Directors: Removal, Retirement And Resignation
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Retirement And Re-election

Retirement by rotation is not a statutory requirement under the Companies Act. As a general rule, the articles of association of a company will provide that at least one-third in number or a number nearest to one-third but not exceeding it, shall retire by rotation each year at the annual general meeting. The directors who are usually required to retire each year are the most senior ones; i.e., those who have been in office longest. Where a number of persons became directors on the same day, those who should retire are determined by lot, unless they agree amongst themselves as to how they should retire.\(^1\)

As a general rule, the retiring directors are eligible for re-election. Where a retiring director has offered himself for re-election, but is not re-elected and no other director is elected to fill the vacancy, then the retiring director is deemed re-elected.\(^3\)

The number of directors may be increased or reduced at the option of the company by passing an ordinary resolution at a general meeting to that effect. The company may similarly decide the order in which the directors are to leave office. Directors are empowered to appoint any person to fill a casual vacancy as director or as an addition to the existing directors. The new director will hold office only until the next annual general meeting and will then be eligible for re-election. He will not be taken into account in determining the directors who are to retire.

It is, however, a matter of good corporate governance to have directors retire and new directors take their place. Such a measure ensures that directors do not become overly entrenched so as to fail to fully concern themselves with the interests of shareholders. It also provides shareholders an opportunity to choose such directors as are capable of performing.

Resignation

A director may resign voluntarily on his own accord\(^4\) even if the articles of association are silent on this matter. The general rule is that the director’s resignation is complete when he gives to the

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1. Re David Moseley & Sons Ltd[1939] Ch 719
2. Eyre v Milton Proprietary Ltd[1936] Ch 224. The articles of association in this provided that the retiring directors were to be chosen by ballot. The court took the view that this meant that the directors to retire were to be chosen by lot. In Jackson v Kingsway Minerals NL (1971-1973) 40 CLR 213, the court held that if the articles required the directors to retire to be selected by lot, then no other method could be used. This is, however, subject to the power of the shareholders to alter the articles of association through passing the requisite resolution upon due notice being given.
company secretary a resignation letter. In *Knight v Bulic* the court held that even if the articles of association had required the directors to resign by a letter in writing, the fact of an oral resignation made to the company secretary and accepted by the company secretary was held to be a sufficient resignation. As has been alluded to earlier, it is best practice to ensure that a provision is included in the articles of association for the resignation letter to be accepted by either the board or at least the company secretary. In other words, the mere giving of notice is insufficient.

Unless the articles expressly provide that the resignation is valid only upon acceptance by the board or the secretary, notice of the resignation is generally effective from the day of its receipt by the company. This is, of course, provided that another date is not specified in the notice of resignation. This is also subject to the requirement that the company continues to retain a minimum of two persons one of whom is resident in Singapore acting as directors. The articles of association can in any event provide that the company must accept the purported resignation from the director before he can have validly be said to have vacated his office.

The resignation does not have to be formally accepted by the board. In the eyes of the law, it is effective unilaterally from either the date of receipt of the notice or the date specified in the notice, irrespective of whether or not the resignation has been tabled and noted at a board meeting. Nevertheless, it would be usual practice for the board to note the resignation.

It is the duty of the company to notify the Registrar within one month after the person ceases to be, or becomes, a director of the company in the prescribed form (Form 49) of the change. The form should contain, with respect to each of the directors, the particulars required to be specified in the register. If there is any default in complying with this requirement, the company and every officer of the company who is in default shall be guilty of an offence against the Companies Act.

**Removal Of Public Company Directors**

Removal of a public company director is governed by the section 152 of the Companies Act. Note that as a general rule, unless there is such legislative provision, or there is a provision in the articles of association of the company, the company has no inherent power to remove a director prior to the expiration of his office. The power to remove is also one that is vested in the members as a whole in general meeting and not in the board of directors.

A special notice proposing an ordinary resolution to remove the director is required to be given to the company. A special notice is a notice of intention to move a resolution, which has been given to the company not less than 28 days before the meeting at which it is moved. However, if the company convened a general meeting after the notice of intention is given, the resolution to

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5 (1994) 13 ACSR 553. See also *Latchford Premier Cinema Ltd v Ennion* [1931] 2 Ch 409, which was followed by the court in *Knight v Bulic*. See further *Stephen v Southern Cross Exploration NL* (1976) 1 ACLR 436.
6 *Sycotex Pty Ltd v Baseler* (1994) 13 ACSR 766.
7 Section 173(7B) of the Companies Act.
8 Section 152 of the Companies Act is restricted in its application only to directors of public companies. By way of comparison, section 303 of the English Companies Act 1985 enables a company by way of an ordinary resolution to remove any director from office, whether of a public company or of a private company.
9 *Imperial Hydropathic Hotel Co, Blackpool v Hampson* (1882) 23 Ch D 1.
10 *Hayes v Bristol Plant Hire Ltd* [1957] 1 All ER 685
11 Section 185 of the Companies Act.
remove the director may be passed at that meeting, even though the meeting took place less than 28 days after the notice of intention is given, but such notice must be given at least 14 days before the meeting. In other words, the requisitionist cannot expect the company to convene a general meeting shorter than 28 days. However, if the company so chooses, it can call for a general meeting in less than 28 days but nevertheless complying with the provision of the Articles to call for general meeting with 14 days’ notice.

The company must, as soon as practicable after receiving the notice of intention to move the resolution, send a copy of the notice to the director concerned. The director is given the right to be heard at the meeting, and may make representations. However, the director concerned cannot use his right to attract publicity for defamatory purposes because any affected person could apply to the court to stop him from sending or reading out the representations at the meeting.

Removal Of Private Company Directors

The director removed may sue for compensation or damages for breach of contract of service (if any).

Note that the statutory provisions dealing with the removal of directors do not apply to directors of private companies. The office of such directors can only be vacated if the articles of association provide accordingly. Such a provision is available in the form of Article 69 of the Table A of the Companies Act.

Where the articles of association are silent as to the removal of a director of a private company, then prima facie, such a director cannot be removed. However, given that the articles of association is only a contract between the shareholders and the company and between the shareholders inter se, the articles can be amended by following the requisite procedure, and then removing the director. It must be borne in mind that the minimum two directors requirement, one of whom must be a Singapore resident must be satisfied at all times.

Removal By Ordinary Resolution

Section 152 of the Companies Act enables a simple majority to remove a director, even though such removal is contrary to the provisions of the company's articles or of any agreement between the director and the company. Under some forms of articles, a director, so long as he does not become disqualified and is not due to retire by rotation, can only be removed by an extraordinary resolution of the company. Section 152, however, provides that a company may, by ordinary resolution, remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between the company and the director. Even assuming a
director may be entitled to petition for a just and equitable winding up on the principles stated by the House of Lords in *Re Westbourne Galleries*;\(^\text{15}\) this does not prevent his being dismissed from the board by a resolution within section 152.

In *Bushell v Faith*\(^\text{16}\) the articles of a private company provided that 'in the event of a resolution being proposed at any general meeting for the removal from office of any director any shares held by that director shall on a poll in respect of such resolution carry the right of three votes per share'. The House of Lords, in affirming the Court of Appeal's decision, upheld this provision for weighted voting in resolutions under section 152. The House held that this was not an infringement of the requirement imposed by section 152 to the effect that, despite any contrary provision in the articles, any director may be removed by ordinary resolution. The following passage\(^\text{17}\) from Lord Upjohn's judgment stresses the distinction between voting rights attached to shares and the scope of section 158:

>Parliament has never sought to fetter the right of the company to issue a share with such rights or restrictions as it may think fit. There is no fetter which compels the company to make the voting rights or restrictions of general application and it seems to me clear that such rights or restrictions can be attached to special circumstances and to particular types of resolution. This makes no mockery of s 184;\(^\text{18}\) all that Parliament was seeking to do thereby was to make an ordinary resolution sufficient to remove a director. Had Parliament desired to go further and enact that every share entitled to vote should be deprived of its special right under the articles it should have said so in plain terms by making the vote on a poll one vote one share.'

Although this literal approach to the construction of section 152 must now be taken to represent the correct interpretation of the law, it may be conceded that there is much force in Lord Morris's dissenting speech\(^\text{19}\) to the effect that it made a mockery of what Parliament really intended. On the other hand, an article of the kind considered by the House of Lords may have a legitimate role to play in the case of small private companies where majority rule may work to the prejudice of a minority shareholder-director.\(^\text{20}\)

A resolution to remove a director under this section, or to appoint a director in his place at the meeting at which he is removed, requires special notice; and on receipt of notice of an intended resolution to remove a director under section 152 the company is to send a copy to the director, who has then the right to make representations and have them notified to the members; if this is not done, the representations are to be read out at the meeting. The obligation of the company to

\(^{15}\) [1972] 2 WLR 1289.
\(^{16}\) [1970] AC 1099. In *James North (Zimbabwe) (Pvt) Ltd v Mattinson* 1990 (2) SA 228, HC (Zim) the articles conferred on the 'A' shareholders and the 'B' shareholders separate rights to appoint and remove their own representative directors. It was held that only the 'B' shareholders could vote on a resolution to remove a director representing that class, notwithstanding a statutory provision equivalent to section 152 of the Companies Act.
\(^{17}\) Ibid at 1109.
\(^{18}\) The equivalent section of the Companies Act 1948.
\(^{19}\) [1970] AC 1099 at 1106.
\(^{20}\) See the speech of Lord Donovan in [1970] AC 1099 at 1110 to 1111.
circularise the representations or have them read at the meeting may, if the representations contain defamatory matter, be avoided by an application to the court.  

A director removed under the section does not lose any right to compensation or damages he may have for the termination of his appointment as director or of any other appointment (e.g., that of managing director) which terminates with his directorship.

If the vacancy created by the removal of a director is not filled at the meeting at which he is removed, it may be subsequently filled as a casual vacancy. A person appointed to the vacancy is to be treated, for purposes of retirement by rotation or otherwise, as if appointed on the day on which his predecessor was last appointed.

Where the articles contain no power to remove a director, the articles must first be altered to give such a power before he can be removed. It has also been held, however, that the court will not necessarily compel a company to employ a director against its will, notwithstanding it may have contracted to do so, but may leave him to his remedy in damages for breach of contract. But the refusal to allow him to act must be that of the company in general meeting, and not that of the board of directors. Thus where his fellow directors attempt to exclude a director (who has not been properly removed from office) from attending board meetings, an injunction will be granted to enforce his right to do so. An interlocutory injunction will not usually be granted to restrain a director from acting where the company seeks a declaration that the director has been validly removed from office. Where, however, under a contract and the articles a shareholder had a right to nominate two directors, the court made a declaration that such a nomination was valid and that the directors were well appointed, and intimated that it would enforce their right to serve unless there was some objection on the ground of unfitness. A power to remove a director ‘for negligence or other reasonable cause’ was held to mean such cause as the company thought reasonable, and the court refused to interfere.

**Vacation Of Office Of Director**

As a general rule, the office of a director can be vacated through one of three methods as follows:

- death;
- statutory provision; or
- provision contained in the memorandum and articles of association of a company or in an agreement between the shareholders and the company.

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21 Section 304 of the Companies Act 1985.  
22 It is not uncommon that directors are named in the articles of association. However, naming the director in the articles does not by itself amount to a contract.  
23 Imperial Hydropathic Hotel Co v Hampson (1882) 23 ChD 1.  
24 Bainbridge v Smith (1889) 41 ChD 462 at p 476; Harben v Phillips (1883) 23 ChD 14 at p 40. The former case related to a managing director, whose petition is somewhat different to that of an ordinary director. On this point, see British Murac Syndicate v Alperton Rubber Co [1915] 2 Ch 186 at p 195.  
25 Pulbrook v Richmond Consolidated Co (1878) 9 ChD 610.  
26 Hayes v Bristol Plant Hire Ltd [1957] 1 WLR 499.  
28 British Murac Syndicate v Alperton Rubber Co [1915] 2 Ch 186.
Death

The office of directorship is a personal one and dependant on the personality of the particulars individual appointed. Given this, on the death of director, a vacancy in the directorship occurs. The directorship cannot as a general rule be transmitted by will; although the power to appoint a director can be passed by will.  

Statutory Provision

The Companies Act in Singapore spells restrictions or events that render the office of a director to be vacated:

- A failure to obtain qualification shares within the two months or as provided by the articles of association after appointment.  
- A failure to maintain qualification shares subsequent to appointment.  
- Being adjudicated a bankrupt or where any arrangement or composition with his creditors is made generally or where a receiving order is made against him unless leave from Court to continue his office has been obtained.  
- Being removed, by the company in accordance with its articles or, if a public company, by the company in general meeting of which special notice has been given.  
- Having attained the age of 70 years where he is a director of a public company or of a company which is a subsidiary of a public company, unless he is appointed pursuant to section 153(6).  
- Being disqualified under section 154 in respect of a conviction involving fraud or dishonesty or in connection with the promotion, formation or management of a corporation or under sections 157 or 339 of the Act.  
- Being disqualified under section 155 for persistent default in relation to the delivery of documents to the Registrar of Companies.  
- Being disqualified under section 156 for failure to disclose his interest in contracts, property, etc.  
- Being an auditor of the company (section 10(1)(c)).  
- Being disqualified under section 149 in respect of having acted as directors of insolvent companies.

Provisions Under Memorandum And Articles Of Association

Article 72 of Table A sets out the usual circumstances in which a director vacates office. It sets out nine circumstances, of which four are also restrictions under the Act:

29 Inderwick v Snell (1850) 2 Mac & G 216.
31 Section 147 (1) of the Companies Act.
32 Section 147(3) of the Companies Act.
33 Section 148 of the Companies Act.
34 Section 152 of the Companies Act.
- where he ceases to be a director by virtue of the Companies Act;
- where he becomes bankrupt or makes any arrangement or composition with his creditors generally (ie, act of bankruptcy committed);
- where he becomes prohibited by reason of any order made under the Companies Act;
- where he becomes disqualified from being a director by virtue of sections 148, 149, 154 or 155;
- where he is absent without the permission of the directors for more than 6 months from meetings of the directors held during that period;
- where he holds any other office of profit under the company without the consent of the company in general meeting (except that of Managing Director or Manager); and
- where he is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest in a manner required by the Act (section 156).