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Navigating the Pandemic and looking ahead: Questions for the (virtual) Boardroom



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Navigating the Pandemic and looking ahead: Risk Management

In times of crisis such as the ongoing COVID-19 pandemic, businesses are required to make important decisions with very significant implications at an accelerated pace and in the face of the unknown. This was the case when governments across the globe ordered borders to shut and non-essential activities to scale down or stop almost a year ago. This remains true as governments have announced and begun implementing plans to restart the economy and financial pressures are mounting rapidly on businesses to resume operations while facing an uncertain economy.

As it becomes legal for businesses to resume operations, careful consideration must be given to the impact of implementation plans on the broader group of a corporation's stakeholders: **meeting threshold or generic requirements might not always be "right". Legal as well as reputational risks will have to be weighed and considered on the basis of the subjective characteristics of each business.**

As operations resume and corporations plan ahead to the post-pandemic world, senior management teams and boards must also broaden their focus. Beyond the immediate short-term challenges and risks relating to resuming operations, boards of directors and senior management must also keep the bigger picture in mind: **while businesses are resuming operations, many will also have to reshape.** In some cases it will be a matter of adjusting the plan to get through a very challenging period. In other cases, fundamental strategies will need to be revisited.

Key issues to consider

The following is a list of key risk management topics and issues that we have put together to help directors and corporate leaders identify what they should consider in the days, weeks and months ahead as the reopening of the economy evolves and the pandemic comes to an end. This list was compiled based on our own board experiences as well as ongoing conversations we are having with many directors and corporate leaders across many industries and geographies. There are no "one size fits all" answers to any of these challenging issues and this list is intended to help you structure your plan rather than provide easy answers in uncertain times. The relevance and analysis of each of these items will vary across industry, geography and business:

SHORT-TERM

- What are the boundaries within which our organization can operate in light of the government restrictions still affecting it? Are we well informed about what





is legally permitted? Do we have the right expertise to guide us and adequately understand the risks and relevant standards?

- What are the standards of care and consultation to which our employees are entitled or feel they are entitled?
- Is operating within what is legally permitted the best or only an option for our organization?
- What does a government-backed easing of restrictions mean for our business? Beyond employees, what is the degree of risk to which customers and others may be exposed? Are we prepared to scale back again should it be required?
- What is our short term financial position? Are there any immediate concerns that need to be addressed? What does an easing of government-backed financial aid mean for our business?

LOOKING BACK AND AHEAD

- In responding to the impact of the crisis, what was done well and what has been managed poorly by our organization? What could have been done differently? What went right? What went wrong? Do we have potential exposure to the latter?
- How to better prepare our organization for the next crisis or a seasonal wave?
- How did the crisis management and business continuity plans respond and adapt to external factors such as any competitor or coordinated industry-wide responses? What can be improved?
- How did our board perform? Did we make the right decisions? Did we have the right information to make these decisions?
- Did we properly engage with our stakeholders and with the financial markets? Do we need to change how we engage with them?
- How did our management perform? Did the crisis reveal weaknesses or succession plan flaws we must address?
- Did we take governmental financial aid? If so, did we properly use and track it and can we account for it?
- What will be our response or narrative if the media report about the financial assistance our company received?
- How can we make sure we take full advantage of new incentives and programs governments may begin to put in place to help restart the economy?
- Do we have a good understanding of how our markets and customers have changed? Are there new risks and new opportunities that have evolved as a result of the crisis? What about our competitors? Where are they?
- How healthy is our company culture? How much did it suffer and what needs to be done to restore or improve it?
- Are there lessons to be learned in terms of the speed and efficacy of management decisions made in the pandemic context which can serve as an inspiration as regards our ability to be faster and more efficient in matters not related to the pandemic?

WORKPLACE AND EMPLOYEES

- How best to protect the health and safety of returning employees, customers and others? Should vaccination be mandatory?

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- Is our workforce properly informed and incentivized to return to work? Do we have workforce shortage issues? How can we make sure that employees are well informed and protected?
 - If and how should or must our workplace be reimagined? How do workplace ergonomics need to be changed? What are we doing to help our employees adapt?
 - Evaluating investments in the adaptation of workplaces. How much should be invested and should it be for short-term modifications? Should the business be investing in long-term flexibility and adaptability of the workplace and how do you justify the cost or measure the return? What are the capital allocation implications to this?
 - How will employees rank a workplace in the future? Is there an opportunity to create a more attractive work environment which might give our organization a competitive advantage at attracting and retaining talent? For example:
 - Are we prepared to work remotely for an extended period of time? Should flexible or work from home arrangements be utilized more regularly across the business to support the organization's strategy?
 - Does the organization have the right mix of full-time, part-time and casual employees and contractors, especially in light of changes to supply and value chains?
 - Should reliance on external consultants or contractors be reduced and the required expertise be sourced or developed in-house?

SUPPLY AND VALUE CHAIN

- What are our main business continuity risks? How has the pandemic affected them?
- How reliant is our supply chain on the physical importation of offshore goods? Can supply arrangements be restructured to reduce import risks, diversify providers and otherwise reduce delivery times?
- Does our supply chain include sufficient flexibility and optionality to properly support our operations in the event of further disruption? What is the financial cost versus strategic advantages to building in greater supply chain flexibility and optionality and how do you measure pay-back?
- Must the prominent "just in time" delivery and minimal inventory models be revisited?

FUNDAMENTAL STRATEGIC ISSUES

- How will the crisis likely alter customer and consumer preferences? What impact will it have on our business model? Is our model still sustainable?
- What are the fundamental changes that have been brought to bear on the investment thesis that drives our business and how must the basic strategy be adjusted or rethought?
- Has the crisis presented any opportunities or challenges unique to our industry or organization and how can we leverage or overcome these? Must we explore strategic acquisitions or divestitures?
- Foreign government lockdowns have exposed weaknesses in relying on offshore sourcing. Does the organization have a contingency plan in place for when an entire offshore business unit goes offline? Should we maintain a core onshore unit or train back-up personnel who can come online quickly to fill the gaps?

RISK MANAGEMENT FRAMEWORK

- Does our risk management framework adequately cater for events including epidemics or pandemics? Scientists are predicting more frequent pandemics in the future: how do we plan to deal with the next crisis?
- Are there other risks that were highlighted by the impact of the COVID-19 crisis that need to be adequately addressed?
- Do we have adequate insurance coverage and strategies? Are we prepared to deal with anticipated restrictions, exclusions and premium increases? Should we explore self-insurance or captive insurance alternatives?
- Why did our risk management framework fail to capture the pandemic risk?

CASH-FLOW, FINANCING AND CAPITAL STRUCTURE

- What is our medium-term financial position? Are there any material concerns that need to be addressed?
- What is our liquidity profile? Is there sufficient cash to pay costs over the short and long term? Can we service existing debt?
- Are we prepared to operate in the anticipated post-pandemic economy? What if there is inflation and interest rates rise?
- Have weaknesses come into light in our capital structure? Will the market or lenders be supportive in the event we need to raise debt or equity?
- How do we view our cost of capital and how does this impact necessary investment decisions? How do we calculate the return on investments required by the crisis and how does this impact the value of our business?
- If operating on a modified or reduced capacity basis results in a loss, is this a justified cost or investment in maintaining the franchise? What are new operational models that need to be brought to bear?

STAKEHOLDER RELATIONS AND EXTERNAL COMMUNICATIONS

- What are our shareholders focused on? Has their focus changed during the pandemic and does it align with our strategy and business plan? How are we communicating our ongoing commitment to the long-term viability of our organization and its potential to create sustained value?
- Will our shareholders be supportive of our organization helping to 'share the burden' and support the wider community rather than focussing on pure corporate and shareholder profits?
- As we reimagine our workplace, processes and supply chains, will our stakeholders support the potentially resulting new cost structures? How will we maintain competitiveness as we reshape our business?
- Are all key stakeholders, including regulators, adequately updated on any significant changes to our organization?

DIGITAL PRESENCE, TECHNOLOGY CAPABILITIES AND CYBERSECURITY

- What advantages exist online for us to adapt our business model, not just to weather the COVID-19 storm, but to support the business strategy in the recovery period?
- What technological lessons have we learned in dealing with customers during the pandemic and what technological solutions should be made more permanent? What worked for us and/or our competitors?



- Do we have a technology platform that supports flexible or work from home arrangements for employees?
- Do we have adequate cybersecurity measures in place to protect the company, employees and customers?
- When is the last time we performed a robust cybersecurity audit? When is the next update?
- How have digitization trends been accelerated as a result of COVID-19 and are we able to capture this opportunity?



CONCLUSION

Businesses and their boards should follow a deliberate (even if time-compressed) review process in order to assist them in discharging their duties. Whatever process is adopted by the board, the directors should be in a position to demonstrate that they took an active role in the decision-making process and remained fully informed throughout the process. Accordingly, directors should be careful to document in a concise manner their processes and the bases for their decisions. They should also seek expert advice where appropriate to help guide them through these uncharted waters.

As the initial crisis is now behind us and time has “slowed down” again to some extent, it is also appropriate for boards to look back at their initial decisions made at the beginning of the crisis to consider if they should or could be improved or adjusted and if they expose the organization to potential risks.

As overarching guiding principles, boards and senior management may wish to inspire their thinking with the Stakeholder Principles in the COVID Era published by the World Economic Forum Board of Trustee members. (http://www3.weforum.org/docs/WEF_Stakeholder_Principles_COVID_Era.pdf) as well as the recent joint World Economic Forum / Forbes publication entitled “integrated corporate governance: 6 leadership priorities for boards after the COVID-19 crisis”.

*The foregoing does not constitute legal advice by McCarthy Tétrault nor should it be construed as such.

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