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When to say yes to your first board of directors (and your second and subsequent ones)

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September 2020

One of the moments of peak professional and social recognition for a senior manager who is already at the top, in the final stage of their executive career or who has just retired, is their first invitation to join a board of directors. It is the culmination of a process highlighting the expertise they have accumulated over their career, an acknowledgement of the confidence and good judgement they project and, perhaps most importantly, the start of a new stage that they will combine with their executive role and/or that will prolong their professional life. Board membership reflects a successful career and, insofar as possible, will even further enhance their social standing. Being a director has always been and, despite the increased responsibility entailed by recent reforms such as the 2014 Spanish Corporations Act, remains one of the most coveted professional milestones.

Throughout the five editions of Esade's Directors Programme, many participants have asked us how they should decide whether to accept or diplomatically decline their first offer of a board position in their new professional life. Time and again, they have asked our professors, guest speakers and programme directors how to do proper due diligence on the proposal in order to make the right decision.

According to the Korn Ferry Spain report 'Los nuevos consejeros 2019', two out of three of the 173 directors appointed over the year at companies listed on the Spanish continuous market were first-time directors. How many of the more than 110 new directors will have undertaken an orderly and structured process of analysis and reflection on the company, its challenges, the board and their role on it before deciding to accept the position? It is impossible to say, but it is necessary to approach the question with an analytical structure that allows you to assess the situation as thoroughly as possible: is this board for me or should I pass on the opportunity? There will be other chances! If this possibility seems unthinkable to you, you may want to reread the Corporations Act and the Criminal Code, because sitting on a board can be a great honour or financially attractive, but it will also imbue you with the board's reputation and it involves significant legal responsibilities and time commitments.

What framework should you use to reflect on and analyse the board you are being invited to join?

In this context, *due diligence* should be a process of analysing and assessing how good of a match your candidacy is for the board position you are being offered. In other words, you have to evaluate what you think you can bring to the company and what the company can offer you. It is important to be honest with yourself and not just to listen to what you want to hear or allow yourself to be swept away by the compliments you receive during the selection process you will have followed to ultimately be offered the position. It is worth remembering that the company offering you it will have followed the same process, but from their perspective… and they have concluded that you are the right candidate for them. But are they the right one for you? Because the most important thing to remember is that you will be putting part of yourself in their hands, a part that you worked very hard to build and that is probably one of the reasons you were chosen for the position: your reputation. We have all heard the saying 'You are judged by the company you keep'; this analysis as well.

In our opinion, before you can say yes, you need to consider five points:

1. **Are your experience, knowledge and skills** right for the position? To this end, it is essential to understand why you were chosen. Which aspects of your profile were decisive in their decision: your functional experience or experience with markets, industries, business, products or public authorities; your personal skills; your relationships; your specific expertise in a key moment of the life cycle of a company (launch, transformation, merger, IPO, international expansion…); etc.

2. How compatible are you with, or how good a fit are you for, the company's **main shareholders'** vision and strategic objectives? This is especially important if there are controlling shareholders. Because it will not be the same, and will require a different performance from you as a board member, if the company is controlled by private equity, a family, a public agency or a bank consortium or has heavily diluted shares, etc. This compatibility can refer both to the management model that having such shareholders involves and to the values or image they project, with which you may not only feel uncomfortable but openly disagree. It is not always that clear who controls the shares in a company and, when the ownership is greatly dispersed, as with listed companies, it may even be the management team itself, with the CEO at the helm, who controls the company.

3. Which is why it is also important to determine whether you are **compatible with the company's management team**, especially the CEO. Joining a board where you can infer or imagine a permanent conflict with the CEO's leadership style and values is not a good decision, for you or the company. Try to gain an understanding of the CEO's relationship

with the board. The company may have skipped over it, but it is something you must study and consider.

4. You are joining a team, **a board, and you need to be sure that you can fit in, rub shoulders and work with the other members**. Reviewing their careers and profiles, including the secretary's, even if he or she is not a director, is key. It is important to understand how this team works: how decisions are taken (vote, consensus, anonymously, etc.), how work is prepared for meetings, how the board's committees are run, who has the final say when there is a division of opinions, what the order of the Q&A session is, who decides the agenda, how conflicts are resolved, whether there is any tension or differences of opinion between board members, how delicate issues are discussed, how many meetings are held a year, etc. One way to access this information may be to read some of the recent board meeting minutes. If, after all of that, you determine that the board is a pure formality, where directors are not expected to make personal contributions ('figurehead' model of director), seriously consider whether you want to be on it.

5. If you are going to join a **company**, you should be able to share **its purpose and values,** you should be interested in its business or businesses and consider them conducive to furthering not only the company's economic development but also that of its community. You should be excited about its history, what it is and what it represents for society, because if you are not, and you accept, you will suffer and feel ashamed, for example, if they announce your appointment in the financial press. Is it worth it? Of course, this does not mean that you will simply rubber-stamp everything, which is why point 4 matters.

How to approach the reflection process

1. Phase 0. Before due diligence, there is pre-due diligence for the (generic) role of director.

– It is true, because not everyone is prepared to be a director, especially those who have been CEOs or business managers (managing directors) who excelled for years, or continue to excel, in their executive roles. Being a director means no longer being an executive. It means being part of a team that specialises in advising executives on company strategy and making sure the CEO and TMT are working to achieve the goals outlined by the owners or shareholders. If you are willing to take the step of no longer being involved in all the day-to-day decisions… go ahead.

– Because being a director means being willing to join a team, work with others, listen, participate, empathise, sometimes accept others' opinions, seek consensus, express yourself freely, be honest, and be professional.

– Because being a director means dedicating time – quality time – to reading and carefully studying the documents and information you are given. Because being a director means exercising judgment, which means you need more than inspiration and have to be able to improvise depending on how the board meeting goes. You have to do your homework, which sometimes requires calling the largest supplier or having a frank conversation with the auditor.

– Because being a director means having available time, since not everything can be planned one year out, when the meeting agendas are decided. Much of the work is done in the board committees, and since things always come up, extraordinary meetings are needed that will require additional time… and you have to have it. Companies and investors are increasingly asking directors not to stretch themselves too thin across numerous boards, of course, but also across other types of positions and responsibilities. Especially if you plan to keep your main executive position, you have to make sure that you not only have the available time, but also the support of your company to accept a board position and the cognitive capacity to take on this new responsibility.

– Because being a director means tolerating risk, accepting it and knowing how to manage it. The profession of director is a risky one, whose risks can be minimised – through the assurance functions of any organisation (compliance, audits and risk management) and D&O liability insurance – but never eliminated 100%, because they are difficult to predict. Imagine how you would feel if you were one day unfortunately accused of something for being a member of the board, because it happens even at the best of companies.

In short, if your answer to each of these five points is not clearly positive, a conscious yes free of all doubt, do not move on to the next step, because being a director is not for you.

2. For a company, due diligence begins when they first make contact.

The process of selecting a director begins when the company, either through an executive search firm or directly through a member of the nomination and remuneration committee (NRC), proposes your name. From there, at that first meeting, the board discusses whether your experience, knowledge, profile in terms of diversity in a broad sense (gender, age, geographic origin, nationality, etc.), skills and values match the needs the board currently wants to meet and considers essential.

Meanwhile, we need to approach the process of joining a board with a sceptical attitude, such as the one the Spanish regulatory framework and supervisory authority, the National Securities Market Commission (CNMV), asks all directors to adopt. In other words, just as the board is evaluating us, we should participate in the recruitment process as candidates with that same spirit. It has to be a reciprocal process of discovery that we must fully leverage. Usually, when a board invites us to participate, they have an advantage, because they already know much more about our background and skills than we do about theirs. Nevertheless, this reciprocity in learning about each other is key.

From the first contact with the consultant or the company itself, you should research the main challenges the company faces one, three, five and ten years out and seek to understand what the greatest risks and opportunities are. Sometimes, it will be easy for you to find this information (in some cases, you may even be provided with documents!), but do not give up if it is not. Ask, ask again, but be sure to get it, because it is key to forming an informed opinion… and deciding whether or not to accept their invitation.

3. Transparency, the traditional media and social media are our allies.

How can you learn more about the company? You can start by reviewing the publicly available information, such as the most recent income statements, balance sheets, management report, non-financial information and audit report. However you do it, you need to gain a clear grasp of its financial situation, future business prospects and cash situation. Is there anything that jumps out at you? Are there any red flags?

Review the company's by-laws, board regulations and internal corporate governance regulations. If it is a listed company, do not forget to review the annual corporate governance report and the annual directors' remuneration report, as well as the privileged information published with the regulatory authority. Again, does anything jump out at you? Are there any red flags?

The company website is a mine of information. Thoroughly researching it and exploring its tabs, links, documents and press room will help you identify key issues. You can learn about its culture, values, core policies, short- and long-term vision, most important projects, investments, investor profile, management team and board members. Today many companies have also begun to publish their non-financial reports, such as social or CSR reports.

Traditional and social media will help you find much of what you need: news, results and corporate presentations, videos, speeches by directors and executives at events (especially by the CEO and CFO), customer reviews (especially at B2C businesses). Sometimes we can also find interesting public information with related parties (auditors, lawyers, clients, suppliers and other stakeholders).

It is an especially good idea to review the LinkedIn profiles of the company's board members and management. For one thing, it allows you to discover shared contacts and learn more about their profiles, management style and values. For another, social media (e.g. Instagram or Facebook) sometimes reveal (more or less serious) tax or legal issues, affecting both the company and its professionals, or that they have received numerous complaints from different stakeholders, such as consumers or environmentalists. This is also valuable information.

One orderly and useful way to classify all the information you have collected so far is to put together a comparative analysis with other companies from the sector, including competitors but also companies with a similar shareholder structure or geographical presence. It will afford you greater perspective and relativise the identified data, 'successes' and 'failures'.

4. Identify the board members you would like to meet. The CEO is also important.

When you begin the process, you will probably be told what interviews you will need to do to become the finalist candidate. That is the time to identify whether anyone key to your decision is missing so that, if you advance as a finalist, you can suggest or make it happen when the decision is in your hands. If for whatever reason that is not possible, during the onboarding process, which we will address below, be sure to meet them. Not having been able to talk with someone you considered to be of interest is also information.

A well-implemented process on our part as a candidate should include: the secretary of the board (remember to ask about the D&O liability insurance), the chair and members of the NRC, the lead independent director and, finally, the chair of the board. If you will also be sitting on a committee, it is worth meeting its chair during the process, too. In the case of companies with large or controlling shareholders, it may also be advisable to meet some of the proprietary directors who represent them or even the shareholders themselves. And with companies that rely heavily on a supplier or client, it would also be a good idea to try to learn more about their point of view.

In these interviews, it is very important to identify the issues to be addressed, which should be focused on aspects identified as critical in the reviewed public information: the basic lines of the strategic plan; inconsistencies with the purpose and mission; excessive debt levels; the causes of any losses (are they one-time or structural; does the company have the equity to offset them; etc.); reputational crises; litigation in court or arbitration; outstanding disputes with employees, clients, suppliers, or government agencies; insufficiently justifiable departures of executives or directors; entries or exits of significant shareholders; the reasons for the most recent corporate operations (acquisitions, mergers, joint ventures, internationalisation processes, diversification processes); contracts governing the relationship with any subsidiaries; guarantees granted by or in favour of the company; verification of compliance with specific obligations in regulated industries; where the greatest growth opportunities are; social responsibility; etc.

5. Identify former directors or executives who can offer good insight into the company.

People who have left a company as a director or senior manager can offer us a perspective that is not conditioned by their current membership, but is conditioned by the way they left. Getting rid of biases is very important, or rather than helping us they can confuse us. If you can contact such people discreetly without revealing the reason for your conversation, it can be very useful, although perhaps you should only do it when you have important doubts that they can help you resolve.

6. If, after the five previous steps, you still are not ready to take a decision, you will need to dig deeper and you will need help… from the company itself.

If you have not been able to identify key information within the framework for reflection proposed at the start of this article, you will have to take the decision without all of the necessary information… as in many areas of professional and personal life. You will need to be able to determine whether what you were unable to find out is too critical to ignore and take the decision. If you do not feel comfortable enough with the level of information you have to take that step… explain your doubts to the company. They may suggest ways to resolve them: additional documents or additional interviews. They may also require you to or you might even suggest that you sign a confidentiality agreement. Fear of what they might say or that they might rule us out if we express any doubts can lead us to make mistakes that we will come to regret.

7. Due diligence continues in the welcoming and onboarding process.

Once you have been selected and decide to accept the appointment, you will begin a key learning and socialisation process. The first months will be intense, because you have to bring yourself up to speed and familiarise yourself with the board's dynamics, both internally amongst the members and with the company and the various stakeholders – each with their own interests.

A good company will have a defined process in place for welcoming and integrating new directors, which will allow you to access key information that you are unlikely to have been shown during the selection process, e.g., minutes from board meetings and the committees you are going to join, interviews with key executives, documents used at board meetings for discussions, decision-taking and oversight and monitoring activities, or access to the strategic plan (in detail) and risk map.

And if, after the onboarding process (or even later…), you realise that it was a mistake to accept, in part because you were given incomplete or misleading information, you should not stay on if you are uncomfortable. If necessary, you are better off leaving early (even if it is not easy) than waiting until it is 'too late'.

8. A final consideration applicable to accepting a position on any board or leaving one at any time.

What reasons would cause you to decline a board position or resign from a board? In preparing this article, we spoke with several directors and corporate governance experts. One point they all agreed on is the need to analyse, weigh and give significant value to in their final decision anything that could entail criminal or serious reputational risks. Almost all of them had a clear idea of which industries or businesses they would never be directors in. What is your red line, the one you would not be willing to cross to be a director?

NOTE:
The thoughts contained in this article are the result of the authors' personal experience in the years we have worked in the field of corporate governance, of personal interactions with hundreds of directors who have made similar decisions in their careers, and of certain thoughts shared in relation to this article for which we would like to give special thanks to Pablo Sagnier (independent director and partner at Egon Zehnder), Antonio Nuñez (independent director and partner at Parangon Partners), Loreto González (partner at Korn Ferry), Ana Plaza (member of the Advisory Board of the Esade Centre for Corporate Governance and independent director), Maria Luisa Jordá (member of the Advisory Board of the Esade Centre for Corporate Governance and independent director) and Isabel Linares (independent director and senior advisor at Boyden and PwC).