

Corporate Governance, Risk Management, and Board Considerations in Response to COVID-19



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The COVID-19 pandemic and its aftermath will heighten focus on corporate governance, risk management and an engaged board as companies forge a path through the uncertain times. Strong oversight, coordination and leadership will be critical in managing a fluid and complex situation impacting a company's business, operations, prospects, employees, stockholders, other stakeholders and government/regulatory relationships. We highlight below some key areas of focus for boards as this unprecedented public health crisis and its impact on the business and economic environment continue to evolve.

Health and Safety: With management, set a tone at the top through communications and policies designed to protect employee wellbeing and act responsibly to slow the spread of COVID-19. Monitor management's efforts to support containment of COVID-19 and thereby protect the personal health and safety of employees, customers, business partners and the public at large. Consider how to mitigate the economic impact of absences due to illness as well as closures of certain operations on employees.

Operational and Risk Oversight: Monitor management's efforts to identify, prioritize and manage potentially significant risks to business operations, including through more regular updates from management between regularly scheduled board meetings. Depending on the nature of the risk impact, this may be a role for the audit or risk committee or may be more appropriately undertaken by the full board. Document the board's consideration of, and decisions regarding, COVID-19-related matters in meeting minutes. Maintain a focus on oversight of compliance risks, especially at highly regulated companies. Watch for vulnerabilities caused by the outbreak that may increase the risk of a cybersecurity breach.

- **Crisis Management:** Employees, shareholders and other stakeholders will look to boards to take swift and decisive action when necessary. Consider whether an up-to-date crisis management plan is in place and effective. A well-designed plan will assist the company to react appropriately, without either under- or over-reacting
- **Task Force/Special Board Committee:** The board should consider creating a task force of various business teams or a special committee of board members that meets regularly and is tasked with monitoring and delegating responses and actions to company management. This response team will handle the rapidly changing environment quickly and be able to report to the board often, to ensure proper board oversight of all COVID-19 related decisions.

Business Continuity: Consider whether business continuity plans are in place appropriate to the potential risks of disruption identified, and continually reassess the adequacy of the plans in light of developments.

- **Employee/Talent Disruption:** As more employees begin working remotely or are unable to work due to disruptions caused by COVID-19, continually assess what minimum staffing levels and remote work technology will be required to maintain operations.
- **Supply Chain and Production Disruption:** Review with management the risks of what a disruption in the supply chain will cause in interruptions in operations and how to protect against such risks, including the availability of alternate sources of supply. Ask management to assess the risks that the company will have difficulty in fulfilling its contractual obligations and how management is preparing to address those risks, including through review of relevant provisions in customer contracts (e.g., force majeure, events of default and termination) to determine what recourse is available.
- **Financial Impact and Liquidity:** Review with management the near-term and longer term financial impact of the COVID-19 pandemic and the related impact of the extreme volatility in the financial markets. Understand the assumptions underlying management's assessment and discuss the likely outcome if those assumptions prove incorrect. Consider the need to seek additional financing or amend the terms of existing debt arrangements.
- **Internal Controls and Audit Function:** Consider whether COVID-19 may have an impact on the functioning of internal controls and audit. For publicly-traded companies, remember that any material changes in internal control over financial reporting will require disclosure in the next periodic report.
- **Key Person Risks and Emergency Succession Plans:** Consider whether an up-to-date emergency succession plan is in place that identifies a person who can step in immediately as interim CEO in the event the CEO contracts COVID-19. Consider the need to implement similar plans for other key persons.
- **Board/Governance Continuity:** Consider whether the board is appropriately positioned to provide guidance and oversight as the COVID-19 threat expands. Consider scheduling in advance special board meetings and/or information conference calls over the next three to four months, which can be cancelled if not needed. Decide whether to replace in-person meetings with conference calls to help limit the threat of contagion. Continue to meet regularly in executive session to discuss assessment of how management is managing the crisis.

Internal Communication: Providing information to employees without encouraging panic is key in keeping the company moving smoothly during any crisis, but especially during a health crisis. Boards should advise management to communicate clearly about the impacts to the business of the crisis.

External Communication: Effective external communications are critical in the face of a crisis. Having an external communication strategy in advance will help to prevent any damaging message failures during a crisis. Boards should make sure that management strikes the right balance between being transparent to external stakeholders—including investors—about any possible impact, and ensuring that the information is accurate. Companies must also consider whether they are making sufficient financial statement disclosures about the actual and expected impacts of COVID-19 on their business and financial condition.

Corporate Strategy/Plan: The COVID-19 pandemic has brought new and unique challenges to most businesses. Focusing on the critical functions of a company certainly takes priority for a board. However, once the critical areas of need are addressed, the board may want to consider the implications for longer-term corporate strategies in light of the changing environment caused by COVID-19. These may include cultivating new alliances, developing more innovation and technology, exploring lower cost financing structures, developing new employee benefit plans and evaluating real estate needs.

- **Strategic Opportunities:** Consider with management whether and if so where opportunities are likely to emerge that are aligned with the corporation's strategy, for example, opportunities to fulfill an unmet need occasioned by the pandemic or opportunities for growth through distressed mergers and acquisitions.
- **Defensive Tactics:** Due to the decline of the stock markets, many public companies are seeing their shares trading at large discounts, and opportunistic investors may develop substantial equity positions. Boards should evaluate defensive tactics and antitakeover measures to prevent an unwelcomed advance from an activist investor.

Management Compensation: Some companies have considered (or implemented) pay reductions either on a case by case basis or across the executive ranks. Consideration should be given to the effect of such reductions on various executive arrangements. Additionally, consider whether incentive plans need to be reworked in light of the

circumstances, to ensure that appropriate behaviors are encouraged. Consider delaying setting incentive plan goals until the uncertainty has subsided or try to build in flexibility with respect to any goals set.

Aftermath: Consider with management whether the changes in behavior occasioned by the pandemic will have any potential lasting effects. Also, be prepared when the crisis abates to assess the corporation's handling of the situation and identify "lessons learned" and actionable ideas for improvement.

Retain Additional Advice: Due to the developments regarding unique COVID-19 issues and the limitation of internal resources, a board should consider if the company needs additional assistance and retain outside advisors where necessary. An effort to consult with outside advisors can help demonstrate a board's good faith effort to be and stay informed throughout the COVID-19 crisis.

For more information on how the Coronavirus is impacting businesses across multiple industries, visit our COVID-19 resource page:

[COVID-19 Resources](#)