



BOARD RESPONSIBILITIES

Overview of Directors' Functions

The business of ADA-ES, Inc. shall be managed under the direction of its Board of Directors.

The Board of ADA-ES, Inc. is to provide a general governance of the company's affairs and provide direction of a quality and nature that optimize the development, growth, and performance of the company and its subsidiaries. The role of the Directors is essentially advisory in nature, with specific day-to-day management functions and decision-making delegated to the full-time officers and executive employees of the company.

Activities of the Board and Committees of the Board considered essential include:

- Developing and approving major policies and objectives.
- Authorizing major transactions recommended by management.
- Giving advice and counsel to the management of the company, especially the CEO.
- Ensuring compliance with the law and pertinent regulations.
- Providing effective auditing procedures so that the Board will be adequately informed of the company's financial and legal status.
- Approving and reviewing financial transactions and reviewing investments at regular intervals, at least annually, to ensure that they comply with all applicable provisions of law.
- Monitoring performance, setting objectives, and measuring management's results against them, evaluating the accomplishments of management and their activities, and being responsible for the selection and removal of officers.
- Adopting of the annual budget and reviewing financial results at regular intervals.
- Establishing and delegating authorities.
- Keeping informed as to the business in which the company is engaged and remaining knowledgeable as to the company's business activities.

Overview of Officers' Functions

Officers of ADA-ES, Inc. are the real managers of the company's subsidiaries.

- The standards applied to officers of ADA-ES, Inc. are high and reflect their greater responsibilities and their obligation of greater familiarity with the business affairs of the company. Thus, for example, an officer who is a director need not and in some cases should not rely entirely on information, reports, or statements from others because he or she has better opportunities for obtaining direct knowledge than do outside Directors.
- Officers of ADA-ES, Inc. are charged with the achievement of the company's overall business goals, targets, and objectives and are responsible for the development of procedures to carry out the company's policies and ensure its compliance with law.

- The growth and complexity of the activities conducted by the company's subsidiaries raise questions of accountability that must be met in the first instance by the active management of ADA-ES, Inc. Such problems include the increase in environmental problems, the energy crisis, products liability, antitrust, civil rights issues, employee welfare, and growing consumer protections.

The primary obligation of an officer is to faithfully discharge his or her responsibilities within the limits of, and as defined by, the delegations of authority given him by the Board.

- Executive officers of the ADA-ES, Inc. often further sub-delegate responsibilities and must exercise care in such delegations and monitor the compliance of their delegates.
- Officers of ADA-ES, Inc. should structure management in a way that ensures reliable oversight of the employees and agents of the company.
- Officers of ADA-ES, Inc. who exceed their powers and authority may be held liable to an injured outsider, unless the Directors expressly or through reasonable implication ratify the unauthorized actions and thereby assume company liability for them.
- Officers of ADA-ES, Inc. who neglect their duties or whose conduct falls below a reasonable standard of care or the requirements of law and who cause direct harm to a company subsidiary, may be liable to the subsidiary.
- Officers of ADA-ES, Inc. should exercise prudent business judgment, soliciting the advice and counsel of the Board and keeping the Board informed of company affairs on an ongoing basis.

Duties and Responsibilities of Directors

Primary Responsibilities

All Directors:

- Serve as fiduciaries for all shareholders and unit holders.
- Direct the business and affairs of the company within the law.
- Oversee company performance.
- Select the CEO and ratify the selection of officers of the company.
- Review and confirm basic company objectives.
- Approve major policy and management decisions.

Outside Directors:

- Spend time learning the business of the company, developing informal contacts with management and other Directors to build mutual trust.
- Advise management.

Secondary Responsibilities

All Directors:

- Adopt or change bylaws of the company.
- Approve changes in policies of the company and its subsidiaries.

Outside Directors:

- Review disinterestedly the work of management, refraining from involvement in day-to-day management.
- Bring perspective and fresh point of view to the Board's deliberations.
- Provide general guidance based upon experience in special areas of expertise.

Additional Responsibilities

Planning

- Approve the short- and long-term objectives, strategies, and plans recommended by management and advise management regarding the planning process. Periodically evaluate progress against such plans.
- Identify any barriers to the company's progress and sense the timing for change.

Management

- Elect the officers of the company and delegate management responsibility and authority to them.
- Authorize necessary officer signatory authorities on behalf of the company.

Financial Structure

- Approve overall capital structure of the company.
- Approve overall financing programs and policies.
- Authorize appropriate officers of the company to take actions as may be required to implement such programs.
- Approve all distribution actions.
- Establish regulations and controls concerning issue, transfer, and registration of securities.
- Ensure that there is a specific financial program designed to properly support the company's long-term plan for growth by reviewing long-term plans and financing to prepare for it.

Controls

- Identify the Board's needs for information and arrange for its timely supply.
- Approve annual operating and capital budgets and review performance to plan quarterly.
- Review capital expenditures.
- Review the accuracy and completeness of financial control systems through an Audit Committee composed entirely of outside Directors.
- Ensure that management has adequate financial systems, including timely and accurate information.
- Inquire into major deficiencies in performance.
- Ensure existence of written policies and authorization systems for major expenditures.
- Require audited financial statements by a major public accounting firm.

Board Continuity

- Seek continuity and strengthening of the Board through identifying and attracting additional and/or replacement Directors.

Expectations of Individual Performance

- Attend all Board meetings.
- Study advance information packets and be prepared to discuss their contents.
- Be available to advise management between meetings when necessary.

Standards of Conduct for Directors

Members of the Board must be aware of and diligently observe the legal requirements of their position.

- The Directors are accountable to all shareholders and unit holders.
- The Directors elect and oversee the performance of the officers of the company.

The Board is to provide direction to the total affairs of the business of a quality and nature that optimize the development, growth, and performance of the company.

- The business and affairs of the company shall be managed under the direction of its Board.
- The Board's operational responsibility is limited to monitoring management.

The Board is to provide for continuity in the quality and depth of management required to obtain the company's objectives:

- The Board makes the basic decisions and designates the officers of the company to execute the decisions.
- State law permits the Board to appoint:
 - (1) an Executive Committee of the Board to exercise all the powers and authority of the entire Board, and
 - (2) the officers of the company who are necessary to carry on the company's business.

The members of the Board are to serve as fiduciaries for all shareholders and unit holders.

Each director is a fiduciary whose actions and performance mandate a high standard of loyalty and care and are subject to rigid review. In carrying out their responsibilities, Directors must exercise the **duty of loyalty** and the **duty of care**.

Duty of Loyalty

The duty of loyalty dictates that a director must act in good faith and must not allow personal interests to prevail over the interests of the company and its owners, particularly in transactions involving potential conflict of interest between the company and the director.

- **Conflicts of Interest.** A director should avoid conflicts of interest, never using his or her corporate position to make a personal profit or to gain other personal advantage. The existence of any material personal interest of a director ("interested director") in a contract or transaction to which the company is to be a party, either directly or indirectly because of employment or investment relationship with an entity with which the company is dealing, must be disclosed by the interested director. The nature of any such material personal interest must be fully described to the other Directors prior to the time action is taken by the Board with respect to the matter, with such interested director abstaining from taking any action thereon.
- **Duty of Fairness.** If a transaction involves a possible conflict of interest, the interested director and those disinterested Directors in favor of the transaction must recognize and satisfy "fairness" obligations. In such situations the terms of a proposed transaction should be as favorable to the company as might be available from any other person or entity.
- **"Corporate" Opportunity.** Directors have a duty to present any business opportunities which are relevant to the company's present or prospective business activities to the Board before pursuing the matter on his or her own behalf or for others.

- **Confidentiality.** Directors are to treat all available information of the company with strict confidentiality until such time as a matter has been publicly disclosed.

Duty of Care

The duty of care requires Directors to be diligent and prudent in managing the affairs and business interests of the company. While limited in application, there are situations in which Directors may be liable for any action that injures the company. However, the law is clear that Directors are not liable merely because they chose a course of action that turned out, in hindsight, to be a poor economic choice. Each director is obligated to see that the company is well managed.

- **Duty of Attention.** Directors have a responsibility to participate actively in overseeing the activities of the company.
- **Meeting Attendance.** Six regular meetings of the Board are scheduled annually. In addition, Directors are expected to attend the annual stockholders meeting in May and the annual strategic planning session in October. Committee meetings are scheduled, usually in conjunction with the Board meetings, at various intervals throughout the year. Regular attendance at meetings of the Board and Board committees is a requirement for acceptable director performance.
- **Review of Information and Documentation.** It is expected that each director will be furnished with sufficient information regarding every important matter requiring Board action in a timely enough manner to permit an informed judgment. Directors are expected to have reviewed all materials distributed to the members of the Board prior to Board meetings, giving special attention to financial statements and any matters to be acted on (such as minutes or proposals).
- **Discussion in Full of Major Items.** A director can make a valuable contribution through focused discussion of and relevant inquiry into management's proposals. Any questions that occur to a director, however basic, should be raised and discussed. Directors are encouraged to make independent inquiries on matters of concern and to register objections when needed.
- **Review of SEC Filings.** Directors should review all major SEC filings before they are filed, especially 10-Ks and registration statements.

Responsibilities and Liabilities of Directors Under Various Laws

Common Law

The law requires that Directors and officers shall perform their duties in good faith, in a manner reasonably believes to be in the best interest of the corporation and with such care as ordinarily prudent persons in a like position would use under similar circumstances.

- The business judgment of Directors and officers generally is protected from judicial suspicion in instances where the discharge of their responsibilities falls within this standard of conduct.
- A director should always take appropriate action when aware of facts that would put a prudent man or woman on guard.

Statutory Law

- Statutory liabilities may arise for knowingly making false statement in any filing required under federal regulations.
- Certain additional liabilities as to parties outside the corporation may arise under various statutes (for example, antitrust laws, The Employee Retirement Income Security Act of 1974 [ERISA], or environmental laws).

Federal Securities Laws

The Securities Act of 1933 and Securities Exchange Act of 1934 administered by the SEC set forth prohibitions and impose affirmative reporting obligations, with wide application to corporate Directors and officer.

- **Section 10 – Exchange Act**

Section 10(b) of the 1934 Act and Rule 10b-5 thereunder make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of any security to:

- Employ any device, scheme, or artifice to defraud.
- Make any untrue or misleading statement of material fact.
- Engage in any act, practice, or course of business, which operates as a fraud or deceit upon any person.

Rule 10b-5 establishes liability against insiders including Directors and officers, who:

- Purchase or sell securities of a company/partnership while aware of material information with respect to such entity prior to the public disclosure of such information.
- “tip” or disclose material information to any other person or entity who uses such information for personal advantage.

Note: Before engaging in transactions in the company’s stock, a director should check with the Transfer Agent (see ADA-ES, Inc. Insider Trading Policy).

- **Section 16 – Exchange Act**

Reporting Obligations. Under Section 16(a) of the 1934 Act, the Directors and officers of ADA-ES, Inc. are required to file reports of their beneficial ownership of equity securities of the Partnership at the time they assume such position and after every change in their beneficial holdings. There are three SEC forms, which must be used by Directors and officers in making the required reports of their holdings.

A **Form 3** (Initial Statement of Beneficial Ownership of Securities) must be filed by each new director and officer of ADA-ES, Inc within ten days of his election. The director or officer must report the amount and the nature of his beneficial ownership of equity securities of the company or its subsidiaries.

A **Form 4** (Statement of Changes in Beneficial Ownership of Securities) must be filed by a director or officer of the company within ten days after the close of any month in which there has been a change in his beneficial ownership of any equity security of the company. All purchases, sales, gifts, etc., and even changes between direct and indirect beneficial ownership, must be reported. Receipt of rights or options to purchase equity securities of the company, purchases, or sales of such rights, and purchases of equity securities on exercise of rights, must be reported.

A **Form 5** (Annual Report) must be filed to disclose transactions exempt from Section 16, such as purchases of stock pursuant to stock purchase plans. Receipt of stock options or restricted shares, participation in savings or retirement plans, gifts of stock, etc. Form 5 should also be used to disclose any transactions during the year that should have been reported but were not. This form is due 45 days from the end of the company’s fiscal year.

Short-Swing Trading Profits. Under Section 16(b), Directors and officers of the company are restricted from having any purchase and sale, or any sale and purchase, of any equity security of the company or its subsidiaries occurring within any period of less than six months.

Short Sales or Delayed Deliveries. Under Section 16(c), Directors or officers of the company are restricted from selling any equity security of the company if he or she does not own the security sold, or if owning the security, he or she does not deliver it against such sale within 20 days or mail it within five days.

- **Rule 144 – Securities Act**

Rule 144 under the Securities Act requires that certain company insiders and others* file a Form 144 with the SEC and the NYSE concurrently with placing an order to execute a sale with a broker.

- **Annual Report; Form 10-K – Exchange Act**

The Exchange Act mandates an annual report on the SEC’s Form 10-K. The Form 10-K is filed annually, usually in late March, after review by the Board of Directors.

ADA-ES, Inc. takes a number of steps to assure the accuracy of the Form 10-K and the incorporated documents. The drafting is a joint undertaking of employees of various staff departments of ADA-ES, Inc. and the company’s principal independent accountants. Each part is reviewed for accuracy and completeness by representatives of the departments responsible for the matters described therein. The entire 10-K is reviewed by members of the accounting and legal departments for ADA-ES, Inc. The financial statements contained or incorporated in the Form 10-K (except for management’s discussion and analysis of the financials) are certified by the company’s independent accountant.

After this internal review, Directors are sent copies of the 10-K and incorporated portions of the Annual Report for their review. The drafts are then the subject of a review meeting or meetings held in conjunction with a monthly Board meeting as part of the director’s investigatory steps.

- **Registration Statements – Securities Act**

The Securities Act and regulations of the SEC thereunder require that the company’s public offerings of equity and debt securities be registered with the SEC.

ADA-ES, Inc. undertakes the same efforts to assure to accuracy of a registration statement as described above for the Form 10-K. The financial statements contained in the registration statements and the incorporated documents (except for interim statements since the date of the latest certified balance sheet and management’s discussion and analysis of the financials) are certified by ADA-ES’ independent accountant. A limited review of interim statements is customarily made by the independent accountant as well, but without certification. After this internal review, Directors are sent copies of the registration statements, or amendments thereto, for their review.

- **Public Accounting Reform and Investor Protection Act of 2002, sponsored by Sen. Paul Sarbanes (D-MD) and Rep. Michael Oxley (R-OH) (Sarbanes-Oxley).**

The Sarbanes-Oxley Act includes provisions strengthening compliance procedures for companies, mandating a code of ethics, and strengthening the role of the audit committee. Through this policy handbook and its other policies, ADA-ES, Inc. strives for full compliance with this law.

* Rule 144 permits, with certain limitations, the sale of securities owned by persons “controlling, controlled by, or under common control with” the company.