Guidance Note – Directors:

Appointment, Termination and Sc

This Guidance Note provides an of a director within a private company and looks in particular at t ncluding sole directors), as well as the process for appointing and re office.

Introduction

A company acts through two groups o ers and its board of directors. The general role of directors is to manage t fit of the shareholders. Although a company is a separate legal entity, it c through those authorised for that purpose, usually its directors.

The directors are basically the agents ed by the shareholders to manage its day to day affairs. Directors have t mpany and are the officers of the company but not necessarily employ e effectiveness of a company's directors is critical to its long term su ir appointment and role must be understood by any new business.

Types of Directors

All companies are required to have at lic company must have two). This is because companies as "artificial" themselves – they need to act through other persons. A company's d to whom the law looks to manage the affairs of a company on behalf the case even for small private companies with only one or two shareh director and shareholder is in fact the same person). The law does make interests of a shareholder as the owner of a company and a director wh the company's behalf.

The term "director" is not actually defin 2006. Section 250 states that the term, "director", includes, "*any perso n of director by whatever name called*". Therefore any person exercisi ons of a director and fulfilling the role of a director in relation to a compa ally appointed and registered as a director) will be regarded as a director,

Whilst the Companies Act 2006 doe ntiate between different types of director, here are some of the more co of directors:-

Executive and Non-executive – 'Exe e' directors are not terms derived from the Companies Act 2006.

However, the term 'executive director' an a director who is an employee of the company, and who directs its d contrast, the term 'non-executive director' is used to refer to those who y-to-day running of the company. They instead act in an advisory functio

Executive Directors perform operatio ess functions such as managing people, looking after assets, hiring and contracts. Executive Directors will

be paid a salary, so they are protected are taxed through the PAYE (pay as you earn) system.

Non-executive directors do not get inv unning of the business. They use their experience and expertise to prov and objectivity, and they usually have a role in monitoring executive m be employed by the business but more likely they will be treated as sel tract for services. Non-executive directors usually work part-time, attenc end time on specific projects in a mentoring or strategic capacity.

Shadow – Under the Companies Ac ector is defined as "a person in accordance with whose directions or in f the company are accustomed to act." Therefore even a person not forr ard might be deemed a director if their role could be considered equival . Note that following on from the Small Business, Enterprise & Emplo expected that legislation will be introduced to put shadow directors und as individual directors.

Corporate – The Companies Act 2 to have corporate directors, but requires that at least one director is a ate director is subject to the same duties and sanctions as an individu is proposed going forward that legislation will be introduced (following terprise & Employment Bill 2014) to prohibit corporate directorships with It is therefore suggested that new companies think carefully before introc businesses think whether this is something that they should try to phase ater.

Associate – An associate director is e meaning of the Companies Act 2006. Generally the term is used to co rather than a directorial role. The letter appointing them should clearly s director, and they must not hold themselves out as directors in their dea

Alternate - A company's articles may ectors of the company to appoint an alternate to represent them when th meetings or otherwise to perform their duties as directors. Note that the Companies Act 2006 do not give directors the right to appoint alternate are silent on the matter, directors may not appoint alternates. A compan nended to provide for alternates if they are deemed to be likely to be nece

Our sub-folder on non-executive, alter ors has the documents to appoint these categories of directors in letter ar

Number of Directors and Sole Direc

It is common for small private compan ector, and sometimes that person will also be the only shareholder (calle siness').

The sole director must be a natural per any.

As stated above, it is important to reme pany is a distinct legal entity to its owner. The company can enter into c e. The fact that the company is a separate legal entity from its owner is at all the company's liabilities are the responsibility of the company - not hareholder(s).

The only exception is if a director of [illegible] bank or other creditor a personal guarantee to repay the company's deb[illegible]mes personally liable to repay the debt if the company is not able to.

Is a Sole Director permitted by the A[illegible]

A company can have a sole director w[illegible]y the Articles of Association. The 2006 Model Articles recognise this, by [illegible]mpany has only one director, and nothing in the articles requires it to hav[illegible]r, then the sole director may take decisions without regard to anything i[illegible] decision making by directors (in other words, the sole director can igno[illegible]rticles that refer to majorities and unanimous decisions of directors).

If the articles of association are base[illegible]es Act 1985), a minimum of two directors are required, and the articl[illegible]nded by a shareholders' special resolution (held in a general meeting c[illegible]o reduce that number to one, OR the company could adopt new articles[illegible]s the Companies Act 2006 Model Articles.

Other issues for Sole Directors

A sole director is subject to the same[illegible] any other director. However, the advantage of being a sole director is th[illegible]erate in a more flexible way than a board of directors. There is no need[illegible]s, or to obtain consensus in any decision making. Sole directors are no[illegible]tes of any meetings (although the *decisions* of a sole director must still b[illegible]s also a matter of good corporate governance to keep records of deci[illegible]*tes – resolution of sole director (CO.CA.MM.02))*.

First meeting of the sole director: [illegible]urchased 'off the shelf', the sole director will need to make a number of[illegible]t in order to tailor the company to his or her requirements. The issues a[illegible] any company purchased off-the-shelf (whether there is to be one direct[illegible]resignation of the first directors (if appropriate), appointment of company[illegible]to be one), changing the name, adopting new articles etc.

***Conflicts of interest*:** the Companies [illegible] prevalence of sole directors in its coverage of conflicts of interest. Sole[illegible] to declare their interest in any contract to themselves or to anyone els[illegible]

Where a limited company has only on[illegible]e sole director, the company can enter into a contract with that person,[illegible]ntract must be set out in a written memorandum or recorded in the minu[illegible]f director following the making of the contract.

***Executing documents**:* a disadvantag[illegible]r is that he or she cannot execute a document on behalf of the company[illegible] have his signature witnessed. A deed can also be validly executed by[illegible]resence of a witness (who also signs).

Employers' liability insurance: if a[illegible]ees, it is required under law to purchase employers' liability insurance[illegible]his rule is that if the company has

only one employee, who owns 50 per c d share capital, employers' liability insurance is not required.

An individual who works for the comp ounted as an employee for these purposes, even if they call themselves

Salary and dividends: a sole director lary drawn from the company will be subject to PAYE and NI contrib sonal allowances and minimum thresholds). Dividends are not subject t while to consult an accountant, to advise on the best way to structure pro nd salary.

Our sub-folder on Paying Dividends al lance and relevant documents on the paying out of dividends.

Appointment of a Director

On incorporation of a new company, th ry, if any) who have consented to act - and are named in the incorpo submitted to the Registrar - will automatically become the first director names must be entered into the Register of Directors (and secretaries). *ors (individuals) (CO.DAR.02)* and *Register of Directors' Residential Addre*

Subsequently, the methods of appoint ined by the company's articles of association, which should be consulted t. There are basically two ways to appoint a director of a company:

- appointment by the boar *oard Minutes – Appointment of Directors (CO.DAR.04)*); or
- appointment by the share re an ordinary resolution of the shareholders, to be pass g, *(See: Shareholders' Ordinary Resolution – Appointment o*

The appointment of a director must b nies House within 14 days using Form AP01 (for an individual) or Form entity). *(See: Companies House Forms – Appointment of a Director (CH*

Companies Incorporated prior to 1st

Unless they have adopted new artic panies incorporated prior to 1st October 2009 will have articles based o

Table A requires the directors to retire al General Meeting under articles 73-80. This process is outside the scop

New Director - Checklist of Practica

1.	Organise approval of necess ntments by the board of directors (or by the sharehold
2.	Prepare a service contract fo w).

3.	File form AP01/AP02 with Companies House within 14 days of the appointment.
4.	Update the Register of Directors.
5.	Amend the bank mandate(s), if appropriate.
6.	Check the directors' and officers' insurance policy covers new appointees.

Directors' Service Contracts

Being a director does not, of itself, make that person an employee of the company. A directorship is an office, not necessarily an employment. If, however, the company enters into a service contract with the director, the terms of which make the director an employee, then the director becomes an employee. Many company directors are in this position. In these circumstances, relevant aspects of employment law (including statutory protection as to unfair dismissal and redundancy) apply in addition to the law relating to directors.

Most executive directors will be employees of the company however most non-executive directors will not. Non-executives will have a contract for services which is *not* an employment contract.

Simply-docs offers four Director's Service Contracts. There are two fixed salary contracts (one with 'payment in lieu of notice' or 'PILON' provisions, and one without PILON provisions), and there are two contracts containing bonus share option provisions (again one with and one without PILON provisions). These are intended to be used by executive directors who are employed. See *Directors' Service Contracts*.

Duration of Directors' Service Contracts

Under section 188 of the Companies Act 2006, Directors' Service Contracts with a guaranteed term, which is (or may be) longer than 2 years, must be approved in advance by an ordinary resolution of the shareholders of the company.

Determining the length of the guaranteed period is subject to complex rules. The guaranteed term of a director's employment is either:

(a) the period during which the director's employment continues (whether under the original agreement or a new agreement pursuant to the original agreement), and it cannot be terminated by the company by notice, or it can be terminated only in specified circumstances, or

(b) in the case of employment which can be terminated by the company by notice, the guaranteed term is the period of notice required to be given.

If the employment has a period within paragraph (a) and a period within paragraph (b), the aggregate of those periods will be the guaranteed term.

If the company enters into a further service contract more than six months before the end of the guaranteed term of a director's employment (except where the original contract gives the other

party that right), then the unexpired per m from the original contract will be added to the guaranteed term of the

How to Obtain Shareholder Approva e Contracts

Where the proposed director's contra ed for longer than two years, a general meeting must be convened (o ulated) to enable shareholders to vote on the proposed contract. Prior ether with the written resolution, shareholders must be provided with out the terms of the proposed contract.

Inspection of Directors' Service Cor

A copy of every Director's Service Cor spection with the company under section 228 of the Companies Act 200 's registered office or at the SAIL ('single alternative inspection location')

Shareholders are entitled to request a summary of its terms.

The copies must be retained by the cor at least one year following the date of termination or expiry of the Serv

Tax Status of Company Directors

HMRC requires directors to complete irectors of limited companies are classed as 'office holders' for the purp l Insurance Contributions (NICs). An office holder's earnings are automa as employment income and there is also a liability for Class 1 NICs.
The rules for calculating NICs for dire ose for other employees. Class 1 employee and employer NICs must st earns over the primary threshold, but unlike employees, directors are tax . This means that their NICs have to be recalculated every time they are al earnings to date. There is more detail in relation to this on HMRC's web

Termination of Appointment of Direc

General Position

A director who is a full time employee o different legal roles. Firstly he is a senior employee of the company. Th ip between him and the company will be governed by his service agreem loyment contract).

Secondly, as a director, he is an office ppointment in this capacity will be governed by the articles of associatio esponsibilities as director will be governed by the Companies Act 200 ce agreement. The statutory and fiduciary duties imposed on a director b d by normal employees.

Termination of employment: if the … on a permanent (open-ended) agreement, the options for terminat… y are for any other employee. Sometimes the service agreement will … enabling termination (for example, a clause stating that either party can …). However, notwithstanding such provisions, if the director has been … n one year (two years for new employees who start work with the cor… ril 2012), the company must have a fair reason for dismissal, and must ac… claim for unfair dismissal.

Even if the director has been employe… ment, the expiry of that agreement without renewal constitutes a dismis… missal and statutory redundancy purposes. Moreover, if a fixed term ag… ermination' provision, it cannot be terminated until the end of its term, and… urport to terminate the agreement, the employer will become liable for loss… until the end of the fixed term.

Automatic Termination of Directorship

The Model Articles (Article 18) and … pecify circumstances in which a director's appointment will terminate au…

These circumstances include:

- disqualification from being a…
- bankruptcy;
- a composition being made … rs;
- admission to hospital in pu… n for treatment under the Mental Health Act 1983 (Table A o…
- where a registered medica… ating that person gives a written opinion to the company st… as become physically or mentally incapable of acting as a d… so for more than three months (Model Articles only);
- a court makes an order b… 's mental health which wholly or partly prevents that person … ng any powers or rights which that person would otherwise hav…
- the director has been abse… or six consecutive months without permission of the directors … e that his office be vacated (Table A only); or
- the director resigns.

Resignation

A director may tender his resignation, … r, in accordance with the terms of his service agreement or employment … ng should be convened to accept the resignation *(See: Board Minute – R… O.DAR.07)).*

The director's letter of resignation sho… that the director has no claim for compensation for loss of office agai… *Director's Letter of Resignation (CO.DAR.08)).* The letter should be ex… re a settlement has been agreed for loss of office, this should be properl… ment Agreement.

The termination of a director's appoin d at Companies House within 14 days using Form TM01, *(See: Compar ination of Appointment of Director (CO.DAR.09)).*

Procedure for Replacement/Removal o holders

By passing an ordinary resolution at a areholders can remove a director *before* the expiry of his term of office. T nce Note deals with the procedure found in Sections 168 and 169 of the C

This shareholders' right takes precede e director's service agreement, or the company's Articles, which endeavo 's removal in this way.

The shareholders' ordinary resolution which means that notice must be given to both the director concerned a least **28 days** before the general meeting where the shareholders will vo tion.

A shareholders' written resolution cann irector from office.

A shareholder or shareholders wishin should follow the steps laid out below. This mechanism is most often of directors does not support the challenge to a director. The shareholo a director will request a general meeting of the shareholders, which will raft resolution to remove / replace the director.

The board is then obliged to convene hich the resolution to remove the director will be put to a vote of the shar

This method can be used to remove he articles of association do not otherwise provide for the removal of or by ordinary resolution of the shareholders.

Step 1 - Shareholders require the dir g

The directors are required to call a any has received requests from shareholders with voting rights holding -up capital (unless it has been 12 months since the last meeting where s valent right to circulate resolutions in advance, in which case the required

This means that if the shareholder w ector does not hold the required percentage of the paid-up capital of find other shareholders who are prepared to join the request until the re ched.

The notice:

- must state the general natu dealt with at the meeting;
- should include the text of to remove the director which is intended to be moved at the
- may be in hard copy form o
- must be authenticated by th mitting it.

(See: Shareholder Notice – Replaceme tor (CO.DAR.10)).

Step 2 - The directors must hold a b

The directors must hold a board meeti holders' request and the proposed ordinary resolution(s), and to call a g the ordinary resolution(s) will be moved. If the directors fail to call a g shareholders who requested the meeting may hold one at the expense ed that it takes place within three months of the date when the directors equirement to hold it. *(See: Board Minutes – Replacement/Removal of Di rs (CO.CA.DIR.07))*.

Step 3 – A copy of the sharehold nt immediately to the director concerned

A copy of the shareholders' notice mus r concerned immediately because he or she will be heard eeting, regardless of whether the director is a shareholder or not.

The director concerned may also make ng to the company. Provided that they are a reasonable length, the dire uest that the shareholders of the company are notified of the representa entations are received too late, the company must send a copy of the rep hareholder to whom notice of the general meeting is sent. If the 'Specia eting' has already been sent out, the company must send out the statem presentations to the shareholders separately.

Step 4 - Special notice must be giver

The shareholders should receive the te ary resolution(s) at the same time as they receive notice of the meeting in advance of the meeting date. *(See: Special Notice of General Meetin val of a Director (CO.DAR.11))*.

Step 5 - General meeting of the com

A general meeting of the shareholders ordinary resolution(s).

As specified in step 3 above, the direc eard at the meeting. If a copy of the director's representations has not b cause they were received too late or because the company failed to do quire that the representations are read out at the meeting (in addition to h rally).

If the director is removed at the genera r entitlement to compensation and damages is not affected simply becau moved in this way. (*See: General Meeting Minutes – Replacement or Re DAR.12))*.

Step 6 - The board of directors must eeting

Following the general meeting, the dire nd board meeting to acknowledge that the ordinary resolution has been p e company secretary to make the necessary filings at Companies House.

Where a director is appointed at the g as been convened to remove an existing director, he or she is treated director on the day on which the

director he or she replaced was last a[illegible]he purposes of determining when he or she is due to retire).

If a director is not appointed to replac[illegible]at the general meeting, then the vacancy can be filled as a casual vacar[illegible] sole director is removed, then he or she must also be replaced at the s[illegible]o comply with the Companies Act 2006 requirement that all private comp[illegible] one director. Sole directors must be natural persons, not corporations.

Step 7 – Filing with Companies Hous[illegible]

1. Form TM01, which records the [illegible]r removed at the general meeting and (if applicable) Form AP0[illegible]ement director must be sent to Companies House, along wi[illegible]nary resolutions passed at the shareholder's meeting. (*See: [illegible]ouse - Removal/Replacement of Director (CO.CA.DIR.22)).*