives should meet by themselves from time to time without the executives. It doesn't matter what the type of Board – the principle applies whether you're a FTSE 100 plc, a trustee board of a charity or a private company. For some boards, it's a routine discussion that they take for granted, but a large number of boards struggle with the concept – and the practice. It's something the Code refers to specifically (Provision 13) but that's not the main reason your Board should be doing it.

Do it because the non-executive directors are holding the executives to account and they can do that better if they have a little space for a frank exchange of views amongst themselves without having to think about how the executives will react.

So why do many boards find it difficult? We look in this month's bulletin at some of the good – and not-so-good – practices which we see when we're evaluating boards.

Good practices to consider…	Things to avoid…
Make them routine – don't save them up for when there's something serious. It's about sharing positive comments and views as much as for discussing concerns. Perhaps some of the NEDs feel they don't have a clear picture and would like to clarify with colleagues if it's "just them" or if management aren't actually giving a coherent picture.	Calling a private session only when a major issue has become serious. "We're fine with our executive team," we hear NEDs saying, "so we don't need private sessions." But this means that if the NEDs want a private session, it sends a message that they think there's a serious problem (even if there isn't) which will set alarm bells ringing among the executives.
Have a short session first thing before the main board meeting begins. This allows the NEDs to speak about particular topics that are coming up, which will help the Chair to shape those discussions during the day, as she will understand where the NEDs are coming from.	Holding them at the end of the day. Quite apart from the fact that everyone is tired, such sessions tend to drift into becoming a post-mortem on the meeting, or a continuation of it, only minus the executives. Avoid having them in the middle of the day too – it disrupts the flow of the meeting and leaves executives hanging around wondering what's going on.
Keep them brief. In most circumstances there's no good reason for the private meeting to take very long. To establish a routine, regular short ones are better than occasional long ones. Because it's important to keep them short, many chairs find it good to hold a dinner of the NEDs once a year to give discussions the chance to run on in a more informal setting.	Making NED-only dinners the default. Informal time is good for the whole Board to get to know one another better and an opportunity, from time to time, for the wider executive team to join. One NED-only dinner a year is generally enough.
Keep it focused and restrict the topics of discussion to those that really need the private time.	Letting the NED-only session become a substitute for discussions that should take place in the board meeting. That may happen through straying into discussions that the executives should be part of or, worse still, taking decisions that are whole-board matters. Or it can result in comments or questions not being brought up at the board meeting because "they've already been raised". It's easy to get carried away, if you don't take care.
Keep a note. The Company Secretary is generally not in the room for these discussions so the Chair needs to take brief notes about what is being said.	Forgetting the execs weren't there at the start and referring back to discussions that took place in the private session. This can be irritating for executives and the Chair should help fill in the gaps where needed – and possible.
Let the CEO know the gist of what's been discussed. Sometimes it's very private but, even if a meeting has discussed a serious concern around the CEO's performance, this needs to be transmitted. In the general scheme of things, topics discussed will have been more prosaic. The Chair should make time to let the CEO know the collective feeling of the NEDs as well as any practical points that have been raised.	Shrouding the sessions in mystery. Executives shouldn't expect a verbatim account of who said what – otherwise what's the point of a private session? But for the Chair to give the CEO a general indication (and in the days immediately following the Board – not a month later) is helpful to all.
Have another think about inviting executives to committees. Yes, of course there are always parts of RemCo and NomCo where it's not appropriate for them to attend (because it's a matter of their own pay, for instance). But there are, equally, parts of those meetings when it's good to have them there – to get their views on the financial outcomes and other measures which impact bonuses, for instance (though not the discussions of what should be paid out).	Treating committee attendance as a matter of dogma rather than of practicality. For example, there are items in the Audit Committee – around the major risks, for example, or the business rationale underpinning impairments – where the CEO's viewpoint is invaluable. (And if the CEO is too busy to attend, make sure this isn't symptomatic of either a CEO who isn't interested in risk and control or an Audit Committee that is spending too much time on technical detail and governance stuff…)
For the Audit Committee's private sessions with the internal and external auditors, follow the same guidelines and schedule regular private check-ins as a matter of routine. This helps to stop them becoming either a big deal or an annual formality. And it also demonstrates that the assurance functions have a special relationship with the Board.	Relying on regular one-to-ones between the Chair of the Audit Committee and the Head of IA and the external audit partner, and the same between the Chair of the Risk Committee and the Chief Risk Officer. These meetings are important, but not sufficient for the whole committee. The other members need the opportunity to question and hear the views of those with a special responsibility for keeping the company – and the directors – safe.
Executives need to embrace the practice as a sign that the Chair and NEDs are doing their job well, making sure governance and "holding to account" is operating as it should.	Executives should avoid making a big fuss about being left out. You should trust the Chair to make sure sessions are generally brief, to keep discipline on the topics discussed and to give you feedback. In return, accept that it's a normal part of a well-functioning board, not a secret plot to undermine you.

Board Effectiveness Reviews

We are one of the UK's leading providers of board reviews, having delivered some 300 board reviews since we were founded in 2002, including half the FTSE 100. And more than 150 companies have used our online self-assessment tool, Thinking Board®, to conduct their internal board reviews. This short video explains how.

Thinking Finance

We are launching a new service - Thinking Finance. It's designed to help finance functions assess their effectiveness and impact on the business - and to help the Board, Audit, Committee and management get a better view of how well Finance is working. Thinking Finance has been developed in partnership with AICPA-CIMA and draws on CIMA's Global Management Accounting Principles put together after extensive research and consultation. Find out more.

INDEPENDENT AUDIT

Independent Audit are leading specialists in governance, risk and assurance. We help clients understand and improve the effectiveness of their governance, including the board and its committees, internal and external audit, and risk governance.

If you have any questions on the issues covered here, please contact Catherine Stalker at catherine.stalker@independentaudit.com

This eBulletin is published monthly. To see back issues click here: "The Effective Board".

To receive this bulletin regularly click here.

www.independentaudit.com

+44 (0)20 7220 6580

Registered in England number: 4373559
Registered office:
One Glass Wharf, Bristol BS2 0ZX