

Directors and Management

Board of Directors

The board of directors is the body of persons which company law and standard articles of association designate as the controllers of the company. They act collectively pursuant to decisions they make as a board. They are the %officers+of the company. This refers to their role or %office+under company law. An office is a role or function separate from the individuals themselves.

The model Articles for a private company provide that a decision of directors may be taken either unanimously or by a majority. A consensus will usually be reached without a vote. The memorandum or articles of association of a company may give different voting rights or weightings to directors.

Decisions may be taken without any meeting unanimously by any means (not just a written resolution). The draft Articles of a private company provide that an unanimous decision is taken when all directors indicate to each other by whatever means, that they share a common view on a matter.

Reasonable notice must be given of a directorsqmeeting, usually 14 days. Formal minutes should be taken. Minutes should be signed by the chairman and kept as an official record. Shareholders are entitled to sight of them.

A private company may have one director only. In this case, board meetings are not required. A public company must have at least two directors.

Companies must keep a Registers of Directors. The appointment of a director must be notified to Companies House within 14 days. Changes of directors must be notified to Companies House.

Differing Roles of Director

The directors may manage the business of the company or alternatively, delegate it and oversee the management of the company and its business. Executive directors play a significant role in the business and are usually the managers of the company. They may also be employees of the company, in which case their employment contract should set out their wider responsibilities.

A non-executive director is usually an outsider to the company who performs principally or exclusively, the role and responsibilities of a director. Typically, non-executive directors come into companies to bring wider experience to the table. Directors have responsibilities under company law.

The Companies Act, 2006 has introduced a more straight forward model articles of association for private companies. A director may, but need not, be involved in the company's day to day affairs. A non-executive director will have the same legal responsibility as other directors.

Appointment and Qualification

The Companies Act, 2006 requires every private company to have least one director. The Companies Act, 2006 does not prescribe who is responsible for appointing directors. The first directors are appointed by the subscribers to the Memorandum of Association. Provision for appointment of the directors is normally made in the Articles of Association of the Company.

The members have an inherent power to appoint directors. A director must be over 16 years of age. The standard draft Articles of Association for both private and public company give power to appoint directors both to the members and existing directors.

The Articles will set out how directors are appointed, how many directors there are or may be, how long they have to serve and what happens at the end of their term

The draft Model Articles for a private company empower the members to appoint a person by ordinary resolution to be a director provided he is ready willing and able to act and may do so by law. The Articles provide that, if as a result of death, the company has no shareholders or directors, the personal representatives of the last shareholder is to have the right to appoint a director.

In the case of public companies, an appointment by directors under standard articles lasts only until the next annual general meeting at which the co-opted director may offer him or herself for re-appointment. The Articles for a public company generally provide that directors must retire by rotation.

Disqualification

Certain persons are disqualified from being directors. Persons can be disqualified by disqualification orders or by giving disqualifications undertakings. If disqualified, a company director will not be permitted to act as a director or as a de facto director. A disqualification order or undertaking prohibits the person concerned from being involved directly or indirectly in the formation and management of a company, without leave of Court.

Directors can be disqualified for a number of reasons. These include allowing the company to trade while insolvent, not keeping accounts, failing to file accounts, failure to make companies returns and failure to send tax returns and pay tax. They can also face criminal charges and fines and be made personally liable.

An individual who is adjudged bankrupt cannot become a director until bankruptcy is discharged (usually one year). An individual who has been adjudicated bankrupt may be made subject to bankruptcy restriction or undertaking for a period of two to fifteen years

Termination

A director may cease to be a director by being prohibited, by being certified as lacking the mental capacity or giving notice to the company that he is resigning or retiring. A company may, by ordinary resolution remove a director before the expiration of the director's period of office. This is, notwithstanding anything that may be provided in the director's employment contract. The director may have a right of compensation for breach of contract against the company. However, this does not limit the ordinary members' power to terminate the directorship.

Disclosure of Benefits

Directors are not automatically entitled to remuneration. They may have the benefit of an employment contract with the company which provides for their remuneration. The Companies Act, 2006 requires companies to give information about directors' remuneration in the notes to their annual accounts. There are separate requirements for small, large and medium sized companies. Certain payments for loss of office require approval of the members.

Companies are required to disclose the total amount of directors' remuneration and under certain circumstances, total gains made by a director on the exercise of share options. Benefits received under share incentive schemes must also be disclosed. In the case of small and unquoted large and medium sized companies, aggregate payments to the directors must be disclosed.

Unquoted large or medium sized company must disclose the aggregate amount of retirement benefits. An unquoted large or medium size company is required to give certain information about remuneration, gains made in exercise of share options as an incentive, pension scheme contributions and details of accrued lump sum benefits. This is not required if the total is less than £200,000.

Every company must make available for inspection, copies of director's service contract. This register must be available for inspection by members free of charge.

Supervisory Role of Shareholders

Standard company's Articles provide for the division of powers between members and directors. Generally the powers of management of the company are delegated to the directors. Members have certain reserved powers under the standard draft Articles for both private and public companies. Members may usually require directors to take specified action by special resolution.

Company Secretary

A company secretary generally deals with the administration of the company. A company secretary is normally responsible for arranging board meetings and general meetings of the shareholders. The actual function may be delegated to an outside company secretarial business or to a firm of accountants. The company secretary will often take on other roles such as PAYE, VAT registration, insurance and pension matters.

Since April 2008, private limited companies are not obliged to have a company secretary unless the company rules so provide. If there is no secretary, the responsibilities remain with the directors.

Public Companies

Public companies quoted on Stock Exchanges are required to have a corporate governing statement. The Combined Code for listed companies require a balance of executive and non-executive directors. In particular independent non-executive directors are required. Public companies are required to produce an annual statement as to how it applies the principle set out in the Combined Code. In the case of quoted companies, certain large scale transaction require the approval of the shareholders under the Listing Rules.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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