

SINGAPORE INSTITUTE OF DIRECTORS

STATEMENT OF GOOD PRACTICE

APPOINTING ALTERNATE DIRECTORS

This Statement has been superseded by the Board Guide.

Introduction

An alternate director is generally a person who is appointed to attend Board meetings on behalf of a director of a company when the said principal director is otherwise unable to attend. For Singapore companies, Section 4(1) of the Companies Act defines a "director" to include alternate directors and they are therefore full directors under the law. Nevertheless, the right to appoint alternate directors would have to be provided for in the articles of association of the company. In the absence of such an express right in the articles, the directors may not be able to appoint alternates for themselves.

Rights and Powers of Alternate Directors

If a company has articles of association similar to Article 82 of the standard Table A articles found in the Fourth Schedule to the Companies Act, the alternate director who is appointed shall be entitled to notice of meetings of directors and to attend and vote at such meetings, and to exercise all the powers of the principal director in his place. Articles of association are commonly crafted quite widely to bestow upon the alternate director fairly broad powers, rights and authorities at meetings of directors that the principal director would have enjoyed, had the alternate director not been appointed.

The notice appointing the alternate director should set out and be clear as to the terms of the alternate's appointment, his powers, the circumstances they are to be exercised, any restrictions on his authority, the scope of his responsibilities and obligations and his remuneration and benefits.

Method of Appointment

Article 82 of Table A provides that the principal director may by notice in writing appoint any person (whether or not a shareholder of the company) to be his alternate, but the appointment requires the approval of the rest of the Board. Some articles do not require the Board to approve the appointment of the alternate and it is left to the principal director's discretion. The relevant article may also provide that the alternate may be one of the existing directors or that a person may not act as alternate director for more than one director of the company.

Term of Appointment

An alternate director continues in office either for a specific period, until he resigns, until his appointment is terminated by his principal director or until the appointment of the principal director is itself terminated. Once a principal director vacates his office, his alternate director automatically vacates his office as well.

If the principal director wishes to remove his alternate, the removal should be effected by written notice served upon the alternate, with a copy to the company, and otherwise in compliance with the articles of association. Some articles may provide for the Board to be able to remove the alternate from office by a resolution of the directors.

Alternate directors do not normally personally stand for re-election at Annual General Meetings. If the appointor is standing for re-election and is re-elected, the appointment of the alternate director would continue. It is recommended that any resolution put before shareholders for the re-election of a principal director disclose and make it clear (in the notice of general meeting or in the notes thereto) that the principal director has appointed an alternate, who will continue in office if the appointor is re-elected. The alternate director should also be given a full director's profile in the Annual Report similar to the other directors.

Remuneration of Alternate Directors

The alternate director is not usually entitled to receive any remuneration from the company, and the principal director should specify in his written notice appointing the alternate whether the alternate is entitled to a proportionate amount of the remuneration payable by the company to the principal director.

Role of Alternate Directors

The alternate director is viewed to be the alter ego of the principal director, and performs a function similar (to an extent) as that of a proxy at a general meeting. There is however a significant difference. The alternate director is a full director and officer of the company himself in the eyes of the law and owes the same fiduciary duties and is subject to the same liabilities to the company. Some articles make this clear by specifying that the alternate director shall alone be responsible to the company for his own acts and defaults and shall not be deemed to be the agent for his appointor.

Since the alternate director is a fiduciary to the company, he will not find refuge from his duties at law by following the directions or instructions of his appointor indiscriminately. Alternate directors are obliged to exercise independent judgement in the carrying out of their duties and should not subordinate their judgements to that of their appointors. Alternate directors that are appointed should ensure that they are fully apprised and made aware of the background and history to the matters laid before the Board as they face and grapple with these issues in their personal capacity while discharging their fiduciary and other duties to the company.

Alternate Directors to Independent Directors

Given that the alternate director is appointed to be the alter ego of the principal director, he should in theory carry out the same role as that of his appointor. If, for example, the principal director is an independent director for the purposes of the Code of Corporate Governance, the alternate director that he appoints to attend Board meetings in his absence should similarly be independent under the Code.

Generally, since independent directors are called upon to exercise objective judgement on corporate affairs independently from management and are chosen for their specific competence, expertise and experience, one would not ordinarily expect independent directors to have to appoint alternates to stand in for them. However, there could be certain special circumstances that justify the appointment of

an alternate director for an independent director and it should be incumbent on the Board to ensure that these reasons and the credentials of the alternate are sufficiently explained and disclosed to shareholders and the investing public when the appointment is made (and also referred to in the Corporate Governance Report that is contained in the Annual Report).

The Nominating Committee can assist the Board to review the reasons for such an appointment and to recommend the appointment of the alternate to the Board whenever appropriate. It may well be that the alternate is a potential candidate being assessed for appointment to the Board in his own right, is being prepared to assume the Board seat outright or is acquainting himself with the workings of the Board and the company concerned for succession purposes.

More usually, an alternate may be considered where the principal director is expected to be away for a specific period for study leave, medical leave, overseas commitments or other reasons, but intends to return to resume his duties in due course. If the absence of the principal director is permanent or for a significantly extended period of time, the absent director should consider stepping down and allowing the Nominating Committee and the Board to appoint a replacement director, rather than have an alternate take his place on a prolonged basis. If a principal director is not able to commit and give sufficient time and attention to the affairs of his company, appointing an alternate is no substitute to the principal director's obligation to contribute effectively and demonstrate commitment to his role as director.

Each Board to Adopt Guidelines

For transparency, the Nominating Committee and the Board should consider adopting clear and specific policies and guidelines for the appointment of alternate directors for each individual company. These express policies and guidelines may well differ from company to company as circumstances require. Guidance can, for example, be given on whether there should be a limit on the period of time that an alternate can be allowed to hold his appointment, whether there should be a limit to the number of directors that can have alternates on the Board at any one time and whether the alternate is permitted to attend Board meetings when the principal director is present. The alternate director should in all cases be able to add value to the Board in his own capacity.

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