The governing body agenda

What governing bodies
should be discussing

Contents

This paper aims to provide the governing body/governing body members with guidance, at an oversight level, as to what a governing body member needs to know or ask in respect to setting the governing body agenda. It includes a high-level overview of some of the key matters or topics that should be considered and/or included on a governing body agenda. For more detailed guidance on some of the corporate governance areas raised in this paper, visit the CGN webpage accessible via https://www.iodsa.co.za/page/ForumCGN for additional CGN papers published on various corporate governance topics.

Introduction

The ever changing face of business requires organisations to be innovative and dynamic in their assessment of the environment in which they operate in order to maximise value. However, there is a danger that governing bodies may be stifled by process and formality and may be bogged down in detail as opposed to having a holistic view of the opportunities and threats facing the organisation. It is also important that the governing body has a focused and incisive approach to matters so that the governing body meetings do not address and treat matters that should be dealt with by management.

The governing body performs a crucial monitoring and oversight function and therefore meetings should be about solving important problems and making decisions. They should not be information sessions.

This paper acknowledges that there is not a 'one size ¬fits all' approach to developing the governing body agenda since each organisation has its own strategy, challenges and opportunities. The governing body agenda is accordingly driven by these. The paper instead aims to identify the process involved in determining the agenda for the governing body. It is therefore relevant not only to companies but may also be used, insofar as it is relevant, in a wider context, for example by a board of trustees or the trustees of a pension fund.

It also includes a discussion of areas that may be relevant to the affairs of an organisation in the current environment, if not at every meeting, then certainly on a periodic basis.

Linking the role of the governing body to the governing body agenda

The governing body's role is one of providing effective, responsible leadership, strategy and direction to the organisation, in an ethical and sustainable manner. It provides this leadership in order to guide the actions of the organisation with the aim of maximising value. The governing body also continually monitors and assesses the performance of the organisation against these strategic objectives. In doing so, the governing body should balance its role of promoting the performance of the organisation with that of maintaining prudent control over how this performance is achieved.

The role of governing body meetings in the context of the above therefore becomes crucial as this is the forum through which the governing body is able to apply its collective mind to debate and discuss issues and determine the way ahead. A well-structured and thought through meeting agenda allows the appropriate course of action to be taken and allows for the assessment of the best manner to achieve the desired result.

It is important for governing body members to ensure that they receive the appropriate information in order to enable them make informed decisions. The information contained in governing body meeting packs should therefore be focused on the milestones and strategy that the organisation has set. A degree of professional scepticism and judgement is required in order to ascertain if all the relevant information has been obtained. Governing body members may supplement the information they receive as part of a governing body pack with their own initiatives or may request additional information from the company secretary or the person responsible for the information.

The governing body charter and annual work plan

The governing body charter governs the activities of the governing body on a principled level. It provides the framework against which the governing body will operate.

In order to operationalise the governing body charter and ensure its effective functioning, organisations will usually develop a work plan for the governing body. The work plan determines what activities the governing body is expected to undertake during the course of the year and allocates when these activities will be carried out. The Chair, in conjunction with the Chief Executive Officer (CEO) and company secretary, is responsible for formulating the yearly work plan for the governing body against agreed objectives.

An important aspect of the development of the plan is the allocation of the time required to adequately deal with the matters raised. The work plan should also address governing body members professional development programs.

The governing body delegates certain functions to its committees, without abdicating its own responsibilities. It is therefore important for feedback from these committees to be incorporated into governing body meetings, for example, feedback from the audit committee should be included as a standing agenda item.

The plan could also include the role and purpose of a governing body retreat to ensure proper governing body effort is provided and relevant issues are discussed at governing body level.

The work plan will include induction and training of the governing body members. The governing body should consider the relevance of such induction and training.

Developing the governing body agenda

The governing body agenda is driven by the work plan discussed above. However, the agenda needs to be flexible enough to accommodate for changes in the external and internal environments and deal appropriately with the work plan for the year.

An important aspect of the assessment of what should be included in the governing body agenda is the understanding of the latest developments and trends in the industry in which the organisation operates. In order to facilitate this, governing body members would be encouraged to develop expertise and knowledge in the industries of the organisations on whose governing bodies they serve. Additionally, the company secretary would arrange for regular briefings on matters relevant to the industry.

The Chair should meet with the CEO, Chief Financial Officer (CFO) or the company secretary or all three before a governing body meeting to discuss important issues and agree on the agenda.

The company secretary should ensure the statutory requirements are addressed.

The governing body agenda would not ordinarily include day to day activities that would usually be performed by management, unless these tasks became an issue. These day to day activities would become important and form part of the governing body agenda when, for example these issues had an impact on the functioning of the organisation, its reputation, the future strategy or sustainability of the organisation.

In preparing the governing body agenda and supporting governing body pack, consideration must be given to the need for information that is focused and decision useful whilst still providing a holistic view of the impact of making the decision. Governing body members must satisfy themselves of the credibility and completeness of the information which they have been presented with and request additional information where deemed necessary.

Further, it is important that management does not take over the governing body agenda by setting items aside and preventing the governing body from having a robust discussion on such issues. It is therefore vital for the governing body and the company secretary to ensure adequate monitoring of the items on the governing body agenda.

The Chair has the prime responsibility to develop the agenda.

Monitoring the effectiveness of actions and plans

A well-documented governing body meeting creates an important record that can guide future deliberations and be useful in resolving future disagreements, in preparing legal defences, for investigations and audits. Time does need to be spent on ensuring the accuracy of the minutes and that the important matters discussed have been recorded.

Corridors and the car park are not for discussing what should have been discussed and agreed on at the meeting. Minutes can also be manipulated after the meeting and during the draft preparation and exposure to include, exclude or change matters that were not said or so decided. If approved these deliberate errors become official record.

Most organisations consider the minutes as a first item on the agenda. This is done to ensure fresh memory of the prior meeting and to follow on from prior consideration. Other organisations have been known to deal with the minutes as the last item on the agenda on the basis that all important matters have been included in the agenda. Grammatical and detail corrections are managed mostly though the company secretary at the end of the meeting. This option allows more time to discuss the important matters of the day and not to delay for "wordsmithing".

Meetings will usually result in actions that must be performed by management and occasionally by individual governing body members. It is the duty of the company secretary to obtain appropriate responses and feedback to specific agenda items and matters arising from earlier meetings in governing body and governing body committee deliberations. This may include feedback on management's progress with regard to implementing decisions previously taken by the governing body. To the extent that items continue to require attention and are unresolved, or if the actions result in further areas for discussion, these items should be brought back to the governing body agenda.

In order to assess the functioning of the governing body against its objectives, a re-iterative check may be performed at the end of the year to assess if all issues identified and initially agreed upon have been adequately addressed. This may also form part of the wider performance evaluation of the governing body and individual members that is conducted on an annual basis. The assessment may include:

- a self-evaluation that considers whether the major issues facing the organisation were covered in governing body meetings;

- whether they were anticipated in the original charter and governing body work plan for the year;

- if they were not, whether they should have been; and

- what actions may have been taken in order to ensure that these matters were considered when the plan was originally drawn up.

The lessons learnt from this exercise should be incorporated into the drafting of the work plan for the year ahead.

Another exercise that governing bodies may consider conducting is to analyse time spent between strategic, operational and compliance related matters and compare these to the governing body charter and the initial intentions of the governing body. This may provide useful insight into the governing body's areas of focus and form a point of comparison to the governing body's objectives and the development of future work plans and agendas.

Specific matters that may be on the governing body agenda

Stakeholder relationships

Stakeholders include:

- parties who contract with the organisation e.g. customers, employees, suppliers etc.;

- parties who have a non-contractual nexus with the organisation e.g. civil society, local communities, NGOs, the environment; and

- the State as legislator or regulator.

Stakeholders have to be managed and should be included as an agenda item at each governing body meeting.

The governing body needs to be informed of value creation sources, of how the organisation makes its money and its effect on the economy, society and the environment.

Management of stakeholders is often an area that does not get management time and is often an area where the eye is off the ball.

A stakeholder framework should be used to understand the stakeholder requirements and the nature of information that is relevant to them. The interactions with stakeholders should be actively managed and deliberated at governing body meetings. To the extent the responsibility for engagement with stakeholders is delegated to the social and ethics committee, regular feedback would be expected at governing body meetings.

Accounting/ Financial Results

Governing bodies take substantial comfort from the Audit Committee deliberations with the finance and audit community (the assurance providers) within the

organisation and often can be lulled into a false sense of security. The Centro Case in Australia and the ongoing Steinhoff saga point to the need for governing bodies to pay more attention to this basic collective accountability.

Audit Committees and the organisation's finance and audit community may spend too much time and energy on the IFRS interpretations and applications without understanding the real underlying business and transactions that have taken place.

The governing body should consider the warning flags that all is not right financially. These include complicated corporate structures to maximise tax effectiveness, substantial intragroup/ organisation transactions, use of SPVs, domicile and situation of legal entities, complex shareholder transactions on acquisitions, accounting policies that accountants do not understand, timeliness of revenue and expense recognition (matching principle) and benchmarked performance unexplained.

Governance and risk management

This covers the application of governance principles, including relevant governance codes into business conduct and practices.

One of the major areas that governing bodies are likely to grapple with during the course of the coming year will be the embedding of the King IV Report™[1] into their environments. It is an area that investors and the broader public will have a keen interest in, especially in the first year of application. Typical steps that the governing body would embark on in applying the King IV Report will entail:

- gaining an understanding of the requirements of the King IV Report;

- assessing the organisation's current level of application of the principles;

- identifying areas and business processes where the organisation will apply the King IV Report; and

- identifying areas where gaps exist and developing a remediation plan to address the gaps.

Strategic planning and risk management

The responsibility of the governing body in strategic planning is now a fundamental responsibility of governing body members. The governing body should ensure adequate time is dedicated to strategy.

The best value a governing body can add is consideration of what is going to happen 'tomorrow'. In essence, governing bodies should give sufficient consideration to the future of the institution they are overseeing.

The governing body should know how the organisation makes it money, how the organisation will sustain value creation in the long term and the governing body should determine, inputs, resources, relationships, outputs, outcomes

Governing bodies are currently facing some of the most difficult macroeconomic and sustainability issues in decades, and the need to focus on strategic planning and monitoring of risks has never been more acute. This is important given the overwhelming scope involved in coming to grips with understanding organisation-wide risk and risk-and-rewards analyses. The most difficult aspect of risk management for most organisations has been ensuring that the strategy and risk appetite are appropriate.

Governing bodies considering risk management would typically cogitate the following:

- Does management perform at least an annual risk assessment that is reviewed by the governing body? And is there a strategy for in place for dealing with emerging risks?

- Does the risk assessment prioritise risks? (Does the risk assessment process cover the full risk landscape and is it based on the correct assumptions?)

- Is assurance provided over the risk exposures? (Are there mitigating controls in place for risk exposures?)

- What is the risk appetite and risk tolerance of the organisation?

- What is the extent of compliance achieved? (What is the risk maturity of the organisation?)

- Does the governing body have the required skills to provide risk oversight?

Governing body members should receive high quality and timely information in order to ensure that they have all the resources and tools needed to meet their responsibilities with respect to risk management.

To the extent the responsibility for oversight of risk management is delegated to a risk committee, regular feedback would be expected at governing body meetings.

Talent management

The need to identify and retain capable leadership is an important governing body responsibility. Vital skills often leave the organisation when a key individual leaves, leaving organisations to rebuild information from scratch. Key questions that governing bodies may consider include:

- Have we identified the areas where critical resources or skills are required?

- Do we have a succession plan in place for these critical skills?

- Is there a contingency plan in place that allows us to continue in the absence of the critical skill for any period of time?

- How is the corporate governance culture seen and lived within the organisation?

The importance of sustainable development

It is the responsibility of every governing body to pay attention and identify sustainability issues and practices relevant to their business and operations.

Sustainable development is often defined as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs". It encompasses the economic, environmental and social spheres and is not restricted to environmental sustainability.

Investors are paying increasing attention to how sustainable development issues have an impact on enterprise risk and the long term strategy and continuing viability of the organisation. Sustainable development issues have the potential to have a significant bottom-line and reputational impact. However, they also have the potential to increase the effectiveness and efficiency of organisation spend if applied correctly. Governing bodies are therefore increasingly expected to have sustainability as an agenda item that is adequately addressed. This includes an assessment both of the risk and opportunities that sustainable development matters present. The governing body retains overall responsibly for the integrity of the sustainability report, but may delegate this function (without abdicating its own responsibility) to another committee, for example a sustainability committee where committee members with the appropriate skills are able to address the issues and report progress back to the governing body. It is important for organisations with big exposures to consider sustainability issues. The Equator Principles[2] should apply to these considerations.

2 http://equator-principles.com/#

The impact of the economic environment

Assessment of liquidity and availability of funding.

One of the areas where the financial crisis has had the largest impact is in the availability of credit. Organisations that rely heavily on debt financing have found that they tested the going concern assumption on a regular basis in periods when availability of funding was low. In assessing the funding situation of the organisation, governing bodies should be considering:

- how credit rationing impacts key customers and suppliers and how the organisation is protected in this regard;

- if there are debt covenants in place that are likely to be triggered in the near future;

- what the organisation's financial sustainability in a credit constrained economy is and how the organisation's plans may be adjusted;

- to what extent there is dependence on short term borrowings or other short term finance and how the organisation plans to obtain these;

- what steps are in place to deal with any funding deficiencies;

- if the financing strategy and capital structure are still adequate in the current environment;

- the sustainability and financial condition of key customers and suppliers;

- if there are any assets or businesses that should be impaired; and

- performing a working capital review.

Technology and information governance and security

The question should not be "should every business have a digital strategy?" but rather there must be a business strategy in a digital world.

Governing bodies should understand the long-term strategy of the business and how IT solutions should be aligned with the business strategy to make the organisation efficient and effective in order to gain competitive advantage.

Governing bodies should strategically integrate IT into the business strategy and ensure that due care and skill is exercised in developing IT solutions. The governing body should also define the policies, strategies and objectives of the organisation's information security strategy in line with the risk profile.

The governing body should oversee and direct information security governance, as well as oversee the implementation and monitoring of the information security management system (ISMS). Management is responsible for the establishment, implementation and maintenance of the ISMS.

The ISMS should be based on a holistic approach to managing security that is informed by the information security strategy and should ensure:

- the confidentiality of information;

- the integrity of information; and

- the availability of information and information systems in a timely manner.

The information security strategy should also include the following elements, amongst others:

- social media strategy as to how the organisation should interact through social media;

- BYOD (bring your own device) strategy on the use of individual devices for accessing organisational information; and

- Business Continuity strategy outlining the strategies on the ability for the organisation to recover from disaster or unexpected events should be included in such understanding.

The Risk and Audit committees should ensure technology and information risks are adequately addressed and they should understand the overall exposure to technology and information risks from a strategic and business perspective. To the extent the responsibility for oversight of technology and information management is delegated to a governing body committee, regular feedback would be expected at governing body meetings.

Remuneration disclosures and policies

In the current climate, disclosures of remuneration practices and philosophies for executives would go a long way to explaining the reasons behind seemingly incongruous pay packages. Remuneration statistics are often lopsided by the impact of share options exercised in any given year.

The disclosures related to remuneration are therefore seen to be a key responsibility and accountability issue for the governing body.

Disclosure of the following to shareholders, may assist in indicating to the public a responsible approach to remuneration issues:

- formal remuneration policies that have been adopted;

- the philosophy behind remuneration assessments;

- the criteria for remuneration setting;

- the remuneration components;

- the composition and role of the Remuneration Committee; and

- severance packages.

Key areas for governing body consideration include:

- analysing remuneration policies and understanding how specific remuneration decisions were made;

- understanding the remuneration philosophies adopted by the organisation and what behaviors' the philosophy is intended to reward;

- understanding the rationale for the manner in which the organisation structured material terms and payment provisions in change-in-control and termination arrangements; and

- the most appropriate manner of communication with shareholders regarding remuneration policies.

Conclusion

The importance of the governing body agenda cannot be underestimated, given that the agenda guides the direction of the governing body and forms the basis of the decisions that governing bodies make. It is therefore vital that adequate planning and preparation go into forming the governing body agenda and ensuring that the agenda items reflect the objectives and needs of the organisation.

The vision must be to have a stakeholder centric governance model which moves away from yesterday's primacy of the shareholder. It needs to be implemented mindfully to achieve the four outcomes of effective leadership, value creation, adequate controls and legitimacy of operations.

Checklist of matters for consideration

This is not an exhaustive list and serves merely as a summary of that which is contained above. This checklist should be used as a guide ONLY to trigger the type questions to be asked.

Has a work plan for the governing body been developed?	
Do the Chair, the CEO and company secretary jointly formulate the yearly work plan for the governing body?	
Does the work plan allocate when the governing body activities will be carried out?	
Does the governing body agenda focus on the strategic objectives of the organisation?	
Does the Chair meet with the CEO, CFO or the company secretary or all three before a governing body meeting to discuss important issues and agree on the agenda?	
Is the declaration/conflicts of interests by governing body members a standing agenda item at the beginning of every meeting?	
Is the agenda flexible enough to accommodate for changes in the external and internal environments and still deal appropriately with the work plan for the year?	
Is there a process to ensure that special agenda items are dealt with appropriately?	
Is the time allocated to deal with each of the matters on the agenda adequate?	
Is feedback from governing body committees incorporated into the agenda?	
Do the governing body packs contain appropriate information that allows governing body members to make informed decisions?	
Does the company secretary obtain appropriate responses and feedback to specific agenda items and matters arising from earlier meetings in governing body and governing body committee deliberations?	
Does the governing body receive feedback on management's progress with regard to implementing decisions previously taken by the governing body?	
Are items that continue to require attention and are unresolved, or which result in further areas for discussion, brought back to the governing body agenda?	
Are governing body queries to management quickly resolved/ responded to? Or are they overpassed by more pressing matters?	
Does the company secretary arrange for regular briefings on matters relevant to the industry?	
Is a re-iterative check performed at the end of the year to assess if all issues identified and initially agreed upon have been adequately addressed?	
Are the lessons learnt from the exercise above incorporated into the drafting of the work plan for the year ahead?	
Does the governing body analyse time spent between strategic, operational and compliance related matters and compare these to the governing body charter and the initial intentions of the board?	
Does the governing body consider the application of governance principles within the organisation into business conduct and practices?	

Does the governing body agenda address strategic planning and risk management?	
Does the governing body dedicate sufficient time to discussing organisation strategy?	
Does the governing body know how the organisation makes its money?	
Does the governing body have an assessment of how the organisation will be sustained into the future?	
Does the Audit Committee call for the intergroup transaction summaries and journal entries?	
Is reported performance effectively benchmarked to the respective areas/ industries of operations and explained?	
Does the governing body clearly understand the corporate and group structure – legal and domicile?	
Does the governing body agenda address talent management?	
Does the work plan address legal and compliance requirements?	
Is sustainable development an agenda item?	
Does the governing body consider the communications that will be directed through the integrated report?	
Does the governing body assess liquidity and availability of funding?	
Is the cybersecurity programme aligned with business strategy?	
Can the cybersecurity programme be explained to Stakeholders?	
Who manages incidents or events?	
How frequently does the governing body consider cyber related risks?	
Does the governing body know what information is critical to the business?	
Has the governing body considered remuneration disclosures and policies?	

Notes

INSTITUTE OF DIRECTORS
SOUTHERN AFRICA

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