



Question:

The day-to-day management of my Company has become extremely problematic insofar as one of the Directors is mischievously blocking important business decisions. As proprietor of the business, how can I remove him as a Director of the Company?

Answer:

The power to remove Company Directors under Irish law rests with the shareholders.

Section 182 (1) of the Companies Act, 1963 states that “A company may by ordinary resolution (*of shareholders*) remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between it and him so, however, that this subsection shall not, in case of a private company, authorize the removal of a director holding office for life”.

Such a process would be initiated by the shareholders requisitioning the directors to convene an Extraordinary General Meeting (EGM) for the purposes of considering the requisite Ordinary Resolution.

The position in regard to requisitioned meetings is that a member or members of a limited company representing not less than **one-tenth** of the voting rights of all the members may at any time lodge a requisition requiring the Board of Directors to convene an EGM for the purposes stated in the requisition.

On receipt of the requisition (which may consist of several documents in similar form) the Board of Directors must, within 21 days, convene the meeting to be held within 2 months from the date of the deposit of the requisition. If the Board of Directors DO NOT comply with this requirement, the requisitionists (or any of them representing more than one half of the voting rights of all of them) may convene the meeting. However, in this instance it must be held within 3 months from the date of the deposit of the requisition. A meeting convened by requisitionists is required to be convened in the same manner, as nearly as possible, as that in which meetings are convened by the Board of Directors. In this connection, the requisitionists may recover their expenses from the Company, which, in turn, is required to deduct the amount of these from the remuneration of the member(s) of the Board of Directors in default.

If the Board of Directors proceeds to call the meeting, the notice will be in the same form as for an Extraordinary General Meeting convened by the Board of Directors in the usual way.

Extended notice of 28 days must be given to the Company of a resolution to remove a member of the Board of Directors other than a member holding office for life, before the expiration of this period of office or to appoint somebody in place of the member of the Board of Directors so removed at the meeting at which he is removed. If the Board of Directors resolve to submit the resolution it may be put before a meeting to be held within this 28 day period. This business will be transacted by ordinary resolution i.e. passed by a simple majority of those present and voting. Therefore, fourteen days notice in writing of the meeting must be given to the Members. A special Resolution would require the giving of 21 days notice. The Company's Articles of Association may also provide that notice must be given to the Company's Auditors.

The Articles may further provide that the notice period must be “clear days” i.e. exclusive of the day on which it is served or deemed to be served and of the day for which it is given. It may also state in the Articles that notice is deemed to be effected 24/48 hours after posting.

Meetings can, of course, be held at less than the full period of notice providing the consent of the Auditors and all the members entitled to attend and vote at the Meeting is secured. It is not necessary for the agreement to short notice to be in writing but it is suggested that without written agreement subsequent proof of consent could be problematical.

As soon as the company receives notice of the resolution proposing the removal of a Director of the Board of Directors, a copy of the notice must be sent to the Director concerned. He may, in turn, make representations in writing to the Company and may request their circulation to the members of the company. If, however, there is insufficient time to allow for proper circulation prior to the Meeting, the Director may insist on making an oral presentation to the Meeting. The Act does however contain safeguards against the circulation/publication of matter which could be construed as defamatory.

These provisions do not, of course, preclude a person, removed as a Director in this manner, from initiating legal proceedings against the Company for breach of contract.