

In-House Perspectives: Governance Practices

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In-House Perspectives: Governance Practices

Compiled by Broc Romanek, our in-house readers share tips, anecdotes, and thoughts about topics that arise in their daily practice.

A. Setting the Corporate Secretary's Budget

1. "Do more with less because most companies aren't going to increase the corporate secretary's budget. Figure out how you can use digital tools and automation to streamline operations. Stop doing stuff that doesn't create value.

Corporate secretary departments tend to have lots of waste elimination opportunities because the answer to the question, "Why do we do this this way?" is often, "I don't know, we've just always done it this way." Use the cost savings to self-fund necessary investments in talent, technology, etc. Impress the CFO with your financial discipline and ownership."

2. "A good part of it will be dedicated to somewhat predictable items like entity management software, local counsel for statutory matters, annual meeting costs, etc. One good way to ask for more is to look at the upcoming governance and secretarial challenges (some of which come up during Nominating & Governance Committee meetings) related to new laws, shareholder proposals/issues, activism etc. and to propose additional spend to address."

3. "We like to keep a rolling five-year comparison of how the corporate secretary's budget has done against "actual" when we reach our year end.

We also try to talk to our peers to see what their budgets look like these days and ensure that our department is getting something in the ballpark of the equivalent. That exercise can be a real eye-opener as it really varies from company to company."

4. "There's probably nothing more depressing than asking for a small raise in our corporate secretary's department and getting rejected year after year. It's hard when it's viewed as a cost center. Arguments for more money always need to hammer the compliance aspect and how much money that saves."

5. "Have you ever compared the General Counsel's budget with the Corporate Secretary's one? Pour yourself a stiff one."

6. "We are a fairly newly-public company and we dramatically underestimated the corporate secretary's department budget in Year One. We got better ideas about what is realistic after that and adjusted accordingly."

7. "Definitely the software used to manage the subsidiary structure and information. And the argument for this is easy – excess subs cost the company at least \$5000 per year (bank accounts and reconciliations, regulatory filings, corporate recordkeeping, etc.). And producing sub ownership lists and subsidiary D&O lists in a flash saves everyone time and lots of money.

And it's really helpful with information needed for lawsuits and when adding new employees as D&Os and when departing employees resign from 40 subsidiary boards at once."

B. Setting the Board's Budget

1. "Definitely on the board budget are these things: Director Recruitment, Independent Compensation Consultant, Board Compensation, Legal Counsel specifically retained to advise the Board, Board travel, (generally) costs to respond to activists."

But should the company charge executive travel for board meetings to an executive's cost center if "but for" the board meeting the executive would have had no reason to travel to New Zealand?."

2. "Corporate secretary's budget versus the board budget? Sometimes what goes where is not clear. Example: Board portal. Is that a board or corporate secretary cost? Annual Meeting and proxy solicitation costs? ISS consultation costs? An administrative person whose primary responsibility is supporting and liaising with the board? And so on. Sometimes it depends on the company's culture and approach to budgeting."

3. "There are boards with a budget? Seriously I've never seen that. It's a bottomless pit."

4. "The board's budget seems to avoid scrutiny, but we're careful with our spend. The pandemic taught us that we can conduct high quality board meetings virtually. Though we are excited to be back meeting in-person, we're considering having one board meeting per year virtually. This unexpected development offers cost savings we couldn't have imagined pre-pandemic."

5. "If you go over budget for the board, who is going to complain? Where will that excess money come from? It's a real dilemma."

6. "Going through the board budget process is important even if the board's budget isn't really capped. It helps you to understand where you can realize cost savings and helps keep the board accountable."

7. "Who from the board should be the most involved in the board budget process? The board chair obviously. And sometimes the corporate governance committee chair too. Keeping them in the loop helps with discipline from the board's side of things."

C. Director Recruiting

1. "Once we narrow our search to a pool of three top candidates, the Nominating Committee Chair and the CEO rank the candidates and begin interviewing the top three. Or if none are acceptable, we provide feedback to the recruiting firm so that additional candidates may be identified. And back to the drawing board we go."

2. "When we narrow our choices down to a final candidate, they are asked to complete a director nominee questionnaire for the Corporate Secretary, allowing for a full independence check as well as a determination of other relevant matters (such as financial literacy for Audit Committee members, special information required if the company owns nuclear power facilities, has government contracts, etc.) and to support proxy statement and other required disclosures."

3. "Before you do anything else, do the hard work of figuring out what your board needs to be in the future. Look at where your company will be going in the coming decade. Expanding outside the US? Trying to attract more diverse consumers? What do the investors you want to attract look for in a

board? Doing that in-depth analysis informs the design of an optimal board for your company.

Then, take a hard look at your current board composition. How does it compare to your optimal board? Where are the gaps? Work to go beyond just filling those gaps. Aspire to build a board of complementary experiences (broadly defined), perspectives (broadly defined), and skills.”

4. “Everybody is all about grids these days. Grids are great, but they have some limitations. When recruiting new directors, you are looking for people who will be effective directors.

Look for people who understand and take seriously the role of the board (as distinguished from management), have a sense for and comfort with complexity and uncertainty, value diverse points of view and perspectives – and are willing to learn from them, can work with different styles and adapt to different personalities, take the long view. Most importantly, you are looking for people with excellent judgment, decision-making skills, and ability to assess and coach talent.”

5. “I worry about director candidates with “soft skills” that aren’t considered adequate. Screening out directors, and employees in general, who have apparent deficits in communication or prioritization sounds like a great way to exclude neurodiverse candidates. We need all kinds of thinkers to do our best work.

Neurodiverse candidates often have valuable perspective BECAUSE they see things differently. They can bring intense focus and expertise, as well as the ability not to fall into crowd-thinking, which sound like great qualities for a director or an employee. I realize that’s not a simple story, but it’s one I’d like to start hearing more about.”

6. “Some companies have challenges obtaining good director candidates because of the industry they’re in. Or because the company recently had a highly publicized scandal. These companies can’t be as choosy as others and wind up taking on directors that they otherwise might not have. The recruiting process for them is far different in that they are trying to sell the company to candidates rather than the other way around.”

7. “Director recruiting – or the evaluation of a skill matrix – for directors should not occur once a year; it should be a continuous process that your Nom/Gov Committee handles and adjusts as the needs of your company change. Our Nom/Gov Committee has a regular discussion item at every meeting on new director prospects – whether we are actively looking or not.”

8. “Director recruiting should be top of mind for the Nominating Committee even when there is no vacancy (or expected vacancy) on the board. Working with recruiters to have a back-up slate is helpful – so when the need arises, you aren’t starting from scratch. When searching, bear in mind the current skill set of the board and the additional skills of the director candidate to enhance overall effectiveness.”

9. “I think it’s critical that the Nominating and Governance Committee (or other designated Board Committee) spend time up-front to identify the skills, experience, qualifications and diversity needed on the board prior to handing off the task of creating a candidate profile to an external search firm. Robust discussions around the type of person (technical skills, background and personality) and potential committee placement is helpful to guide the search process and lead to candidates with the right profile.

I have had good experience setting a calendar and cadence of check-in calls with the directors involved in the process to manage the various steps. Once director candidates are identified, I think it is important for a diverse group of directors (including the CEO) to meet and interview candidates (preferably in-person or on videocalls) and then share their impressions about how each candidate matches against the specifications that are sought.”

10. “This is sooo critical. I have worked with recruiting firms that can really make a difference particularly with finding diverse candidates. But you have to have a clear vision of what skills you need – and perhaps be willing to forego the candidates with CEO experience to find people with different skill sets.

This is not because there aren’t diverse CEO candidates out there. There are plenty. But the bigger, better paying boards seem to attract them and I am speaking from the small-mid cap company experience”

11. “I just met a CEO of a company that’s been public less than 10 years. She has an amazingly diverse and impressive board. But it was a high priority for her – which is why she has the results that she has.”

12. “We’ve had excellent results recruiting through existing directors, as opposed to using a recruiting firm. Recruiting firms add cost, complexity and potentially waste as you spend time trying to help the firm understand your process and what you’re looking for.”

D. Board Presentations by Outside Parties

1. “We ask that they provide maximum engagement, so we avoid traditional slide presentations. We’ve had good success using panel discussions (a couple of outside speakers facilitated by a member of management) or fireside chats (one outside speaker responding to questions from a member of management).

We provide slide decks as pre-reads, but don’t project them. We had an awesome ESG panel to address what our directors needed to know to provide the right oversight for our company. Since the directors had read the pre-reads, no facilitation was necessary. They engaged from the get-go and right through to the end. Directors and management felt energized and we all gained actionable insight”

2. “As with any board presentation, it’s helpful to identify your objectives/intentions at the outset and build toward that. Any outside speaker is vetted in advance to ensure that our objectives will be met and that we’ve selected the right speaker. Adjust as necessary.”

3. “Not everyone is board ready. The CLO/GC should be able to help vet board readiness, but this is a big deal. If the third-party is not experienced in board presentations, they should not do so. I realize this is a chicken/egg issue, but it is a rule I would not break. If they can sit second chair several times before sitting first chair, that could be an approach.”

4. “A speaker doesn’t work well who has not presented to the board, who doesn’t understand that what they are talking about is not the most important topic in the world, or is not able to be sympathetic to the reality that board members are sitting through 8 hours or more of meetings for 2-3 days and so they appreciate brevity.”
5. “If you have 30 minutes allocated to your presentation, then ½ that time should be kept open for questions. Make high level points only – do NOT get in the weeds. Anticipate questions. It is not a good look to not have a quick answer to everything that is asked. Don’t BS. If you don’t know, just say you will get back to them after the meeting.”
6. “DO NOT READ THE SLIDES YOU HAVE PREPARED!!! Always assume that the board has read your slides. Remember, the board members will be sitting through a lot of content besides yours.”
7. “The best type of speaker is someone who knows more about a topic than your board and that has a background that is intriguing (i.e., a cybersecurity expert that has worked for a military branch or government agency at a high level). Or if a lawyer, they must be an expert in their field and have some interesting client experience that will interest board members.”
8. “We had a banker and a lawyer present to the board, and they chartered a plane to fly from NYC together. We gave them both time limits for their presentation. The bankers presented first and stuck to their schedule. The lawyers presented next, and we asked the bankers to leave the room to protect privilege.

Well, the lawyers didn’t stick to their time limit at all. The bankers got tired of waiting, so they headed to the airport and took the plane back to NYC. Needless to say, the lawyers were surprised to not have a ride home. The next time the lawyers were invited to speak, they were right on schedule.”

9. “We like our speakers to be low ego. Focused on what board needs, not self-aggrandizement. Able to adjust to audience on the fly. Good listener. Able to really hear questions and reframe for maximum education.

Expertise must match board need – could be a scientist explaining some challenge facing the company, could be a lawyer explaining a board’s duty. Could be diversity educator.”

10. “The kiss of death is when a speaker is a narcissist. I don’t say that flippantly. We have all seen it. It does not end well.”
11. “Prep is critical for board presentations. It should align with the board’s goals for that meeting. The CEO may have a few more goals. Work with an expert to ensure they understand your goals. They may have good insights regarding an approach and content based on their experience”
12. “Be clear that any materials to be used as part of the presentation are to be in plain English. Send the materials well in advance. At the meeting, highlight your key points, then open the discussion with a focus on the company. Context should be well known and considered.”
13. “Our best speakers have deep subject matter expertise in a topic important to the company’s strategy. It’s important that they have experience talking to boards so that they can keep the conversation at the right level. We use outside speakers to complement our management presentations in some way, i.e., provide an external view or even a contrarian view.”

14. “What type of speaker doesn’t work well? Anyone who isn’t engaging will bomb. This reflects badly on management.”