On the 2024 board agenda: Private company considerations

KPMG Board Leadership Center

In the year ahead, private companies will face many of the same challenges that public companies will need to navigate–from the geopolitical environment and domestic polarization to advanced cyber threats and technological disruption. Linking geopolitics to strategy and risk, assessing the application of artificial intelligence (AI), and focusing on cyber resilience will need to be top of mind for every board. Yet, given the unique challenges, pressures, and structures of private companies, the KPMG Board Leadership Center offers these supplemental considerations to our On the 2024 board agenda for private company boards as they help guide their companies forward in 2024.

Challenging financial environment

Not surprisingly, in an environment marked by rising costs, higher interest rates, and reduced M&A activity, boards and management teams at private companies are focusing on cash conservation, capital adequacy, and operating effectiveness. How clearly the CEO and other business leaders are communicating with the board on both challenges and opportunities for growth should be front and center.

Family owners, founders, and institutional investors also have to reconsider how their companies approach debt and equity financing, including the timing of any sale. Though valuation multiples have settled, the M&A market is still looking for a catalyst to compel the $1.4 trillion in private equity (PE) dry powder and $5.8 trillion in US corporate cash off the sidelines.[1] And, despite a handful of notable initial public offerings lifting the IPO market from 2022's multiyear lows, the market for new issues remains significantly muted, requiring many IPO-track companies to delay or shift course entirely. To raise debt capital in a higher rate environment, companies are looking to the burgeoning private credit market as bank lending standards tighten. Corporate bankruptcies are also on the rise.[2]

Regulatory developments

In 2024, private companies will likely be affected, directly or indirectly, by federal, state, and global laws and regulations addressing cybersecurity, data privacy, AI, and climate and other sustainability issues.

Cybersecurity. In July, the US Securities and Exchange Commission (SEC) issued final cybersecurity rules that significantly increase the disclosure obligations of public companies, including the reporting of material cyber incidents within four business days of a materiality determination, as well as the

[1] PitchBook Data, Inc., "Global M&A Report: Q3 2023," October 25, 2023.

[2] Dietrich Knauth, "U.S. business bankruptcies rose 30%, court stats show," Reuters, October 26, 2023.

companies' processes for assessing, identifying, and managing materials risks from cybersecurity threats, including whether the company "… has processes to oversee and identify such risks from cybersecurity threats associated with its use of any third-party service provider."[3] The final rules do not exempt public companies from providing disclosures regarding cybersecurity incidents on systems owned by their business partners, including private companies. As a result, public companies will want to confirm that they have effective communication protocols in place with service providers, including private companies, to enable timely assessment and disclosure of material cybersecurity incidents. Private companies doing business with public companies can expect greater scrutiny of their own cyber preparedness, which may include how secure their systems are, as well as contractual obligations for incident reporting. (See "Maintain the focus on cybersecurity and data privacy and monitor management's preparations for compliance with the SEC's cybersecurity rules" in On the 2024 board agenda.)

Cybersecurity also poses compliance risks for private companies, including compliance with industry-specific laws and regulations as well as privacy laws and regulations that govern how personal data—from customers, employees, or vendors—is processed, stored, collected, and used. A number of countries and states have enacted privacy and personal data protection laws and regulations, and more are considering such legislation. Private company boards should help ensure that management is monitoring US, state, and global data privacy developments that may impact the company and help ensure that the company has controls in place to manage that data in accordance with applicable laws and regulations.

Climate and other sustainability issues. Some US, state, and global regulatory mandates regarding climate and sustainability disclosures will directly or indirectly pull in private companies. Management should be analyzing which laws and regulations the company must comply with and the likelihood that the company will be required to provide data on climate and other sustainability issues to business partners that have their own compliance mandates (such as reporting Scope 3 emissions). For example:

- **California laws SB-253 and SB-261:** Private companies doing business in California may find themselves subject to new California climate laws that go into effect in 2026. The California laws cover both public and private companies doing business in the state, with a $1 billion revenue threshold for those required to report greenhouse gas emissions and a $500 million revenue threshold for those required to report climate-related financial risks. Companies will need to monitor additional regulatory and legislative initiatives relating to the California climate legislation, as Governor Gavin Newsom noted concerns that would need to be addressed by the state administration and the legislature.
- **European Union (EU) Corporate Sustainability Reporting Directive (CSRD):** Private companies with operations in the EU may be required to comply with the CSRD, which requires covered companies to issue a sustainability report on a range of environmental, social, and governance (ESG) topics. The specific reporting requirements applicable to non-EU companies are under development, and private companies need to monitor the CSRD developments as well as other global climate and sustainability initiatives. (See "Keep abreast of management's preparations for new US, state, and global climate and sustainability reporting requirements" in On the 2024 board agenda.)

Tapping into the board's value

Tenuous markets and shifting regulations require an engaged board, fit for purpose, ready to question strategy, spotlight risks, and guide talent. Yet many private company boards are lagging in their efforts to bring in independent directors, add diverse voices, and stay educated on current issues impacting the company. In a 2022 study of venture capital–backed private companies, Him for Her and Crunchbase

[3] SEC, "Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure," Release No. 33-11216, July 26, 2023, p. 170.

found that nearly a fifth of boards didn't include an independent director, and a quarter had only one.[4] Women held only 16% of board seats in the Crunchbase study, compared to nearly 30% of directors on Russell 3000 companies.[5] Though not comparable, the gender diversity data for PE-backed companies is more promising. Of more than 1,600 PE portfolio companies tracked by the ESG Data Convergence Initiative, 57% reported at least one woman on the board in 2022, compared to 54% in the prior year. Among comparable public companies, 90% percent had at least one woman on the board in 2022, compared to 87% in the prior year, according to analysis by BCG.[6] (See "Think strategically about talent, expertise, and diversity in the boardroom" in On the 2024 board agenda.)

Related-party transactions

Conflicts of interest, including related-party transactions, often pose a significant challenge for private company boards, which frequently include directors from PE or venture capital firms and investment funds. While the interests of the private company and third-party entity that a director represents should be aligned, conflicts can arise—in the form of management fees, debt and equity financing terms, dividends and distributions, timing or exit strategies, or ownership transitions, etc. Be vigilant to identify early on any potential conflicts, and work with legal counsel to develop an appropriate course of action to surface and resolve any conflicts.

For more, read On the 2024 board agenda.

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[4] Ann Shepherd, "Him for Her and Crunchbase 2022 Study of Gender Diversity on Private Company Boards," Crunchbase, March 29, 2023.

[5] KPMG Board Diversity Disclosure Benchmarking Tool, powered by ESGAUGE, September 30, 2023.

[6] Vinay Shandal and Benjamin Entraygues, "Sustainability in Private Equity, 2023," BCG, October 23, 2023.

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About the KPMG Board Leadership Center

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