Corporate Governance Institute

Welcome to the Masterclass

26 September 2024

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Agenda

1:00 - 1:05 pm	Welcome and expert speaker introduction
1:05 - 1:25 pm	Deep Dive into Governance Concepts - Directors' Fiduciary Duties - Directors' Liability - Ethical Decision-Making
1:25 - 1:30 pm	Interactive Discussion on concepts covered
1:30 - 1:35 pm	Case Study Introduction
1:35 - 2:00 pm	Group Work and Discussion
2:00 - 2:15 pm	Q & A; and Wrap Up

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GOVERNANCE EXPERT INTRODUCTION

Tony McPoland

Independent Non-Executive Director

Tony is an experienced financial services executive with twenty five years' experience, primarily in asset management and investment banking. He spent the last 15 years of his executive career with BW Bank Ireland plc, LBBW Bank Ireland plc and LBBW Asset Management Ireland plc, and served ten years on the Board of Directors with executive responsibility for Finance, Operations, Risk and IT.

He has since become a professional Independent director and sits on the Boards of eleven companies including a regulated asset management company, a number of regulated funds, SME Companies and non-profit organisations. He is Chairman of five of these boards.

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What can you expect to learn today?

- **Outline** the roles and responsibilities of a company director.
- **Describe** the company director's regulatory responsibilities.
- **Explain** liabilities of a company director.
- **Identify** the importance of ethics, and ethical decision making.

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1. Understanding Directors' Fiduciary Duties

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What is a company director?

Company directors provide oversight and direction to an organisation on behalf of its shareholders, stakeholders and board.

The directors function collectively as a board to make decisions and effectively govern the company. Shareholders and stakeholders trust the directors to represent the organisation and ensure effective management and oversight.

Although the **CEO and executive team** handle day-to-day operations, the **board of directors** retains the authority to oversee and delegate these responsibilities as they see fit.

The board plays a vital role in **approving the company's strategic direction** and ensuring compliance with the law.

It is important to note that the board may delegate certain powers to specific directors, board committees or the CEO based on the **circumstances and requirements.**

If you hold multiple roles, such as being a nominee director or an executive director, it is essential to **distinguish between these roles** and act accordingly in each capacity.

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“The board of directors sees the development of strategy as a collective effort between themselves and management, rather than a question of ‘us versus them’.”

— Pearl Zhu
author and corporate executive

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The company director's responsibilities

Company directors have a responsibility to fulfil their fiduciary duties as outlined in the relevant company laws for their jurisdiction.

Some of the fiduciary duties of a director in the UK are:

- Adhere to the organisation's constitution and articles of association;
- Use independent judgment to make final decisions without allowing others to control your individual decision-making powers;
- Perform to the best of your ability;
- Avoid conflicts of interest;
- Refrain from accepting gifts or other benefits from third parties that are given because of your role;
- Inform other directors and members if you might benefit from a company transaction.

UNDERSTANDING DIRECTORS FIDUCIARY DUTIES

The next example highlights the the potential consequences of neglecting these fiduciary duties.

BROWN&MASON

Brown and Mason, is an international demolition, dismantling and asbestos removal company

The UK's Competition and Markets Authority (CMA) has disqualified Nicholas Brown, a company director, for seven years following an investigation into illegal cartel behaviour in the construction industry.

- Brown and Mason Group **received £700,000** in "compensation payments" for participating in anti-competitive agreements;
- Brown, who served as the Managing Director, **confessed to playing a significant role** in these illegal activities by instructing his staff to create invoices for non-existent services and goods to obtain payments;
- The CMA **fined 10 firms** for collusive tendering, boosting prices and limiting competition.
- This case marks **29 director disqualifications** since Dec 2016;
- **Demolition firm Cantillon**, a company implicated in this controversy, saw its ex-MD Paul Cluskey disqualified for 4.5 years.

2. Directors' liability, and D&O insurance

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What are the liabilities of a company director?

As a company director, it is crucial to be aware of the potential liabilities you may face for your actions.

Understanding these liabilities is essential for **upholding** responsibilities and **protecting** the interests of the organisation and its stakeholders.

If a director acts against the best interests of the organisation's shareholders and, in some cases, creditors, and engages in wrongful behaviour, they may **face personal liability** for the debts of the business.

Here are some forms of director wrongdoing:

- Failing to fulfil director duties;
- Obtaining finance through fraudulent means;
- Director misfeasance;
- Accepting payments despite financial difficulties;
- Selling assets below market value;
- Personal guarantees.

D&O insurance

Over the past 15 years, directors' liabilities have significantly increased due to the growing number of statutory and regulatory responsibilities, as well as the impact of court decisions.

As a result, many directors are understandably concerned about the **potential personal liability** they may face if claims are brought against them for mismanagement of organisational affairs. This is where D&O insurance can help.

D&O insurance provides:

A valuable protection for directors and officers of companies by covering claims arising from the performance of their business duties.

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DIRECTORS' AND OFFICERS' (D&O) INSURANCE

Increased risks and need for coverage

In the wake of recent events in the financial services, directors and officers are exposed to potentially greater risks of litigation due to lower investor tolerance for performance and governance failures.

In the **absence of sufficient D&O coverage**, directors and officers may rely on their organisation's ability to protect them if they are held liable.

Due to the increased severity of claims, directors and officers face a **greater risk** because companies (particularly small and medium-sized enterprises) may not provide financial protection from the substantial costs involved in modern litigation.

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DIRECTORS' AND OFFICERS' (D&O) INSURANCE

Evaluating D&O policies

Before committing to a policy, directors should thoroughly evaluate the cover provided by various insurers to understand what is covered and what is not covered by each policy.

Directors need to consider **how the policy applies** to their roles when joining, serving, and leaving an organisation.

It is essential to understand the implications for director and officer insurance coverage if directors do not leave on good terms.

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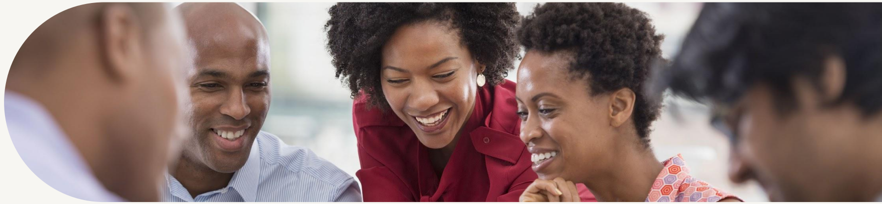
3. Ethical Decision-Making



What is ethics?

It's the responsibility of the board and the executive to recognise behaviours that give rise to unethical behaviour in an organisation.

Boards contribute to the **long-term success** and **sustainability** of the organisation by considering the ethical implications of each decision, fostering trust and confidence among stakeholders through ethical governance.

Ethics are **deep-rooted principles** and **values** that will influence the policy, guidelines and expectations about the professional and personal behaviour of board members and employees.

There are three main drivers of unethical practices in business:

- Faulty processes that enable personal gain,
- Pressure on organisation's management to meet or beat performance targets, and
- A company culture that puts profitability and business performance ahead of ethical behaviour.

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ETHICAL DECISION MAKING

Code of ethics

A code of ethics sets out principles to guide the board in conducting business honestly and with integrity.

It guides organisational decisions in areas such as protecting the environment, bribery, insider trading, ethical procurement, social responsibility, and gift-taking.

Some organisations combine the code of conduct and code of ethics into one document. However, it is advisable to keep them separate when the organisation has specific ethical requirements.

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Questions?