MBAA811/BLCG511 2020
MEMORANDUM: PORTFOLIO OF EVIDENCE
SUBMISSION DATE: 08 JUNE 2020

General

With regard to the substantive content of the Portfolio I have listed material and key concepts that the student should discuss in the theoretical discussion and evaluation of Corpcapital and its director's conduct. As far as recommendations are concerned, the student can be given free reign as long as it can be substantiated. Please note that in respect of practical examples the mere reference to an incident or company is not enough. The student must refer to a specific event or act e.g. it not enough to refer to "ENRON". The student must state what about "ENRON" e.g. the creation of special purpose vehicles or e.g. Steinhoff, the failure of the audit committee.

Evaluation of Corpcapital's conduct against King III & IV

1. Ethical and effective leadership and the establishment of an ethical culture:
   a. Define business ethics - Refer to Tricker's definition- ethics is not compliance – one at the middle/top - creation of ethical culture – refer or use the 7 characteristics referred in King IV;
   b. Assess director's conduct in respect of asset evaluation. Argument as to what is income or not i.e. the definition of headline earnings - discuss recommended practices in Principle 2. Access to advice – intimidation;
   c. Recommendations and solutions.

   Reference: King IV p43 - p45; Naidoo p395 – p404.

2. The governing body as the focal point and custodian of corporate governance in the organisation:
   a. Provide an explanation of the role and responsibilities of the board within the corporate decision-making process, the role of the chairman – accountability of the board and recommended practices and board committees;
   b. Functioning of committees, role of the chairman – culture – how the board in practice functions;

c. Recommendations and solutions.

Reference: King IV p49; Naidoo p163 - p189.

3. The composition of the governing body:
   a. Deal with the recommendations of King III & IV and the difference in approaches e.g. issue of independence and reasons behind the thinking;
   b. In the critique of Corpcapital the student should refer to the composition of the Steinhoff board and probably also to that of African Bank and other examples. Must deal with non/executive director balance and independence and the role of the chairman in this particular instance;
   c. Recommendations and solutions.

   Reference: King III Chap 2; King IV p50 -53. Naidoo p130 - p161

4. Delegations, independent judgement, balance of power and the discharge of duties:
   a. Discuss the recommendations of King IV in respect of committees, the importance of proper terms of reference, composition and chairing of in practical terms;
   b. Focus to be on the failure of the Remuneration committee, the reasons therefore and the absence of a proper committee and delegation structure. May refer to failure of Steinhoff audit committee;
   c. Recommendations and solutions.

   Reference: King IV p54 -57. Naidoo p175 - p193

5. Evaluation of board performance:
   a. What is meant by the evaluation of board performance and the requirements for an effective evaluation;
   b. In this particular circumstance are the board functioning at all or is it a rubber stamp for executive management;
   c. Recommendations and solutions.

   Reference: King IV p58; Naidoo p193 - p194

6. Management appointments and delegations:
   a. Discuss the recommended practises as set out in King IV p58 – 60. Also deal with the positions of CEO/MD, CFO and company secretary, internal audit and prescribed officers;
   b. Again the issue of executive directors will be mentioned. Must also deal with the independence of the secretariat. Can also deal with board's access to information and obtaining specialized advice;
   c. Present proposals as how to remedy.

   Reference: Naidoo p227 - p239

7. Remuneration Governance:
   a. Discuss King IV recommendations, p64 - p67. Given the number of executive directors, the issue of board and not only executive remuneration will come into play. Deal with incentives, disclosure, reports and policy;
   b. Analysis of the Corpcapital situation against mentioned guidelines. Deal with lack of policy, integrity and manipulation of performance;
   c. Discuss corrective action.

   Reference: Naidoo p247 - p265.

8. The institutional investor:
   a. Discuss the institutional investor's dilemma, the challenges, the use of codes of conduct and "tools" of interaction with companies and King IV guidelines;
   b. Analyse the role of institutional investors in the Corpcapital saga.
   c. Discussion of the way the institutional investor should deal with situations such as Corpcapital.

   Reference: King IV p 73; Naidoo p 121 – 123; Crisa Code; Mallin 116 – 124

9. Underlying ethical theory; Tony Frangos:
   a. Brief discussion of the 3 classical normative theories.
   b. With reference to the theory and facts the student is to reach a conclusion as to the Frangos approach.

   Reference: Basson p71 - p85.

10. Please take note that the conduct of the individual director is relevant in almost all the discussions on the conduct of Corpcapital. Cognisance should therefore be taken of the content of Naidoo, Chapter 9.

ISSUES TO BE RAISED IN THE PORTFOLIO IN VIEW OF CORPCAPITAL'S CONDUCT

Key words or phrases:
Stewardship - executive/non-executive relationship - powerful CEO - substantive disclosure - asymmetry in information - rapid decisions - balance of power - who is in control? - director duties - absentee owner - fiduciary relationship - governance principles - access to legal advice - disclosure of advice - role of chairman - intimidation and independence - conflict of interest - reporting and manner of disclosure - board and executive remuneration - committees - institutional investor - tools - public announcements - restraint of trade - headline earnings - share options - board processes - role of secretary - trust - board framework - boardroom culture - composition.