Restructuring expertise: Bringing a new voice to the boardroom

It's already clear that the COVID-19 pandemic will change many companies' current form. As boards consider their next steps, expert knowledge on restructuring will become an important component of board oversight.

A crisis such as the COVID-19 pandemic causes companies to make tough decisions that will affect their employees, their customers, and their clients. It also brings into sharp focus the need to identify what the rebound and growth strategy will entail and where the critical gaps in that strategy are. One of the key questions companies are asking themselves is whether they have the right leadership and governance in place to weather the storm, including if they have all the necessary skill sets and experiences to manage this crisis and set their organizations on the path to recovery.

Many boards may lack one newly important area of knowledge: restructuring. As the economic effects of the pandemic become clearer, many companies around the world are facing the need for some kind of restructuring or financial repositioning. Boards play a crucial role in the decision making and implementation of such plans, but, going into the crisis, many might not have had members with the specific kinds of expertise they'll need to be able to move with agility through the process. Indeed, many boards thought that bringing on members with the financial and legal knowledge specific to restructuring would be seen as a tacit admission that the company was in trouble. And, of course, boards have faced many competing expectations for which new members to add, from diversity of background to new areas of expertise such as digital, sustainability, and corporate reputation.[1]

Coming out of the immediate crisis, boards at companies facing fundamental challenges may find themselves pressured by creditors or other stakeholders to make decisions quickly; those with little expertise run the risk of making more radical decisions than they have to. Recent interviews with experts in restructuring, several of whom sit on boards, offer some insights into questions that boards facing liquidity constraints and financing events should be asking themselves.

1 Heidrick & Struggles, *Board Monitor US 2019*, May 28, 2019, heidrick.com.

The current crisis provides an opportunity to reassess the board's composition and skill sets

As a result of this crisis, an increasing number of companies are coming to the same conclusion as that of the senior executives we interviewed for this article: board members with restructuring experience could be an asset for their company. One size will not fit all, however, as some companies may become more vulnerable to hostile takeovers and liquidations, while others might be in a strong position to consider acquiring companies or expanding into new markets. Regardless, Durc Savini, senior managing director in the restructuring group at Guggenheim Securities, states that "companies and management committees can benefit from having board members who understand the rules of the game and speak the language of lenders and distressed investors." Jim Decker, former senior restructuring advisor at Guggenheim Securities, reinforces this point: "The rules of corporate finance don't change, but they work differently in restructuring."

One of the hallmarks of this crisis is the speed of decision making, as leaders don't have the luxury of time for the many ethically charged decisions they have to make. That makes extensive experience with different restructuring scenarios, and an understanding of the process and pitfalls, critical. As the future holds a number of uncertainties, companies should consider different modeling exercises to help them evaluate their needs and make assumptions regarding recovery and growth.[2] Steven Strom, CEO of Odinbrook Global Advisors, highlights that "experience is important. Having someone who has seen a crisis scenario play out multiple times allows for pattern recognition that can provide a blueprint for best practices on quickly executing a proven strategy in a time of crisis."

In a compressed timeline, intimate knowledge of the rules of the game and the main players—lenders, law firms, turnaround consultants, and restructuring advisors—could prove to be a competitive advantage. Choosing the right advisors and lenders will help boards move quickly and make good decisions. Strom also points out: "In some cases, companies facing an uncertain future might need to use two advisors—a traditional investment bank and a firm with deep restructuring experience—in order to provide perspective on the full range of strategic alternatives, including negotiations with creditors. Many company boards are not familiar with how to manage a restructuring advisory pitch process and have never priced restructuring advisory services." A wide range of possible outcomes created by economic uncertainty necessitates a thorough understanding of the full menu of options available in a financial repositioning, the complete process and each of its stages, key financial players and the way they operate in terms of pricing, strategy, and more.

Having restructuring expertise in the boardroom can also help minimize the risk of being misled into overpaying when it comes to choosing your advisor. Board members with such expertise understand the importance of having the senior people from the team you hired at crucial points in the process. Steven Panagos, former vice chairman in the restructuring and recapitalization group at Moelis and now an independent director at companies going through restructurings, explains: "Having someone on the board who understands the restructuring process, the known players, their personalities, and how to get a deal completed expeditiously is invaluable. There are three forms of capital a company has in a restructuring: people, time, and money—and companies in crisis are short on all three."

Another competency that restructuring bankers bring to boards is fluency in understanding creditor rights and how creditors tend to react in different scenarios, enabling them to proactively manage the situation with more foresight. Once companies are in distress, according to Jim Decker, "they will likely see their bondholders organize and form a steering committee that needs legal counsel and a financial advisor. The cost for the legal and advisory fees falls on the company. Instead, the distressed company could have anticipated and proactively positioned itself with the creditors to have a better outcome. It's as simple as asking the creditor what it wants. Because maybe it doesn't want to take over your company."

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Durc Savini
Senior Managing Director,
Restructuring Group, Guggenheim Securities

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Recapitalization Group, Moelis

2 Yulia Barnakova, Eric Skoritowski, and Scott Snyder, "COVID-19 and the future of work: Four scenarios," Heidrick & Struggles, April 14, 2020, heidrick.com.

Steven Strom observes that, in moments of crisis, creditors "suddenly have 100 problems. Companies that are able to rank near the top of that class of 100 are best positioned for favorable treatment. While not all factors are in a company's control, some strategies for companies to rank near the top include clear communications, relevant analysis, responsible asks, and being proactive. It is perceived more favorably when a borrower proactively reaches out to the creditor and clearly communicates the problem first." Having someone with restructuring experience on the board adds an element of confidence and credibility when dealing with various financial and governmental organizations—knowing that on the other side of the table there is someone with experience in previous economic recession cycles and mitigation strategies. These stakeholders can be confident that this counterparty understands the exact nature of risks and opportunities at a specific moment in time and knows the right questions to ask (see sidebar, "Questions that are on the top of a restructuring expert's mind in a moment of crisis"). It simply signals that the company has done its homework and has considered its options.

Conclusion

While there is an air-tight case for boards to consider adding independent directors with restructuring experience to their team during a crisis, they could also use this as a test for a longer-term position. Clearly, having an independent director with this acumen and network can provide a viewpoint that is not only tied to a crisis. Steve Panagos adds: "Well-capitalized large corporates historically have avoided M&A transactions involving bankrupt companies, because they don't understand the process and how to transact. Having the right director with restructuring experience gives the board comfort that there are great synergistic opportunities that could be realized in many instances."

New digitally driven business models and the search for growth have resulted in an increased frequency of big corporate transformations, be that internal reorganizations, mergers and acquisitions, divestments, and so on. And as a large number of organizations are likely to go through a major transformation as the COVID-19 crisis hopefully recedes, bolstering boards' arsenal with restructuring skill sets might well give organizations the competitive advantage they need to emerge in a winning position.

Questions that are on the top of a restructuring expert's mind in a moment of crisis

Our interviews with leading restructuring bankers offered us a glimpse into their playbook when addressing a liquidity crisis or financial event. Boards will benefit from keeping this perspective in mind, asking themselves the following questions:

- Is additional capital likely to be required in the near term? What is the size of the liquidity need?
- Where is the company's debt trading?
- Is the company eligible for government aid?
- What working capital can be stretched to buy time?
- Who should lead the crisis response team? What decision authority should the crisis response team have to ensure the right balance of speed and oversight?
- Does the company have the right leadership and board composition to navigate this crisis? What are the immediate changes required within the board's composition and roles?
- Does each director understand his or her fiduciary duties?
- Does the board need to establish the principles to guide the organization's response and recovery?

If a company is well positioned and has enough liquidity, boards should ask themselves the following questions:

- What other initiatives can be implemented to better position the company in this current climate?
- With rates at these levels, is there an opportunity to refinance the company's debt?
- Is this the right time to consider an acquisition?

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