

CONCEPT OF NEXT OF KIN



With the reduction in the minimum number of director for private companiesⁱ to one, the Companies Act 2016 (“2016 Act”) has introduced the concept of ‘next of kin’ⁱⁱ to cater for situations where the sole director passes on or becomes incapacitated to perform his duties.

Pursuant to the 2016 Act, where the sole director becomes disqualified, becomes of unsound mind, dies or vacates his office according to the company’s constitution, the secretary shall, as soon as practicable, call a meeting of the next of kin, other personal representatives or a meeting of members for purposes of appointing a new director. In the event a new director is not appointed within 6 months, the Registrar may direct the company to be struck off from the register of companies.ⁱⁱⁱ

What amounts to ‘next of kin’

The 2016 Act, however, does not define the term ‘next of kin’. Notwithstanding the lack of definition, reference may be made to the meaning of “a member of the director’s family” which is defined under the 2016 Act^{iv} to mean the director’s spouse, parent, child(ren), including adopted child and stepchild, brother, sister and the spouse of the director’s child, brother or sister. The expression ‘next of kin’ denotes relative or kin, and usually includes persons who would be entitled to succeed on intestacy.^v

If a sole director who is also the sole member of a company is unable to manage the affairs of the company by reason of his mental incapacity, the committee appointed under the Mental Health Act 2001 to manage his estate may appoint a person as a director.^{vi}

Considerations for sole directors of a private company who is also the sole member of the company

(a) Drawing up a Will

It is advisable for the director to draw up a last will and testament, expressing chosen name(s) of director(s) to be appointed to take over in the event of death or incapacity, so as to ensure continuity in the business and operations of the company.

(b) List of Successor(s)

Alternatively, the sole director may deposit with the company secretary a list of successor(s) to be appointed as director(s) of the company.

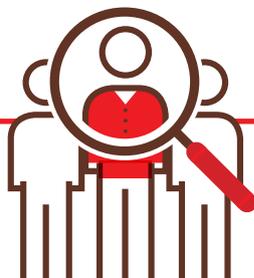
With such arrangements in place, any unnecessary disruption to the continuity in the business of the company and risk of being struck off from the register of companies can be eliminated.

“It is advisable for sole directors to express chosen names of directors to be appointed to take over in the event of death or incapacity in their will and testament.”

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MONTH(S)



When the sole director is disqualified, becomes of unsound mind, dies or vacates office



The company secretary shall call for a meeting of the next of kin, personal representatives or a meeting of members to reappoint a new director

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MONTH(S)



The Registrar may strike out company that fails to appoint a new director in 6 months

ⁱ Section 9(d) and 196(1)(a) of the Companies Act 2016 permit a minimum of one (1) director for private companies;

ⁱⁱ Section 209(3) of the Companies Bill 2015; ⁱⁱⁱ Section 209(5) of the Companies Act 2016; ^{iv} Section 197(2)(a) of the Companies Act 2016;

^v Re Application By Tengku Ahmad Tajudin bin Tengku Ibrahim [1984] 2 MLJ 231, at 234; ^{vi} Section 209(6) of the Companies Act 2016