



Mentoring Circle

Outcome Report

**Topic: What Are the
Challenges Facing South
African Directors?**

Date: 22 November 2016



**INSTITUTE OF DIRECTORS
SOUTHERN AFRICA**

The aim of the Mentoring Circles is personal development, building a community of directors, and contributing to the social and personal competencies of the Director Development Framework.

The Challenges

- How do new directors tackle dominant behaviour on a board that is contrary to good governance?
- How do we appreciate the individual director's risk and amount of legislation?
- Do ethics play any part in Boards, or is it just window-dressing?
- How do you clearly define the relationship between directors and management?
- How do you avoid conflict of interest?
- How do you deal with directors who have been declared legally delinquent?
- What is the role of consultants to the board?
- What is the purpose of an NPO board?
- What is the mentors' perspective on current "case studies" on what not to do, i.e. what went wrong?

The Solutions

- It is crucial to prepare well for a Board meeting to manage excessively (negatively) dominant individuals and to understand one's risk exposure and legal requirements, especially as a new director. Being new can be used to one's advantage, as Board colleagues can be asked to explain behaviours and decisions in light of existing policies, the Charter, the MoU, the Companies Act and similar documents. Such challenges should be made in light of knowing one's liabilities, rights and powers as a director, and should be phrased using collective language (we as the Board), not you or I. This approach will help give you confidence and courage to deal with the issues constructively, and when all else fails, to formally be recorded as dissenting on that issue – the IoDSA has useful guidance on that matter on their website. Confidence can be gained from using your personal integrity, from realising that you are looking after the affairs of others, and accepting that you might be wrong as well. Using independent board appraisal processes are useful to identify problematic dominant people, particularly if this happens to be the Chairperson. The company secretary should be viewed as a governance advisor and ally in this.
- Directors should ensure that they are constantly developing, not least through formal training opportunities, and through activities such as inductions onto new Boards.
- Ethical leadership is crucial as a director, and can be focused on determining what is right for the company and its stakeholders, rather than dwelling on who is right. Ethics can be determined by looking at whether one would be prepared to receive the consequences of one's decisions as a director. In uncertain situations, decisions can be delayed by any director (but not incessantly).
- Levels of responsibility between the board and management are defined in the Board Charter or MoI. As directors, everyone is equal and no single director (including the Chairperson) has any more power than another.
- Conflict of interest must be avoided as a director, and the first point is to declare any such conflicts. Some directors are unaware of being in a conflict of interest situation – training can address this. If a director actively and knowingly remains in a conflicted position, the other directors can charge them with fraud, or use whistle-blowing mechanisms.
- Being legally delinquent in one situation does not mean that a director is deemed to be the same for all positions. It becomes a Board decision whether to retain them or not, and external legal opinion can be sought. It is important to note that external consultants can only advise; the Board remains responsible for all decisions irrespective of third-party advice given.
- The role of an NPO Board is the same as any other. The fiduciary duties of NPO directors are the same as any director, irrespective of whether directors are remunerated or not. In an NPO situation it can be more taxing to manage because of perceptions relating to NPOs.
- One perspective is that the general system of governance is failing in South Africa in the public and private sector, despite all the legislative requirements and frameworks such as King IV. Irrespective of what other directors are doing, it is important for each director to act in accordance with their values, and take a stand on what they perceive to be the right thing. This might come at huge personal cost – financial, positional and reputational. Directors must exercise their independence at all times.