

# Action Agenda for the Board of Directors in the Context of COVID-19



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*Some say that corporate boards only have value when companies are in crisis. If that is true, the 2020 global pandemic presents a moment for corporate boards to step up like no other.*

Corporate boards and management face serious challenges in navigating the COVID-19 pandemic. In this difficult environment, companies have to be mindful to apply best practices and exercise care to fulfill their duties of loyalty and care. The challenges are complex and the risks and fall outs are exponential. Corporate boards have to exercise responsible oversight by understanding the risks facing the company and the impact of the pandemic to day-to-day and strategic decision-making

Corporate management bears the day-to-day responsibility for managing the corporation's response to the pandemic. The board's role is one of oversight, which requires monitoring management activity, assessing whether management is taking appropriate action and providing additional guidance and direction to the extent that the board determines is prudent. Staying well-informed of developments within the corporation as well as the rapidly changing situation provides the foundation for board effectiveness. The role of corporate directors is all the more important at this time because they are the ones who must ensure that the corporation is able to plan for the return of normal operations, post-COVID-19. Directors are subject to a fiduciary duty to the corporation. Being obliged to act for the good of the company and to take into account the interests of all stakeholders, as directors are expected to have a broader perspective than the managers who are only involved in day-to-day operations.

## **Imperative Board actions**

Running their business in the midst of a pandemic is an unprecedented challenge for Boards and business leaders worldwide. Management teams and their boards are juggling a wide array of concerns right now, from the health of their workforces to disruption in value chain, volatile equity markets to shuttered debt markets. So, what should boards do in a moment of crisis such as this?

**Crisis Management:** During this turbulent time, 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 :** To manage the current crisis, companies have to establish a task force reporting to the board with representatives from the various facets of business viz. compliance, human relations, legal, finance, audit, Information technology and security to coordinate information sharing, planning, implementation and communication to the public and other stakeholders.

**Define crisis-response roles and responsibilities for the board:** Boards need to get more proactively involved to help mitigate the impact of COVID-19 on their businesses. They should hold candid conversations with senior management to establish clear expectations about their respective roles and responsibilities in a crisis. This will help to reduce the risk of any unhealthy board-management dynamics and improve response / recovery actions. The team should be in regular contact with the board or a designated board member or committee.

**Health and Safety :** The key concern and responsibility of the Board and management is to set a tone at the top through communications and policies designed to protect employee wellbeing and act responsibly in the context of COVID-19 and thereby protect the personal health and safety of employees (and their families), 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

**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. As companies rely on remote employee arrangements, companies have to assess increased cyber security and data risks. To the extent employees are relying on residential wi-fi access to the Internet, companies have to assess risk depending on the seniority and responsibilities of employees who may have access to confidential information. In these situations, employees have to exercise healthy cyber practices to avoid a possible data breach or attack from third parties.

**Supply Chain and Production Disruption:** Review with management the risks that a disruption in the supply chain will cause 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. Such an inquiry requires review and assessment of customer contracts, vendor/supplier contracts and capabilities, along with access to business insurance relating to these contracts.

**Effective external communications:** An effective external communication strategy is 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. This becomes a real challenge in deciding what to disclose to investors about the risk exposure and in determining what is material, because the impact of the risk could quickly change if the virus disrupts more markets and regions.

**Evaluate management's internal communications strategy:** Providing information to employees without triggering panic is key in keeping the company moving smoothly during any crisis, but especially during a health crisis such as the present COVID-19 pandemic. Boards should advise management to develop an effective internal communication strategy to keep all the internal stakeholders duly informed about the evolving business / work scenario and the actions that are being taken by the management to appropriately respond to the situation.

**Communication with Government authorities:** Companies have to maintain open lines of communication with Central, state and local government representatives in order to keep current as to pandemic data and government policies, guidelines and actions. Companies have to duly consider and incorporate such data and government actions in relation to employee safety, business continuity and business disruptions.

**Operational and Risk Oversight:** Monitor management's efforts to identify, prioritize and manage potentially significant risks to business operations, 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, and duly watch for vulnerabilities caused by the outbreak of Covid 19 that may increase the risk of a cyber security breach.

**Financial Impact and Liquidity:** Review with management the near-term and longer-term financial impact (including the ability to meet obligations) 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. The current crisis is hitting corporate cash flow hard. Companies previously stable may soon be facing the prospect of insolvency or bankruptcy. In such situations, companies tend to make tough management decisions quickly, without taking a step back to ensure that they are truly justified or are in fact the best scenario.

**How strong is our underlying business model is:** Beyond the near-term liquidity, there is more fundamental matter regarding company's solvency. Board members must assess the long-term prospects of a company's underlying business model. Amid all of these pressures, boards, together with senior leadership, must traverse the delicate balancing act of thinking both long term and short term, and board members must not lose sight of their longer-term strategic oversight responsibilities. Crises can offer rare opportunities for innovation to not only defend the core business, but also explore opportunities for growth through distressed M&A.

**How do we keep our company culture alive? :** Boards must be alert to the need to defend the company culture and keep it strong in the face of heightened uncertainty. Despite the unusual circumstances in which companies find themselves today, a strong culture, backed up by solid, empathetic leadership is necessary to ensure that the company remains on solid ground. By actively managing the behaviors that are part of the company culture, employees will be more committed and feel like they are part of a team contributing to a collective effort to help address an unprecedented global crisis.

**Ensure effective management reporting to the board:** Appropriate Board Reporting framework should be developed regarding the information that directors are expected to receive during and post Covid 19 scenario. Boards should ensure that they receive relevant and timely updates to understand how the business is being affected enabling them to initiate timely desired actions.

**Business Continuity and Contingency Plans:** Consider whether business continuity plans are in place appropriate to the potential risks of disruption identified, including through a discussion with management of relevant contingencies, and continually reassess the adequacy of the plans in light of developments. A crisis is inherently unpredictable. However,

the company should endeavor to anticipate all potential crises to which it is vulnerable and develop contingency plans to deal with those crises to minimize on-the-fly decision-making. By way of example, what if the company's main suppliers are unable to supply components which are crucial to the company's manufacturing or provision of services? As far as possible, these concerns should be proactively addressed, especially in light of the duty that directors have to exercise reasonable care, diligence and skill, and this involves assessing and minimizing the risks in similar extreme situations.

**Emerging Role and Responsibilities of the Directors:** It is more relevant than ever for directors to approach their mandate with agility and skill, especially with a view of adding value to their organization. Agility will help them to sail to a safe harbor. Existing crisis management or business continuity measures or policies may be insufficient or outdated in the face of the current crisis. Benchmarking against best practices and updating this data on an ongoing basis, should be considered. It would also be advisable to consult crisis management specialists if the company does not have specialized resources in-house. Directors will require skill to pursue their mandate capably and with the highest standard of competence. However, In the current context and in light of the above, directors must balance the temptation to step into the role of manager against the need for an appropriate level of supervision of company activities that may give rise to personal liability. Ethics is at the heart of society, particularly in the context of the issues we are currently facing. The values of solidarity and concern for others will have to be taken into consideration by directors as the society will have new expectations from Directors and organizations.

**Disclosures:** With respect to regulated entities and companies listed on a regulated market which are subject to various laws and regulations aimed at securing investor protection, adequate disclosure without delay of information which should be made known to the public should remain a top priority. Going forward boards of such companies should thus continue to assess the situation, communicate with regulators, and provide public disclosure where it is needed or warranted as new information constantly emerges. Prudent assessments should be made to analyze the extent of the negative impact of COVID-19 related developments and to determine any corrective action that might be needed to mitigate such impact as far as possible, with constant disclosure of significant developments to the general public.

## **Conclusion**

By most indications, the next several quarters, if not years, will be tough for boards, senior leaders, and the companies they run. In this scenario Boards do have a special role to play. They will help to recast the corporate role in the future global economy post-Covid-19. The recovery phase will be a time for soliciting feedback, reviewing the company's values and consolidating lessons learned. This process, based on dialogue with the various stakeholders, will help the Board / company to respond more effectively to the current scenario through preventive action, preparation, and an awareness of ethical considerations. COVID-19 crisis calls for reflection by corporate directors, who must carefully consider how to manage both the current risks within the organization as well as the collateral risks that could arise, while identifying areas for future improvements. The considerations as discussed above can serve as a guide for boards and senior business leaders as they navigate the current circumstances.