

The Pros (and Cons) of Using Precedent for Governance Documents

Lawyers use precedent documents all the time. Outsiders may say it's done out of laziness, but there's much more to it. Here are three reasons why precedent documents are your friend when rethinking your board committee charters and corporate governance guidelines: 1. Tap into knowledge of peers - Maybe another company has a governance practice that seems like a good idea for your board to add to its arsenal. Or maybe your board already has been engaging in that practice but it's not evident from your governance documents. 2. They improve drafting quality - Maybe another company has been better at articulating the same practice as it's described in their governance document. Being a better communicator through your governance documents can be important for shareholder engagement and to bring in the vote come annual meeting time. 3. Understanding market trends can inform negotiation strategy - Speaking of shareholder engagement, if you review a number of governance documents from other companies and they don't have the kind of provision that an investor seeks, that might help build your case if it's something you want to push back on. For all the same reasons that lawyers depend on "what's market" when negotiating deal documents, relying on "what's market" in governance documents might help you be persuasive. And here are two reasons why you shouldn't overly rely on precedent documents when rethinking your own governance documents: 1. Your governance documents should reflect actual practice - There's nothing worse than including a practice in one of your governance documents because it's seemed like a good thing to do - but your board doesn't actually do it. Go through every inch of your governance documents and ensure that your board really does undertake every action, practice and task mentioned. 2. Your governance document should be a real, breathing document - The point above is so important that it bears repeating, perhaps in a different way. It's important to regularly vet your governance documents - at least once a year - and ensure that they cover the actions, practices and tasks that your board undertakes right now. Remember to remove things that the board used to do - but doesn't anymore.

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