

## APPOINTMENT OF DIRECTORS IN GHANA — THE NEW REGIME



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## INTRODUCTION

The enactment of the Companies Act, 2019 (Act 992) [2019 Act] in Ghana marked the dawn of a new era in the country's corporate industry. The 2019 Act repealed the Companies Act, 1963 (Act 179) and reformed the regulation of companies and businesses in Ghana. One of the major reforms that was introduced affected the qualifications of persons that can act as directors. Indeed, it is no surprise that the legislation would seek to regulate the type of persons that can act as directors as directors have a fiduciary duty to direct and administer the business of a company. We have therefore outlined below are the new requirements set out under the 2019 Act for the appointment of directors.

### Reforming the Boards of Directors in Ghana

One of the most interesting provisions in the 2019 Act provides a 5-year automatic disqualification period for appointed directors where that person {1}:

1. Has been convicted, within the last 5 years, of an offence involving fraud or dishonesty, or relating to the promotion, formation or running of a company.
2. Has been a director or senior executive of a company that has become insolvent within the last five years on account of or partly as a result of the culpable activities of that director.
3. Has been disqualified to act as company secretary, receiver, manager or liquidator of a company.

In addition, the 2019 Act provides for a 10-year automatic disqualification period and permanent automatic disqualification. Section 177 (3) provides that where a person is convicted for matters highlighted under paragraph i. above is subsequently subject to:


- a second conviction, that person shall be automatically disqualified for a period of 10 years; and
- a third conviction, that person shall be permanently disqualified as a director or to act as a director.

The Act goes on to introduce the concept of disclosure of potential conflicts of interest of directors. A potential conflict of interest is now required to be entered in the Interests Register to be maintained by the company [2]

Section 195(1) requires a director of a company who has an interest that is likely to create a conflict of interest between that director and the company to:

- cause to be entered that interest in the Interests Register established under section 196; and
- disclose that interest to the Board of the company at a meeting or by written notice given to the directors immediately after becoming aware of the fact of that interest.

[1] Section 177 of the 2019 Act



Section 194(6) states that:

*“in the case of a proposed contract in which the director is interested, the director shall, before the consideration of the matter, disclose the nature and extent of the interest of the director in the proposed contract at a meeting of directors or by written notice given and to be disclosed to the Board of the company in accordance with section 195.”*

Another useful introduction provides that a director must not disclose company information that would otherwise not be available to that director except for special purposes [3]

Accordingly, the new requirements and procedure for the appointment of directors and the removal of directors are outlined below:

## Appointment of a Director

1. The first directors of the company are appointed and named in the regulations (now the constitution) of the company.

2. After incorporation, subsequent directors are appointed by an ordinary resolution of the company in general meeting.

3. Before the appointment, the director consents in writing to the appointment and files the same with the Registrar of Companies within 28 days;

4. Makes a statutory declaration (to be filed with the Registrar of Companies) to the effect that the director has not;

- a. within the preceding five years of the application for incorporation been charged with or convicted of a criminal offence involving fraud or dishonesty
- b. been charged with or convicted of a criminal offence relating to the promotion, incorporation or management of a company,
- c. been a director or senior manager of a company that has become insolvent or if the person has been, the date of the insolvency and the particular company.

Persons to be appointed directors must be natural persons of a minimum of 18 years of age, a sound mind and must not be bankrupt.

[2] Section 196 of the 2019 Act  
[3] Section 198 of the 2019 Act



## Removal of a Director

- 1.The company may by ordinary resolution remove a director from office.
- 2.A director who wishes to be removed may put in a resignation letter and the company will pass a resolution to accept it.
- 3.The ordinary resolution to remove the director must be passed at a general meeting.
- 4.The company must give a notice of the resolution to the director affected.
- 5.The notice must be served on the director at least 21 days before the general meeting.
- 6.The director is entitled to be heard at the meeting or send a written statement.
- 7.The vacancy created by the removal may be filled at the meeting or at a later date.

## Documentation Required for Appointment or Removal of a Director

### Appointment of Director

1. Signed consent letter of the person to be appointed.
2. Statutory declaration of potential director.
3. Ordinary resolution of appointment.
4. Completed Form 17 of the Registrar Companies 'Change of Directors'.
5. Tax Identification Numbers of all new directors (In line with section 4 of the Tax Identification Numbering System Act, 2002 (Act 632))

### Removal of Director

- 1.Ordinary resolution removing the director.
- 2.Where necessary, a letter of resignation and an Ordinary resolution accepting the director's resignation.
- 3.Completed Form 17 of the Registrar of Companies 'Change of Directors'.





## Conclusion

It is presumed that when directors meet these standards of accountability and integrity, the business community and the economy may stand to benefit. It is also expected that the reforms in the 2019 Act will bring the companies regulation and corporate governance in Ghana at par with global best practices.



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