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Briefing
Procedure for Removing a Director

INSTITUTE OF DIRECTORS IN IRELAND

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The office of director may be vacated by operation of a legislative provision, upon his or her death or under a provision in either the constitution of the company or of a shareholders' agreement.

Vacation of office under the Companies Act 2014 arises if:

- a director becomes bankrupt;
- a director is disqualified from being a director by a court order or where he or she is deemed to be disqualified;
- a director fails to take a share qualification that is required by the company's constitution within two months of the appointment (most constitutions exclude this requirement);
- the appointment of a director exceeds the maximum permitted number of directorships.

Further methods of vacating office may be included in the company's constitution. Typically these are:

- if a director resigns;
- if a director is absent from board meetings for a specified period (typically six months);
- if a director becomes bankrupt or makes any compromise or arrangement with his or her creditors generally;
- if a director suffers from a mental disorder; and
- if a director is subject to a restriction order under the Companies Act.

Clearly conflict with a director can be a difficult time for a company. Usually the easiest way to manage conflict is to seek to persuade the director to resign in return for a severance package. Shareholder approval of the severance package may be required under the Companies Act.

Alternatively, the company's constitution may make provision for the removal of a director.

However, if the foregoing is not practicable then a director may be removed by the following procedure under Section 146 of the Companies Act 2014:

- the member(s) who wish to remove the director must give 'extended notice' to the company at least 28 days before the meeting at which the resolution is to be moved;
- on receipt of the notice the company must send a copy of the resolution to the relevant director. A board meeting must also be called to convene a general meeting;
- the relevant director is entitled to make written representations to the company and to request that the company communicates those representations to the members. The director may also speak at the meeting on the resolution concerning his or her removal;
- the board may, if it so wishes, make a representation to the members, whether the board members are for or against the resolution, and even if they are divided. However, the proposers of the resolution may only make representations at the general meeting; and
- an ordinary resolution (ie '50% plus one') of the members at the general meeting suffices.

Removal of a director under these procedures does not affect his or her rights to compensation under the terms of the appointment. An executive director is an employee of the company, whether there is a written contract or not, and the dismissal of an executive director is governed by employment law as well as companies legislation. Therefore, if a director is removed from office and this also terminates his or her employment, the dismissal may be unfair under the Unfair Dismissals Acts: a director who is removed from office may have a substantial compensation claim against the company.

If the director is also a shareholder then, depending on the circumstances, he or she may also have a remedy for oppression in the conduct of the company's affairs, under Section 212 of the Companies Act 2014.

Professional legal advice should be sought in every case in which a company is contemplating removing a director from office.

Further information is available from

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