



Why Due Diligence is Important before You Join a Board

If you truly understand the role of a Board of Directors, you also understand that such a position should not be accepted lightly. The potential risks of joining a public company Board of Directors have increased over the past decade. Increased scrutiny from global regulatory authorities and activist investors are just two of the most recent risk trends. In this environment, it would be irresponsible for a candidate to accept a Board position without conducting an appropriate amount of due diligence.

Due diligence is the process by which you will gather vital business information about the company you intend to join. In addition, we also recommend that you engage in a reflective due diligence process about your own capabilities and commitment. Such a process will enable you to determine whether or not your appointment will add value to the Board; assess the degree of risk entailed in the appointment; and identify any potential conflicts of interest. In addition, the Board's response alone to your due diligence efforts will provide you with much insightful information. If you are considering a respectable and well-run Board, a thorough due diligence process will make you a more valuable and attractive candidate.

Due Diligence Questions to Ask About the Company and Its Board

What do the public, corporate and other documents reveal? At a minimum, you should thoroughly review all of the public corporate documents of the Company including, but not limited to, public reports filed by a company with a securities regulatory organization (including disclosure of executive compensation), relevant organizational documents, board committee charters and D&O insurance coverage. You should also review recent and historical news articles about the company and its leadership. Have any concerns been raised about the company's management or board? Ask to review Board minutes, financial plans and budgets, and any information about any litigation filed. These documents can give you an idea of what type of issues the Board has been dealing with and whether or not Board process is well established. Follow-up with questions about anything that is of a concern to you.

What is the general culture and experience level of this Board? It is important to know who is on the Board and understand the interconnections amongst them. **How were the current directors identified? What are their qualifications and areas of expertise? Do the current directors have meaningful mutual business and/or personal relationships? Are there historical voting relationships and patterns among the Board members? In addition, what phase is the Board in?** New or transitioning Boards may have a greater need for policies to be written, directions to be established, missions to be articulated, and/or strategies to develop, which can be very challenging and time consuming. Do not be afraid to ask these questions. As a Non-Executive, and probably minority female Board member, you will want to know that there is transparency about all of these issues.

What is the Board's relationship with its investors? It is important to understand the Board's view of and relationship with its shareholders. Is the company in regular contact with its shareholders or is the communication less structured and reactive? Is there a qualified person who is designated as the primary shareholder contact? What types of investors are there (retail, mutual funds, activists, etc.) and has there been a recent change? It is important to note that proactive shareholder relations may mitigate shareholder activist behavior or, at least, provide insight into the particular concerns raised by shareholders.

How much of a time requirement is needed? Find out how often the board meets, where it meets and how long the meetings normally last. When assessing how much time a board role is likely to demand, keep in mind that you will also need to read the meeting papers before meetings, attend committee meetings, and attend other functions between meetings.



Why do you want me on the Board? Ask why the Board vacancy exists. This can reveal important Board history and dynamics and/or interesting information about the Company and its strategy and growth. Knowing the board's needs and expectations will also help you to assess whether you can capably fulfill the role, as well as giving you insight into what new skills and experiences you can expect to gain by serving on this particular board. Some boards will have a detailed job description to help incoming board members understand the tasks they will be expected to perform. If the board hasn't yet developed such a document, you could ask an existing member to describe the expectations and duties.

What is the defensive philosophy of the Board? A stressful time for a Board can occur during a merger and acquisition period. It is important to establish whether the Board is willing to use a poison pill. A poison pill is a defensive action taken by the Board to make stock less attractive for takeover, usually in the form of a shareholder's right plan. Understanding the defensive profile of the Company and its Board will give you insight into Board character and strategy.

Have there been any relevant corporate governance issues? Join the Board and its Company with a clear vision of its history and ethics. Have there been any disputes among directors and/or executive management regarding independence, codes of conduct or the exercise of fiduciary duties? Has the board or any of its committees initiated any internal investigations of directors or management? If you have a specific skill and/or profession and you already know which committee you will be asked to join, you should ask to speak to committee members and ask these corporate governance questions to the committee level as well.

Are there adequate compliance programs in place? Many companies are expanding globally, especially into emerging markets. Ask questions related to the Company's compliance programs to make sure training is planned and available for ethical and anti-corruption programs in the emerging markets.

Are there any other industry, reputation or community specific questions you should be asking? Use your knowledge of your industry, the Company's reputation in the industry, and the community, including, but not limited to, the risks and challenges they face, to devise any other important questions. You want to gather as much relevant information as you can to make a well informed decision. This will, after all, be the standard you will want to employ in all of your due diligence as a Board member as well.

Due Diligence Questions to Ask About Yourself

Once you have gathered all of the information you can about the Company and its Board of Directors, including their needs, goals and values, it is now important for you to engage in a due diligence self-assessment. Ask yourself questions to determine if you are a suitable candidate. Answer honestly. An honest self-assessment is, in fact, one of the first ways in which you can demonstrate that you truly understand the role you are considering. Below is a non-exhaustive list of questions to ask. There may be others that are relevant to your particular circumstance.

How much time can I really devote to this position? Be realistic. You must have adequate time and energy to dedicate to this role. Directors who are over-committed unintentionally expose themselves to potential liability by being inattentive to the business details.

Do I have the skills and experience that are really needed? Assess your value. If you were on the Board, would you hire yourself for the skills that are needed? An honest self-assessment may be of more value than an assessment others have made of your skills and aptitudes.

Can I hold this position with integrity and without conflicts of interest? Examine the functions and past decisions of the Board. Be aware of situations that could impact your business or personal interests and/or those of your family and friends.



Do I trust and respect the CEO and other Executive Directors? The Board relies heavily on the capabilities and ethics of the CEO. It is a good idea to consider the capabilities of the inside directors when assessing your role as a Non-Executive Director.

Did the Board clearly communicate its goals and are those goals achievable? Be realistic about the situation you are joining and make a well informed decision. Are you joining a high performing Board with a clear vision or does it appear to have a track record of unrealistic goals and inconsistent performance? Does the current senior management team and current directors possess the global business or governmental experience necessary for the company to achieve its mid- and long-term business goals and/or regulatory compliance needs? Past achievement does not equal future success. Especially if this is your first Board position, you may want to reconsider joining a Board that is dysfunctional.

Do I share the goals and values of the Board? It is your job as a Non-Executive Board member to think independently. Start now. Assess the business. Do you believe in the goals and values of this Board and Company? If you do not share the goals and values of this organization, it is unlikely you will be able to contribute enthusiastically to the Board's activities.

Once you have answered all of these questions, you are ready to make a well informed decision if you are offered a position on this Board of Directors. Good luck!