

Boardroom Training

2023 / 24

Company directors of businesses of all sizes face a myriad of legal and regulatory challenges in their role.

As legal and regulatory requirements continue to evolve, directors need to be mindful of their obligations and potential personal responsibilities. Access to quality training, which will help directors keep abreast of the relevant legal and regulatory requirements, is increasingly important.

With that in mind, Weightmans has designed a boardroom training service which provides guidance on a wide variety of relevant issues. Our boardroom training service is suitable for both experienced directors who need to maintain their awareness of legal and regulatory changes, and for those who are newly appointed and who need to get up to speed with their new responsibilities.

The Training Structure

Our boardroom training services can be delivered in a variety of formats to best suit delegates' needs. For example:

- Training can be delivered in bite-sized chunks as part of an organisation's regular away-day sessions, providing an overview of the key challenges under one or more of the topics;
- Alternatively, training can be delivered via half or full day workshops (which in turn can be delivered in-person or online) and which cover one or more topics in greater depth.

Set out below is a summary of our services for 2023/24. Our boardroom training is entirely flexible and we are happy to cover any additional topics which may be of particular interest or concern. In addition, as part of each training session we typically include a round-up of any key 'hot topics' that may be in the news. All of our training is delivered by experienced legal practitioners who will be happy to address any legal or practical questions which delegates may have on the day.

Director's duties

- Statutory directors, Shadow directors, De facto directors and Non executive directors - do different rules apply?
- Transactions with the company including service agreements, loans and share dealings;
- Disclosure of interests in contracts;
- Duties to act honestly and in good faith in the best interests of the company, to avoid conflicts of interest, and to exercise reasonable care, skill and diligence;
- Consequences of breach of a duty: when might personal liability arise? Indemnification;
- Directors' and Officers' Insurance, including the nature of cover, when it is triggered, who and what is actually covered, common exclusions and defence costs;
- Distressed trading;
- Corporate insolvency and personal risk for directors (including duties owed to creditors) and misfeasance claims;
- Wrongful trading.

Business crime and how it could affect you

- **Criminal Investigations** - when might a director be investigated? Practical steps to deal with these situations and ensure business continuity;
- What to do if you receive Production Orders and Requests for information from Prosecuting authorities;
- **Bribery Act** - practical steps to ensure that you have adequate procedures in place to prevent issues arising;
- **Anti-Money Laundering** - advice and practical steps to ensure that your due-diligence is up-to-date;
- **Fraud Prevention** - how to minimise the risk of fraud occurring within your business;
- **Directors' duties and liabilities** - when are directors liable for the actions of employees;
- Facing Corporate Criminal Offences, such as Failure to Prevent Tax Evasion and Failure to Prevent Bribery;
- The impact on organisations of the Economic Crime and Corporate Transparency Bill and the introduction of a new corporate offence of Failing to Prevent Fraud.

Cyber crime

Increasingly financial controls regulation such as Sarbanes Oxley are met and assured using technology solutions and as a result more and more financial and business crime takes place in the digital sphere. We are specialists in technology and cyber crime and can advise on the threats posed to businesses and help you with all aspects of risk and compliance management:

- Advice in relation to seizure or freezing of assets linked to crypto and online assets
- How to carry out internal investigations in the event of a cyber attack or data breach by external or internal actor, identify potential criminal offences and advise on remedial action.

Business crime and how it could affect you

The Economic Crime and Corporate transparency Bill

The Economic Crime and Corporate transparency Bill is due to be made law in Spring 2024. It will introduce new powers intending to make it harder for foreign criminals to transfer funds to and through UK entities. The Act will introduce significant controls and requirements which will impact upon all businesses, irrespective of size or sector. Weightmans Financial Crime Team provide bespoke training and advice on the Act and how it could affect your business.

New Corporate Offence

The Act will introduce a new corporate criminal offence of failing to prevent fraud. Understand the elements of the new offence and the defences available to companies' facing investigation or prosecution.

Information Sharing

Businesses will have greater obligations to share commercially sensitive information with prosecuting authorities investigating alleged money laundering and terrorism offences. The Serious Fraud Office can also compel businesses to provide information at a much earlier stage in their investigations. Ensure you understand the requirements and the consequences of failing to co-operate in a timely fashion.

Crypto Assets

The Act will bring digital assets into line with more traditional assets. At present, the authorities can only seize property or cash. Businesses holding or trading with online crypto assets need to be aware of the increased powers of UK authorities to seize and forfeit crypto assets which are suspected of being the proceeds of crime.

Registering a business

The Act will introduce greater scrutiny on registering and operating registered companies in the UK. There will also be a requirement for UK companies to identify those people who have significant control, irrespective of whether they are a named director or not. Companies need to be aware of the greater controls in place when registering or updating company details and the powers available should companies repeatedly fail to submit accounts and documents in a timely fashion.

Competition law

- Summary of the civil and criminal implications of anti-competitive agreements, including cartels, such as fines, imprisonment, director disqualification orders and damages claims from affected third parties;
- Advice on the various types of business relationships, vertical and horizontal, and how they may affect competition;
- Abusive behaviour when holding a dominant position in a market;
- Do's and Don'ts and exemptions available, with tips on practical steps to avoid infringement;
- The Groceries Supply Code of Practice (GSCOP);
- Dawn raids and how to handle them;
- The post-Brexit merger control regime;
- The impact of the new National Security and Investment Act regime on certain corporate transactions, with compulsory pre-clearance requirements in certain cases.

How data, digital and cyber risks affect your business

Cyber, digital and data protection basics

- Understanding the impact of digital risk on your organisation using scenario impact modelling, stress testing and risk quantification;
- Strategies for managing insurance, legal and regulatory obligations;
- Defining, implementing and evaluating technology leadership - the roles of the Data Protection Officer (DPO), Chief Information Officer (CIO), Chief Information Security Officer (CISO), Chief Digital Officer (CDO) and Chief Technology Officer (CTO);
- Implementing, measuring and managing cyber and technology governance – 3 lines of defence, cyber controls, policies and procedures, managing change and the role of architecture.

Cyber, digital and data protection advanced topics

- Strategies for effective management and oversight of digital and technical transformation and operational resilience, including: effective cyber metrics, cyber and information governance, managing and transferring risk through insurance and third party supply chain management;
- Understanding and harmonising your cyber, data and operational resilience obligations including:
 - Data protection under the GDPR.
 - Operational resilience in the UK financial sector and the EU Digital Operational Resilience Act (DORA).
 - Critical national infrastructure regulation such as the EU Network and Information Security (NIS/NIS2) Directive.
 - The impact of the new securities and exchange commission (SEC) reporting rules on US listed companies and their supply chains.
- Digital, data and cyber strategies to deliver competitive advantage for your business, including data commercialisation, consumerisation, and leveraging emerging technologies such as cloud and artificial intelligence (AI).

Cyber attack simulation and table tops for boards and senior executives

- Ransomware, sanctions, terrorist financing, and cyber extortion protocols - to pay or not to pay, or is payment even an option?
- Crises management and communications strategy for B2E and B2B customers, regulators and law enforcement;
- Managing data breach, data loss and regulatory reporting, enforcement and harm scoring, data subject notifications and support.

Employment law & immigration

Employment

- Equal pay and gender pay gap reporting, including the key principles and potential liabilities, and the duty on employers with more than 250 staff to publish annual gender pay gap reports;
- Modern slavery, including supply chain accountability, and the legal and practical obligations on organisations with regard to publishing annual slavery and human trafficking statements;
- Equality and Diversity, the key considerations and benefits of diversity in business and the risk areas to be aware of;
- Neurodiversity in business;
- Employment status risks in the gig economy, considering the evolving case law and the Government's anticipated consequential approach.

Business immigration

- Right to Work compliance & updates;
- Sponsorship Management System (overview or full training);
- NHS / Health and Care immigration;
- Tricky Issues in Sponsorship.

Preparing your business for sale

Business owners face a lot of uncertainty surrounding the process of preparing their business for sale. Once the decision to pursue a sale has been made, what does a business owner need to consider?

- **How to prepare your business for sale** – planning and having an experienced advisory team is key to a successful outcome;
- **Advantages of sale planning** – early identification of risks and opportunities and aligning them with potential buyers will lead to better deal terms and a smoother process;
- **Examples of transaction problems we have seen**
- how prior planning could have helped;
- **What does Weightmans ‘preparing for sale’ service encompass?**
 - Explain deal structures
 - Legal due diligence to identify and resolve legal risks
 - Reviewing business structure and manage any pre-sale reorganisation
 - Incentivisation structures for key personnel
 - Share ownership and personal tax/will planning review

Environmental compliance and incidents

Consider the environmental risks associated with your business and understand:

- Why environmental incidents happen and how they can be prevented;
- How to respond when incidents do happen;
- Managing individual liability and responsibility;
- At a time of increasing environmental regulation, what you need to be aware of and how to ensure compliance;
- Product stewardship and the circular economy;
- Where there are opportunities from improved environmental awareness.

Environmental social & governance (ESG)

- Understanding the business case of ESG and its value to you;
- Identifying your ESG priorities and engaging with stakeholders;
- How to design and implement an ESG policy;
- Corporate governance, including ESG reporting;
- B-corporation certification;
- ESG plan development - ESG competency program, supply-chain engagements on human rights and environmental impact and KPI setting;
- ESG disclosures;
- How to avoid greenwashing and green-hushing when making environmental claims;
- How to assess sustainability-related risks in your supply chain to ensure legal compliance and continued access to markets;
- Trends in ESG litigation and regulatory developments.

(Further details about our ESG-related boardroom training service are available on request).

Emission trading scheme and decarbonisation

Emission trading scheme

- Understand the cap and trade approach to reducing emissions in your sector;
- Compliance with permits and emissions monitoring plans;
- Making the move to the METS from ETSWAP.

Decarbonisation

- What does decarbonisation mean to your business?
- Individual and corporate responsibilities to deliver on decarbonisation;
- Explore new opportunities to reduce the carbon footprint of your business;
- Gain confidence engaging with the decarbonisation agenda.

Health and safety law

- Individual and corporate legal duties;
- Internal incident investigations and managing regulatory investigations;
- HSE visits and the fee for intervention scheme;
- Consequence of breach;
- Liability for gross negligence manslaughter and corporate manslaughter;
- Individual liability for Directors for breaches of health and safety.

Pensions law and managing pensions liabilities

- Identifying and mitigating legal risks and liabilities in your defined benefit pension scheme, including 'hidden liabilities';
- Implementing cost saving measures, including member options, scheme amendment and termination;
- Transferring defined benefit pension liabilities to an insurer. How to work with the scheme trustees to prepare for and to transact a buy-in and buy-out, enabling the scheme to be wound up;
- Pensions issues arising from corporate transactions and restructuring;
- Death in service benefits. How to select the beneficiary of the lump sum payable from your pension or group life insurance scheme following the death of colleague.

Modern slavery

- Discuss and highlight the forms of modern slavery;
- The Modern Slavery Act 2015 - advice on the duties and obligations imposed on organisations by the legislation;
- An explanation re a business's "duty to notify";
- The importance of Transparency in an organisation's supply chain;
- Modern Slavery Statement - the requirement to publish and provide guidance on compliant drafting;
- The consequences of failing to comply with the MSA 2015;
- Defences available to organisations and individuals facing criminal investigation;
- Recent developments and updates.

Product safety

- Recalls;
 - Recall planning;
 - Active recall advice/guidance;
- Crisis intervention;
- Advice on insurance coverage for product liability claims/recalls;
- Contractual issues flowing from defective products;
- Supply chain issues flowing from defective products;
- Compliance of products with regulations (UK and worldwide);
- Bespoke in house training, seminars, workshops & practical case studies.

Consumer duty

- Consumer Duty: an outcome focussed approach to consumer protection;
- The Consumer Duty Principle - requires “firms to deliver good outcomes for retail customers”;
- Cross Cutting Rules (Act in good faith; Avoid foreseeable harm; Enable and support retail customers to pursue their financial objectives);
- The Four outcomes (Products and services; price and value; consumer understanding; consumer support);
- Who the Consumer duty applies to;
- Financial Conduct Authority (“FCA”) expectations;
- Impact of the Consumer Duty – it does not have a retrospective effect and does not apply to past action by firms;
- How the landscape will look following implementation of the Consumer Duty;
- Vulnerability training:
 - Definition of vulnerability
 - How to Identify a vulnerable customer
 - Nature of the vulnerability
 - Understanding the differences between vulnerable circumstances and vulnerable characteristics
 - TEXAS drill
 - Deciding how best to support and assist a vulnerable customer
 - Consideration of GDPR
 - How the recipient processes/receives the information and the impact which it has on them personally
 - Suicide

Construction/building contracts

- An overview of construction procurement routes to assist with strategic decision-making on how to procure construction works (mainly geared for those who procure construction works);
- Preparing negotiation protocols to stipulate levels of internal approval required when negotiating building contracts, appointments and collateral warranties on construction projects (to assist with governance for construction projects);
- Updates and training on major forms of building contracts, common terms of appointment and usual negotiation points (mainly geared for construction directors or principals at consultancy firms involved in negotiation of main building contracts and appointments);
- Updates on the Building Safety Act (mainly aimed at those who negotiate construction contracts and owners or taller buildings with potential cladding claims);
- Health and Safety/regulatory overview.

Other training modules available

We also have a series of additional training modules available which delegates may find useful:

- Procurement law and tenders including tender challenges
- Product liability - dealing with your suppliers
- Avoiding litigation – the most common causes in commercial agreements
- Banking and finance law and what to expect when financing a project
- Employment law update
- Property law update Contract law update
- General tax update - a summary of recent and prospective developments affecting corporates.
- Transport regulatory and fleet risk

Additional methods of training available

Boardroom training is one of a range of training services which are available from Weightmans. Others include Weightmans online training services, which are ideal for organisations with large and/or geographically widespread workforces, and also interactive workshops, which enable staff to learn about key legal and practical issues in a 'real life' setting. We meet with every client so as to understand their particular needs and to ensure that the training is tailored accordingly.

Next steps

We have outlined a series of topics that we believe will match your day to day boardroom requirements.

This list is by no means exhaustive. We would be happy to discuss any specific issues which you would like us to address, as well as costs and structure of the training in order to align more closely to specific themes within your organisation.

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