

## ***Challenges and Changes***

# **In the eye of the storm – governing in a crisis**

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Whether a pandemic has laid low half the workforce, a natural disaster has demolished head office, or a defective product has put customers' lives at risk, there are practical steps that directors can take when faced with a crisis to help ensure that their company weathers the storm.

### ***Sudden catastrophe or creeping crisis***

Some crises occur suddenly and with little warning – events such as terrorist attacks, hurricanes, and mass power outages. Other situations, if not adequately anticipated and managed, can reach crisis proportions – for example, labour strikes, systems breakdowns and financial problems.

Crises may be company-specific (product tampering) or have across the board impact (a pandemic). Effects may vary based on geographic location, type of company and numerous other factors.

The way in which a company responds to a crisis will affect not only its bottom line, but also relationships with employees, customers, regulators and other stakeholders.

An excellent tool for boards of companies in crisis is the Canadian Institute of Chartered Accountants publication *20 Questions Directors Should Ask about Crisis Management*, authored by Doug Enns and Hugh Lindsay for the Risk Management and Governance Board of the CICA. Much of this discussion is based on that briefing.

### ***Role of the Board***

The board of directors has overall responsibility for the organization and must provide oversight and guidance to management throughout the crisis.

An effective response to a crisis will require prompt, decisive action, effective communication and teamwork between the CEO and the board. The CEO and management team have primary responsibility for responding to sudden crises and implementing the company's business continuity plan. The role of directors is to oversee these efforts and satisfy themselves that the CEO has things under control.

The CEO should not be afraid to ask the board for advice and guidance. The board should monitor the CEO's handling of the crisis and offer help or step in if necessary.

### ***Crisis Management***

There are several key components to managing a crisis:

#### ***Crisis response***

- Take immediate action to protect lives, property and the environment.
- Get information about the crisis, its impacts, and the likely duration.

- Appoint a core team to manage the crisis and free team members from their regular responsibilities.
- Contact external advisors such as insurers and legal counsel.

#### *Business continuity*

- Make sure that core operations continue as much as possible.

#### *Communications*

- Designate a single individual to handle crisis-related communications and communicate frankly to stakeholders and the news media.
- Demonstrate commitment to communities directly affected by the crisis by sending in the appropriate corporate representative.
- Communicate directly and frequently to the company's stakeholders including employees, customers, suppliers, shareholders and regulators – both during the crisis and subsequently.
- Give the board regular briefings.

#### *Business resumption*

- Implement or develop a plan to resume normal operations.
- Continue to communicate with stakeholders as the plan unfolds.

#### ***Companies that cope well with crisis***

Being prepared for a crisis involves more than the capacity to manage the crisis itself; it means having the resources and resilience to continue operations. Organizations that have survived crises were best able to recover if they:

- had a well-tested business continuity plan;
- had a leader who rose to the occasion and took prompt, decisive action;
- communicated promptly and frankly with employees, customers, other stakeholders and media;
- demonstrated practical compassion for the injured, frightened and bereaved;
- had practical arrangements in place such as alternative computer and communication systems, off-site back up of vital records, contact information; and
- had the financial and other resources to absorb the effects of the crisis and return to normal - strong balance sheets, positive cash flow and good cost control.

#### ***Specific Actions the Board Can Take***

##### *Supervision of management's crisis response*

The CEO should contact the board as soon as possible to inform directors of the situation and management's initial response and plans. The chair of the board should convene a meeting or conference call for the CEO and the board to review and agree how the crisis will be managed, and to establish an initial process and schedule for reporting to the board.

After assessing the severity of the crisis and the CEO's response, the board can determine the appropriate level of involvement, which may include:

- letting the CEO handle the crisis and receiving regular progress reports;
- designating one or more directors with relevant experience and expertise to work with the CEO on managing the crisis;
- bringing in outside experts to advise the CEO; or
- appointing someone other than the CEO to manage the crisis.

Depending on the circumstances, the CEO may be asked to provide the board with:

- reports at regularly scheduled board meetings;
- frequent briefings by phone or email; or
- briefings at specially-called board or crisis committee meetings.

#### *Organization of the Board*

The board may appoint one director to coordinate the board's crisis-related activities or it may establish a crisis committee of the board. Directors should consider the capacity of individual board members to devote more time to the company during a crisis. This particularly affects non-executive chairs or designated lead directors who may find they have to devote most of their time to the organization during the crisis period.

The board may need to approve emergency financing or other crisis-related transactions. One or more of the board's committees will usually be equipped and available to work with management, or else the board may need to appoint a special committee. The board may also retain advisors to provide specific counsel to the board.

#### *Oversight of corporate communications*

The board is responsible for overseeing corporate communications, which will be critical to the company's reputation and ability to resume normal operations. Employees, customers and suppliers need to know what is happening and how it will affect them. The news media, the investment community, the public and regulators will all expect timely and useful information. The board must ensure that all crisis-related communications come from one point of contact and that they are frank and consistent.

Securities regulators require disclosure of material events that affect a company's financial health. A decision will have to be made on the materiality and confidentiality of the crisis and may include immediate disclosure of major crises through press releases that are filed with the securities regulator. The company may be required to file a material change report and include a discussion of the financial implications in the next Management's Discussion and Analysis (MD&A) report.

### ***Crisis Management Challenges***

#### *Red Flags*

Directors, while conscientiously overseeing management's response to the crisis, must guard against the temptation to overreact and jump in, and ensure that they do not distract management from dealing promptly with urgent issues by excessive demands for information. However, there are some clear warning signs that let directors know when the CEO is failing to manage the crisis effectively and board intervention may be warranted:

- evidence that management has underestimated the scope or severity of the crisis;
- failure to react decisively and effectively;
- the absence of a business continuity plan or a plan which does not work; or
- the provision of inaccurate or incomplete information by management to the board.

#### *When the CEO is the crisis*

One of the most challenging situations is when the board of directors cannot count on the CEO to resolve the crisis. This may occur when the crisis involves the CEO (e.g., a corporate scandal, sudden death or resignation of the CEO) or when the CEO is unwilling or unable to effectively address the crisis and take the necessary action.

When there is a sudden and unplanned vacancy in the CEO position, the board may need to implement or accelerate the CEO succession plan, but should be prepared to look outside the organization if there is no strong inside candidate who knows the business and its people and the external candidate can get up to speed quickly.

If the CEO is temporarily in a conflict of interest, the board must step in, ask the CEO to step aside in the areas where the conflict is operative and appoint another person to act until the conflict has been resolved.

In the case of a CEO who is still on the job but is not successfully addressing the crisis, the board may consider more hands-on coaching of the CEO or using another executive or a director to lead the crisis management team. Replacement of the CEO may ultimately be necessary, but should be a last resort during times of crisis.

### *Fatal Errors*

Directors should endeavor to steer the company clear of the following critical errors, which can be more devastating to the company than the original crisis:

- covering up or failing to acknowledge the problem;
- failing to act swiftly and decisively to address the crisis;
- failing to make required disclosures to investors and regulators; or
- failing to communicate in a frank, consistent, timely manner.

### *Learning from the experience*

Once the crisis is over, the board or one of its committees should review the crisis, its effects and the company's response in order to strengthen the organization and to be better prepared for future crises.

Points to consider in a post-crisis review include:

- Did the CEO and management team respond quickly and effectively to the crisis?
- Was the board's involvement timely and appropriate?
- Did the process for supervising the CEO and receiving information at the board level function effectively?
- Has management conducted a thorough post-crisis operational review and reported on it to the board?
- Were corporate communications timely, frank and effective in maintaining stakeholder confidence?
- Did the crisis reveal any weaknesses in strategic planning and risk management processes?

A crisis situation will test a company's management and corporate governance. Those companies that respond quickly and effectively to crisis may well emerge from the storm stronger and with their good reputation intact.

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