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DIRECTORS AND MANAGERS SHOULD KNOW – BUT DO THEY WANT TO?

There is no doubt that the liabilities attached to directors and managers have steadily increased on a worldwide basis. This phenomenon has caused directors, most particularly in first world countries such as the United States, to think twice about not only their positions on boards, but indeed the many consequences attached to their actions as fiduciaries. Recent evidence shows that concerned directors are retiring themselves from their very onerous positions. According to the Booz & Company Annual Survey 2008; the departure of CEOs rose on a global basis from 13,8% (2007) to 14,4% (2008). While 50% of these surveyed CEOs from 2500 of the largest public companies were due for retirement, 35% of the departures were forced out of their positions due to dismissals related to poor financial performances, irreconcilable differences or ethical lapses of judgment.

Closer to home, South Africa has seen a flood of new legislation and there has been, over the last decade, an average of 6 new acts passed each month. Notwithstanding the overwhelming number of new laws being passed -- including the introduction of King III -- directors and managers are seemingly choosing to shrug off the consequences of the legal implications or not taking these matters seriously.

This situation appears to be getting worse -- notwithstanding all the legal frameworks -- and there is generally speaking very few cases where non-performing executive leaders have been taken to task, besides those of a few high profile cases such as Khaya Ngqula of SAA and Arthur Brown of Fidentia.

More worrying is the fact that many organisations in South Africa are forcibly placing directors on their boards for the purpose of rectifying either their BEE scorecard, and/or their equity and gender numbers. Not only are many of the boards' members becoming much younger (with often less experience), but alarmingly these directors are quite frankly not up to scratch when compared with their more experienced director counterparts. Never before has it been more vital to have experienced members on a board, particularly due to the increased exposure directors (and managers) now face with the substantially increased director duties and liabilities introduced in the new Companies Act 2008. More significantly, directors are required to not only look after the affairs of the company, but indeed also hold themselves accountable to each other. Incompetent directors and those who are self serving, clearly will expose themselves, their colleagues and ultimately the companies they are meant to serve.

And so one needs to question not only the board dynamics and its composition, but indeed its maturity as well as the value each member brings. Considering that the board represents the ultimate leadership of a company; why is it that so many boards fail in their duty to provide the correct leadership and strategy? Could this be due to the fact that so many company boards have inadvertently become entrenched in their own history of non-performance, or possibly that they do not understand their true function, or that they simply just don't care because they have never been challenged regarding their individual value and functions?

Interestingly, the Tower Watson 2010 Global Workforce Study shows that company shareholders expect senior leaders to be trustworthy (71%), to care about the well-being of others (62%) and be highly visible to employees (56%). Whilst these are just some of the desired attributes expected, one questions whether in fact this is the reality of our leaders who so often demonstrate their contempt of the laws and business recommendations?

Transformational business leaders, who are described as those who respect their employees, customers and the law, are those who also set clear standards of ethics and business practices throughout their supply chains. Above all, these factors constitute good business practices; transformational leaders unequivocally show their commitment to the importance of company officer induction, coaching, mentorship and training. These are unmistakably the hallmarks of a great leader; one who can lead their team with confidence from behind if need be. Paradoxically, the Deloitte Best Company To Work For Survey 2009 shows a rather stark difference of opinion regarding the priority employers and employees have regarding *training and development,* where employees score this engagement driver with a weighting of 65% important, while employers (executive leadership as defined by each participating company) only score it at 47%.

Moreover, the survey shows a glaringly different view regarding the following factors:

- *having skills and resources to do my job properly* - employees score this priority as 76.5%, while employers only at 48%;
- *being able to add value* - employees score this priority at 70%, while employers at 45%; and
- *knowing and believing in the company's vision, mission and values* - employees score this priority at 59%, while employers at 34%.

Clearly there are issues companies need to deal with in order to ensure that their directors and managers are skilled and equipped to satisfy the requirements of their job functions, save for the company and its company officers being severely punished - either financially, or being faced with civil or criminal charges. Of course what is also very disconcerting is the fact that companies themselves may not know just how disenchanted their company officers may in fact be. Deloitte's paper entitled Managing Talent In A Turbulent Economy; Keeping Your Team Intact 2009, shows that non-financial employee concerns far out-weight the financial factors and cite *a lack of trust and confidence in leadership* as one of the many reasons as to why they would leave their company.

'Trust' in the business' leadership *should be* parameterised in terms of those boundaries that make employees (and customers) comfortable. For example; if employees know without any reason for doubt, that a company and its leadership are in obedience of the laws and regulations intended for good business behaviour, why should there be any lack of trust? Simply put, the mistrust is caused as a result of business and its leadership flouting laws and regulations, and showing scant regard for ethical conduct.

Moreover, leaders earning 'fat cat' bonuses and living in opulent conditions beg the questions of fairness and transparent behaviour, especially under prevailing economic conditions where many employees have received single digit increases at best and bonuses remain a distant memory.

The final buck will rest upon the shoulders of the company's top leadership - there can be no excuse for ignorance of the law, neither the mismanagement of a company. Common law is quite clear; have the directors and management discharged their duties in the best interest of the company and did they endure the "fit and proper" test to hold office? Were the right leaders selected to protect and grow the shareholder's investment? These are but a few acid test questions deserving frank answers, but which are sadly avoided through political jostling in many boardrooms.

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About CGF Research Institute (Pty) Ltd

CGF specialises in conducting desktop research on Governance, Risk and Compliance (GRC) related topics. The company has developed numerous products that cover GRC reports designed to create a high-level awareness and understanding of issues impacting a CEO through to all employees of the organisation.

CGF's capabilities extend to management consulting, executive learning and facilitation of Corporate Governance and Risk awareness workshops, which caters for large corporates to small and medium sized businesses.