

ACHIEVE A HIGHER GOVERNANCE STANDARD IN CORPORATE RESTRUCTURING

By Daniel Wikel

From disruption in retail leading to a flood of bankruptcies, to tech giants [pushing incumbents into decline](#) faster than ever, there are myriad examples of businesses turning to restructuring to enhance revenue streams, mitigate losses, stave off insolvency and/or try to stay afloat. But dig a little deeper, and you may find that proactive organizations can use restructuring to remain nimble and viable, addressing financial concerns before they become a larger problem.

Businesses can maintain a higher level of governance during restructuring by taking initiative, particularly if they want to identify risk early and avoid further financial deterioration.

Strategically—and responsibly—managing a corporate restructuring can be a competitive differentiator as a business strives to adapt to a changing economic environment within its

industry. For that to happen, boards of directors, investors and management each have important, interlocking roles and need to hold one another accountable. By [diligently and successfully collaborating](#) during each step of the process, restructuring can not only generate financial stability, but also set the stage for longevity.

Building a Proactive Board

Boards of directors maintain a duty to assist and advise their management team with an overall strategic roadmap for the organization and know when to step in on specific issues relevant to financial and/or operational restructuring.

During a restructuring, board members need to:

- **Remain relevant and active:** Members should have expertise appropriate for the company or industry in which the organization exists, or bring a unique financial, legal or personnel acumen to ensure a well-rounded board that asks the tough and probing questions.
- **Steward the necessary committees:** Engaged board members need to perform the necessary functions in their roles and be active and rigorous on committees such as auditing, finance and compensation.
- **Understand fiduciary roles:** Effective board members serve as checks and balances against management. They must speak up when management or investors are too

myopic or misguided to realize restructuring may be necessary to adapt to a changing industry landscape.

Typically, boards of public companies have more formal [shareholder obligations](#), greater regulatory requirements and a high level of governance standards during a restructuring than non-public companies. But in many private organizations, the boards tend to be less formalized; members may be installed because of personal or familial relationships with management, or they may only serve in an advisory capacity.

It becomes more incumbent upon private board members to serve as that independent check on management who may not be able, or willing, to adequately evaluate, contextualize and respond to distress. For the board members of a privately-held company, a higher governance standard may require tough conversations alerting private equity or other investors when the business requires a restructuring or is headed toward the zone of insolvency.

Charting a Course That Delivers for Investors

As an organization executes its long-term business plan, it can head in one of three directions: growth, continued stability or future headwinds. In many cases, most businesses aim for growth, but in practice, that may not always be realistic. In a maturing industry, leaders' immediate objective should be to stabilize and reinforce the current business using existing capital and human resources versus unrealistic, costly growth initiatives.

Moreover, an engaged board will conduct the necessary and proper critical analysis to determine whether an organization is facing headwinds. Depending on the analysis outlook, board members may need to speak up if they reach that conclusion—alerting management to the need for a restructuring.

In the normal business course, when an organization moves through restructuring, its responsibility is to maximize equity investor value. As some organizations restructure, they may experience increased pressure to proactively design and share a clear plan for how restructuring will set the stage for successful financial and operational transformation. Therefore, the sooner leaders recognize a need to restructure, the better the likelihood they can maximize return on investment and equity value.

When restructuring occurs because that organization may be in the zone of insolvency, the fiduciary duty shifts to protecting all creditors. If the organization falls into the zone of insolvency during a restructuring, leaders need to pause and adjust their course of action. It is no longer just about delivering value to investors; businesses need to protect all creditors to whom they may have an obligation.

Shaping a Forward-Thinking Strategy with Management

In some industries, disruption happens at a faster pace than businesses can adapt to; restructuring becomes a reactive prescription for a weakened organization. This underscores the need for future-focused management who can develop a strong strategic vision, define the metrics and financial drivers for success, and ensure the organization's daily activities and annual budget reflect that long-term plan. It then becomes the responsibility of the board of directors to test whether management is achieving those goals.

For example, [PepsiCo](#) kicked off a four-year restructuring plan to ensure stability in the near-term and position the company for long-term growth that, according to its filing with the SEC, will cost the organization \$2.5 billion pre-tax through 2023. In a quarterly earnings call with investors, PepsiCo announced its goal to save \$1 billion annually in the same amount of time, offsetting the cost of the restructuring. Amidst

restructuring, PepsiCo plans to “relentlessly” invest in automation to make the business even more agile.

In many cases, using restructuring to right-size an organization and align with its future vision sooner rather than later is the optimal solution. Businesses can maintain a higher level of governance during restructuring by taking initiative, particularly if they want to identify risk early and avoid further financial deterioration.

In some cases, businesses cannot simply cost-cut their way to prosperity, as this does not always address broader market dynamics. Management, with guidance from the board and input from investors, must remain diligent partners before, during and after restructuring to maintain the proper course, enhance the brand of the organization and focus on revenue growth.

Key Takeaways

The principled execution of a corporate restructuring requires organizations and their boards of directors to:

Think differently.

Board members and investors need to serve as independent checks and balances to management to ensure the organization is meeting its fiduciary responsibilities and charting a sustainable path forward.

Plan differently.

Restructuring is more than just a cost-cutting tool; it can be a proactive measure for organizations to remain agile and competitive in the face of industry disruption.

Act differently.

Boards should practice sound governance by ensuring that members are active, aware of their fiduciary duties, invested in the industry and engaged on relevant committees.



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