Board of Directors

When the company is owner-managed i.e. the directors and the shareholders are the same people, then these individuals have total control. They can decide to do what they want as long as they remain within the law. They are accountable only to themselves. Many owner managed businesses work very informally and as the owner managers carry all the risk, there's often little transparency.

When the employees own the company, a more formal structure is appropriate. A proper board is constituted, and its responsibilities detailed in the company's legal documentation, specifically the Articles of Association, as well as the general legal responsibilities as set out in the Companies Act (2006).

It is the board's role to oversee the running of the company. The board will decide on the direction of the business, how resources are to be allocated, and monitor company performance as well as environmental factors which impact the company such as market, legislation, fiscal changes and so on.

Essentially, the board is concerned with answering the following three questions:

- Where are we now?
- Where do we want to be?
- How do we get there?

The board is collectively accountable to the shareholders for achieving company success. This does not mean that the board has to agree all the time; constructive debate and challenge is important. However, the board has to work effectively as a unit and aim to resolve any conflicts with a view to committing to an agreed outcome.

The board is a legal entity and as such is governed by the laws of the country and the company's own rules and policies. All directors have a responsibility to be aware of these rules and regulations. The following is a brief summary.

Purpose of the Board

The board of directors of a company is primarily responsible for:

- Determining the company's strategic objectives and policies
- Monitoring progress towards achieving the objectives
- Appointing senior management
- Accounting for the company's activities to the relevant parties, eg shareholders, authorities etc.

The managing director is responsible for the performance of the company, as dictated by the board's overall strategy. The managing director is answerable to the chair of the board. The board is accountable to the company's shareholders. In the case of most employee-owned companies, the trust is the main shareholder.

Responsibilities of Directors

The Companies Act (2006) sets out seven legal duties of a Director:

1. To act within powers in accordance with the company's constitution and to use these powers only for the purposes for which they were conferred. This means that a director must comply

2. To promote the success of the company for the benefit of its members as a whole (or, if relevant, other purposes specified in the constitution). The Director must have regard to all relevant matters, specifically:

- the likely consequences of any decision in the long term

- the interests of the company's employees

- the need to foster the company's business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment

- the desirability of the company maintaining a reputation for high standard business conduct; and the need to act fairly as between members of the company.

3. To exercise independent judgment. The director should not use their position to represent the views of others. This does not prevent directors from relying on advice, so long as they exercise their own judgment on whether to follow it.

4. To exercise reasonable care, skill and diligence.

5. To avoid conflicts of interest

6. Not to accept benefits from third parties. The company may authorize acceptance eg to enable a director to benefit from reasonable corporate hospitality

7. To declare any interest in a proposed transaction or arrangement. The declaration must be made before the transaction is entered into.

Confidentiality

The board of directors is charged with ensuring the success and sustainability of the company. The ability to have full, frank and honest discussion is paramount to the effective functioning of the board. Some discussions at board level are necessarily confidential.

Employee ownership brings an added obligation to ensure that the employee owners are informed and consulted appropriately.

This transparency can appear to conflict with the need for confidentiality and it is useful to agree what is confidential and what is able to be shared with colleagues and other stakeholders.

The general rule is that personally sensitive and commercially sensitive information must be assumed to be confidential unless expressly agreed otherwise.

Personally sensitive information : Information that pertains to an individual or to employees as a group. For example, performance concerns, promotion decisions, salary information, redundancy discussions are all issues that are deemed to be personally sensitive and should not be discussed outside of the boardroom.

Commercially sensitive information : Any information about the company's strategy, plans, performance or anything at all which might compromise the board's decision making or the company's position. For example, a downturn in company revenues might be temporary, which if leaked could undermine the confidence of customers or suppliers and thus endanger the company's ability to trade.

It is of the utmost importance that the board is clear on:

- What is sensitive information
- When any sensitive information can be communicated
- The most effective way to communicate that information, and who will be responsible for making that communication.

Any contravention of the Companies Act or the Company's Confidentiality Code may result in disciplinary action, removal from office of director, and in some cases, criminal proceedings.

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