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ARTICLE

DEALING DECISIVELY WITH BOARDROOM DYSFUNCTION: NO 'SILVER' BULLET…
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In the context of corporate governance, much has been said and written about boardroom dysfunction and the impacts this can have on a company. Indeed, there are many reasons associated with boardroom dysfunction and if left unchecked, it can wreak havoc with devastating results. The symptoms of boardroom dysfunction can range from -- for example -- directors in the company who show scant regard for its business, to those who lack the ability to maintain confidentiality and order, right through to those who completely disregard the company's stated objectives and decide to rather serve their own personal agendas as opposed to those of the company. But as the saying goes, 'the fish rots from the head' and when the signs of dysfunction become evident, a person has to ask how the leadership of the company has addressed the dysfunction, and indeed further question whether or not it was the lack of leadership that led to the dysfunction in the first place.

Undoubtedly -- and unlike any comparable time previously -- South Africans are living in uncertain, yet extraordinary times. Whether it's about the political uncertainty as South Africans head to the next general elections or the extent of the often violent industrial and social protests, right through to the disruptions of basic services; these times are unpredictable with cautious optimism ahead. But in these times, in order to exist as a well-functioning and sustainable company, it is absolutely essential for the board and its leadership to remain focused upon the very essence that binds them with the company and its shareholders. Simply put, most business leaders are united in their quest for profit, and if leaders -- more specifically the board of directors -- do not strategically manage all the elements of risk within the company's sphere of business, the profits will evade them, and equally so their shareholders.

"A dysfunctional board of directors has the ability to cause multiple headaches for your business or organization. Not only will a dysfunctional board of directors often fail to make decisions that are in the best interest of the organization, its dysfunction has the potential to move outside the confines of the boardroom, causing negative publicity."

Stacy Zeiger, Demand Media

Accordingly, it is prudent to start with some of the most basic duties one should expect from the leadership of any company, irrespective of whether or not the company exists for profit or not. All leaders -- managers, directors and prescribed officers -- are bound to serve the best interests of the company to which they are appointed, and this must be done on the basis that directors fulfil their fiduciary duties*. As its custodians, directors must act in good faith and apply their mind to the company and its affairs, moreover performing their duties of care, skill and diligence at all times. Directors must devote serious attention to the affairs of the company, but in many instances they 'skirt' some of the most basic governance issues that underpin the company's sustainability. Directors who fail to place the interests of the company first and foremost, not only expose the company to unnecessary forms of risk and possible dysfunction, they also act in direct contravention of their fiduciary duties, which frankly speaking, is reckless.

Boards are powerful forces; and through their directors' collective knowledge, skill, experience and practice, their output is intended to bring about positive and sustainable growth and prosperity for the company. However there are instances where the board of directors may become dysfunctional. A dysfunctional board typically fails to make decisions that are in the best interest of the company, thereby causing several problems at strategic and operational levels. Today -- more than ever -- having a high-performing board is a critical success factor for organisational leadership and the company's overall performance. It is therefore imperative that boards function well in order to have a positive impact on the company, including its supply chain.

The impact of a dysfunctional board is bad for the bottom line and can ultimately lead to the failure of the company. Dysfunctional boards (or its members) can tarnish or destroy entire brands, as well as leave an ugly stain on the reputation of the company's directors. In this vein and as a recent example, in the information technology company, Pinnacle Holdings, it was alleged that an executive director was being investigated for bribery and possible insider trading violations. Whilst some analysts feel the market has over reacted to these allegations, the reality is that Pinnacle's share price plummeted as investors sold off their shares in reaction to the executive director's arrest. It's reported that nearly R1.5bn was wiped off the market capitalisation of Pinnacle Holdings as a result of this incident.

Recognising the early warning signs of a dysfunctional board can help fix the board before serious problems occur. The most common symptoms of dysfunction include, amongst others, the inability to focus on goals, the inability to make decisions, personality clashes, lack of teamwork and personal or 'political' agendas and rather ironically, a poorly appointed and haphazard chairman. Board meetings must have a decisive chairman with an agenda that is supported by its directors who are on the 'same page' in order to ensure the future plans and initiatives of the company are fulfilled. Whilst personal, hidden and 'political' agendas are not only dysfunctional and will cause damage to the company, these can also lead to disagreements amongst the directors which in turn inevitably becomes publicly exposed, thereby ultimately compromising the company's interests, brand and reputation. In respect of setting the company's annual goals, again, it is imperative that boards and their committees -- guided through the chairman -- work with one agenda and one set of common goals for the benefit of the company.

The fiduciary duties owed by the directors to the company -- collectively and individually -- must urgently seek to eradicate any dysfunction within the board (or its members) and create a more productive climate to achieve the company's overall objectives. Specifically, an explicit process to deal with dysfunctional directors must be put into place and this process should be implemented before larger problems occur, which would become more difficult to resolve if left unchecked.

There are a number of steps the board can take to remedy various forms of dysfunction, and these include, but are not limited to:

1. incorporating specific provisions in the Memorandum of Incorporation (MOI) that allow the board to remedy boardroom dysfunction without obtaining the shareholders' approval;
2. incorporating specific provisions in the Board Charter and within the company's policies (e.g. codes of conduct, conflicts of interest, delegation of authority);
3. setting annual goals;
4. choosing the right chairman and the right directors;
5. entrenching good governance procedures;
6. dealing immediately with signs of discord or disharmony, such as directors becoming polarised over decisions and issues before the board;
7. ensuring continual communications and equal access to information across the board;
8. ensuring that debates over issues, particularly ones where there are strong dissenting views, are concluded in the boardroom and not continued outside of the boardroom amongst small groups of directors;
9. utilising social functions to build camaraderie amongst board members;

10. conducting board meetings in an orderly fashion – i.e. sticking largely to the agenda, allowing equal opportunity for comment and creating a safe environment in which all directors are free to voice their views, even if they are dissenting ones;
11. scheduling time to review goals and update action plans – the annual board strategy session is a good time to do this;
12. leaving personal and 'political' issues outside the boardroom;
13. building trust amongst members of the board and between the board and employees;
14. providing board induction and training;
15. conducting regular board evaluation;
16. provide executive coaching and mentorship; and
17. creating diversity on the board.

In a fast ever-changing world, leaving a board in a dysfunctional state is a sure recipe for disaster. The starting point to resolving boardroom dysfunction is to identify the dysfunction and establish steps to help boards become more effective. Expectedly, there's no 'silver' bullet and boards that identify any characteristics of dysfunction are best advised to deal with these matters decisively. Sometimes this may even require drastic and corrective action through the company's strategy whereby members of the board, who fail to meet the appropriate standard of professional, fiduciary or directorial conduct, are removed.

* The fiduciary duties that apply to company directors apply equally to the leaders of all organisations whether for profit or not.

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