Boards dealing with crisis – where's our interim board member?

Sitting on the board of directors of an Australian company is not something to take lightly.

It's not like any other 'regular' job within a corporate or not for profit. Just ask any of those directors of failed companies who are now being pursued personally by shareholders, creditors or liquidators to contribute to the losses suffered by stakeholders when the company they were a director of failed.

More than ever, being aware of the responsibilities of taking on a director role, the obligations and risks involved, and the consequences of not performing the duties in accordance with regulations is hugely important. It is not a role for the inexperienced.

As a result, more and more boards and shareholder groups, including private equity investors and lenders (who find themselves as shareholders, or have board representation as part of their debt participation), are turning to professional advisors to take on the board role on their behalf. There are many attractions to using interim board directors, but some key drivers include:

- Providing a temporary 'band-aid' solution while permanent candidates are found to take the long-term role;
- Providing subject matter expertise directly related to the crisis or company situation, e.g. to drive the turnaround or transformation;
- Providing the shareholder/lender with 'someone on the inside' to protect their interests; and
- Providing leadership and coaching for the executive management.

In Australia, the conduct of directors sitting on boards is governed by a range of regulatory bodies including ASIC, APRA, and in the case of public companies, the ASX. Guidelines set out how directors need to perform their role and consider their duties and obligations with respect to the key stakeholders in running a company, namely the shareholders, financial creditors, employees, and the company's customers and suppliers. Combine these stakeholders with the regulatory bodies, and it very quickly becomes a very long list that directors need to consider while guiding a company through its journey.

It is because all companies go through many different stages in its life cycle the role of the director becomes even more complex. Many companies face challenging times. Indeed most will face a crisis at one point or another, and statistics show that near on 70% of companies will fail in the first 10 years following their incorporation.

Regardless of size, understanding how best to deal with the risk of failure of the enterprise is an essential part of the director’s toolkit. Many directors are well versed in these situations and come equipped with a good balance of urgency and process to navigate through these times. Others are ultimately out of their depth and either fail to spot the warning signs, or don’t know how to react and drive the decision making required to deal with the crisis.

Professional interim directors have this experience in spades. They are used to working in high-pressure environments, they understand the ‘playbook’ and how the process will work, and what needs to be done, by when and who should own each initiative.

Some of the fundamental aspects for boards to consider during a crisis are listed below. In many cases, the interim directors lead these initiatives on behalf of the wider board:

1. Communication

Regular, clear and concise communication during a crisis is critical. Key stakeholders can be divided between:

a) Internal – keep employees apprised of the situation and what the board and management team are doing about it, how it impacts strategy, and how it will impact them (if at all). A good board stands beside (and where appropriate in front of) the executive management team to show strength in leadership and alignment of approach.

b) External – people don’t like surprises, especially public markets, banks and financiers. The basic rule of thumb is to share information as soon as is practical once it comes to hand. However, it’s advisable a company completes a full assessment of the implications of any bad news announcement and prepares as best it can to respond to any potential backlash.

Boards need to balance public disclosure, which can have a very negative impact on share price or customer/supplier behaviour, with the requirement to disclose material events or updated views on forecast performance. Knowing how much to say and when is like walking a tightrope at times, and a question almost always answered with professional advice.

2. Dealing with information flow

In any crisis, the number one thing a board and their stakeholder groups should request is information. Understanding of cash and liquidity (current and forecast), the impact of actions taken or options that could be pursued, updates on forecast trading results, or an analysis of the options available to the company are all common demands on the company when bad news is shared.

These items provide the board with a current position of the business and assists in planning a way forward. The pressure, because of this increased thirst for information, routinely falls on the company’s chief financial officer and the finance team which needs to be understood and dealt with quickly to ensure the finance team does not drown.

3. Maintaining ‘business as usual’ while dealing with the crisis

Often management and the board are so consumed and distracted by dealing with a crisis, that operating the business risks being forgotten about. If service fulfilment begins to fail and customers will start to look elsewhere for their goods or services. This results in a deterioration of revenue, reputation and the brand, and it becomes increasingly harder to kick-start the business again once the crisis has been dealt with.

To avoid this outcome boards may consider assigning a committee with members who are well versed in dealing with these situations to take responsibility for the management of the crisis leaving the balance of the board to focus on business as usual. This ensures there is a semblance of ‘normality’ to the operations, and the business continues to trade and keep money flowing in the door.

4. Engaging professional advice

While many boards have enough experience to spot when an issue exists, very few boards have the necessary skills and experience to deal with the problems they face from within the existing team. Supplementing the years of experience around the boardroom table, with independent, and objective advice from professionals (legal and financial) who live and breathe disruptive events is essential to ensuring the right decisions are being made, and to help protect those responsible for making them.

While not wholly abdicating responsibility to interim directors, a well informed and advised board who listen to their professional advisors, will better understand the options available and likely make better decisions versus those who chose to go it alone and operate without external support.

With the introduction of the safe harbor reforms introduced in 2017, boards are now increasingly encouraged to seek professional advice and to rely on this advice where appropriate to ensure all necessary actions are being considered and taken to protect the interests of the stakeholders and preserve value in the business. This is a positive step forward in reducing the instances of directors filing for insolvency protection earlier than perhaps is necessary, purely to protect themselves from personal liability.

Share the burden, lessen the load

Whether it is during a crisis, or when a company is undergoing a transition, interim directors are a highly flexible and effective tool who can guide and support a board through the process of a disruptive event. They come equipped with the situational experience required to drive the information provision and decision making in order to get things done and progress the business to the next stage of its life cycle.

At FTI Consulting our senior experts have substantial experience at C-Suite level and have held many interim board roles in an advisory capacity. Our interim board professionals bring extensive leadership, financial management and operational experience, and the highest levels of functional and industry expertise to reinforce executive teams in crisis.

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