

13 October 2009

To all Deloitte Clients in Namibia 10 Things for Boards of Directors to Avoid

Dear Esteemed Clients

Deloitte receives a number of client questions regarding leading corporate governance practices that can help boards of directors be more successful in carrying out their duties. Recently, several directors took a different tack and asked us what they should avoid doing.

In formulating a response, the Deloitte LLP Centre for Corporate Governance in the United States looked to the experience of our professionals and developed the attached list of ten activities boards should avoid to improve effectiveness in the boardroom. This list is not all inclusive, and there may be other considerations for the board.

As we consider this document to be highly relevant also in the Namibian context, we would like to share this publication with you, our clients.

Further, more detailed, guidance on corporate governance-related issues can be obtained on our Governance website at www.corpgov.deloitte.com.

Should you have any questions regarding this document, please do not hesitate to engage your audit partner in a discussion on this matter or contact myself.

Yours sincerely



Jens Kock
Partner
Risk Advisory Services

Ten things for
boards of directors
to avoid



Deloitte receives a number of client questions regarding leading corporate governance practices that can help boards of directors be more successful in carrying out their duties. Recently, several directors took a different tack and asked us what they should avoid doing. In formulating a response, we looked to the experience of our professionals and developed the following list of ten activities boards should avoid to improve effectiveness in the boardroom. This list is not all inclusive, and there may be other considerations for the board.

1. Avoid presentation overload

Presentations should not dominate board meetings. If your board meetings consist of a scripted agenda packed with one presentation after another, there may not be sufficient time for substantive discussions. The majority of board meetings should be focused on candid dialogue about the critical strategic issues facing the company. The advance meeting materials should comprise information that provides the basis for the discussions held during the meeting. Management should feel confident that the board will read these pre-meeting materials, and the board must commit an adequate amount of time in advance of the meeting to do so.

2. Avoid understating the importance of compliance

There is no room for a culture of complacency when it comes to compliance with laws and regulations. As noted in the Deloitte publication *Questions That Boards Should Consider Asking Regarding Ethics and Compliance Programs*, building a culture of ethics and an effective compliance program within an organization is a business imperative. From the mailroom to the boardroom, everyone should adhere to the same high standards of ethical behavior and commitment to compliance.

3. Avoid postponing the CEO succession discussion

CEO succession planning is one of the primary roles of the board. With the changing governance landscape and new and proposed regulations, the board has a full agenda these days. However, it is important to occasionally take a step back to ensure the board is addressing this important responsibility. During this time of rebuilding and prior to the implementation of new regulations, boards should assess where time is being spent and perhaps redirect focus on succession.

It is important to note that the succession planning process is continual and doesn't end when a new CEO is selected. As the company evolves, its needs change, as do the skills required of the leadership team. The board needs to ensure that a leadership pipeline is developed and that its members have ample opportunity to connect with the next generation of leaders.

4. Avoid the trap of homogeneity

The topic of board composition and having the "right" people on the board continues to receive much attention. The SEC has proposed rules that would require more disclosure about director qualifications, including what makes each director qualified to participate on certain board committees. The shift to independent board members facilitated a move away from a "friends on the board" approach to a new mix. However, the board needs to assess whether this new mix translates into a positive and productive board dynamic. Boards should take a closer look at the expertise, experience and other qualities of each member to ensure the board that can provide the right expertise. Diversity of thought provides the perspectives needed to effectively address critical topics, which can contribute to greater productivity and ultimately a stronger board.

5. Avoid excessive short-term focus

Perpetual existence is one of the principal reasons for the initial development of a corporation. However, recent history offers many examples of modern corporate entities managing to reach short-term results at the expense of long-term prosperity. The board can demonstrate its leadership by being the voice of reason and openly discussing the sustainability of strategic initiatives. This can result in a well-governed company with a greater chance of achieving long-term, sustainable success.

6. Avoid approvals if you don't understand the issue

Complex issues can have significant implications for the survival of an organization. It is up to directors to make sure that they understand issues that can alter the future of an enterprise before a vote is taken. This doesn't require dissecting every detail, but it should consist of a thorough investigation and assessment of the risks and rewards of proposed transactions. If you don't adequately understand the issue, ask for more education from management or external experts. It comes down to being able to ask the tough questions of management and probing further if things do not make sense. Consensus doesn't mean going along with the crowd. True consensus results from a thorough debate and airing of the issues before the board, resulting in a more informed vote by directors.

7. Avoid discounting the value of experience

As a director, it is important to recognize the value that your experience can bring to the issues at hand. Good governance doesn't mean checking all the right boxes. Rather, it is bringing together the diverse skills and experiences of each director to lead the company through challenges. Directors can provide greater insight by being 'situationally aware' when evaluating events and courses of action to take. Just as the captain of a ship needs to understand the various environmental factors that influence navigation, boards need to understand the external risks that may have an impact on the navigation of the company. Consider the context of the current issue, how it is similar to, or different from, previous experiences, what alternatives could be considered, and how outside forces may impede a successful outcome. Don't discount the value of experience just because it was gained outside the boardroom.

8. Avoid stepping over the line into management's role

A board that makes management decisions will find it difficult to hold the CEO accountable for the outcome. A director's role is to oversee the efforts of management rather than stepping into management's shoes. Directors must make a concentrated effort to ensure that they have clarity on management's role, which is to operate the company. The distinction between the board and management is often blurred by directors who forget that they are not charged with running the day-to-day operations of an enterprise. This doesn't prevent a director from getting into the details of an issue facing the company, but it does mean that directors should avoid stepping over the line.

9. Avoid ignoring shareholders

A company's shareholders are among the most important and potentially vocal constituents of the enterprise. Concerns can sometimes be addressed by providing shareholders an audience with the board to air their concerns. Historically, compliance with the SEC Regulation Fair Disclosure (Reg FD) rules has been perceived as a hindrance to directors engaging in shareholder dialogue and meetings. As outlined in the Millstein Center for Corporate Governance and Performance policy briefing, *Talking Governance: Board-Shareholder Communications on Executive Compensation*, Reg FD is to be respected but not feared. Recently, companies have developed practical means of engaging in shareholder dialogue by establishing a comprehensive policy, conducting appropriate training, planning and supervising discussions, and using a "listen only" approach. Companies are encouraged to seek the advice of legal counsel to devise appropriate controls and address specific issues associated with Reg FD.

10. Avoid a bias to risk aversion

With the recent focus on excessive risk-taking and its impact on the credit crisis, there is concern that companies and boards may become risk-averse. Deloitte's recent publication *Risk Intelligent Governance: A Practical Guide for Boards* addresses this issue:

"At many organizations, risk governance and value creation are viewed as opposed or even as mutually exclusive, when in fact they are inseparable. Every decision, activity, and initiative that aims to create or protect value involves some degree of risk. Hence, effective risk governance calls for Risk Intelligent governance — an approach that seeks not to discourage appropriate risk-taking, but to embed appropriate risk management procedures into all of an enterprise's business pursuits. By treating risk as intrinsic to the conduct of business, Risk Intelligent governance elevates risk management from an exercise in risk avoidance to an essential consideration in every decision, activity, and initiative. Such an approach can provide companies and boards the ability to remain nimble and agile in times of distress, while continuing to focus on how to extract value from the opportunities presented to the company."

Contacts

For more information or to discuss any of these suggestions, please contact the Deloitte LLP Center for Corporate Governance team. Additional corporate governance resources can be found at the center's Web site, www.corpgov.deloitte.com.

Ray Lewis

Partner

Deloitte & Touche LLP

raylewis@deloitte.com

+1 212 492 4006

Nicole Sandford

Partner

Deloitte & Touche LLP

nsandford@deloitte.com

+1 203 708 4845

Maureen Errity

Director

Deloitte LLP

merrity@deloitte.com

+1 212 492 3997

Philip Soulanille

Senior Manager

Deloitte LLP

psoulanille@deloitte.com

+1 212 492 4407