Safeguarding against the risk of fraud – key questions for independent directors

With the changing regulations issued by the Securities and Exchange Board of India (SEBI), Listing Obligations and Disclosure Requirement (LODR), and the Companies Act (2013), among others, and an increasing number of reported corporate frauds, the role of independent directors has evolved significantly over the years. The pandemic's impact on business models as well as the corporate environment has put an intense pressure on companies to stay afloat and meet market expectations. In this scenario, independent directors must exercise greater caution and scrutiny in carrying out their responsibilities.

To this end, we have prepared a list of key questions that independent directors should ask themselves to adequately discharge their fiduciary responsibilities:

Q1 Does your organisation have an adequate anti-fraud compliance framework/control in place – both in terms of design and implementation?

Q2 Does the organisation have an effective continuous monitoring mechanism in place to identify red flags or outliers in near real time?

Q3 Am I confident that material/related-party transactions are justified in the organisation's best interests and, if necessary, supported by satisfactory underlying documentation/independent opinion?

Q4 How can I be confident that the observations of auditors (both internal and external) are properly addressed by senior management and that controls are tested on a regular basis to avoid recurrence?

Q5 How can I ensure that the board receives accurate, complete information ahead of time so that it can provide adequate oversight and guidance?

Q6 How can I ensure that the organisation's methods for reporting concerns (whistleblower) about fraud or misconduct are successful and seen as effective by all employees, outside parties and other connected parties?

Q7 Do I have confidence that the allegations of fraud or misconduct have been thoroughly investigated by an experienced internal/external team, depending on the gravity of the matter?

Q8 How do I ensure that I am up to date on industry-specific insights/nuisances, as well as the most recent trends in fraud or other misconduct relevant to my organisation?

Q9 Am I getting data from extraneous sources (outside the boardroom) to conduct a fraud risk sense check?

Q10 Do I pose challenging questions to management and document my responses / views (assent or dissent)?

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It is crucial that all these questions are adequately answered. We've listed some mechanisms below that may help you to answer or get certain insights into the above-mentioned questions.

A. Forensic dipstick review

Perform forensic analytics on high-risk areas and conduct a thorough evaluation of sample transactions to make sure that the organisation's policies and procedures are being followed. Also, remain vigilant for any signs of potential misbehaviour or misconduct.

B. Analytics platform for continuous monitoring

Create a continuous monitoring platform to screen business transactions and identify red flags and outliers in near real time to prevent problems from becoming systemic.

C. External intelligence review

Gather intelligence from outside the company (for example – vendors, customers, ex-employee's business agenda and any other related third party) to identify associated risks/potential areas for improvement/unethical practices, if any.

D. Anti-fraud education

Attend trainings/sessions on key fraud trends, high-risk areas, fraud schemes, anti-fraud preventive controls and global best practices.

E. Forensic investigations

On a best-effort basis, fact-finding investigations should be conducted to determine the veracity of allegations/ suspected irregularities, mode of operation, magnitude of financial loss and other implications.

If you would like to discuss any of the above-mentioned or other aspects of fraud and risk mitigation and how can we help with the same, **please reach out to us:**

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