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Navigating and Looking Ahead in Times of Crisis: Questions for the (hybrid) Boardroom

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Navigating and Looking Ahead in times of Crisis: Risk Management

The timid return to a “new normal” after the shock and disruption of the COVID-19 pandemic has been quickly over-shadowed by the outbreak of the war in Ukraine which has triggered or exacerbated a fresh series of crises and disruptions.

The war has triggered a third successive shock to our economy since the financial crisis of 2008-2009 and shed a new light on latent and new geopolitical risks, triggered an era of massive government intervention as well as energy and food shortages.

Energy security has been moved to the top of the world’s geopolitical agenda. This is notably fueling an acceleration of the energy transition, with increased focus on renewables, carbon footprint and sourcing of precious metals, new protectionism measures, relocation of operations and production within national borders (“onshoring” and “friendshoring”) and an accelerated focus on innovation.

These events have also contributed to even more erosion of trust in our institutions broadly. In distrusting times, a corporation’s capacity to strengthen and generate trust will ensure its social licence to operate.

Today’s economic and geopolitical climate have fostered a new set of particularly difficult challenges for directors and corporate leaders, but also new opportunities to revisit business models and past practices in order for corporations to emerge stronger, better and more resilient.

Key issues to consider

Following up on our [prior publications](#), the following is an updated list of key risk management topics and issues that we have put together to help directors and corporate leaders identify what they should consider and monitor in the months and years ahead. 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 considerably across industries, geographies and businesses.



BROADER FOCUS

As the current turmoil unfolds and some of the fog and uncertainty eventually starts to lift, senior management teams and boards must broaden their focus. Beyond the immediate short-term challenges and risks relating to navigating the current crises, boards of directors and senior management must also keep the bigger picture in mind: **while businesses are navigating this period of economic instability, 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. While navigating these crises, careful consideration must also 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.**

SHORT-TERM

The pandemic and the fresh series of crises and disruptions triggered by the outbreak of the war in Ukraine will undoubtedly have long term implications on society, business operations, the economy as well as the re-shaping of the global geopolitical context. They also have significant short term consequences boards and corporate leaders must pay close attention to:

- What is our short term financial position? What is our revised financial outlook? Are there any immediate concerns that need to be addressed? What is the impact of the inflation and interest rates rise for our business?
- What are the immediate impacts of the global rise in energy costs for our business, our industry and our competitors? Are there new challenges or opportunities to be identified? With China reopening, global oil demand is set to rise to an all-time high in 2023. How will this impact our business?
- How is our business and market access impacted by the current and foreseeable future economic sanctions, notably with respect to Russia?
- What are the potential effects of new protectionist measures around the world on our business and market access, including with regard to the *Inflation Reduction Act* in the United States and similar upcoming legislation in Europe?
- Have we witnessed trends of onshoring in our industry or from our competitors and what are the immediate short-term impacts?
- Do we have workforce shortage issues? Is it an industry-wide issue or does it affect only our company or specific divisions of our company?
- How is inflation and rising cost-of-living affecting our employees? Are they expecting compensation increases? What are our competitors doing?
- What's our return to work policy? Is it appropriate and competitive? Does it strike the right balance between the "old normal ways" and a potential "new and improved normal"?

DO NOT WASTE A GOOD CRISIS: LOOKING BACK TO PLAN AHEAD

The outbreak of the war in Ukraine and the fresh series of crises and disruptions it triggered may make the COVID-19 pandemic feel like a distant memory and cause boards and corporate leaders to neglect looking back

to understand some of the lessons to be learned. Boards should make sure to take time to look back to better plan ahead notwithstanding some of the current pressing issues and challenges their companies may be facing:

- 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?
- 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?
- 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 with regard to our ability to be faster and more efficient in matters not related to the pandemic?

SUPPLY AND VALUE CHAIN

While the pandemic has had an immediate and material impact on global supply chains and showed some of their vulnerabilities, the newly exacerbated geopolitical risks triggered by the war have removed any subsisting doubt about the need to re-think and possibly re-shape supply chains in many industries.:

- How reliant is our supply chain on the physical importation of offshore goods? Can supply arrangements be restructured to reduce import risks, increase local content to manage any applicable market access risks, diversify providers and otherwise reduce delivery time?
- What is our exposure to China? Is it realistic for our company to “decouple” from China or must we rather have an appropriate de-risking strategy with other jurisdictions, such as South East Asia, India, Mexico or the 10 ASEAN countries?
- What are our main business continuity risks? How has the current geopolitical climate affected them?
- 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?
- Are we at risk of new disruptive requirements imposed by the customers or markets we serve (whether in terms of our sustainability, local content or otherwise)?

FUNDAMENTAL STRATEGIC ISSUES

Recent events have notably reaffirmed the position of the US as an indispensable leader of the free world as the world is redefining itself by new political blocks. We have entered a period of massive government intervention, through “industrial policies” motivated by the push back against China and the imperatives of climate change.

- Do we have a clear understanding of the impact of these global trends and which ones will have an impact on our business?
- 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?
- What are the long-term impacts of the global rises in energy costs for our business, our industry and our competitors? Are there new challenges or opportunities to be identified? How can we cope with the impacts of these increased costs in the future?
- What are the strategic opportunities of onshoring? Can our business benefit from onshoring from a cost, regulation, supply chain or political perspective? What are the potential long-term effects of the new protectionism measures around the world on our business, including with regard to the *Inflation Reduction Act* in the United States and similar upcoming legislation in Europe? Have we witnessed trends of onshoring in our industry or from our competitors and how will this impact our business in the long term?
- Should we consider robotics or automation as a long-term solution for the labour-shortage?

RISK MANAGEMENT AND CULTURE

- Does our risk management framework adequately cater for events including epidemics, pandemics, wars, political tensions and recessions? 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 crises triggered by the pandemic or the war that still need to be adequately addressed?
- Do we take enough risks? Do we take the right risks? Is our view of risks more strongly skewed to avoid losses than it is to achieve gains?
- 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 or other risks?
- What systems and processes must be in place or enhanced to support effective board education, monitoring, risk management, and adherence to regulatory requirements?

INNOVATION AND CAPITAL ALLOCATION

Investment in innovation and intangibles is something companies need to focus on more than ever before:

- How important is innovation to our business and long term survival (both for our processes and our products)?
- Are we spending enough on R&D and how do we compare to our competitors?
- Are we or some of our products at risk of becoming obsolete or socially unacceptable?

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- Are we making the right capital allocation (both human and financial) decisions to support innovation?
 - Is management properly distinguishing (for management and not for financial reporting purposes) between expense and investment?
 - Are we taking advantage of the many programs that governments are offering as incentives to innovate?

CLIMATE CHANGE AND ENERGY TRANSITION

The pandemic and most recently the war have accelerated the energy transition and exacerbated the urgent need to fight climate change, triggering increased stakeholder awareness and pressure on companies with respect to carbon footprint, energy transition and sustainability:

- Does our board have the required level of “climate competency”?
- Do we have the right skills and people to address the issues related to climate change? Should we appoint a “chief climate change officer”?
- Do we have a clear understanding of who our key stakeholders are and what they expect in terms of climate change strategies? For example, do we have any green funds as part of our shareholder base?
- How do we handle the disclosure requirements and related liability associated with climate change and sustainability? Are there any regulatory changes we should consider in order to facilitate the energy transition?
- What strategies can we implement to reduce our company’s carbon footprint and transition to renewable energy sources? What are the financial implications? What are the potential risks and benefits?
- How can we engage our employees and stakeholders in the energy transition process? What kind of partnerships should we consider to ensure that our energy transition is successful? Should we select our suppliers based on their commitment to environmental sustainability?
- How can we best utilize data and technology to monitor and measure our progress on the energy transition?

WORKPLACE AND EMPLOYEES

The pandemic and resulting lock-downs have had a significant impact on the workplace, particularly in the service industry, and have challenged our traditional organization of labour. Many organizations are facing significant challenges as the economy has reopened and are struggling to find the right balance:

- 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 or in a hybrid way 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?
- What is our return to office policy? How are we encouraging our employees to be present in person? Is there an opportunity to be different from our competitors and create better engagement and employee-loyalty?
- Should reliance on external consultants or contractors be reduced and the required expertise be sourced or developed in-house?

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- 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?
 - What impact is the hybrid model of remote and in person work having on our company's culture? Do we recognize the difference between the culture of the company that is present among top management compared to the other levels of the company?

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 economy? How can we face ongoing inflation and a high interest rate environment? What if the anticipated recession is longer and more severe than predicted?
- 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 LICENSE TO OPERATE

In distrusting times, a business's capacity to strengthen and generate trust will ensure its social licence to operate:

- Do we have a good sense of how we are perceived by our stakeholders and whether our license to operate is robust or eroding?
- What are our shareholders focused on? Has their focus changed 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?
- Are we prepared to face an accelerated focus on ESG and energy transition? Do we have adequate information, tools and procedures to "walk the talk"?
- Are we or our operations impacted by indigenous reconciliation? Do we have the right level of engagement and strategy to partner with First Nations in this rapidly shifting environment?
- 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 appetite for risk, capital allocation, processes and supply chains, will our stakeholders support the potentially resulting new cost structures? How will we maintain competitiveness as we reshape our business?

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- Are all key stakeholders, including regulators, adequately updated on any significant changes to our organization?

DIGITAL PRESENCE, TECHNOLOGY CAPABILITIES AND ARTIFICIAL INTELLIGENCE

Any organization handling data and AI will be dealing with new and constraining regulations on privacy and data transfer.

- 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? Have we remediated the material vulnerabilities that the cybersecurity audit may have identified?
- Have we anticipated and are we prepared to be compliant with the upcoming privacy & personal data regulations applicable to our business?
- How mature are our information governance policies and practices? Are they fully documented and subjected to internal audit review?
- Have we considered how artificial intelligence is likely to affect our business?
- Have we identified opportunities or risks related to the use of artificial intelligence for our operations?
- What are our competitors doing with regard to artificial intelligence, ChatGPT, block-chain or similarly disruptive technologies?
- Do we have the right skills and people to address the opportunities and risks related to the foregoing?
- Do we need to implement a governance and ethical framework as we deploy our artificial intelligence strategy?
- If we are developing or deploying AI systems, have we implemented robust algorithmic risk impact assessment and data readiness processes?
- What systems and processes must be in place to support effective ongoing board education, monitoring, risk management, and adherence to regulatory requirements?

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.

You may wish to inform your strategic thinking in these challenging times by referring to the most recent [Global Risks Report](#) prepared by the World Economic Forum.

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

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