On the 2021 board agenda

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Covid-19, recession and related uncertainties all paint a picture of a daunting and opaque business and risk environment for the year ahead. Global volatility – driven by trade and geopolitical tensions, resurging debt, technology and business model disruption, elevated cyber risk and regulatory scrutiny – will add to the challenge. The pressure on employees, management, boards, and governance will be significant.

Along with the business, boards will continue to operate against a backdrop of tremendous uncertainty, an uneven economic recovery, and heightened stakeholder expectations – investors, employees, customers, suppliers and communities. Indeed, many boards are likely to see 2020/21 as an inflection point for corporate governance. This may include demands for greater attention to corporate purpose and stakeholder views, corporate culture and incentives, diversity and inclusion, the richness of boardroom dialogue and debate, and the company's (and board's) readiness for the risks and opportunities ahead – some of which may be backed up by investor votes against directors.

Drawing on insights from our interactions with directors and business leaders, we highlight ten focus areas for boards to keep in mind as they consider and carry out their 2021 agendas.

1. Maintain a focus on management's response to Covid-19, while keeping sight of the bigger picture

Covid-19 will continue to redefine business as usual for nearly all companies – and their boards – regardless of industry, size, or geography. All leaders will face significant disruption and uncertainty – grappling with Covid-19 vaccine requirements, the implications of managing remote workforces, accelerating digital transformation, building more resilient supply chains and strengthening connections with customers in the months to come. At the same time, some companies are finding new opportunities for growth in this uncertain environment.

Navigating the uncertainty ahead will require a sharp focus on people, liquidity, operational risks and contingencies while keeping sight of the bigger picture: strategy, risk and resilience.

With information about Covid-19 and the economy changing frequently, companies maybe expected to recalibrate their responses – and potentially reframe their thinking about how the pandemic is impacting the business. As consumer demand and job growth return and the new reality takes shape, it will be critical to stay nimble. This will be highly dependent on an effective operatizing strategy, staying competitive and eventually thriving.

Perhaps most important will be the continued attention to human resource issues, particularly reopening plans, employee safety, engagement, and morale, as well as normalizing work-from-home arrangements. Diversity and equity in the workplace are likely to remain a priority.

Companies may need to rethink how work is carried out and reassess the operational and policy implications of working remotely. Is management considering more flexible work-from-home policies longer-term, as well as the implications for workflow, efficiency, performance, talent development and culture?

Leadership and communication regarding the company's reopening plans and strategy will be critical to retaining the trust and confidence of employees, customers and investors. Understanding and compassion have become more important than ever: as many have emphasized, stakeholders will remember how they were treated during Covid-19.

2. Make human capital management and CEO succession a priority

Covid-19 has amplified the critical importance of human capital management (HCM) with respect to a company's performance and reputation.

Even before the pandemic, the government, as well as institutional investors in general, were interested to understand how the board oversees human capital and talent development programs and how they link to strategy.

[i] https://www.vision2021.ae/en/our-vision

[ii] https://sseinitiative.org/

[iii] https://www.dfm.ae/docs/default-source/default-document-library/esg-reporting-guide_en.pdf?sfvrsn=60fa7681_0

[iv] https://adxservices.adx.ae/WebServices/DataServices/contentDownload.aspx?doc=1704806

To gain better oversight over HCM, many boards are charging the remuneration committee (or another board committee) with oversight of talent development and related HCM issues. This may also include changing the name of the committee and its charter to reflect these additional responsibilities. Boards will want to deepen their understanding of the company's HCM strategies and better integrate HCM into the board's agenda and priorities.

Does management's talent plan align with its strategy and forecast needs for the short and long term? Has management considered whether reskilling of certain categories of employees makes sense? Which talent categories are in short supply and how will the company successfully compete for this talent? More broadly, as millennials and younger employees join the workforce in large numbers and talent pools become globally diverse, is the company positioned to attract, develop and retain top talent at all levels?

Boards should also consider implementing organizational-level policies or guidelines related to Covid-19 vaccines i.e. how to encourage management/employees/clients to be vaccinated to reach herd immunity.

For its part in HCM, the board should also help ensure that the company is well prepared for a CEO change. Are succession plans (including emergency succession plans) for the CEO and other C-suite roles formalized and reviewed at least annually (if not more often), and which board committee is responsible? In considering potential CEO successors, the board should ensure that if the business and strategy have changed as a result of Covid-19, the desired profile of a new CEO has been updated accordingly. The numerous crises of 2020 may require other changes in the succession pipeline, with some skills becoming more important, and some executives having stepped up with steady leadership in the face of tremendous uncertainty.

3. Re-evaluate the company's focus on ESG and corporate purpose

Corporate growth and shareholder return still require the essentials – managing key risks, innovating, capitalizing on new opportunities and executing on strategy. However, the context for corporate performance is changing quickly and Covid-19 is accelerating that transformation.

Employee and consumer activism regarding environmental, social, and governance (ESG) issues continues to grow, with millennials leading the way. Shareholders continue to submit more proposals on ESG issues – particularly the "E" and the "S" issues related to the pandemic.

The UAE continues to drive sustainability forward in the country under the framework of UAE Vision 2021,[i] in alignment with the Unites Nation's Sustainable Development Goals (SDGs) and according to the Sustainable Stock Exchanges (SSE) initiative.[ii]

In line with this initiative and in order to drive market growth and sustainability in financial markets, Dubai Financial Market (DFM)[iii] and Abu Dhabi Securities Exchange (ADX)[iv] introduced ESG reporting guidelines. The objective is to promote leading practices and support

listed companies incorporating environmental, social and governance information into their reporting processes.

Stakeholders increasingly demand clearer disclosure of how a company addresses ESG risks and opportunities – particularly climate change and diversity. Which ESG issues are of strategic significance i.e., key to the company's long-term performance and value creation? How is the company embedding ESG into its core business activities (strategy, operations, risk management, incentives and corporate culture)? Is there a clear commitment and strong leadership from the top, as well as enterprise-wide buy-in?

4. Reassess whether crisis readiness and resilience plans are effectively linked to the company's key risks

Covid-19 is a stark reminder of the need for robust enterprise risk management (ERM) processes that are closely linked to crisis preparedness and resilience.

Are the company's risk governance processes keeping pace with its changing risk profile? Does the board understand who owns key risks at the management level? Would an empowered chief risk officer help create a more unified approach to risk? The events and crises of 2020 suggest a number of fundamental questions for boards and management teams as they reassess the company's risks and readiness, including:

— Do we have a complete inventory of the company's critical risks? Covid-19 has brought to the fore a range of heightened risks to manage. These include employee and customer health and safety, managing remote workforces, the acceleration of digital transformation, changing customer demands and vulnerable supply chains.

— Does the risk management framework consider both external and internal factors, macro and micro economic factors? OPEC+ oil production cuts, lower oil prices, reduced global oil demand, and disruption in global supply chains is exacerbating the economic strain – particularly among members of the Gulf Cooperation Council (GCC).[v] Given certain dependency on oil in the region, fluctuations in supply and demand are a major concern. Accordingly, risk management processes need to also consider the company's strategic transformational programs, future financial positions, etc., when providing the board with information to assist them in assessing the company's prospects and resilience.

— Extreme weather events – droughts, wildfires, hurricanes, flooding and rising sea levels – illustrate the risks that climate change poses to companies, supply chains and customers. Covid-19 has cast a bright light on a host of ESG risks that are likely to be front and center for business leaders. Risks include employee well-being and gender diversity, human rights, and how companies are meeting their commitments to stakeholders. Management may need to regularly reassess the risk landscape in light of the dynamic operating environment.

— Are crisis readiness plans closely linked to risk management, and are we prepared for a worst-case scenario? Even the best ERM isn't going to prevent every crisis. Companies need crisis response plans with a focus on agility, resilience and values – maintaining operations and company reputation in the face of disaster and learning from past crises. Identifying likely crisis scenarios and practicing responses using tabletop exercises is critical. Prepare for the worst-case scenarios (e.g., extended periods of supply chain disruption, substantial sustained reduction in sales and revenue, and the loss of key personnel) and consider having the board participate in these exercises.

— Does the board's committee structure bring the right focus and attention to the company's critical risks and its crisis readiness and resilience? Are the risk oversight responsibilities of each committee clear? Does that allocation of responsibilities still make sense – particularly in light of the changing risk environment? While boards may be reluctant to establish an additional committee, considering whether a finance, technology, risk, sustainability or other committee would improve the board's effectiveness can be a healthy part of the risk oversight discussion. Also consider whether risks should be reallocated among committees, and whether committees have directors with the necessary skills to oversee the risks their committees have been assigned.

5. Approach cybersecurity and data privacy holistically as data governance

The accelerated shift to digital that many companies are experiencing underscores a trend: the importance of taking a holistic approach to data governance. This includes the processes and protocols in place around the integrity, protection, availability and use of data.

The wide-scale shift to remote working arrangements due to Covid-19 rapidly increased organizations' vulnerability to cyber-attacks, as work laptops now share home Wi-Fi networks. There is also greater potential for softening of controls and safety measures. Employees may even inadvertently circumvent such measures when operating remotely. Technological advancement also increases the sophistication and frequency of cyber security attacks and frauds.

[v] https://www.reuters.com/article/gulf-economy-idUSKBN2650IN
[vi] KPMG Cybercrime survey 2020

Boards have made strides in monitoring management's cybersecurity effectiveness. For example, greater IT expertise on the board and relevant committees and company-specific dashboard reporting of key risks inform more robust conversations with management. Discussions focus on operational resilience and the strategies and capabilities that management has deployed to minimize the duration and impact of a serious cyber breach.

Despite these efforts, given the growing sophistication of cyber attackers, the shift to remote work and online customer engagement, cybersecurity may continue to be a key challenge.[vi]

The broader challenge is data governance. This encompasses compliance with privacy laws and regulations (such as relevant UAE federal laws, ADGM Data Protection Regulations 2015 and its amendments in 2018 and DIFC Data Protection Law No. 5 of 2020), that govern how personal data (customer, employee or vendor) is processed, stored, collected and used.

It also includes the company's policies and protocols regarding data ethics. In particular, data governance seeks to manage the tension between how the company may use customer data in a legally permissible way with customer expectations. Managing this tension poses significant reputation and trust risks for companies and represents a critical challenge for leadership. To help develop a more rigorous approach around oversight of data governance, organizations would be well advised to:

- Insist on a robust data governance framework that makes clear how and what data is being collected, stored, managed and used – and who makes decisions regarding these issues.
- Clarify which business leaders are responsible for data governance across the enterprise – including the roles of the chief information officer, chief information security officer and chief compliance officer.
- Reassess how the board – through its committee structure – assigns and coordinates oversight responsibility for both the company's cybersecurity and data governance frameworks, including privacy, ethics and data hygiene.

[vii] https://www.sca.gov.ae/en/regulations/regulations-listing.aspx#page=1

6. Help set the tone and monitor the culture throughout the organization

Covid-19 has increased the risk of ethics and compliance failures, particularly given heightened fraud risk due to possible employee financial hardship and the pressure on management to meet financial targets. Boards should closely monitor the tone at the top and culture throughout the organization with a sharp focus on behaviors (not just results) and yellow flags. Is senior management sensitive to the human resource issues stemming from Covid-19, particularly the pressure on employees, health and safety, productivity, engagement and morale and normalizing work-from-home arrangements? Does the company make it safe for people to do the right thing? Globally, the headlines highlighting lax data privacy protections, aggressive sales practices, and other lapses continue to put corporate culture front and center for companies, shareholders, regulators, employees and customers. Boards themselves are also making headlines – particularly in cases of self-inflicted corporate crises – with investors, regulators, and others asking, "Where was the board?"

Given the critical role that corporate culture plays in driving a company's performance and reputation, we see boards taking a more proactive approach to understanding, shaping and assessing corporate culture. Have a laser-like focus on the tone set by senior management and zero tolerance for conduct that is inconsistent with the company's values and ethical standards, including any "code of silence" around such conduct. Be sensitive to early warning signs.

Verify that the company has robust whistle-blower and other reporting mechanisms in place and that employees are using them without fear of retaliation.

Understand the company's actual culture (how things get done versus the values statement in the employee handbook). To do so, use all the tools available – surveys, internal audit, hotlines, social media, walking the floor, and visiting facilities – to monitor the culture and see it in action. Recognize that the tone at the top is easier to gauge than the mood in the middle and the buzz at the bottom. How does the board gain visibility into the middle and bottom levels of the organization? Make sure that incentive structures align with strategy and encourage the right behaviors. In addition, take a hard look at the board's own culture for signs of groupthink or discussions that lack independence or contrarian voices. Culture and strategy are inextricably linked. If the company's strategy has changed as a result of Covid-19, carefully consider what cultural changes may be necessary to support the new strategy.

7. Build the talent in the boardroom around the company's strategy and future needs

Boards are increasingly focused on aligning board composition with the company's strategy, today and for the longer term. Talent and diversity in the boardroom are also top of mind for investors, regulators and other stakeholders. Nevertheless, the world may be changing faster than boards.

The slow pace of change in boardrooms points to the central challenge with their composition: a changing business and risk landscape. Addressing competitive threats and business model disruption, technology and digital innovation, cyber risk and global volatility requires a proactive approach to board-building and board diversity. This includes diversity of skills, experience, gender, race/ ethnicity, age and cognitive thinking.

The Securities and Commodities Authority's (SCA) Corporate Governance guide for Joint Stock Companies issued in 2020 (Chairman of Authority's Board of Directors' Decision no. (3/Chairman) of 2020)[vii] emphasizes the need for diversity in board composition. For example, listed companies are required to have at least 20% female representation on the board. Further, under the Central Bank the UAE's Corporate Governance Regulations (Circular number 83/ 2019) and Standards[viii] issued on 18 July 2019, a policy should be put in place setting out that at least 20% of the candidates considered must be female.

Accordingly, boards should be focused on their composition and diversity in 2021. This should be communicated to the company's investors, included in enhanced disclosure in the company's annual report and used to help position the board strategically for the future.

8. Be proactive in engaging with shareholders

Shareholder engagement continues to be a priority for companies. Institutional investors increasingly hold boards accountable for company performance and demand greater transparency, including direct engagement with independent directors. Institutional investors expect to be able to engage with portfolio companies – especially when there are governance concerns or when engagement is needed to make a more fully-informed voting decision.

In light of Covid-19, transparency, authenticity and trust (or lack thereof) are increasingly important themes for engagement with shareholders. Boards and management must think about engaging not only with shareholders but with their own employees, customers, suppliers and community stakeholders.

[viii] https://centralbank.ae

[ix] https://www.wam.ae/en/details/1395302865596

[x] https://www.bizzmosis.com/advantages-for-israeli-companies-to-do-business-in-the-uae/

Boards should request periodic updates from management about the company's engagement practices: Do we know and engage with our largest shareholders and key stakeholders? Do we understand their priorities?

Do we have the right people on the engagement team? What is the board's position on meeting with investors and stakeholders? Which independent directors should be involved? And perhaps most importantly, is the company providing investors and stakeholders with a clear, current picture of its performance, challenges and long-term vision?

Strategy, executive compensation, management performance, ESG initiatives, human capital management, and board composition and performance will remain squarely on investors' radar during the 2021 proxy season. We also expect investors and stakeholders to focus on how companies are adapting their strategies to address the continuing impact of Covid-19 and the economic and geopolitical uncertainties and dynamics shaping the business and risk environment in 2021.

9. Factor emerging and disruptive technologies into the boards thinking around strategy and risk

As digital technologies, such as cloud computing, AI and blockchain continue to advance both in capability and in application, their impact on risk assessment becomes as important as it is challenging. This includes both disruption as well as protection solutions.

[xi]https://adxservices.adx.ae/WebServices/DataServices/contentDownload.aspx?doc=2246496

Boards are increasingly aware that most companies' risk management processes may not be sufficiently robust, as they are unable to identify emerging and disruptive risks. Now is the time to firmly pose questions around this, and just as importantly, to follow up robustly on proposed actions. Are the company's risk management processes adequate to address the speed and disruptive impact of these advances? Are they capable of assessing the continuing validity of the key assumptions informing the company's strategy and business model? Tomorrow's competitors are likely to be different than yesterday's.

Where disruptive technology is identified as a risk management opportunity, does the business have the right skills to deliver on it? Understanding the risks and opportunities posed by technologies is a long way from being able to actively manage or leverage them. This requires skills rarely found traditionally in current management, but typically prolific within the millennial population.

10. Changing business environment in UAE: the normalization deal between UAE and Israel

In August 2020,[ix] UAE President Sheikh Khalifa Bin Zayed Al Nahyan issued Federal Decree Law Number 4 of 2020, abolishing the ban on business and trade dealings with Israel in place since 1972. The oil, tourism, medical equipment and pharmaceutical, and technology and innovation sectors are expected to flourish due to this development.[x]

In December 2020, Abu Dhabi Securities Exchange (ADX) and the Tel Aviv Stock Exchange (TASE) have signed a memorandum of understanding (MOU) that will contribute to the growth of the capital markets in UAE and Israel. Objectives of this collaboration include:

- the cross listing of securities
- mutual trading by each exchange's respective members
- facilitating investor access to each other's markets
- creating new fintech and other market infrastructure technologies
- sharing data and other information to enable the development of new products

It will also offer an attractive marketplace to key stakeholders, including listed companies, investors and brokers, as well as providers and consumers of information.

Boards may consider the opportunities that would arise as a result of this association. Is there a need for companies to re-assess their investment strategies? What is the impact on companies' socio-economic decisions, its existing and future customer base and other stakeholders? What are the views of shareholders for cross listing of securities?

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