

# Board Dynamics – Information Management

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## 1. Introduction

Information means power and informational advantage leads to information asymmetry. Information imbalance or lack of information bears the risk of wrong or inappropriate decision-making. Hence, for optimal decision-making there should be information symmetry among the decision-makers. Information management aims at restoring this symmetry by removing information imbalances. At board of directors level information management has different characteristics in each phase of the information cycle: the phase before a board meeting (**Pre-Board Meeting Phase**), the phase during a board meeting (**Board Meeting Phase**) and the phase after a board meeting (**Post-Board Meeting Phase**).

## 2. Pre-Board Meeting Phase

### 2.1 Starting Position and Problem Statement

The Pre-Board Meeting Phase is characterized by the following issues:

- Can an individual board member directly approach an executive committee project leader to gain additional insights or information about that specific project?
- Can an individual board member request additional analysis and ask for dissemination of the outcome of the analysis to the full board in advance of a board meeting?
- Can individual board members exchange relevant information among each other and eventually act in concert?
- To what extent do such activities, if they are deemed appropriate at all, require the chairman/chairwoman's attention and do they need to be submitted to the company secretary for the records?
- Do the chairman/chairwoman or company secretary, if they have been notified of such activities, have to share this information with the full board prior to a board meeting or is it sufficient to do so on the day at the beginning of a board meeting?
- Does such information have to be included in the minutes of the respective board meeting?

## 2.2 Solution Statement

Information Management ahead of a board meeting should be driven by a spirit of addressing information asymmetries through advance information dissemination in order to achieve an information balance at the time of the board's decision. A company's decision-making process should be structured in a way that a board's decision is based on a maximum of reliable and relevant information, which equally requires transparency, flexibility as well as some pragmatism. Internal rules and regulations should facilitate an ongoing elimination of existing or developing information asymmetries through dissemination of new or additional decision-relevant information to ALL board members, irrespective of who asked for it in the first place. This must be seamlessly documented to make sure that it is clear what information was requested by whom and who that information was shared with at any point in time. This information dissemination process has to be conducted centrally through the chairman/chairwoman. As a prerequisite, all decision-relevant activities in advance of a board meeting must be coordinated with the company secretary. Internal rules and regulations for information exchange prior to a board meeting (for example in the Corporate Bylaws) can provide clear guidance as to what is permissible and what is not. This creates transparency, provides clarity and is the foundation for acceptance of the decision-making process. As part of the board's annual self-assessment process these rules and regulations have to be evaluated for effectiveness and efficiency and revised if needed.

## 3. Board Meeting Phase

### 3.1 Starting Position and Problem Statement

The Board Meeting Phase is characterized by the following issues:

- How best to update board members with the latest information at the beginning of a board meeting?
- Which means can be used by individual board members to request additional information during a board meeting? Is there any entitlement to enforce an information request?

- Who is responsible for ensuring that there is a sufficient level of information on agenda items so that the board can make effective decisions?
- What is the chairman/chairwoman's role in general with regard to information management in a board meeting? To what extent is he/she responsible for achieving and maintaining information symmetry in a board meeting?
- How should board committee chairpersons be involved in this context? To what extent do they have to participate in the board's information management?
- Can a board agenda item be removed or postponed if a board member is not satisfied with the answer to his/her information request? Can the removal of an agenda item be enforced or is this subject to the chairman/chairwoman's sphere of competence or should there be a formal request to be decided by a majority vote?
- Can the interruption of a board meeting be ordered to organize additional information or to invite those with sufficient knowledge to join the board meeting? Can the agenda be altered in order to do so?
- To what extent does any of the above have to be minuted?

### 3.2 Solution Statement

Agenda:

- The agenda defines the meeting structure. From an information management point of view, items addressing developments since the last board meeting should be allocated to the beginning of the meeting, when specifying the sequence of agenda items. Minutes of the last board meeting are always the first agenda item. The resolution of pending issues, as reflected in earlier board minutes, can also be added to this item. The chairman/chairwoman can use this first agenda item to report on developments that happened since the last board meeting or prior to the current meeting.

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- The agenda is also a management tool for the chairman/chairwoman. It should enable the board to work in a timely, efficient and productive manner. Accordingly, changes to sequence, removal or postponing of agenda items or interruptions of board meetings should be possible at all times.

### Meeting management:

- The chairman/chairwoman plays a crucial role and is responsible for both the efficient process and running the meeting.
- Committee chairpersons should also be actively involved.
- Prior to the formal resolution of an agenda item, a short summary of the major points of view by the chairman can be helpful.
- The chairman/chairwoman is also responsible for concluding a given item.

### Board members' obligation to cooperate:

- Passiveness does NOT discharge responsibility. Neither ignorance nor lack of expertise are excuses when it comes to their responsibility in the case of court proceedings.
- Each board member is expected to actively participate and ask questions if there is a lack of clarity with respect to a certain agenda item. This is why Article 715a para 1 in the Swiss Code of Obligations explicitly states that at a board meeting each board member has the right to inquire about any matter of the company.
- In the decision-making process the board has to make sure through active exchange that there is sufficient information flow to allow for a broad-based and well-informed decision.
- All board members have an obligation to efficiently and effectively cooperate, discuss and debate to allow the chairman/chairwoman to bring agenda items to a conclusion.

### Minuting of board meetings:

- The dynamics of the board's decision-making process have to be reflected in the minutes.

- Changes to sequence, removal or postponing of agenda items also have to be precisely documented in the minutes. The same is true for individual board members' requests for additional information or insights into business documents, to verify who asked whom, when for what and in which form.
- Controversial board discussions should be reflected in the minutes as well, though naming and quoting of involved board members should only happen if explicitly requested.
- Non-unanimous votes should be documented numerically in the minutes.
- Minutes should reflect how the specific discussion- and information-flow has evolved during the board meeting and how the decision-making process ended in the resulting resolution.

## 4. Post-Board Meeting Phase

### 4.1 Starting Position and Problem Statement

The Post-Board Meeting Phase is characterized by the following issues:

- Do conversations between individual board members which took place immediately after a board meeting have to be minuted subsequently? What if the chairman/chairwoman participated in these discussions?
- Are informal meetings between individual board members before or after a board meeting admissible?
- Can an individual board member after a board meeting directly approach an executive committee member with an information request to gain additional insights or information about a specific matter which was on the agenda of the preceding board meeting?
- Is there a need to systematically capture and document additional, agenda item-specific information which, in agreement with the chairman/chairwoman, was made available after a board meeting to all board members?

- Who is responsible for capturing pending items and who manages the pending item list? Who is in charge of communicating captured pending items? How can be assured that pending items are added to the agenda of the subsequent board meetings?

## 4.2 Solution Statement

### Documentation versus minuting:

- Board meetings must be minuted. A meeting is defined as a gathering of board members, which is included in the board calendar in advance, and which requires a formal invitation and a meeting agenda. A meeting has a beginning and an end – clearly defining the period which is covered in the minutes.
- Occurrences after a board meeting are thus outside the official meeting and are not subject to minuting. However, it is conceivable that, judging on a case-by-case basis, the chairman/chairwoman instructs the company secretary to prepare a memorandum about a specific incident which occurred after a board meeting.
- It is advisable that the company secretary maintains a log of correspondence with the board between board meetings.

### Informal information exchange versus formal meeting:

- Often there is a need for information exchange between board meetings – either between individual board members or between board members and members of the executive committee. It is advisable to establish internal rules to address this informal information exchange.
- To assure an orderly process, board members' information requests related to specific agenda items outside of board meetings should be addressed to the chairman/chairwoman, to make sure he/she also maintains leadership outside of board meetings (see Article 715a para 3 in the Swiss Code of Obligations).

### Management tools of the board:

- Management tools that ensure a company has established a decision-making process, which complies with the Business Judgement Rule, are an integral part of a structured information

management in the board. They form part of a board's organizational responsibilities and set the boundaries of the company's decision-making processes.

- The board calendar (also referred to as «roadmap») clearly defines the dates in a year, when a company's decision-makers have to address certain topics. The agenda sets out for a specific board meeting date, who has to present what in what form and for what purpose.
- These tools are only fit for purpose if they are updated on an ongoing basis. This means that the board calendar needs to be adjusted after each board meeting to reflect new pending items.
- Guardian of these tools is the company secretary. He/she is responsible for maintaining the pending item list, updating the board calendar and drafting board agendas which are consistent with the board calendar requirements and reflect in a timely manner what items have to be addressed at the next board meetings.
- Board calendar and agendas have to be made available on time and in the appropriate form within a company to allow for sufficient preparation time for the meeting participants. This communication also forms part of the company secretary's job.

## 5. Conclusion

A board's timely and well-informed decision-making process is crucial to the success of a company especially in today's fast-paced business environment. The decision-making has to follow clearly defined procedural guidelines in order to be compliant with the Business Judgement Rule. Best practice information management is a key enabler to this. Each phase (pre-, during and post-board meetings) has its specific characteristics which need to be addressed differently in the information cycle to assure best possible information symmetry at all times. This paper has identified challenges and possible solutions for each of these phases and outlined how dynamic board information management should be organized.