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ИССЛЕДОВАНИЯ РАЗВИТИЯ: ПЕРСПЕКТИВЫ УСТОЙЧИВОГО РАЗВИТИЯ

DEVELOPMENT STUDIES: PERSPECTIVES ON SUSTAINABLE DEVELOPMENT

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BOARD MEMBERS (DIRECTORS)

Introduction

The process and requirements for appointing a board member in a corporate environment are typically outlined in the company's corporate governance structure, which includes the company's bylaws, articles of incorporation, corporate governance policies, and any applicable laws. The jurisdiction in which the company is incorporated and whether the company is public or private also affect board nominations.

Here is an overview of typical corporate board nomination requirements, along with some key processes and guidelines:

1. Eligibility Criteria for Board Nominees

Corporate boards of directors typically establish specific eligibility criteria for individuals seeking to serve on the board.

These criteria may include:

- **Age:** Some companies set age limits to ensure that board members have the necessary experience and can serve for a sufficient period of time. For example, companies may require that board members be under a certain age at the time of nomination.
- **Experience:** Candidates are often expected to have significant professional experience, typically in relevant fields such as business, finance, law, or industry expertise (e.g. technology, healthcare, manufacturing). A wide range of skills and knowledge is often required to complement the current board composition.
- **Independence:** For public companies, regulations (e.g. from the Securities and Exchange Commission (SEC) in the US or the Financial Conduct Authority (FCA) in the UK) often require a certain proportion of board members to be independent (i.e. not involved in the day-to-day management of the company). Independence can mean both financial independence (no material financial ties) and operational independence (not a former executive or employee).

Conflicts of Interest: Candidates must not have any conflicts of interest that could affect their ability to act in the best interests of the company. This includes any financial interests in competing firms or outside entities that could influence decision-making.

- **Legal and Regulatory Compliance:** Candidates must meet all applicable legal and regulatory requirements, such as having no criminal record, no securities violations, or other disqualifying conduct.

2. The Nomination Process

The nomination of a new board member typically follows a structured process that may include the following steps:

Board or Governance Committee Nomination: In most corporations, board members are nominated by an existing Nominating or Governance Committee. This committee is responsible for reviewing potential candidates, ensuring their suitability, and assessing how their skills complement the current board.

The Nominating Committee is typically comprised of independent directors, ensuring that the selection process is impartial and fair.

- Shareholder nominations: In public companies, shareholders can also nominate directors, especially if the company follows a proxy access model or shareholder proposals. Shareholder proposals can identify candidates for board positions, which will then be considered by the nomination committee or the board.

In some jurisdictions, shareholders who hold a significant number of shares (e.g. 1-5%) for a certain period (e.g. 1 year) may have the right to nominate candidates directly for election at the annual general meeting (AGM).

Review and Evaluation: The nominating committee evaluates the qualifications of candidates. This evaluation may include background checks, interviews, skills assessments, and compatibility with the company's strategic goals. Criteria such as diversity (in terms of gender, race, experience, or skills) may also be important factors in the evaluation process.

- Formal Nomination: After screening a candidate, the board of directors votes on the nomination. If approved, the candidate's name is put up for election at the next shareholder meeting, where shareholders will vote to appoint a new director.

3. Governance and Legal Framework for Nominating Board Members

- Company Bylaws: A company's bylaws (or constitution) typically include specific provisions for the nomination process. This includes how and when nominations are made, who has the right to nominate candidates, and the process for voting for new board members. It is important to review these bylaws to ensure that the nomination process complies with company rules.

Shareholders' Agreements: In privately held companies or joint ventures, shareholders' agreements may determine who can nominate or appoint directors. This is particularly relevant for companies with special ownership structures, such as private equity or venture capital-backed companies.

Corporate Governance Codes: Publicly traded companies are often subject to corporate governance codes that provide additional guidance on board composition, independence, and the nomination process. These may be issued by stock exchanges or regulators (e.g., the UK Corporate Governance Code or the Sarbanes-Oxley Act in the US).

These codes often encourage a diverse board of directors with an emphasis on different skills, experiences, and perspectives, and sometimes require companies to disclose their diversity policies.

4. Nomination Disclosures and Proxy Statement (Public Companies)

- Proxy Statement: For publicly traded companies, the proxy statement is a critical document in the nomination process. It provides shareholders with detailed information about candidates for the board of directors prior to the annual general meeting (AGM) or special meetings of shareholders.

A proxy statement typically includes:

- Biographical information about the candidates

- An explanation of the candidate's qualifications, experience, and other relevant details

- Information about board committee memberships and independence

- Any relationship the candidate has with the company, including compensation and share ownership

- How the board and nominating committee evaluated the candidate

- Voting and approval: Shareholders vote on candidates at an annual general meeting of shareholders or a special meeting. Directors are typically elected by a majority vote, although some companies may require a majority vote to elect board members.

If a candidate does not receive enough votes, the position may remain vacant or the board may need to nominate another candidate.

5. Regulatory Considerations and Best Practices

- Public Companies (Securities Law Compliance): In addition to corporate governance rules, public companies are subject to securities laws, including the Securities Exchange Act in the United States and the European Union Shareholder Rights Directives. These laws require companies to follow certain procedures and deadlines for nominating board members and providing adequate notice to shareholders.

- Independence Requirements: Regulators often impose requirements on independent directors. For example, the NYSE and NASDAQ require a majority of board members to be independent. This is to prevent conflicts of interest and ensure that decisions made by the board reflect the interests of shareholders, not the company's management.

- Diversity Initiatives: Increasingly, companies are expected to include diverse candidates on their boards. Some jurisdictions, such as California and the European Union, have imposed mandatory diversity quotas on boards, particularly with respect to gender balance.

6. Board composition and strategic considerations

When appointing new board members, an existing board should consider the strategic direction of the company. This includes assessing:

- Skills and experience: ensuring that the new member brings valuable experience in key areas such as finance, law, technology or international business.

- Diversity: promoting diversity in terms of gender, race and professional experience to encourage different perspectives and decision-making.

- Company needs: the board should identify any gaps in expertise or representation to ensure that the board can effectively guide the company's strategy.

Conclusion

The appointment of a board member in a corporate environment is a formal process governed by legal, regulatory and internal governance rules. Nomination requirements ensure that board members are qualified, independent and aligned with the company's strategic goals. For public companies, the process is highly regulated, with detailed disclosure and shareholder voting. A clearly defined and transparent board nomination process is vital to the governance and long-term success of a company.

References

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