

Appendix 1 – Summary of Training

Cabinet Committee – Group Company Governance Report – Director's Roles & Responsibilities Training

29 October 2018:

Subsidiary Companies & Governance

Scope:

- Background of Limited Companies
- Overview of the Roles and Responsibilities of a Director
- Overview of the Role of a Shareholder

Governance & Challenge

Scope:

BCC Subsidiary Governance / Monitoring:

- Types of Counterparty and context
- Board Composition and Role of Non-Executive Director
- Responsibilities of BCC Nominee - Non Executive Directors / Observer
- Accountability of Non-Executive Director / Observer
- Board Pack / Business Plan / Management Information

Constructive Challenge – a Consistent Methodology (what questions to ask):

Case Study: -

- Business Fundamentals
- Financial Fundamentals
- Risks and Mitigants

24 January 2019:

The Company Director: Roles, Responsibilities and Duties

41 Attendees

New mailbox established –

groupcompanygovernance@birmingham.gov.uk

Scope of training:

DIRECTORS

- What is a director? How is the role defined?
- Types of Director?
- Who can be a director?
- Formalities for appointment?
- Nature of office - multi-layered:
 - agents of their company.
 - fiduciary relationship with their company (utmost good faith > directors' duties)
 - employees of the company (only to the executive directors of the company who have a service contract and are paid a salary)

ROLE & RESPONSIBILITIES OF DIRECTORS

- Responsible for the management of the company. Broadly:
 - ensuring that the company meets its statutory obligations
 - determining the company's strategic objectives and policies
 - monitoring progress towards achieving the objectives and policies
 - appointing senior management
 - accounting for the company's activities to relevant parties, e.g. shareholders
- How is this exercised in practice?
 - board meetings
 - alternative approaches – e.g. written resolution (require unanimity)
- Authority of directors: power to bind the company
- Delegation of authority: to individual committees or individual directors
- Practical impact of the directors' management role? Shareholders not (generally) get involved in the day-to-day running of the company.
- Shareholders cannot usually overrule the board or retrospectively alter one of the board's decisions.

DIRECTORS DUTIES

- Who are duties owed to?
- Previous common law and equitable principles now codified in Companies Act 2006:
 - To act within powers
 - To promote the success of the company for the benefit of its members (shareholders) as a whole
 - To exercise independent judgment
 - To exercise reasonable care, skill and diligence
 - To avoid conflicts of interest
 - Not to accept benefits from third parties
 - To declare interests in transactions or arrangements with the company

Additional Specific Duties of Directors

Further Companies Act 2006 obligations/restrictions to be aware of:

- annual reports and accounts
- substantial property transactions
- loans

Other duties to be aware of:

- health, safety and welfare at work of its workers, under health and safety legislation
- environmental legislation
- anti-corruption legislation
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Consequences of breach of a director's duty

- Potential Personal liability
 - common law damages awarded against the director for negligence
 - fine and/or imprisonment
 - account for profits
 - return company property
 - injunction against the director (usually when the breach is threatened)
 - disqualification

AVOIDING LIABILITY FOR BREACH OF A DIRECTOR'S DUTY

- Board authorisation
- Shareholder ratification
- Relief by the Court
- Insurance
- Company indemnity

FINANCIAL DIFFICULTIES & INSOLVENCY

- Directors' responsibilities on insolvency
 - Modification of the general duty to promote the success of the company
- Wrongful trading
 - When it arises
 - Consequences for a director
- Fraudulent trading
 - When it arises
 - Consequences for a director
- Misfeasance
 - When it arises
 - Consequences for a director