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DISCUSSION-OPINION-EDITORIAL

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Why risk-qualified executives are unavoidable today in the mining industry

Over the past decade, there has been a growth in class actions relating to mining company director's duties of care and diligence (including appropriate risk management), such as the:

1. Newcrest class action settled in 2014 for AUD 36M (Slater & Gordon 2016) for: "misleading or deceptive conduct by providing production guidance without reasonable grounds" and for"breaching continuous disclosure obligations" (i.e. allegedly due to acquisitions which were subsequently substantially written down).
2. BHP class action for failing to act upon or to disclose information in an independent engineer's report on the risk of failure of the Samarco tailings dams, which led to material losses and damages.

With mines safety legislation becoming increasingly risk based and less prescriptive, it is important to ensure a systemic framework of identification, management and assurance of risk management is in place across the organization. The aim is to ensure that appropriate mechanisms exist to demonstrate that all risks are identified, and their mitigating controls are monitored for their effectiveness.

Risk intelligent companies follow nine principles (by Deloitte):

1. A common definition of risk, which addresses both value preservation and value creation, is used consistently throughout the organization.
2. A common risk framework supported by appropriate standards is used throughout the organization to manage risks.
3. Key roles, responsibilities and authority relating to risk management are clearly defined and delineated within the organisation.
4. A common risk management infrastructure is used to support the business units and functions in the performance of their risk responsibilities.
5. Governing bodies (e.g. boards, audit committees, etc.) have appropriate transparency and visibility into the organisation's risk management practices to discharge their responsibilities.
6. Executive management is charged with primary responsibility for designing, implementing and maintaining an effective risk programme.
7. Business units are responsible for the performance of their business and the management of risks they take within the risk framework established by executive management.
8. Certain functions (e.g. HR, finance, IT, tax, legal, etc.) have a pervasive impact on the business and provide support to the business units as it relates to the organisation's risk programme.
9. Certain functions (e.g. internal audit, risk management, compliance, etc.) provide objective assurance as well as monitor and report on the effectiveness of an organisation's risk programme to governing bodies and executive management.

Directors should ensure their company has a mature risk management framework which provides a level of assurance that risks are being managed appropriately. If due diligence is not executed in an auditable fashion, there is a risk of company directors and officers facing steep penalties, criminal charges, class actions and/or regulatory action. Board assurance of technical and operational risks should be high on the agenda of mining company boards. Understanding 'what can go wrong' and 'what must go right' in the technical and operational aspects of mining is the domain of technical experts such as mining engineers, geologists, geotechnical engineers, metallurgists, mining specific environmental scientist, etc. These domain experts should drive the assurance process, preferably from the board level. Mining is

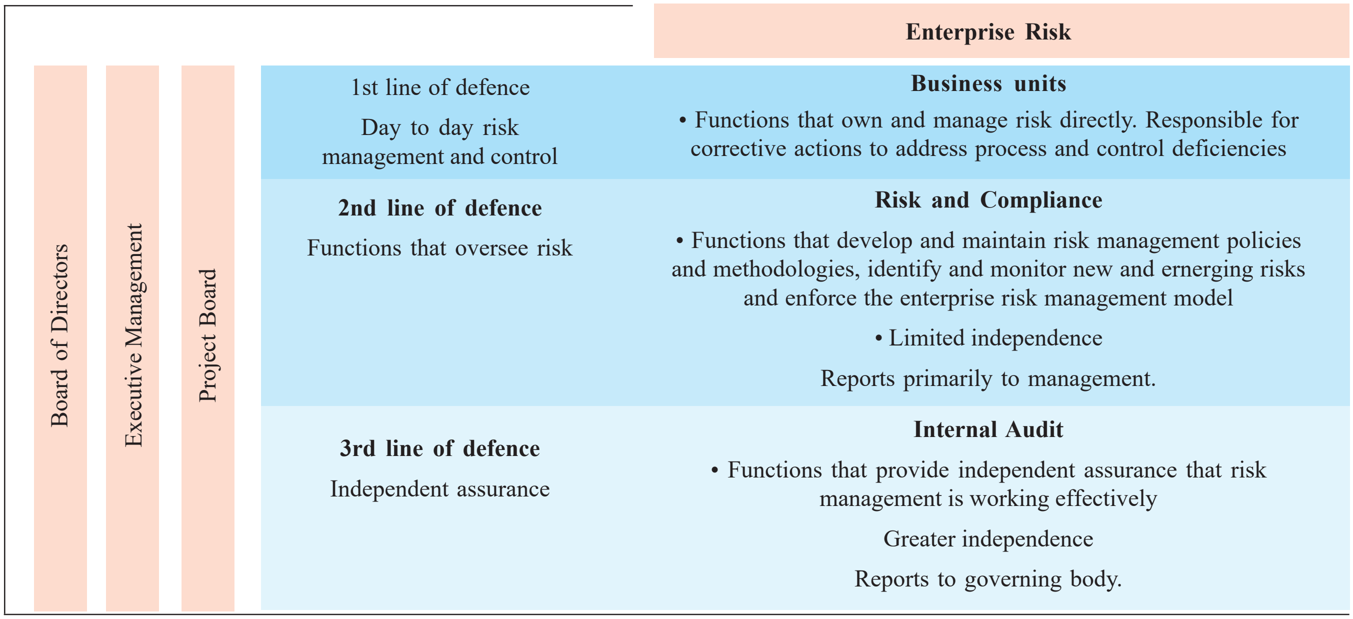

Fig.1

technically complex disasters can and do happen.

Auditors use processes known as 3 Lines of Defence (3LoD) board assurance to map out key risks, key controls and their effectiveness assessments. "When used in conjunction with assurance maps, a documented '3 Lines of Defence' model can help inform the Board of Directors, Audit Committee and Senior Management how well the organisation's assurance functions are operating". The first line of defence is "concerned with management controls and generally has a real time focus". The second line of defence "centres on risk oversight and involves some degree of real time activity, with a mandate to review 1st Line of Defence activities". The third line of defence "involves independent assurance that evaluates the adequacy and effectiveness of both 1st Line and 2nd Line risk management approaches" (Fig.1).

There are gaps in the current auditing framework and board assurance for management of technical and operational risks in mining. For the mining industry to retain its attractiveness to investors, board level assurance of technical and operational risks – not just legal and financial risks – is imperative. In order to do this, mining company boards and executive teams must have appropriate representation of mining experts in their ranks. Many major multinational mining companies have insufficient risk educated geologists, mining engineers, geotechnical engineers and/or metallurgists on their board or in their executive team. In some cases, these companies have had to defend themselves against class actions and/or regulatory action as a result of adverse outcomes, including incidents that could have been prevented by greater due diligence on geotechnical risk. Moving forward, corporate governance thought leaders need to be educated. Understanding risk in mining requires technical and operational expertise in mining engineering, life of mine planning, geotechnical engineering, geology and metallurgy. These professionals need to work alongside traditional risk practitioners and assurance providers to develop new ways to provide transparency, accountability and assurance to mining company boards.