

## Briefing Note

Directors

---

### Types of Director

#### Who is a director?

The Companies Act 2006 (Act) does not define the term "director", stating only that in companies legislation "director" includes any person occupying the position of director, by whatever name called. This is the same definition as was under the Companies Act 1985 which was interpreted by the courts in two conflicting ways:

- To include only persons duly appointed, whether referred to as directors or by another title such as "managers" or "governors".
- To include anyone, whether or not duly appointed, who controls a company's affairs.

Therefore, the meaning varies depending on the context in which the term is used.

#### Shadow directors

Many of the statutory responsibilities and liabilities that apply to directors apply equally to shadow directors (see our Briefing Note: Directors' Duties and Liabilities). This term is defined in section 251 of the Act as someone: "in accordance with whose directions or instructions the directors of a company are accustomed to act." However, in certain circumstances (set out in section 251(3) of the Act), a holding company will not be treated as a shadow director of its subsidiaries by reason only that the directors of those subsidiaries are accustomed to act in accordance with its directions or instructions.

#### Shadow directors

In addition to their duties as board members, executive directors carry out executive functions in the Company, usually under contracts of employment, and will have rights and duties as employees of the Company which are completely separate from those arising from their position as a director of the Company.

## Non-executive directors

Non-executive directors have the same duties and responsibilities as executive directors, but non-executive directors are not employees of the Company and may not have the same involvement in the Company's day-to-day affairs.

## Alternate directors

If the articles of association of the Company permit a director to appoint an alternate to carry out his duties this does not relieve the appointing director of his responsibilities to the Company as a director. However, an alternate director is personally responsible for his own actions as a director while performing the functions of his appointor.

## Nominee directors

This term is often used to describe a director appointed to the board by a particular shareholder or group of shareholders, or by a particular creditor. Although such directors are appointed in order to represent and safeguard the interests of their appointors, like all other directors they must, as a matter of law, act independently of their appointors in the way they consider would be most likely to promote the success of the company for the benefit of its members as a whole. In particular, a nominee director must keep confidential all information which comes to his knowledge through his position as a director. A nominee director cannot, therefore, pass on such information to his appointor without being in breach of his obligations of confidence. However, the board of directors of a company can, having considered all relevant information, consent to the disclosure of confidential information by a nominee director to his appointor. This consent should be given by formal resolution of the board (with the nominee director abstaining from voting) and the resolution should specify any conditions attaching to the consent, for instance, that the appointor will in turn keep information received from its nominee director confidential.

Please contact Turcan Connell's Business Law team for more information on directors and the various types of directorships.

Please note that this briefing note is intended as a short summary of directors' glossary. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

© Turcan Connell September 2013