



# EXPECTING THE UNEXPECTED

## How NEDs Can Be Better Informed In an Ever-Evolving Risk Landscape and Prepare Themselves for the Unexpected

The role of the Non-Executive Director (NED) is often described as that of the guardian of good governance, providing guidance to the board from a position of specialist knowledge and experience outside of the day-to-day running of the company. A recent webinar run by Kroll and the Non-Executive Directors' Association (NEDA) considered how boards and NEDs were dealing with the potential threats to their corporate reputation, especially the potential risks they faced from within.

As part of the webinar, a survey of NEDs was conducted, and as background, the survey indicated that over 90% of NEDs felt the role enhanced their professional reputation in some way; however, over 80% felt the risks associated with the role had increased over the past three years. Strikingly, less than 40% felt that risk management was well represented in their boardroom, and just over 40% rely on themselves to remain informed of the evolving risk landscape, highlighting the challenge faced by NEDs operating in today's increasingly broadening corporate risk landscape.

### DEALING WITH THE RISKS THAT MATTER

The range of corporate scandals that have hit the headlines over the past 18 months demonstrates a continuing need to understand how corporate risks evolve and change. Stakeholder interest historically was perhaps limited to financial misdemeanours, such as major frauds, corruption or insolvency. Today, the breadth of issues that can be considered a headline event—with the potential for significant reputational and financial damage is ever increasing. We see a far greater emphasis on issues of "wrongdoing" that reflect on the cultural shortcomings of a board, and inevitably, the company itself.

It is no coincidence that this increase in attention on corporate actions (or inactions) is aligned to the fact that in today's landscape, the range of key stakeholders a NED has to consider is far greater; over 85% of NEDs surveyed felt this to be the case. As a result, the breadth of corporate missteps that can result in external allegations of wrongdoing or poor governance receives greater scrutiny, adding to the challenge that today's NEDs face.

### IMPROVING YOUR RISK RADAR

So, how can NEDs, individually and collectively, as boards better position themselves to expect and anticipate the unexpected? Perhaps it all starts with corporate culture; there's an often-used quote: *"If you get the culture right, most of the other stuff will take care of itself."* The board is the most visible manifestation of the company and has to act as the role model in setting the tone in terms of the targeted culture and behaviours.

Most companies are often blindsided by major internal issues that arise. Why? Groupthink and inertia around risk possibly; and if this is the case at the board level, then it will drive the culture of the company. Many risk registers can be generic and formulaic, often not tailored enough to the company's individual business model and its own dependencies and vulnerabilities. If the sum of a board's parts is not diverse in terms of background and experience, then the board will not be equipped to anticipate and manage a risk profile that is dynamic and that constantly changes.

Boards need to take a frequent "helicopter view" of their business, and critically the environment in which the business operates, and discipline themselves to consider how the current and emerging risk landscape and its key stakeholder groups might be evolving. An effective independent NED should be well equipped to help drive a process tailored to the individual characteristics of both the business and its stage of development. No one size fits all in the analysis of risk.

### PREPARING FOR THE UNEXPECTED

Boards should do more to prepare for the unexpected, particularly for scenarios where there is not an objective right answer. Practice and testing, often with third party assistance, helps build learning, understanding and trust and to draw on the range of thinking and life experience around the table.

Although the implications of the evolving risk landscape facing corporates are increasingly the subject of discussion, there is a practical implication for a NED that is often overlooked. Increased risk, when not well considered and anticipated, often results in a crisis or an "extraordinary event" and the unexpected and immediate need for an investigation into what has happened for decisions to be made quickly and appropriately.

Typically, the seriousness of the issue requires board-level attention, but often, the board is under fire for a decision that has been made or actioned by an executive team member. Consequently, this is where we have seen a far greater focus on the role of the NED in leading the investigative charge, on behalf of the company and its shareholders, especially with the objectivity and independence they bring with their role. Of those NEDs surveyed, 45% had sat on boards where an investigation of corporate malfeasance had been required, yet only 30% had any experience of leading them.

### PRACTICAL STEPS FOR A NED TO TAKE

How to lead an internal investigation on behalf of the company should be part of a NED's skill set, and the cognisance of "The Four Is" will be a good starting point:

1. **Integrity:** This speaks to the role of the NED as the independent and objective individual leading the investigation on behalf of the company, with no bias or personal interest as to the outcome. As such, when placed in this situation, your objective is to oversee a proportionate scope of work which seeks to identify and present the relevant facts in order for the nature and extent of any wrongdoing to be determined and if applicable those involved. You will likely be supported by any variety of external advisors or inhouse employees, but the key is that your integrity needs to be unquestionable.

- 2. Information:** There will be an immediate need for more information, but where is that information located and in what form; in witness accounts for example or physical / electronic records or both? Is the information available internal or external to the organisation and how readily can it be accessed? Does the corporate have the technical and physical capabilities inhouse to identify, collect and analyse it, and is it appropriate for them to do so? Remember that in an investigation relevant information is likely to become evidence, so how does that impact how it is treated and who collects and analyses it?
- 3. Independence:** This relates to the simple premise that the investigation should be able to be demonstrated as independent in perception and in fact. In part that goes to you as the NED leading the investigation, but also consideration needs to be considered as to those conducting the investigation. They, too, need to be truly objective as to the ultimate outcome. Sometimes this can be delivered by the appropriate internal employees of an organisation such as HR, Compliance, Internal Audit and other related functions, whilst some matters will be so sensitive an external party is necessary. Whatever the situation, those individuals also need to be deemed completely objective as to the outcome.
- 4. Intermediary:** This is often the least considered, and most difficult. For a NED to be placed in the situation where it is necessary for them to request or oversee an internal investigation, the nature of potential wrongdoing is most likely to be serious and/or sensitive. And this will invariably result in difficult questions needing to be asked of corporate decision-makers at the senior management or C-suite level. NEDs often find themselves as the ones responsible for asking those difficult questions, which can be awkward and uncomfortable. But they need to be asked, and it falls to you, as the independent intermediary, to ensure that they are.

The expectations surrounding the role of the NED are increasing and, as outlined above, the NED may need to be more front and centre in leading an internal investigation when a risk crystallises. You bring your independence, external experience and ability to support and advise and should be well prepared to deal with the situations presented in both the good times and the bad. Rather than being thrown in at the deep end, you should do your homework and better position yourself for when the unexpected knocks at the boardroom door.



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