

FAITH **IN** NATURE[®]

NATURE ON THE BOARD
AN OPEN SOURCE GUIDE



INTRODUCTION

In August 2022, Faith In Nature became the first company in the world to appoint Nature to its board. Why? Because everything we do has an impact upon the natural world, and yet the natural world itself has no say on these decisions. We feel the repercussions of these decisions in the escalating environmental degradation of our planet, and yet business as usual continues.

So clearly ‘business as usual’ is not working, and business itself needs rethinking.

By voluntarily recognising the legal Rights of Nature within our structures, Faith In Nature set out to forever reverse this injustice — seeking counsel from Nature in order to make better, more responsible decisions that take the natural world into account.

But the intention was always to create a model that was replicable, practical and easily implemented in as many other businesses and organisations as possible. Only when that happens will the power of this move truly be realised.

We share this document freely to accelerate the adoption of Nature’s Rights in other businesses, acknowledging that our own efforts are Version 1.0.0 of this movement. In time they will be refined, improved upon, reimagined and reworked for other jurisdictions and challenges. We welcome the evolution of this idea safe in the knowledge that there are a great many wonderful, compassionate people who will make it their work — as we’ve made it ours — to rebalance business’ relationship with the natural world.

THE LEGAL LOWDOWN

(Content warning for all non-lawyers — we’re about to get technical!)

OUR AIM

We first asked ‘Can Nature really be the boss?’ What we meant was: can we somehow make Nature a stakeholder within our business, to whom we can turn for advice on how to make more environmentally responsible decisions. This meant appointing a director to our board who would represent the interests of Nature, all species and the environment in general. After extensive research we discovered that it is eminently possible to appoint a director to Faith In Nature’s board who represents the natural world, non-humans and environmental interests under the current law of England and Wales.

Where the company is solvent and manages its affairs correctly (i.e. there are no implications to creditors and the company can pay its debts as they fall due) there are no issues with such a director having a direct voice and a vote on the board of directors.

We felt that there are clear benefits to our company in appointing such a person with a specific remit to advocate for Nature. These include, but are not limited to, more conscious decision making, lessening the impact on the natural world, increased capability to review environmental impact in detail, increased marketing opportunities, better staff morale, increased market share and more contented stakeholders.

We felt that the timing is especially pertinent given the increased scrutiny on companies and any greenwashing or environmental lip service they engage in. This kind of measure is defensible as a proactive and meaningful step towards environmental accountability.

There is a further context of the growing support for the holistic stakeholder decision making approach by the board of directors of a company. We felt that it was not just morally the right thing to do to embed a long-term mind-set in our board culture, but that it can also be linked back to director’s duties under the Company’s Act 1996 s.172.

The specifics of what we did are set out below.

QUICK READ

1. We added to our objects clause to allow the company to have specific regard to Nature in our general purpose of promoting the success of the company.
2. We appointed a non executive director to speak on behalf of Nature. We appointed a corporate director to allow for the rotation and consultation of a number of humans behind the scenes.

LONGER READ

1. We added to our objects clause to allow the company to have specific regard to Nature in our general purpose of promoting the success of the company.

Generally speaking companies' objects are unlimited and contained (post 2006) in the Articles of Association. We wanted to make a statement that would allow us to continue all commercial activities but also demonstrate that we believe we have a longer term purpose which is, in addition to acting to promote the success of the company, that we should have a positive impact on Nature and minimise any harmful impact. We gave constitutional power to the duty to have regard to the environment.

The Changes Made

We changed the articles of association to include, alongside promoting the success of the company, a long term duty to Nature. This means that we can still progress our business model but we recognise that without a functioning planet, ecosystems and biodiversity we will not be able to continue in the long term. It sets up a purpose that ensures our business decisions are informed and imbued with a long term view of the health of Nature taken as a whole. It also speaks to the concept of holding both Members and Nature as Legal Persons with the right to be named in the objects clause. This is our new wording:

The objects of the Company are to promote the success of the Company,

- a. for the benefit of its members; and**
- b. while delivering, through its business and operations, using its best endeavours to**
 - i. have a positive impact on Nature as a whole and to**
 - ii. minimise the prospect of any harmful impact of the business and operations on Nature,**

in a manner commensurate with the size and resources of the Company, taken as a whole.

The board of directors must act in the way he or she considers, in good faith, most likely to promote the success of the Company in achieving the objects set out in paragraph (1) above, and in doing so shall have particular regard to impact of the Company's business and operations on the environment and on the affected stakeholders, including Nature and including the likely consequences in the long term.

Nothing in these Articles, whether express or implied, is intended to or shall create or grant any right or any cause of action to, by or for any person other than the Company.

- 2.** We appointed a Non Executive Director to speak on behalf of Nature. We appointed a corporate director to allow for the rotation and consultation of a number of humans behind the scenes.

The Changes Made

We appointed Nature as a Non Executive Director on our board of directors and created the ability to delegate the powers to a wider committee. We did this by amending our Articles of Association to entrench the position and used a terms of reference document to outline the duties and responsibilities of the human who acts as the voice of Nature.

Nature is currently represented by the not-for-profit legal NGO, Lawyers for Nature. We did this by appointing them as a corporate director at Companies House.

The specific aspects of this arrangement fall under three headings:-

- A. The NED itself - appointment, entrenchment and, removal
- B. Decisions - Decision making processes, voting rights, involvement and delegation of authority.
- C. Transparency and accountability

Each of these can be varied accordingly.

A. The NED

- i. We appointed the NED via an ordinary resolution of our shareholders and we changed our articles of association to entrench the position via a special resolution of our shareholders. We used a terms of reference document which includes a consultancy contract for a NED.
- ii. To require the board to include the NED in its meetings we included this article:

Composition of the Board: “The board of directors of the Company from time to time shall include at least one guardian who acts on behalf of Nature.”

We used the following definitions for Nature and Nature Guardian

Definitions:

- **“Nature** means the natural world and all non-human species that inhabit it and is represented by a director with the requisite expertise and the role to ensure that the board of directors gives due consideration to the environmental impact issues in its decision-making process, for the purpose of achieving the objects of the Company.”
- **“Nature Guardian** means a director acting on behalf of Nature shall be nominated by the Board in accordance with the Nature Nomination Policy and appointed by the holder(s) of a majority of the Voting Shares for the time being in accordance with Article 12.1.”

- iii. We entrenched the position by changing our Articles of Association to reference Nature Related Matters and these requiring input from Nature. We also prescribed that the quorum must include Nature where such a declaration had been made. This was the article we inserted:

Quorum for directors' meetings: "The quorum at any meeting of the directors (including adjourned meetings) shall be 3 directors, provided that, if the agenda of the meeting includes any Nature Reserved Matters, the quorum of such meeting of the directors (including adjourned meetings) shall include Nature.

"In respect of any Nature Reserved Matter, the Nature guardian may provide written materials to be discussed at the board meetings to be accompanied with the agenda of the meeting."

- iv. We inserted a removal clause as follows:

"In the event the Nature Guardian is proposed to be removed from office pursuant to Article 12 or resigns from office, such decision shall be supported with comprehensive and clear reasons, including any information relating to the Nature Guardian's disagreement with the board of the directors."

B. Decisions

- i. We gave Nature one vote as a director on our board. The Nature Guardian can also call on a committee of experts to assist with the decision making.
- ii. The Nature Guardian is able to call on and delegate responsibility for decision making to a committee of experts.

C. Transparency and accountability

- i. We inserted a 'provide reasons' clause into our articles to ensure that there was transparency around decisions that concern Nature directly. This is the clause we used:

“Duty to provide reasons when Board makes decision contrary to the advice of Nature: “In the event that the board of directors makes a decision on any Nature Reserved Matters by voting (or otherwise approving, consenting or withholding approval or consent) that is not in the same manner as Nature votes (or otherwise approves, consents or withholds approval or consent), the board of directors shall provide a balanced and comprehensive reasons for such decision. Such decision shall be properly recorded in the form of the resolution in writing or minutes of the meetings of the board of directors as applicable.”

- ii. Reporting obligations

We inserted a clause into our articles of association to ensure there is a reporting obligation once a year on the company. This is the article we used:

“The board of directors shall, for each financial year of the Company, prepare and circulate to its members a Nature Report, the contents of which shall be to the satisfaction of Nature. The Nature Report shall contain a balanced and comprehensive analysis of the impact the Company’s business and operations have had, in a manner commensurate with the size and resources of the Company. The Nature Report shall contain such details as necessary to enable to the members to have an understanding of the due regard given by the board of directors on the environmental impact issues arising in its decision making process.

Beyond our constitutional changes: Conscious Corporate Governance

Outside of the corporate law framework that we implemented we are also learning how we can best engage with conscious corporate governance that goes beyond the basics of the law or the UK corporate governance code. We are interested in working with researchers to look at behavioural changes as we move through this period. We are also interested in engaging with the institutionalisation of politics of presence and multi species justice in corporate law.

JOIN US IN GIVING NATURE A VOICE

We thank you for reading and for taking this move as seriously as we have done. The legal work was conducted by the wonderful **Lawyers for Nature** (UK) and **Earth Law Center** (USA), supported by corporate legal experts at their pro-bono partner, **Shearman & Sterling LLP**.

This approach has been designed to work in the UK where it can be implemented exactly as Faith In Nature have implemented it. Consideration was also given to implementation in the USA, which Earth Law Center can discuss further with you. If you are from another jurisdiction, or have other questions not answered in either this document or our Q&A document, all involved are happy to help.

For us at Faith In Nature, making this change is only the first step of the journey. Now we move into the phase of working with this in practise and of living this newly reimagined way of doing business. We'll continue to share our learnings and to advance this conversation in whatever way we can.

But though Faith In Nature is the first company in the world to give Nature a voice and a vote, we really don't want to be the last. Please join us. It takes an ecosystem to work.