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THE UPHOLDING OF CORPORATE GOVERNANCE DURING PANDEMIC

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ABSTRACT

The COVID-19 pandemic isn't the only downturn that corporate directors have faced, but it is unprecedented in terms of its uncertainty, scale, financial consequences, and current problem. Organizations have looked to corporate leaders for effective responses and solutions in the face of shattered distribution networks and a highly volatile market. Much as corporate governance is not an obvious focus during the pandemic, it is during these testing times that leadership and governance structures are put to the test, exposing their strengths or weaknesses, and whose stakeholders remember for a long time. The system and ways of direction and control used by corporations are referred to as corporate governance. In this article, we understand how Corporate governance is also thought to include a variety of laws, rules, guidelines, and voluntary private sector practices that enable a corporation to draw investors, operate profitably, fulfill other legal duties, and generally live up to social standards, especially in the time of the pandemic. The challenges faced by all the people involved in the company and majors taken by the top management in keeping the company intact in Covid 19.

INTRODUCTION

One of the most drastic environmental transformations in the history of marketing has been demonstrated by Covid-19. This does not imply that the pandemic will alter all corporate governance principles. The COVID-19 dilemma has served to emphasize how important it is to take into account important non-financial variables when evaluating a company's long-term viability in the twenty-first century. Governance is no exception to this, as has been shown. The pandemic offers us a singular chance to pause and consider the new paradigm we are entering as well as the fact that our economic model is inextricably linked to how we engage with these elements. Among the essential concepts that are anticipated to alter dramatically are the dynamics between the board of directors and management, the level of director's involvement, and the control over specific management duties. In recent years, the external environment in which listed companies operate has become increasingly complex for companies and shareholders.

WHY IS CORPORATE GOVERNANCE IMPORTANT DURING PANDEMIC

Due to the COVID-19 epidemic, many organizations are changing the way they operate and are substantially more flexible with their personnel. At this time, organizations' policies and processes should be implemented efficiently to reduce any new risks induced by the COVID-19 pandemic and the responses to it. The law, corporate stakeholders, and public policy will probably expect boards to be responsive in some way to how conditions have altered, in a good faith manner. This is a crucial impact of the epidemic. Thus, boards will be required to assess the governance implications of pandemic-specific lessons and experiences and to enact reforms deemed necessary in light of the situation.[1] For this to happen, consider the following:

1. The need for transparency with regard to the board's and management's different aspects of decision-making authority should be understood by all parties. Both senior leadership must have a common understanding of the key distinctions between the duties of governance and management in order to fulfill their obligations during times of crisis. This is particularly true today that the crisis has increased demands placed on their conduct, which both board and management are attempting to meet.
2. The board's responsibility for risk oversight includes monitoring the resilience of the business. It is based on the duty to reassess management's preparations for recovering from catastrophe and disaster regularly, taking into account activities like business online security that is both physical security and cybersecurity, and management situations of crisis.
3. The crucial role that the board has to play in helping management is to ensure that they are prepared for the crisis and accordingly put efforts for the same and both the board of directors and management are coordinated for running the business efficiently.
4. Board of directors will be expected to guarantee that management has a solid emergency technology plan in place. To create a map of probability, such a strategy would be made to face the crisis situations in which personnel, equipment, technology, or any of them together, becomes unapproachable. Depending on the sort of emergency, the plan would provide access to backup technology as well as additional technical support and deal with a prescribed plan without previous source of technology.
5. Many companies have inadequate or overly informal management succession plans and procedures to overcome the range of pandemic succession plans. Going forward, the board of directors are expected to look for succession plans more carefully and formally, which will benefit the organization.

CHALLENGES IN CORPORATE GOVERNANCE DUE TO PANDEMIC

Numerous businesses have had to modify their operations in light of the new terminology and precautions required to stop the spread and illnesses of Covid-19. First, due to the rules requiring people to keep social distance to stop the spread, the workforce has almost completely disappeared. Companies have been forced to lay off workers, keeping only a small number of people to run their most vital internal processes. Many firms' output and productivity have decreased as a result of a smaller workforce. Reduced earnings for the businesses over the long term have the consequence of lowering profitability. Many countries' travel bans have forced the majority of businesses that export their goods to cease operations. Because the epidemic has had an impact on the financial basis, which is an essential component of corporate

[1] Michael W. Peregrine,et al., 2020, The long term impact of the pandemic on corporate governance, Harvard Law School Forum of Corporate Governance, The Long-Term Impact of the Pandemic on Corporate Governance

governance, maintaining and managing such enterprises has become a major challenge. Since the pandemic affected the majority of the operations within these organizations, some have been obliged to impose pay cuts for the employees. As a result of the reduced workforce and financial resources, many employees have been compelled to accept salary cuts and do unpaid work to live. The pandemic has had a significant impact on corporate social responsibility since many businesses have switched their attention to ensuring the continuation of their operations and neglected to take care of social responsibilities. The pandemic has impacted the cost of various things since many businesses are being compelled to sell off products at bargain prices to stay in business and pay their employees.

CORPORATE GOVERNANCE ISSUES FOR DIRECTORS

1. Management and Governance aligned

Directors sometimes feel that During the crisis, there was some "blurring" of the boundaries between the roles of the executive team and the board. Senior management team members may be asked to participate actively in board-level discussions, and individual directors may be asked to use their networks to help eliminate barriers. These adjustments were good and necessary, but they needed to be short-lived, and it was crucial to make sure the board wasn't "stepping on management's toes" once the crisis had passed.

2. Monitoring and oversight

Directors must make a full-fledged effort to set up an appropriate board-level system of monitoring and reporting because they must oversee the corporation's business and affairs.[2] It has been determined that a director oversight failure would take place (1) if directors failed to put any corporate reporting, information, or control systems in place or (2) if such systems were put in place but the directors consciously failed to monitor or oversee the company's operations, preventing them from being made aware of significant risks or issues that needed their attention.

3. Working capital management

Evaluating the short-term cash needs and the available funding options, including credit lines, financing for accounts receivable, customer advances, etc. This means being aware of the company's immediate liquidity requirements and collaborating with management to meet them.

4. Liquidity and Capital Considerations

During the COVID-19 epidemic, liquidity is a critical topic of discussion. Since the crisis began unexpectedly and incredibly quickly, the majority of businesses were unprepared for the sudden drop in economy all over the globe. As per the foresight, directors should receive regular briefings from management on the company's liquidity and capital considerations, and ensure that any difficulties are resolved. In order to do this, it is necessary to understand how the cash flow of the company has been affected in the crisis and whether there is any outstanding debt

[2] Sylos Labini, S., Kostyuk, A., & Govorun, D. (Eds.). (2020). *Corporate governance: An interdisciplinary outlook in the wake of pandemic*. https://doi.org/10.22495/cgiowp

which can be procured and the likelihood that financial covenants will be upheld.

5. Crisis can sometimes lead to opportunity

Through the crisis, new talent was discovered within their organizations - people who had been pushed to take on positions that amounted to "battlefield promotions," and who had excelled in them. For several of the directors, the result was a deepening and diversification of the talent pools of their organizations. Directors faced several distinct issues as a result of the pandemic's rapid corporate transformation, but it also revealed how their role as leaders and decision-makers is always changing. Modern governance is more important than ever in these difficult and uncertain times.

6. Keeping the board engaged

The Business Roundtable's statement of governance principles[3] ascribe to the board the basic responsibility for oversight of corporate management and business strategies, consistent with the goal of long-term sustainability. It is vital to remember that, in these turbulent times, the board has a crucial role to play. The senior management's decisions, guided by the board, will primarily determine how resilient any organization will be after this. The organization will benefit from receiving the monitoring and strategic support it needs by first convening a virtual board meeting as soon as possible, followed by weekly check-ins. In addition, a discussion of emergency succession and contingency plans, including disclosures to employees, regulatory bodies, and shareholders, should take place among board members if any senior management or board members contract COVID-19.

7. Keeping critical functions going on

Critical control functions should continue to run while organizations manage operations remotely. Organizations must make sure that essential control procedures are followed and non-essential monitoring controls are used as needed. Since the entire working staff needs to work remotely, which is primarily made possible by technology, critical support operations like IT should continue to run without interruption. Contracts with important vendors and and other connected parties to the business should be reviewed, and important clauses such as force majeure, governing law, and data protection should be evaluated to determine the potential harm on crucial operations.

8. Communication with internal and external stakeholders

In these times of crisis, the board will need to take the initiative by working with the management to first ensure the safety of the company's employees and to foster open communication among all stakeholders, including the administration, regulators, shareholders, and employees. Additionally, businesses need to be ready to regularly engage with their workforce so they are aware of the existence and operation of whistleblower channels. Employees will be encouraged to raise concerns, about possible

[3] The Business Roundtable, Principles of Corporate Governance, Aug. 2016, Principles of Corporate Governance 2016

malfeasance, and related internal control weaknesses without fear of repercussions.

AN APPROACH TO LONG- AND SHORT-TERM FOCUS

Instead of concentrating on immediate issues like the recent earnings per share, boards have been pushed to adopt a long-term approach to topics like strategic planning. Even the term "sustainable" suggests a longer perspective. However, pandemic in 2020 has forced boards to quickly and intensely focus short-term approaches as well, including well-being of the workforce and their health, broken supply chains, and sudden drops in revenues, liquidity, and cash flows. Boards have also had to manage challenging decisions regarding issues like firing or probating workers, closing down workplaces, and in some cases permanently closing the business. Boards may also require medium- and long-term perspectives for the recovery and beyond, as well as the ability to ask management important questions about workforce strategies, such as those about employee safety and wellbeing.

This approach tends to enable boards and management to alternate between short-, medium-, and long-term concerns as a changing environment may need. Boards will need to monitor the recovery of their companies, as well as the companies' futures, for the enterprises to prosper in a post-pandemic world, particularly once the crisis is receding or in the past.

SHIFTS IN THE WAKE OF COVID 19 IN CORPORATE GOVERNANCE

1. Moving remote

Pandemic has given rise to one of the most evident repercussions that has been the sudden shift to online existence. The crisis has considerably advanced the trends like e-commerce, digitalization, automation and many more. This is the reality of businesses which will need to adapt to, and it will have an impact on topics like supply chain management, corporate governance, data security, and privacy.

2. Dividends

Before the pandemic, choosing when to pay dividends was typically straightforward. The board would choose the amount based on the company's earnings of that year, taking into account the dividend policy, historical distribution methods, and perhaps shareholder expectations. The crisis-induced evolution of the decision-making process. When a company has thought about paying any dividend at all, it has become a matter of balancing multiple competing factors, including government pressure on certain industries to reduce or cancel dividend payments, the perception of returning cash to shareholders while making job cuts or laying off staff, the impact of reducing or canceling dividend payments on the company's financial reputation, the company's cash position and strategic plans, caution, and more.

3. Balancing the need of shareholders

As the economic environment evolves, businesses have been working hard to keep their shareholders informed. Companies should make sure their shareholder engagement initiatives address all significant stakeholder groups. Boards must be aware of the potential necessity to consider creditors' interests in their decision-making while confronting financial challenges. The pandemic has confronted employees of many firms with hitherto unheard-of issues in terms of their health, well-being, and financial stability. The workforce will be affected by decisions made for a very long time, and many of those decisions will be quite difficult. Making decisions in a way that guarantees businesses enter the post-pandemic era with a workforce that can rise to the challenge will depend on having effective communication routes to and from employees.

4. Board composition

The role of a board is to supervise and offer strategic guidance for corporate actions. To satisfy a company's business requirements, the board of directors must provide the required competence. The pandemic's growing focus on disparities has further highlighted the need for board members to have a diverse variety of experiences and perspectives. Increasing the number of female directors on boards has received recent attention, and where this has been done, positive effects have been seen. Enhancing the representation of other underrepresented groups should have a similar effect.

5. Key business relationships

It's critical for a company's owners, employees, and key business partners to be aware of its plans. The entire people should likewise be concerned about it. Building confidence will be aided by keeping lines of communication open with consumers and suppliers regarding supply expectations and payments.

6. Effect on the Social Environment

Naturally, businesses are paying much more attention to the communities in which they operate, and boards should be aware of the increased focus that shareholders and customers are placing on environmental issues. They will be important factors to take into account when making decisions about operations, including those affecting technology, working methods, travel, real estate, and supply chain management.

SHIFTS DUE TO NEW TRENDS

Corporate law and governance evolved gradually in the second half of the 20th century. A discussion regarding the convergence of corporate governance toward a shareholder primacy model resulted from many jurisdictions gradually shifting toward a larger focus on the interests of outside investors, particularly during its latter decades. The COVID-19 pandemic will accelerate existing movements and establish several new trends that will move corporate governance away from shareholder orientation which are the three topics of stakeholders, nationalism, and resilience.[4]

Resiliency

While it was anticipated that the convergence in corporate governance would result in more dispersed ownership, integration of businesses into a wider network that aids in survival during difficult times may instead increase resiliency. This could signal trends toward corporate group mergers, consolidated ownership, or close ties to the executive branch. A trend toward business networks with consolidated ownership, strong family control, or strong ties to the state may also be supported. In order to be resilient, businesses must also cultivate a healthy staff. 'Healthy human capital' will need to be added to traditional human capital

[4] Martin Gelter & Julia Puaschunder , 2021, Covid 19 and comparative corporate governance,Harvard Law School Forum of Corporate Governance, COVID-19 and Comparative Corporate Governance

theories of the capital-labour relationship. This raises the possibility of discrimination in part because businesses will be enticed to recruit people who are not part of a risk group. The long-term workforce still needs physical interaction, therefore businesses will also need to adopt procedures to prevent transmission. The level of physical interaction is determined by the type of work being done and how much of it can be done remotely. These developments are likely to affect how labor and capital are positioned relative to one another in negotiations.

Nationalism

The importance of nationalism and protectionism in business law, as it has changed in westside nations due to its alleged inefficiencies. Governments will be more likely to protect politically motivated foreign investors, such as companies linked to the People's Republic of China, than to bail out important companies. Foreign direct investment regulations have already been reinforced by the US and the EU in recent years. On a larger scale, we might witness a rise in the popularity of instruments like "Golden Shares," as it provides the power to reject few decisions as well as legalities in takeover which helps in winning back more political support.

Stakeholderism

'Stakeholderism' in corporate governance is coming back. Two significant public policy issues are anticipated to resurface along with labor-related worries. First off, the epidemic has made economic disparity worse throughout many regions. Workers are losing their means of subsistence as a result of the disruption of industries by digitization and the uselessness of previous human capital investments. Lockdowns brought on by the pandemic are accelerating this pattern. Second, despite the Green New Deal initiatives in the US and the European Green Deal, climate change has not vanished from the public's consciousness and is expected to resurface as a topic of significant discussion in the years to come. On all fronts, the financial sector is exerting pressure on businesses to make adjustments and deal with the problems internally.

ADAPTING TO CHANGE - CRITICAL CONSIDERATIONS WITH INVESTORS AND CLIENTS

1. Capital management

Changes in workforces and shareholder experiences brought about by COVID-19 are prompting discussion and action about remuneration plans, especially executive compensation plans. There are several instances of executive compensation being slashed in response to the altered climate. Other aspects of compensation, such as alterations to equity compensation schemes and changes to the pay ratios of CEOs to the general workforce, are expected to receive more scrutiny. Over the next year, we expect shareholders' interest in remuneration recommendations to grow.

2. Risk management

The amount of dangerous capital raising happening presently and the respite of projected development projects, specifically in the money area, show the extensive lack of stress-experiment and imperfections in calamity readiness and synopsis preparation that COVID-19 has told. We trust that risk administration, deadlock administration, and trade progression preparation will be much more approximately checked from now on. Companies will be necessary to support supplementary news about their risk administration foundations.

3. Cyber security

In recent years, the threat posed by cyber security has grown across all industries, and from our experience, company readiness levels vary widely. We have been talking to businesses about putting the proper risk management and cyber governance frameworks in place for a while now. In the current paradigm, businesses that have made investments to strengthen their cyber defenses will be more resilient than those that face a high risk of significant cyber interruptions to their operations.

4. The ability of the board

The challenges that corporate boards are currently confronting are not solely caused by the COVID-19 virus, but also by enduring societal issues that have been exacerbated by the epidemic.

CONCLUSION

The pandemic's socioeconomic effects could lead to new company structures that aren't always effective in terms of achieving a global optimum. In periods of gradual economic growth, the traditional efficiency analyses that corporate governance academics focus on the majority of their research might prevail. However, when the conditions in the areas of the economy, society, and public health change quickly, the evolution of corporate governance likewise comes to a punctuated equilibrium and progresses in leaps. This is due to the need for corporate governance to adapt as the political realm begins to have a bigger impact on the economy.

The company's long-term performance should be promoted by maintaining social, economic, and environmental governance considerations. Directors must make sure that decisions on capital allocation and distribution are long-term and in the company's best interests. In other words, be fair and take the long view because we are all in this together and an important aspect of the corporate sector is resilience that is allowing businesses to weather brief downturns without jeopardizing their responsibilities to customers, suppliers, and staff. The expansion of new companies and business models that can supply the innovation and investment required to enable green and digital transitions will be supported by encouraging access to market-based in Covid 19.

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