

## Blur

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**A lot happens in the blurred area between the working area of the board of supervisory directors and the board of directors. Obviously, this is where you will find supervisory directors who are playing the role of director. This often goes wrong.**

Not too bad, but difficult, is the figure of the delegated supervisory director. He received a special duty from the board of supervisory directors in relation to the board of directors. This often regards the chairman. He maintains, for instance, interim contact with the board of directors at the request of the board of supervisory directors. A delegated supervisory directorship can also be related to more serious matters. In case of a far-reaching conflict with the trade union a delegated supervisory director can assist the directors in the negotiations (attention: not personally negotiate). Occasionally a business can also be facing a crisis of the board of directors. Then a solution is expected of the board of supervisory directors. This is not easy to realize with five or seven people at the same time. It is then handy to encumber one or two supervisory directors with a mediation mission.

Before he understands what is going on, the delegated supervisory director lands on the ground with both feet. Before he even notices it, he is managing in full. There is then question of a serious blurring of roles. Namely, a delegated supervisory director can never exercise more authorities than vested in the board of supervisory directors. Regardless of how a delegated supervisory director performs his duty, even if he starts managing in full, he remains a supervisory director. From a legal perspective, managing implies that he is, by law, qualified as a director, but that all other individuals on the board of supervisory directors are, in pursuance of section 138 in conjunction with sections 14 and 19 of Book 2 of the Dutch Civil Code (also) responsible for his potential mistakes.

The fact that a certain duty is assigned to a delegated supervisory director does not imply that authorities of the board of supervisory directors are transferred or limited. The board of supervisory directors remains authorized to perform the relevant duties, to take them back or to adjust them. Besides, a responsibility that is vested in the board of supervisory directors as a whole, for instance the adoption of resolutions about certain management acts included in the articles of incorporation, cannot be delegated to an individual supervisory director.

It is recommended as the board of supervisory directors to agree on a timeframe with a supervisory director when assigning a specific duty in relation to the board of directors. Think about a period of a couple of months when it regards duties in the grey area of management. In practice you often notice that delegated supervisory directors are assigned duties that go well beyond the authorities of the board of supervisory directors itself. Strictly speaking this should not be the case, but what should not

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be done happens nonetheless.

The figure of the delegated supervisory director has a special form in the event that the board of supervisory directors temporarily takes over the management when one or more directors are absent or unable to attend. There is question of inability to attend when there is question of a temporary interruption of the performance of the position. There is question of absence when there is question of a vacancy. Think about (prolonged) sickness. In that case the board of supervisory directors intentionally takes the seat of the board of directors, simply because there is no (plenary) board of directors. Many articles of incorporation also regulate this expressly. However, it is of utmost important in this case that the board of supervisory directors or the individual is not going to manage in full. It should more be seen as 'watching the store'. Your most important duty in case of absence is to find a new director. You must certainly not implement big changes or formulate policy. In this case it is also recommended to agree on a restriction in time in advance, for instance at most three or four months. This way you prevent operating in a blurred area. Namely, it gets dark after that.



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