Guidance Note: Appe

This Guidance Note provides an overlooks in particular at the types of dire appointing and removing a director from

Introduction

A company acts through two groups of general role of directors is to manage to company is a separate legal entity, it opurpose, usually its directors.

The directors are basically the agents its day to day affairs. Directors have t company but not necessarily employ directors is critical to its long term su understood by any new business.

Types of Directors

All companies are required to have at is because companies as "artificial" through other persons. A company's d the affairs of a company on behalf companies with only one or two share the same person). The law does make owner of a company and a director wh

The term "director" is not actually defin term, "director", includes, "any perso called". Therefore any person exercisi role of a director in relation to a compa director) will be regarded as a director,

Whilst the Companies Act 2006 doedirector, here are some of the more co

Executive and Non-executive – 'Exe from the Companies Act 2006.

However, the term 'executive director' of the company, and who directs its director' is used to refer to those who They instead act in an advisory functio

Executive Directors perform operatio people, looking after assets, hiring and be paid a salary, so they are protected as you earn) system.

ation of Directors

ctor within a private company and ctors), as well as the process for

ers and its board of directors. The fit of the shareholders. Although a through those authorised for that

ed by the shareholders to manage mpany and are the officers of the he effectiveness of a company's air appointment and role must be

lic company must have two). This themselves – they need to act to whom the law looks to manage the case even for small private director and shareholder is in fact e interests of a shareholder as the the company's behalf.

2006. Section 250 states that the n of director by whatever name ions of a director and fulfilling the ally appointed and registered as a

ntiate between different types of of directors:-

e' directors are not terms derived

an a director who is an employee contrast, the term 'non-executive ay-to-day running of the company.

ess functions such as managing contracts. Executive Directors will are taxed through the PAYE (pay Non-executive directors do not get investible their experience and expertise to prophave a role in monitoring executive memore likely they will be treated as sedirectors usually work part-time, attended to the memoring or strategic capacity.

Shadow – Under the Companies A accordance with whose directions or in act." Therefore even a person not for their role could be considered equivale of the Small Business, Enterprise & E under the same legal duties as forma 2006), "... where and to the extent shadow director has been amended sacts in accordance with instructions function conferred by or under legislation."

Corporate –The SBEE proposes to be will be amended by the SBEE and recopersons and the appointment of corporate directors made after Octobe corporate directors will need to take syear transition period during which to o

However under the SBEE, the Secreta setting out exceptions to the general exceptions are currently the subject of updated in due course setting out the however, it is perceived that there will forward. It is recommended that any remove them well in advance of Octob

Associate – An associate director is 2006. Generally the term is used to co letter appointing them should clearly themselves out as directors in their deals.

Alternate - A company's articles may an alternate to represent them when t their duties as directors. Note that the directors the right to appoint alternate may not appoint alternates. A compar they are deemed to be likely to be necessarily

Our sub-folder on non-executive, alternatives categories of directors in letter a

unning of the business. They use and objectivity, and they usually be employed by the business but tract for services. Non-executive pend time on specific projects in a

ector is defined as "a person in of the company are accustomed to pard might be deemed a director if lote that following the introduction BEE"), shadow directors are now (as set out in the Companies Act lying." Further, the definition of a be a shadow director if the board that person in the exercise of a

herefore the Companies Act 2006 2016 all directors must be natural prohibited. Any appointment of void and companies with existing the SBEE grants companies a one e removal by October 2017).

en the power to make regulations tors must be individuals. These on and this Guidance Note will be are known. For SME businesses keeping corporate directors going corporate directors steps to

e meaning of the Companies Act rather than a directorial role. The director, and they must not hold

rectors of the company to appoint meetings or otherwise to perform Companies Act 2006 do not give are silent on the matter, directors nended to provide for alternates if

ors has the documents to appoint

Number of Directors and Sole Direct

It is common for small private compar will also be the only shareholder (called

The sole director must be a natural per

As stated above, it is important to rem owner. The company can enter into a separate legal entity from its owner is the responsibility of the company - not

The only exception is if a director of guarantee to repay the company's deb debt if the company is not able to.

Is a Sole Director permitted by the A

A company can have a sole director vector 2006 Model Articles recognise this, by nothing in the articles requires it to hat decisions without regard to anything other words, the sole director can ignounanimous decisions of directors).

If the articles of association are base directors are required, and the articl resolution (held in a general meeting of the company could adopt new articles Articles.

Other issues for Sole Directors

A sole director is subject to the same advantage of being a sole director is the board of directors. There is no need decision making. Sole directors are not decisions of a sole director must still be governance to keep records of decision.

First meeting of the sole director: director will need to make a number of his or her requirements. The issues a shelf (whether there is to be one direct appropriate), appointment of compan adopting new articles etc.

Conflicts of interest: the Companies coverage of conflicts of interest. Sol contract to themselves or to anyone els

ector, and sometimes that person siness').

any.

pany is a distinct legal entity to its e. The fact that the company is a nat all the company's liabilities are hareholder(s).

pank or other creditor a personal mes personally liable to repay the

y the Articles of Association. The mpany has only one director, and or, then the sole director may take decision making by directors (in articles that refer to majorities and

ies Act 1985), a minimum of two nded by a shareholders' special o reduce that number to one, OR s the Companies Act 2006 Model

any other director. However, the erate in a more flexible way than a s, or to obtain consensus in any tes of any meetings (although the is also a matter of good corporate tes - resolution of sole director

urchased 'off the shelf', the sole t in order to tailor the company to any company purchased off-theresignation of the first directors (if to be one), changing the name,

prevalence of sole directors in its to declare their interest in any

Where a limited company has only on enter into a contract with that person, memorandum or recorded in the minuthe contract.

Executing documents: a disadvantage a document on behalf of the company deed can also be validly executed by signs).

Employers' liability insurance: if a purchase employers' liability insurance only one employee, who owns 50 per of insurance is not required.

An individual who works for the comp purposes, even if they call themselves

Salary and dividends: a sole director be subject to PAYE and NI contripersholds). Dividends are not subject advise on the best way to structure pro-

Our sub-folder on <u>Paying Dividends</u> a the paying out of dividends.

Appointment of a Director

On incorporation of a new company, to act - and are named in the incorporautomatically become the first director Register of Directors (and secretaries) Register of Directors' Residential Address of the company of th

Subsequently, the methods of appoint association, which should be consulted appoint a director of a company:

- appointment by the boar <u>Directors (CO.DAR.04)</u>); or
- appointment by the share shareholders, to be pass Resolution – Appointment

The appointment of a director must I Form AP01 (for an individual) or Form Forms – Appointment of a Director abolition of corporate directors, Form A

ne sole director, the company can attract must be set out in a written of director following the making of

or is that he or she cannot execute have his signature witnessed. A presence of a witness (who also

ees, it is required under law to his rule is that if the company has d share capital, employers' liability

ounted as an employee for these

lary drawn from the company will sonal allowances and minimum while to consult an accountant, to had salary.

dance and relevant documents on

ry, if any) who have consented to submitted to the Registrar - will names must be entered into the ors (individuals) (CO.DAR.02) and

ined by the company's articles of it. There are basically two ways to

<u> Roard Minutes – Appointment of</u>

re an ordinary resolution of the g, (See: <u>Shareholders' Ordinary</u> .

nies House within 14 days using entity). (See: Companies House Note however with the proposed ant in due course.

Directors' date of birth

The SBEE as of October 2015 has end a director's birth when registering on visible to those searching. Companies of birth of directors as and when they a

This change has been introduced by retrospective in effect. However comp of a relevant date of birth will not be o company registers on the central registable to do as of June 2016 also as par

Companies Incorporated prior to 1st

Unless they have adopted new articles based of the control of the

Table A requires the directors to retire 73-80. This process is outside the score

New Director - Checklist of Practical

1.	Organise approval of necess directors (or by the sharehold
2.	Prepare a service contract for
3.	File form AP01/AP02 with Co
4.	Update the Register of Direc
5.	Amend the bank mandate(s)
6.	Check the directors' and office

Directors' Service Contracts

Being a director does not, of itself, mal is an office, not necessarily an empl contract with the director, the terms of becomes an employee. Many compa relevant aspects of employment law redundancy) apply in addition to the lay

Most executive directors will be en directors will not. Non-executives will contract.

mpanies House to omit the day of at only the month and the year is to send the Registrar the full date

ombat potential fraud, but it is not all be aware that the day element ction if companies opt to hold their apanies House, which they will be

npanies incorporated prior to 1st

al General Meeting under articles

w).

4 days of the appointment.

vers new appointees.

ee of the company. A directorship e company enters into a service or an employee, then the director position. In these circumstances, ection as to unfair dismissal and

ny however most non-executive ices which is not an employment

Simply-docs offers four Director's Ser with 'payment in lieu of notice' or 'PII there are two contracts containing bon PILON provisions). These are intended Directors' Service Contracts.

Duration of Directors' Service Contr

Under section 188 of the Companies term, which is (or may be) longer that resolution of the shareholders of the companies

Determining the length of the guaran term of a director's employment is either

- (a) the period during which to original agreement or a not cannot be terminated by specified circumstances, or
- (b) in the case of employmen guaranteed term is the per

If the employment has a period within aggregate of those periods will be the

If the company enters into a further ser guaranteed term of a director's employ party that right), then the unexpired pe be added to the guaranteed term of the

How to Obtain Shareholder Approva

Where the proposed director's contrageneral meeting must be convened (o vote on the proposed contract. Prior shareholders must be provided with contract.

Inspection of Directors' Service Con

A copy of every Director's Service Co section 228 of the Companies Act 200 ('single alternative inspection location')

Shareholders are entitled to request a

The copies must be retained by the co date of termination or expiry of the Ser re two fixed salary contracts (one e without PILON provisions), and is (again one with and one without directors who are employed. See

vice Contracts with a guaranteed roved in advance by an ordinary

complex rules. The guaranteed

nt continues (whether under the to the original agreement), and it or it can be terminated only in

ed by the company by notice, the period of the period of the company by notice, and the company by notice, the company by notice, and the company

d within paragraph (b), the

six months before the end of the original contract gives the other m from the original contract will

Contracts

ed for longer than two years, a culated) to enable shareholders to ether with the written resolution, out the terms of the proposed

ispection with the company under 's registered office or at the SAIL

summary of its terms.

at least one year following the

Tax Status of Company Directors

HMRC requires directors to complete classed as 'office holders' for the purp An office holder's earnings are automatical is also a liability for Class 1 NICs.

The rules for calculating NICs for direction and employer NICs must structure to be recalculated every time they are detail in relation to this on HMRC's well

Director Disputes regarding appoint

There are always a small number of appointment being registered at Com and/or he or she never consented to be

The SBEE as of October 2015 has d House procedure for verifying a director

The procedure as set out in sections 1

- a) When a company notifies Com "statement of truth" to confirm includes on initial registration or
- Upon receipt of the notification them that their appointment ha to information regarding their le
- The new director can apply to the public register if they did no
- d) If a company fails to provide O consent to act as a director, O from the public register.

In practice this means for newly appracted by Companies House to the relectronic) that the person has consent

Companies are also required to agr procedure of providing a signature o filings.

As part of this, Companies House will that their appointment has been filed duties.

lirectors of limited companies are al Insurance Contributions (NICs). as employment income and there

bse for other employees. Class 1 earns over the primary threshold, b. This means that their NICs have al earnings to date. There is more

contends that, despite his or her ne was never properly appointed secretary).

felt that the previous Companies dequate.

BEE provide as follows:

pointment it is required to make a sented to their appointment. This

write to the new director to notify public register and will direct them

emoval of their appointment from a director.

ficient evidence that a person did move details of that appointment

cretaries, a statement has been d incorporation forms (paper and t capacity.

his replaces the consent to act onal authentication on electronic

ted directors to make them aware nd explain their statutory general

In addition to this the SBEE has mad details removed from the register. As which any person appearing on the premoved if they did not consent to act.

Termination of Appointment of Direct

General Position

A director who is a full time employee a senior employee of the company. The will be governed by his service agreem

Secondly, as a director, he is an office governed by the articles of association governed by the Companies Act 200 fiduciary duties imposed on a director by

Termination of employment: if the agreement, the options for terminate Sometimes the service agreement will a clause stating that either party can provisions, if the director has been employees who start work with the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and must according to the coral fair reason for dismissal, and the coral fair reason fair rea

Even if the director has been employe without renewal constitutes a dismis purposes. Moreover, if a fixed term agterminated until the end of its term, and the employer will become liable for loss

Automatic Termination of Directors

The Model Articles (Article 18) and director's appointment will terminate at

These circumstances include:

- disqualification from being
- bankruptcy;
- a composition being made
- admission to hospital in pt Health Act 1983 (Table A c
- where a registered medic opinion to the company st incapable of acting as a (Model Articles only);
- a court makes an order be partly prevents that person person would otherwise ha

or incorrectly appointed directors' EE creates a new mechanism by tor can apply to have their name

o different legal roles. Firstly he is hip between him and the company ployment contract).

ppointment in this capacity will be esponsibilities as director will be ce agreement. The statutory and by normal employees.

on a permanent (open-ended) by are for any other employee. enabling termination (for example,). However, notwithstanding such in one year (two years for new ril 2012), the company must have a claim for unfair dismissal.

nent, the expiry of that agreement nissal and statutory redundancy ermination' provision, it cannot be urport to terminate the agreement, until the end of the fixed term.

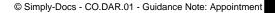
pecify circumstances in which a

prs;

on for treatment under the Mental

ating that person gives a written as become physically or mentally so for more than three months

i's mental health which wholly or ng any powers or rights which that



- the director has been abse permission of the directors A only); or
- the director resigns.

Resignation

A director may tender his resignation, his service agreement or employment the resignation (See: <u>Board Minute</u> – F

The director's letter of resignation sho compensation for loss of office agai (CO.DAR.08)). The letter should be e for loss of office, this should be proper

The termination of a director's appoin days using Form TM01, (See: Compa. (CO.DAR.09)).

Procedure for Replacement/Remova

By passing an ordinary resolution at a before the expiry of his term of office. found in Sections 168 and 169 of the O

This shareholders' right takes precede the company's Articles, which endeavo

The shareholders' ordinary resolution given to both the director concerned a meeting where the shareholders will vote the shareholders will vote the shareholders.

A shareholders' written resolution cann

A shareholder or shareholders wishir below. This mechanism is most often challenge to a director. The sharehol meeting of the shareholders, which wil the director.

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

This method can be used to remove otherwise provide for the removal of shareholders.

Step 1 - Shareholders require the di



or six consecutive months without e that his office be vacated (Table

or, in accordance with the terms of any should be convened to accept CO.DAR.07)).

that the director has no claim for Director's Letter of Resignation are a settlement has been agreed ment Agreement.

d at Companies House within 14 ination of Appointment of Director

<u>hareholders</u>

areholders can remove a director nce Note deals with the procedure

e director's service agreement, or 's removal in this way.

which means that notice must be least **28 days** before the general tion.

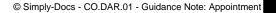
director from office.

should follow the steps laid out of directors does not support the a director will request a general raft resolution to remove / replace

hich the resolution to remove the

the articles of association do not or by ordinary resolution of the





The directors are required to call a shareholders with voting rights holding months since the last meeting where s in advance, in which case the required

This means that if the shareholder w percentage of the paid-up capital of prepared to join the request until the re

The notice:

- must state the general natu
- should include the text of intended to be moved at th
- may be in hard copy form of
- must be authenticated by t

(See: Shareholder Notice - Replaceme

Step 2 - The directors must hold a b

The directors must hold a board meeti ordinary resolution(s), and to call a g moved. If the directors fail to call a g meeting may hold one at the expense months of the date when the directors *Minutes – Replacement/Removal of Di*

Step 3 – A copy of the sharehold concerned

A copy of the shareholders' notice muhe or she will be entitled to be heard director is a shareholder or not.

The director concerned may also mak they are a reasonable length, the dire company are notified of the representa company must send a copy of the re general meeting is sent. If the 'Specia the company must send out the staten separately.

Step 4 - Special notice must be give

The shareholders should receive the to as they receive notice of the meeting (See: Special Notice of General Meeting)

Step 5 - General meeting of the com

A general meeting of the shareholders

pany has received requests from 1-up capital (unless it has been 12 valent right to circulate resolutions

rector does not hold the required find other shareholders who are ched.

dealt with at the meeting;

to remove the director which is

mitting it.

<u>:tor</u> (CO.DAR.10)).

holders' request and the proposed the ordinary resolution(s) will be shareholders who requested the ed that it takes place within three equirement to hold it. (See: Board rs (CO.CA.DIR.07)).

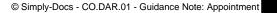
nt immediately to the director

r concerned immediately because eeting, regardless of whether the

ng to the company. Provided that uest that the shareholders of the entations are received too late, the hareholder to whom notice of the eeting' has already been sent out, presentations to the shareholders

ary resolution(s) at the same time in advance of the meeting date.
val of a Director (CO.DAR.11)).

ordinary resolution(s).



As specified in step 3 above, the director's representations has not I or because the company failed to do read out at the meeting (in addition to I

If the director is removed at the general damages is not affected simply becaused the Meeting Minutes – Replacement or Re

Step 6 - The board of directors must

Following the general meeting, the dir that the ordinary resolution has been processary filings at Companies House

Where a director is appointed at the existing director, he or she is treated director he or she replaced was last a he or she is due to retire).

If a director is not appointed to repla vacancy can be filled as a casual vaca or she must also be replaced at the s 2006 requirement that all private comp be natural persons, not corporations.

Step 7 – Filing with Companies Hou

1. Form TM01, which records the and (if applicable) Form AP0 Companies House, along w shareholder's meeting. (See: <u>Director</u> (CO.CA.DIR.22)).

leard at the meeting. If a copy of cause they were received too late quire that the representations are orally).

r entitlement to compensation and noved in this way. (See: General DAR.12)).

heeting

nd board meeting to acknowledge e company secretary to make the

as been convened to remove an director on the day on which the he purposes of determining when

at the general meeting, then the sole director is removed, then he comply with the Companies Act one director. Sole directors must

or removed at the general meeting rement director must be sent to nary resolutions passed at the louse - Removal/Replacement of

