



Irish Association of
Corporate Treasurers

IACT Breakfast Meeting

9 November 2023

Management's Role in Setting up the Board for Success

- Dr Margaret Cullen, Governance Advisor to the Institute of Directors in Ireland
- Niall Best, Partner, McCann FitzGerald LLP

Agenda

- Character and Role of a Directorship
- Duties of Directors
- Functions of the Board
- Delegation – Potential Pitfall
- Governance and Subsidiaries – Potential Pitfall
- Prudent Steps for Directors

Character and Role of a Directorship

- Officer of the Company
- Qualification:
 - Natural person (not a body corporate)
 - Aged at least 18 years
- All Directors are equal as Directors irrespective of whether one reports to another in employment law terms
- Chairperson can have additional powers (such as a casting vote)
- Powers are vested in the Board acting collectively



Duties of Directors

- With rights, come responsibilities
- Common law, statute and contract



Primary Fiduciary Duties of Directors

- Developed from common law
- Trust and Confidence
 - 1) Probity
 - 2) Competence



Duties of Probity

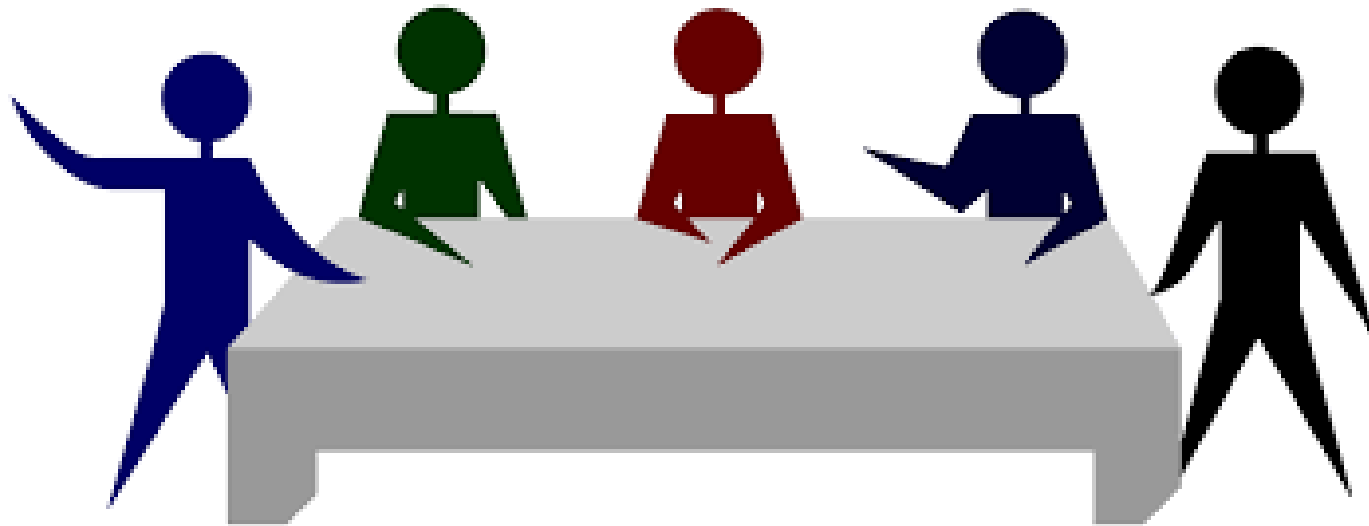
- codified in section 228 CA 2014
- seven duties



- act in good faith in what the Director considers to be the interests of the Company
- act honestly and responsibly
- act in accordance with the constitution of the Company
- not use property or information of company for improper purpose
- not restrict independent judgement
- avoid conflicts of interest
- not to use confidential information for own benefit

Duties of Competence

- also codified in section 228 CA 2014
- duty to exercise due care and skill
- duty to be diligent



Functions of the Board

The key purpose of the Board

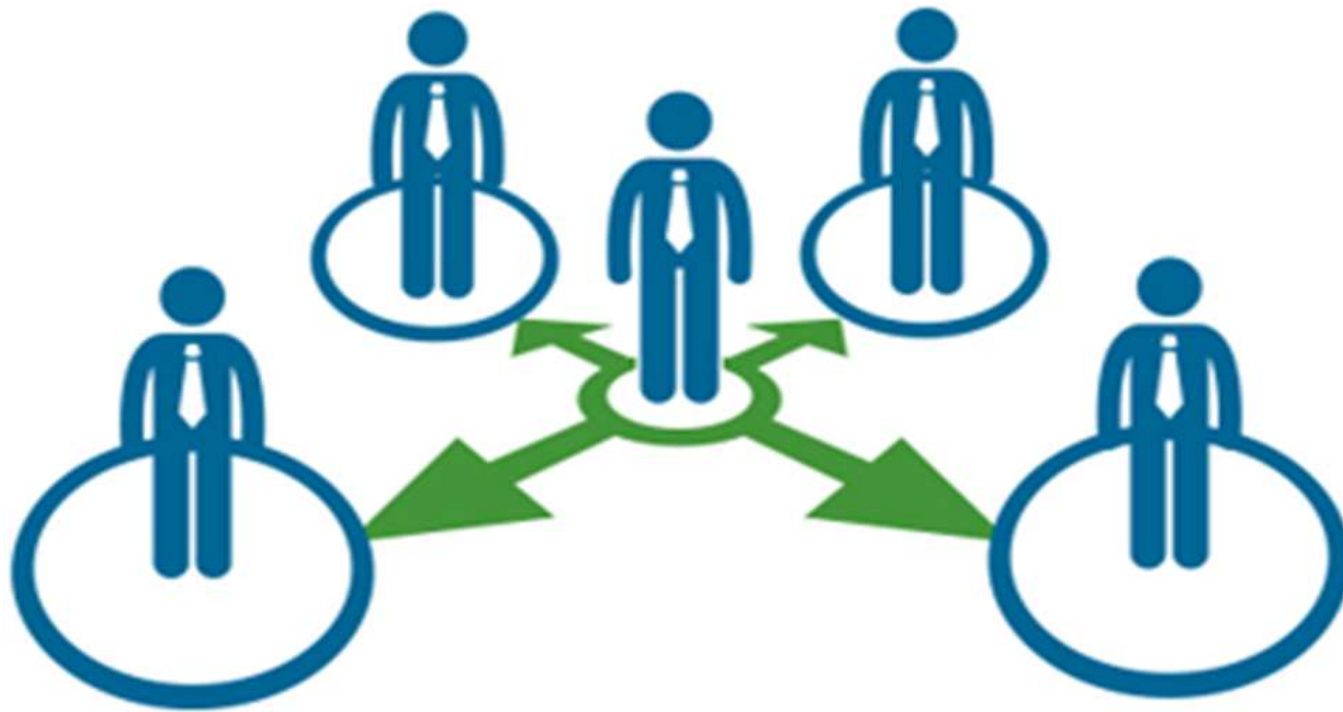
- Ensure the Company's prosperity
- Each Board member must personally find the rights balance between the various competing pressures

Areas for particular focus of a Board

- Determining Board composition and organisation
- Clarifying Board management responsibilities
- Planning and managing Board meetings
- Developing the effectiveness of the Board



Delegation – Potential Pitfall



- Delegation is permitted but ‘abdication’ is not
- As a Director:
 - ensure that you have sufficient knowledge and control to perform your role
 - direct, oversee and scrutinise, don’t “manage”
- Consider and test the robustness of financial and other control systems
- Ensure proper reporting (and reporting channels) to the Board of relevant information by relevant personnel
- Ask:
 - Is the delegate appropriately qualified, skilled and resourced for the role? And
 - Is there any reason to question or doubt the delegate’s performance?

Governance and Subsidiaries – Potential Pitfall Wearing Different Hats



Prudent Steps for Directors



Key things that a director **must** do:

- Act in the interests of the company
- Act honestly and diligently and keep good records of how the company is directed and controlled
- Take good advice whenever necessary
- Keep knowledge up-to-date
- Show leadership and discharge directors' duties
- Disclose conflicts of interest
- Ensure sufficient board meetings are held
- Keep compliance-related issues on the agenda of Board meetings
- Consider and test the robustness of financial and other control systems
- Keep confidential sensitive information that is provided to you in your capacity as a Director

Key things that a Director **must not** do:

- Never attempt to manage the Company
- Never make personal gain
- Never withhold information that is relevant to the Board's decisions
- Never break the law
- Never make assumptions or fail to challenge
- Never allow the Company to trade while insolvent
- Never act for competitors

Sample System of Governance

- Senior Management Team Key Responsibilities:
 - Approving for submission/recommendation to the Board detailed business plans/strategies for the company business, including business priorities, sales targets, product and customer propositions and budgets within an agreed risk appetite [in line with the Group strategy, risk appetite and priorities];
 - Supporting and implementing strategies of the company business as approved by the Board;
 - Ensuring the following key operating principles are followed:
 - Operate a sustainable business consistent with the criteria set by the Board [and by the Group];
 - Provide competitive, relevant products and a superior level of service to customers;
 - Maintain the good standing reputation, image and integrity of the business;
 - Monitoring business results against agreed plans and reporting to the Board; (**ASSURANCE ON PERFORMANCE**);
 - Managing all risks in line with approved risk appetite, continuously reviewing and monitoring strategic and other risks, reducing level of unrewarded risk and reporting to the Board (**ASSURANCE ON CONFORMANCE**);
 - Ensuring the operation of an effective internal control framework and providing assurance to the Board (**ASSURANCE ON CONFORMANCE**);
 - Ensuring the business operate in accordance with legal and regulatory expectations and providing assurance to the Board (**ASSURANCE ON CONFORMANCE**).

The Governance Challenge

What are your Stakeholders interested in?

1. Sustainable Business Model
2. Transparency: financials
3. Accountability
4. Effective Decision-making processes
5. Robust Risk Management and Internal Control
6. Management of Conflicts of Interest
7. Legal and Regulatory Compliance
8. Corporate Culture
9. Succession Planning
10. Honesty and Responsibility
11. Assurance

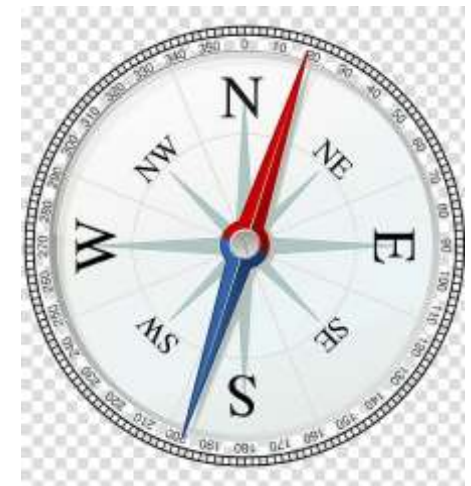
How do we give them what they want?

An Effective Governance System that reflects:

- i. The complexity of company's business model, regulatory and operational infrastructure

and delivers:

- ii. Group's Strategic Ambitions, as applicable

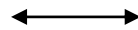


Governance Challenges

- Executive Directors and the Senior Management Team (together Executive Management) have an important role in contributing to the effectiveness of the Board and Board Committees (and de facto the Company) through the provision of Board Information and the standard of board papers requiring discussion and decision by the board.
- Independent non-executive directors (INEDs) have an information asymmetry opportunity and challenge:
 - **Opportunity:** information asymmetry supports the very objectivity and independence they bring to the boardroom
 - **Challenge:** for INEDs working through board or committee papers can sometimes feel like looking for a needle in a haystack

Potential Governance Pitfalls

Regulatory/Conformance led Governance rather than Board led Governance supporting a Regulatory Compliance Culture with Effective Stakeholder Engagement



Failure of the Board and the Company's Governance Framework to Respond to its evolving Business Model

Characteristics:

- All Conformance / Insufficient Performance
- 'Silo' type reporting
- Directors overwhelmed with information from each Silo
- Directors not understanding why they are getting information
- Board not focusing on the critical, pertinent issues: what is in the papers must be discussed
- Focus is on getting through a packed agenda
- Time spent on historic data at the expense of looking forward and analysing future risks to the business and operational models
- Not enough critical conversations or dialogue

Characteristics:

- New business elements not integrated effectively into the information provided to and considered by the Board
- Key risks (financial, operational and strategic) not considered by the Board
- Missed opportunities and threats

...It's all about the right BI!

- Reporting to the Board (BI) that:
 - Provides a clear picture on **strategy, risk, culture**: measures
 - Provide **assurance** to the Board on adherence to policies and procedures and regulatory compliance: what are we trying to measure?
 - Provides assurance to the Board on key group dependencies
 - Translates **technical and voluminous information** into issues and choices requiring business judgement by the Board/Board Committee
 - Provides **sign-posts** to the Board/Board Committee
 - **Supports effective dialogue, critical analysis, debate and collective decision-making** by the Board / Board Committees
 - **Leverages collective strength!!**
- Has management worked with the Board (and its Committees) to **create the basis and format of reporting** to the Board (BI) across all lines of business and functions?
 - Business as usual (every board / annually etc)
 - Exception reporting
 - Decision-making
 - For information/knowledge of the Board





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Q&A



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UPCOMING EVENTS 2023

November 14 IACT Academy

**November 14-15 IACT Annual Treasury
Management Conference**

**November 27 Mastering Market Volatility &
supporting strategic
objectives with TMS**