

Companies Law: Roles and responsibilities of directors in joint stock companies

Board Leadership Centre

On 19 January 2023, the new Companies Law was issued by the Ministry of Commerce, becoming the primary document for corporate governance at joint stock companies. In this document, we present some of the key clauses of the Companies Law for board members to be aware of, including those related to process of establishing, appointing and terminating board members, the entrusted and specific duties of care as part of the board members' responsibilities, the financial oversight and disclosure requirements, delegating specific tasks as part of the assignment of power, and how to avoid conflict of interest for board members. While non-exhaustive, these highlight the critical aspects of roles, responsibilities and potential liabilities.

Establishing, appointing and terminating a board of directors

A joint stock company is governed by a board of directors composed of at least three members. Shareholders nominate and elect board members who may also self-nominate. This process is outlined in the company's articles of association and/or bylaws, adhering to the Companies Law. The articles also define the board's term, capped at four years, with the possibility of re-election unless otherwise stipulated.

The articles address board member termination, allowing for board-initiated removal. However, the general assembly can override this, even if the articles specify otherwise. In such cases, the general assembly elects a new board or replacements for removed members.

Before its term expires, the board convenes the general assembly to elect a new board. If an election cannot be held, the current board continues its duties until a new board is elected, but for no longer than four months.

Upon resignation, the board chair and members call a general assembly meeting to elect a new board. Their resignation takes effect upon election of the new board, but for no longer than four months.

Individual board members may resign by submitting written notice to the chair. The chair's resignation is submitted to board members and the secretary. In both cases, the resignation takes effect on the date specified in the notice.

Unless the articles of association and/or bylaws provide otherwise, when a board member position becomes vacant due to death or resignation, and if the minimum quorum for board meetings is still met, the board may appoint a qualified individual with relevant expertise to fill the temporary vacancy. This appointment is reported to the Commercial Register and, if the company is listed, the Capital Markets Authority (CMA) within fifteen days and submitted to the general assembly at its first meeting. The appointed member completes the predecessor's term.

If the number of board members falls below the quorum requirement, the remaining members must convene a general assembly meeting within 60 days to elect the necessary number of members.

If, in accordance with paragraphs 1, 2, or 5 of the new Companies Law, no new board is elected or the required number of members is not met, any interested party may petition the competent judicial authority. The court may appoint qualified individuals with expertise to oversee the company's management and call a general assembly within 90 days to elect a new board or appoint the required number of members. Alternatively, the court may dissolve the company.

The general assembly, upon recommendation of the board of directors, may terminate the membership of any member who fails to attend three consecutive meetings or five non-consecutive meetings without an acceptable excuse.

Duties of care

The board of directors shall convene at least four times annually, as called for by the chairman, as stipulated in the company's articles of association and/or bylaws. Upon written request by a board member, the chairman shall convene a meeting to address specific matters.

A valid board meeting requires a quorum of at least half of the members, present in person or by proxy, unless the articles of association and/or bylaws specify a higher percentage.

In joint stock companies, board members cannot attend meetings or vote by proxy. An exception allows designating another board member as proxy, provided the articles of association and/or bylaws permit it and the designated member does not represent more than one board member.

Board decisions require a majority vote of attending members, present in person or by proxy. In the case of a tie vote, the chairman holds the casting vote, unless the articles of association and/or bylaws specify otherwise.

The board of directors determines the location of its meetings and may utilize technology to conduct them. Board decisions become effective on the date of issuance, unless the decision states a specific date or condition for taking effect. The board may issue urgent decisions by circulating them to all members unless a member requests a meeting. Voting for circulated decisions is by majority or per the articles. Such decisions are presented at the next board meeting and recorded in the minutes.

Financial oversight and disclosure

The new Companies Law requires immediate disclosure to the board of any direct or indirect interests board members have in company transactions or contracts. This disclosure will be documented in the meeting minutes. Board members with disclosed interests cannot vote on decisions concerning such transactions or contracts, either at the board or general assembly level. Failure to disclose interests can lead to contract invalidation, profit/benefit recovery, and liability for damages for the board member and potentially other board members if negligence is proven.

Board members who object to decisions and explicitly record their objection in the minutes are exempt from liability. Absence from the meeting does not exempt members from liability unless they were unaware of the decision or unable to object.

The board must notify the general assembly of transactions involving board member interests, accompanied by a special auditor report.

Joint stock companies cannot grant loans or act as guarantors for board members or their relatives. Any contracts in violation are void, and the company can seek compensation for damages. Banks, financing companies, and employee incentive programs are exempt from this provision.

The board can conclude loans, sell or pledge assets, or relieve debtors from liabilities unless restricted by the articles of association or general assembly decisions. Sale of company assets exceeding 50% of total assets requires general assembly approval, calculated from the first transaction within the previous twelve months.

The board prepares annual financial statements and a report on activities and financial position, including a dividend distribution proposal. The documents are provided to the auditor at least 45 days before the annual general assembly. The chairman and CEO, along with the CFO (if in function), sign the documents.

The board provides shareholders with the signed documents and the auditor's report (if any) at least 21 days before the annual general assembly.

If losses reach half the issued capital, the board must announce them and their recommendations within 60 days. Within 180 days, an extraordinary general assembly must be called to consider company continuation or dissolution.

Board members are entrusted with specific duties and responsibilities:

Acting within their mandate

Board members must operate within the authority granted to them by the company's bylaws and regulations.

Acting in the company's best interest

Decisions and actions should prioritize the company's success and well-being.

Independent decision-making

Board members must exercise independent judgment and avoid undue influence.

Due diligence

Board members are expected to apply reasonable care, skill, and diligence in fulfilling their duties.

Conflict of interest avoidance

Board members must avoid situations where personal interests conflict with their obligations to the company.

Disclosure of interests

Board members must disclose any direct or indirect interest they have in company transactions and contracts.

Violations of these restrictions may lead to:



Contract invalidation

Any contracts involving board member self-interest may be declared null and void.



Profit/benefit recovery

The board member may be required to forfeit any profits or benefits obtained from their violation.



Liability for damages

The board member, and potentially other board members if negligence is proven, may be held liable for any damages caused by their violation.

Reduction in capital requires a board statement outlining the reasons, company liabilities, and the decrease's impact on satisfying them. This statement includes the auditor's report and may be presented to shareholders for decisions made by circulation.

Assignment of power

The board of directors holds all powers necessary to manage the company and achieve its objectives, except for those reserved for the general assembly and without prejudice to its authority. The board may delegate specific tasks to one or more of its members or other individuals within its mandate.

The company is bound by the board's acts and representations, even if they exceed its authority, unless the other party acted in bad faith or knew about the exceeded authority.

At its first meeting, the board of directors of a joint stock company appoints a chairman from among its members and may appoint a managing director or CEO from its members or others. The company's articles of association and/or bylaws specify their powers and duties.

Listed joint stock companies must appoint a vice-chairman from among their members at the first meeting, whereas for unlisted companies appointment of a vice-chairman is optional.

The board appoints a CEO from among its members or others and determines their powers and remuneration if the articles of association and/or bylaws do not specify them.

The board also appoints a board secretary from among its members or others and determines their duties and remuneration if not defined in the articles of association and/or bylaws.

The board may remove the chairman, vice-chairman, managing director, CEO, or board secretary, but such removal does not terminate their board membership. The chairman represents the company before judicial and arbitration bodies and other parties. The articles of association may grant this power to the managing director or CEO, either of whom may delegate it further.

The chairman may, by written decision, delegate certain powers to other board members or individuals to carry out specific tasks, unless the articles of association restrict this. In the chairman's absence, the vice-chairman assumes their duties.

Conflict of interest

Board members cannot have any direct or indirect interest in company transactions or contracts without written authorization from shareholders, the general assembly, or their designated representatives. This restriction applies to personal interests and relationships with other individuals or entities involved in such transactions or contracts. Exceptions may be granted for public tenders, terms offered to third parties, and transactions without conflict of interest, but full disclosure and transparency are required.

Board members are prohibited from engaging in any business that competes with the company or its activities without prior authorization from shareholders, the general assembly, or their designated representatives. This includes businesses directly owned or controlled by the board member, as well as those in which they have a significant financial interest or influence.

Board members must not exploit the company's assets, information, or investment opportunities for their personal benefit, directly or indirectly. This includes using confidential information for personal gain, engaging in self-dealing, or using company resources for unauthorized purposes.

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Board Leadership Centre

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