

## **The Board of Directors – roles and responsibilities**

The board's key purpose is to ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its shareholders and stakeholders.

The objects of the company are defined in the Memorandum of Association and regulations are laid out in the Articles of Association.

### **Appointment of directors**

The ultimate control as to the composition of the board of directors rests with the shareholders, who can always appoint, and – more importantly, sometimes – dismiss a director. The shareholders can also fix the minimum and maximum number of directors. However, the board can usually appoint (but not dismiss) a director to his office as well. A director may be dismissed from office by a majority vote of the shareholders, provided that a special procedure is followed. The procedure is complex, and legal advice will always be required.

### **Role of the board of directors**

Boards can be helped greatly by focusing on four key areas:

#### **Establish vision, mission and values**

- Determine the company's vision and mission to guide and set the pace for its current operations and future development.
- Determine the values to be promoted throughout the company.
- Determine and review company goals.
- Determine company policies

#### **Set strategy and structure**

- Review and evaluate present and future opportunities, threats and risks in the external environment and current and future strengths, weaknesses and risks relating to the company.
- Determine strategic options, select those to be pursued, and decide the means to implement and support them.
- Determine the business strategies and plans that underpin the corporate strategy.
- Ensure that the company's organisational structure and capability are appropriate for implementing the chosen strategies.

#### **Delegate to management**

- Delegate authority to management, and monitor and evaluate the implementation of policies, strategies and business plans.
- Determine monitoring criteria to be used by the board.
- Ensure that internal controls are effective.
- Communicate with senior management.

### **Exercise accountability to shareholders and be responsible to relevant stakeholders**

- Ensure that communications both to and from shareholders and relevant stakeholders are effective.
- Understand and take into account the interests of shareholders and relevant stakeholders.
- Monitor relations with shareholders and relevant stakeholders by gathering and evaluation of appropriate information.
- Promote the goodwill and support of shareholders and relevant stakeholders.

### **Responsibilities of directors**

Directors look after the affairs of the company, and are in a position of trust. They might abuse their position in order to profit at the expense of their company, and, therefore, at the expense of the shareholders of the company.

Consequently, the law imposes a number of duties, burdens and responsibilities upon directors, to prevent abuse. Much of company law can be seen as a balance between allowing directors to manage the company's business so as to make a profit, and preventing them from abusing this freedom.

Directors are responsible for ensuring that proper books of account are kept.

In some circumstances, a director can be required to help pay the debts of his company, even though it is a separate legal person. For example, directors of a company who try to 'trade out of difficulty' and fail may be found guilty of 'wrongful trading' and can be made personally liable. Directors are particularly vulnerable if they have acted in a way which benefits themselves.

- The directors must always exercise their powers for a 'proper purpose' – that is, in furtherance of the reason for which they were given those powers by the shareholders.
- Directors must act in good faith in what they honestly believe to be the best interests of the company, and not for any collateral purpose. This means that, particularly in the event of a conflict of interest between the company's interests and their own, the directors must always favour the company.
- Directors must act with due skill and care.
- Directors must consider the interests of employees of the company.

### **Calling a directors' meeting**

A director, or the secretary at the request of a director, may call a directors' meeting. A secretary may not call a meeting unless requested to do so by a director or the directors. Each director must be given reasonable notice of the meeting, stating its date, time and place. Commonly, seven days is given but what is 'reasonable' depends in the last resort on the circumstances

### **Non-executive directors**

Legally speaking, there is no distinction between an executive and non-executive director. Yet there is inescapably a sense that the non-executive's role can be seen as balancing that of the executive director, so as to ensure the board as a whole functions effectively. Where the executive director has an intimate knowledge of the company, the non-executive director may be expected to have a wider perspective of the world at large.

## **The chairman of the board**

The articles usually provide for the election of a chairman of the board. They empower the directors to appoint one of their own number as chairman and to determine the period for which he is to hold office. If no chairman is elected, or the elected chairman is not present within five minutes of the time fixed for the meeting or is unwilling to preside, those directors in attendance may usually elect one of their number as chairman of the meeting.

The chairman will usually have a second of casting vote in the case of equality of votes. Unless the articles confer such a vote upon him, however, a chairman has no casting vote merely by virtue of his office.

Since the chairman's position is of great importance, it is vital that his election is clearly in accordance with any special procedure laid down by the articles and that it is unambiguously minuted; this is especially important to avoid disputes as to his period in office. Usually there is no special procedure for resignation. As for removal, articles usually empower the board to remove the chairman from office at any time. Proper and clear minutes are important in order to avoid disputes.

## **Role of the chairman**

The chairman's role includes managing the board's business and acting as its facilitator and guide. This can include:

- Determining board composition and organisation;
- Clarifying board and management responsibilities;
- Planning and managing board and board committee meetings;
- Developing the effectiveness of the board.

## **Shadow directors**

In many circumstances, the law applies not only to a director, but to a 'shadow director'. A shadow director is a person in accordance with whose directions or instructions the directors of a company are accustomed to act. Under this definition, it is possible that a director, or the whole board, of a holding company, and the holding company itself, could be treated as a shadow director of a subsidiary.

Professional advisers giving advice in their professional capacity are specifically excluded from the definition of a shadow director in the companies legislation.

*RCW 5/11/2000*

Sources: *Standards for the Board*, Institute of Directors  
*The Independent Director*, IoD/Ernst & Young  
*Running a limited company*, David Impney & Nicholas Montague, Jordans