

COMPANY DIRECTORS:  
ROLES AND DUTIES

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## P R E F A C E

THIS IS MY FIRST PROJECT PAPER AND I DO HOPE THAT THIS PROJECT PAPER WILL GIVE BENEFITS TO ALL LECTURES AND STUDENTS ON THEIR STUDIES IN COMPANY LAW. FOR THIS PROJECT PAPER I WOULD LIKE TO THANKS MY SUPERVISOR ENCIK MAHENDRAN WHO HAD BEEN VERY KIND FOR SUPPLYING ME WITH ARTICLES AND MATERIALS AND ALSO GUIDED ME TO HOW TO PREPARE THIS PROJECT PAPER, TO ENCIK KHALID FOR GIVING ME THE OPPORTUNITY TO HAVE THIS TOPIC FOR PROJECT PAPER AND ENCIK JANTAN FOR HELPING ME WITH THE TYPING.

## C O N T E N T

### INTRODUCTION

The Concept Of The Company.....	1
---------------------------------	---

### CHAPTER ONE

What Is A Director?.....	2
--------------------------	---

### CHAPTER TWO

Qualification, Appointment And Removal Of Directors.....	5
--	---

### CHAPTER THREE

Power Of Directors.....	10
-------------------------	----

### CHAPTER FOUR

Remuneration Of Director.....	30
-------------------------------	----

Position Of Directors.....	34
----------------------------	----

### CHAPTER FIVE

Duties Of Directors.....	39
--------------------------	----

CONCLUSION.....	45
-----------------	----

## INTRODUCTION

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### THE CONCEPT OF THE COMPANY

A registered company i.e. a company incorporated by registration under the companies Acts, is regarded by the law as a person, just as a human being. This artificial or juristic person can own land and other property, enter into contracts, sue and be sued, have a bank account in its own name, owe money to others and be a creditor of other people and other companies, and employ people to work for it. The company's money and property belong to the company and not to the members or shareholders, although the members or shareholders may be said to own the company. Similarly, the company's debts are the debts of the company and the shareholders cannot be compelled to pay them, although if, for example, the company is being wound up and its assets do not realise a sum sufficient to pay its debts, a shareholder whose liability is limited by shares is liable to contribute to the assets up to the amount, if any unpaid on his shares. A Company, of course, can only act through human agents, and those who manage its business are called directors. But the directors are only agents of the company, with the powers of management given by the company's articles of association and usually with power to delegate any of their powers to a managing director. The company is also liable for torts and crimes committed by its servants and agents within the scope of their employment or authority. This conception of a company as a corporation, i.e. a person separate and distinct from the other persons who are its members and directors, is the fundamental principle of company law.

The directors of a company, who are usually appointed by the members at their annual general meeting, have wide powers to manage the company's business conferred upon them by the articles. The members cannot control the exercise of these powers, although they can, e.g. alter the articles. The directors owe certain duties of good faith care to the company. A registered company is capable of perpetual succession but it may become insolvent or it may decide to retire from business. In such case it is wound up, i.e. it is put, or it goes, into liquidation and a person, called a liquidator, is appointed to wind up its affairs. He sells the company's property and pays as much of its debts as he can do out of the proceeds of sale, if there is a surplus, he distributes it among the shareholders when the liquidation is completed the company is dissolved and ceases to exist.

## CHAPTER ONE

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### WHAT IS A DIRECTOR?

As a company cannot obviously act on its own, directors are entrusted with the duty of managing its affairs. Every company must have at least two directors, each having his principal or only place of residence within Malaysia. The Companies Act is unfortunately not helpful in defining a director, stating merely that it "includes any person occupying the position of director of a corporation by whatever name called and includes a person in accordance with whose directions or instructions the directors of a corporation are accustomed to act and an alternate or substitute director". Directors have also been defined as trustees, agents and employees but it is obvious that not one single term can exhaustively define their powers and duties. Articles 73 of Table A of the Fourth Schedule to the Companies Act states:

The business of the company shall be managed by the directors who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject nevertheless, to any these regulations, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

It appears therefore that the precise nature of directors' powers and duties depends on the Articles in each case subject to the overriding provisions of the Companies Act. It should be noted that in a private company the directors are usually substantial shareholders. In a public company, the directors normally have few shares, their fees and other emoluments, rather than their dividends, being their main sources of profit from the company, with the result that management and ownership of the company are divorced.