



**ENTREPRENEURIAL
BUSINESS LAWYERS**

MEETINGS OF DIRECTORS

GENERAL

Whilst a company has a separate legal identity, it cannot function without its board of directors who are collectively responsible for the management of the company on behalf of its owners. The board of directors must consider the shareholders' (also called "members") interests in everything they do. In addition to duties to the company's members, directors have duties and responsibilities to the company's employees, its trading partners, its creditors and the State. The role of the director carries with it onerous responsibilities and should not be taken on lightly.

UK Company Law draws a clear distinction between ownership and management of companies. Ownership is vested in the shareholders, whilst management is entrusted to the directors. The directors are given power to manage under Article 3 of the Model Articles. It is possible to reserve certain management powers to be exercised by the members by inserting provisions in the Articles of Association of the company. An example of this might be a restriction on borrowing, where the directors must seek shareholder consent if they wish the company to borrow above a certain limit.

The directors are expected to act collectively as "the Board", but they may delegate tasks to Committees or others where this is permitted

in the Articles of Association.

DIRECTORS' MEETINGS

Articles 7 to 16 of the Model Articles set out the default position regulating the proceedings of directors' meetings. Many companies only partially adopt the Model Articles and modify and add to them in customised Articles. Consequently, the proceedings of directors' meetings will differ from company to company.

Generally, directors may regulate their proceedings as they see fit. Under Article 9 of the Model Articles, any director may call a board meeting by giving notice to every other director. Resolutions of the directors are decided on a majority of votes but the chairman may have a second "casting vote" in the event of an equality of votes, depending on the terms of the Articles of Association.

Article 11 of the Model Articles, sets the quorum for board meetings as two. This may be changed to one if the company only has one director. Equally, certain companies may wish to specify that a specific named director must be present for a meeting to be quorate. This is a common modification where investors have appointed a director.

Article 12 of the Model Articles provides that directors may appoint (and remove) one of their number as chairman. Given the default position that the chairman has a casting vote, this can be a powerful position, particularly

where the company has only two directors.

Article 8 of the Model Articles stipulates that directors may unanimously pass written board resolutions instead of holding board meetings. These must be signed by all of the directors, not just the chairman.

Subject to certain exceptions, directors may not vote in relation to matters in which they are interested, or where a conflict is involved. A director who is not entitled to vote may not be counted in the quorum for a board meeting. Such a conflict of interest can be approved by the other directors under section 175 (5) of the 2006 Act.

Conflicts of interest must be declared, and it is a matter of good corporate governance to include declarations of conflict of interest and (if appropriate) a section 175 approval as a standing item on the agenda of every board meeting.

CHECKLIST FOR DIRECTORS AT MEETINGS NOTICE OF MEETING

- ✓ Has the notice of the Meeting been received by each director and any other party entitled to receive such a notification?

PREPARATION

- ✓ Has an agenda been agreed and circulated in advance?
- ✓ Have minutes of the previous meeting been prepared for approval at the upcoming meeting?
- ✓ Have any documents which will be tabled at the meeting been prepared, copied and circulated?

QUORUM

- ✓ Check the Articles for the number of directors required for a quorum or any other stipulations to constitute a quorum.

- ✓ Is the required number of directors (or specifically named director) in attendance?

DISCLOSURE

- ✓ Have the directors each declared any interests in matters to be discussed at the Meeting?

SHAREHOLDER APPROVAL OR OTHER CONSENTS

- ✓ Is approval of the shareholders required in order to carry out any of the actions proposed at the meeting? If so, will a general meeting, written resolution or written consent be required from the members to approve, for example:-

- Any substantial property transactions involving a director. (Transactions exceeding £100,000 or 10% of the net asset value of the company) De minimus of £5,000;
- Any Director's service contract with a term in excess of 2 years;
- Any payment proposed to be made to a director in compensation for loss of office; or
- Authority of the Directors to allot shares.

CONCLUSION

The directors' meeting is of fundamental importance to the correct day-to-day administration of an incorporated company. All directors must develop the habit of holding regular meetings and minuting those meetings correctly.

This note has been prepared on the assumption that the company has more than

one director. However, this is often not the case and some companies continue to trade for a lengthy period with a sole director. It is important to note that such a company must take a record of a sole director's decision making. This may seem artificial but it is a habit that the sole director should develop. It is useful from the perspective of corporate governance, and will demonstrate to external parties that the company is being properly run.

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