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THOSE WERE THE DAYS . . . OF DIRECTORSHIPS

In comparison with the late 1980's -- which seems just like yesterday -- it's difficult to remember whether there were as many directors of companies then, as we know and experience it today. Somehow it now seems in vogue to simply appoint an individual as a 'director'; or people may indeed assign this status to themselves in order to self elevate their importance, without realising the potential devastating implications and personal liabilities attached to the title. This is especially true for individuals who don't have the credentials to fulfil the position and the fiduciary duties it entails. In what seems to be a 'prehistoric' era -- and prior to the King Reports on Corporate Governance in South Africa -- one has the sense that only a few were eligible for directorship positions and that to acquire these elite positions took much time, training, business skill and acumen. Of course, there were also those individuals who were fortunate enough to belong to family-run businesses and de facto became directors as the 'baton was passed down'. And whilst many of us were perhaps a little too young to understand the implications attached to the by-gone days of these more traditional styled directors, it is a well-known fact that times have changed and the 'game' with its rules of directorship have most certainly been seriously altered since the demise of Enron, Worldcom and so many others.

What of course is now crystal clear to directors and their fellow company officers (well for most anyway) is the fact that personal liability is totally unparalled to years gone by. Being a director is serious business; there is most often big money attached to this post and many have described it as a "contact sport and not meant for sissies." Yet somehow, increasingly there are more individuals being appointed to directorship and other executive related positions, many of whom may not have the necessary skills to fulfill their duties. Moreover -- and particularly in an inter connected e-business economy -- the levels of individual performance and experience expected by company stakeholders of directors has notably increased, not least to mention the massive surge of business laws, recommendations, business charters and legislation. One wonders just how directors cope with such complexities, increasing business competition, pressurised profits, integrated reporting and indeed, greater protection of civil and environmental rights.

Of course this leads to a few questions? Are directors of today *really* coping and are they better qualified than their predesecors? Perhaps these are questions to which answers may not be entirely understood, or even forth-coming? Yet we do know that many directors have become quite brazen, even to the draconian regime where new legislation appears to have overtaken the production cookie machine as they continue in their abusive, self indulgent ways. Contrary to this argument, many would believe that the recent formalisation and role of the Non-Executive Director (NED), as set out in the King Report on Governance for South Africa 2009 (King III) for example, would assist companies and their board of directors to behave in a fashion which is becoming of a more upright, moral society.

Indeed in most cases the role expected of the NED -- if excercised correctly -- will bring many benefits to the company, its full time executive directors and the company's wide array of stakeholders. Amongst the numerous benefits offered through the NED, their independence and 'outside' experience is probably their most valueable asset. These traits are meant to assist or guide executive directors in the organisation's strategy, or when the executive directors themselves become self consumed, particularly where this may lead to damage within the organisation and its stakeholders.

Of course there are those who argue that the independence of the NED could either be a good or bad thing, both for the individual and the organisation. There *is* a fine line attached to the understanding of

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a NED's independence of the management of the organisation and its interested parties. Regretably, independence to many NEDs -- it would seem -- means a total abdication of their duty to the organisation and even an ignorance to the very nature and functioning of the business. This thinking is bizarre as it becomes impossible for the NED to be able to function as a *check and balance* to the Board, and the organisation as a whole. Naturally this stand-offish approach cannot be good for an organisation. Its adoption is much the same as the historical view organisations may have deployed when appointing NEDs, which in many cases was simply based upon the retiring executive director's name or reputation, and the supposed value such an appointment would bring the organisation, with scant regard to that which NEDs of today are expected to deliver.

Frankly speaking, this window dressing may not have changed much through the years, however organisational stakeholders, institutional investors and activists have, in more recent years, become a lot more informed of this reckless attitude which still prevails, in spite of the increased regulatory frameworks. That said, NEDs must be cautioned against their naievity or laissez faire actions, believing that their roles as part-time directors are without personal liability. To their peril; the courts in most countries, including South Africa, do not offer a distinction or limit the liability between the wrongdoings of an executive or Non-Executive Director. In other words, if an executive director who is employed full time in the organisation and causes damage, the courts will hold the Board of directors collectively responsible (especially when public interest is at stake). Clearly then, NEDs must play a more active role in the organisations they represent, furthermore taking the necessary time to fully apply themselves to their fiduciary duties owed to the organisation.

Finally, the performance of the NEDs should be assessed on an ongoing basis and processes must be in place to deal with underperformers who don't add value to the Board and organisation. Therefore, amongst other critical functions, the organisation has a legal, but also moral duty to evaluate the effectiveness, the performance and the value -- individually and collectively -- of each member of the Board.

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