

Governance: Three Top Tips

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Top tip # 1

Reflect on your legal structure

Your structure?

- ▶ Guarantee company
 - ▶ Unincorporated association
 - ▶ Statutory body
 - ▶ Charitable trust
 - ▶ Friendly Society
 - ▶ Industrial & Provident Society
 - ▶ Other
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Reflect?

If you are, or are thinking of becoming a guarantee company, look at the internal configuration of the company and consider the optimum use of it.



The Guarantee company

Members

(who own)

delegate to

Board

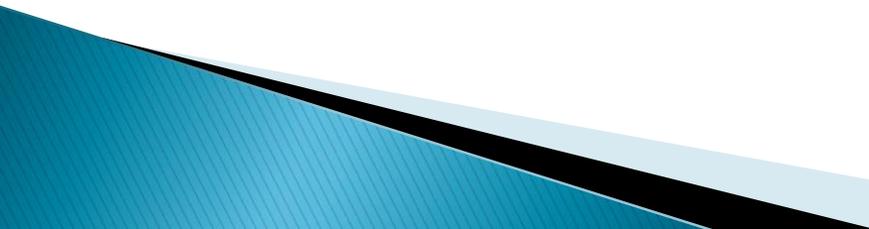
(which governs)

delegates to

Executive

(which manages)

Members' powers

- ▶ To control the constitution
 - ▶ To control the name
 - ▶ To elect directors (if constitution allows)
 - ▶ To give directions to the directors (if constitution allows)
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What the members cannot do...

Exercise the authority given to the directors in the constitution – to manage the business of the company



Different ways of using the structure

- ▶ Some companies have a natural membership;
 - ▶ in others the opportunity can be created;
 - ▶ for some it is unnecessary, or inappropriate, or even impossible
 - ▶ Some simply don't like it
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When the members and directors are different people:

- ▶ A structure that provides accountability
 - ▶ Debate – generation of ideas
 - ▶ A pool from which to draw directors
 - ▶ An opportunity to benefit from wisdom of ex-directors
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The question

- ▶ Should you consider creating or expanding your membership?
 - ▶ How do you decide?
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The answer

The answer lies in identifying the real stakeholders in the company and asking how best the board can account to them.



But where they are the same...

- ▶ Wear the two hats properly
 - ▶ Keep the registers correctly
 - ▶ Call meetings with required formality and document carefully.
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If you are an unincorporated association, now is the time to consider incorporating.....



Top Tip # 2

Review the Constitution (the Memorandum & Articles of Association)

After the Companies Act....

- ▶ Some things have changed: e.g. the company can have just one member; can avail of audit exemption
- ▶ It must change its name
- ▶ It is not obliged to change the M&A but it is really unwise not to do so.

Why?

- ▶ The Act has mandatory provisions which will apply: they should be stated in the constitution
- ▶ There are a substantial number default provisions which will apply unless *dis-applied* on changing the articles. They should be evaluated and the constitution tailored to suit.

Examples

- ▶ Where 2 or more people are put forward at an AGM for appointment as directors, unless there is a resolution to the contrary, they must be voted on individually [Mandatory, include]
- ▶ Any director can appoint another director (or with the approval of the majority of directors anyone else) to act as an alternate [Default –Disapply]
- ▶ Directors meetings can be held by conference call, subject to certain conditions [Adopt]

Top Tip # 3

Get a great company secretary!

The company secretary

- ▶ The role has changed – in law and in practice
- ▶ In law: the directors have a duty to ensure the person appointed has the skills necessary to discharge his or her duties
- ▶ The liability of the secretary has changed – now focused on the "statutory duties" related to the administration of the company

In practice....

- ▶ Increasingly recognised as a key role in the company and a bridge between the directors and the executive
 - ▶ The person who looks out for governance and keeps the decision-making on the right track
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The role

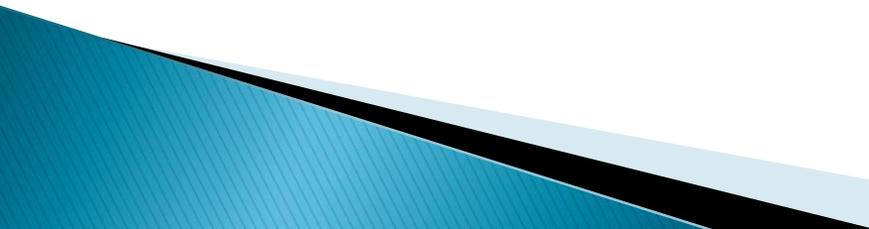
Overseeing the administration of the company, for example, by maintaining statutory books (including registers of members, directors and secretaries); organising board meetings and general meetings; preparing agendas and taking minutes.



But also...

- ▶ Guiding the board & chair on duties under law and relevant codes, and ensuring systems in place to facilitate compliance
- ▶ Monitoring changes in legal and regulatory environment
- ▶ Supporting the chair in ensuring the board functions efficiently
- ▶ Ensuring good information flows within the board and committees and between executive and board
- ▶ Facilitating induction of board members

Who to appoint?

- ▶ The CEO – not recommended
 - ▶ Another member of staff, reporting to the chairperson – possible tension
 - ▶ An external agency – possibly too impersonal
 - ▶ Train one of the directors – excellent
 - ▶ Recruit a person, as you would a director to act in that role only – best of all
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In conclusion

It's never been safer to be a board member!