

(Draft Version) Flowchart: Procedure on Removal of Company Director under Companies Act 2016

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Golden Plus Holdings Bhd v Teo Sung Ngap and another appeal [2020] MLJU 2037
It is a principle that the holding company cannot bind the subsidiary company as each company are separate legal entities. Thus, the court held that a holding company could not terminate the individual position in subsidiaries without going through the Board of Subsidiaries. (pg 11, 15 of the court judgement)

Removal of Director must be done in an actual meeting

Best Practice: Before starting the process of Removal of Director, please explore the option of gentle but firmly requesting the director to Resign

Low Thiam Hoe & Anor v Sri Serdang Sdn Bhd & Ors [2020] 10 MLJ 137
***No special notice is required if the private company has a constitution s.206(1): "subject to the constitution"
"A Director may, and on the request of a Director, the Secretary shall, at any time summon a meeting of the Directors." - Para 93 and 94 of the court judgement

s.297(2)(a) CA 2016 Private company CANNOT bypass s.206(3) special notice by removing director through a circular written resolution.
Removal of Director must be done in an actual meeting.
Note: Some are of opinion that the constitution can be amended to allow removal of directors via board meetings. However, CA2016 is silent on giving powers to directors to remove directors. Until such a matter is determined by the Courts, we will put a caveat here.

S206 (4) CA2016 Resolution to remove director shall NOT take effect

S206 (4) CA2016 Is the Director's Successor appointed?

S206 (4) CA2016 Is the removed director of the public company appointed to represent the interests of any particular class of shareholders or debenture holders?

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Eka Noodles Berhad v Norhayati Binti Tukman (2021)
s196(1) CA 2016, a private company shall have minimum 1 director while public company shall have minimum 2 directors.
The removal and appointment of directors can be done so long that at the end of meeting, the company has maintained the minimum number of directors. (pg 18 of the court judgement)

s201 CA 2016, a person is not to be appointed as director unless he has the written consent and declaration as the proposed new directors.
It does not mean that such consent and declaration must be delivered together with the requisition notice. (pg 7 of the court judgement)

s.297(2)(a) CA 2016 Private company CANNOT bypass s.206(3) special notice by removing director through a circular written resolution.
Removal of Director must be done in an actual meeting

Any member means even member with share can send special notice. However, best practice is to get more than 1 member to send special notice to company.
It is a MUST to have special notice from a member of the company proposing an ordinary resolution for removal of director

S206 (3) Special Notice is required (Any Member send to Company)
S322 (1) Special Notice is required of an ordinary resolution to remove company director

Dato' Low Tuck Choy and Anor v Chong Kok Weng and Others (2009) MLJU 826
CA1965: S.128 make no limitation that the provision only applies to directors of public companies. It is applicable to private companies and cases where the director is removed by a company by a resolution. (cross reference to S.326 of the CA2016: Removal of Director) (pg 5 of court judgement)

Kow Kok Leong v KL Team Development Sdn Bhd & Ors [1998] 5 CLJ 287
CA1965: Failure to comply with the requirement to give special notice under S.128(2), in accordance with the requirement stated under S.153 will render the resolution invalid. (cross reference to S.322 of the CA2016: Special Notice) (pg 2 of court judgement)

Zung Zang Trading Sdn Bhd v Kwan Hung Cheong & Anor (2011) 4 MLJ
court interpreted the term "members" and "requestionists" under s144 of the CA 1965. Under this section, the directors must convene a meeting of members upon the requisition of the "members". (pg 12 & 14 of court judgement)

Note: s.2 CA 2016, a member means a person whose name is entered in the register of members as the holder of having one or more shares in the company. Members means singular or plural. However, the best practice is to get more than 1 member to requisition for the EGM

Sample #07: Special Notice of Proposed Ordinary Resolutions For Removal (S206(3) and S307(1) at EGM)
Sample #08: Bursa Announcement of Special Notice Resolution of EGM
Sample #09: Requisition of EGM by Parent Co.
Sample #10: Email from Co. Sec to Directors - Receipt of Requisition of EGM - BOD Meeting
Sample #11: Notice of BOD Meeting
Sample #12: Minutes of BOD Meeting

Sample #15: Notice of EGM pursuant to s313
Sample #16: Notice to Shareholders EGM

S209 CA2016 Director has got to retire every 3 years.
So, in practice, members can choose not to reappoint the director and vote against the resolution to re-appoint director retiring at the AGM.

S316 Public Company: 14 Days before AGM
Private Company: At least 21 days before the date of AGM
The company need to issue notice of general meeting in writing

s317(1) Notice of meetings of members shall state, Date, Time, Venue and general nature of the business of meeting
s317(2) May include text of any proposed resolution and other information as the directors deem fit

Sample #03: Notice of AGM
Sample #04: Bursa Announcement - Notice of Meeting AGM
Sample #05: Revised Proxy Form for AGM
Sample #06: Outcome of Meeting

Best Practice: Use this strategy only when you are Majority > 50% and have two members supporting the removal of director

s310 (b) Power to convene meeting of Members by any member holding at least 10% of the issued share capital or a lower % as specified in the constitution or, if the company has no share capital, by at least 5% in the number of the members

s311(3)(a) Members representing at least 10% of the paid up capital carrying right of voting at Meetings of Members (excluding paid up capital held as treasury shares) ?
s311(3)(a) The member send requisition notice to the directors to convene meeting of members (EGM)
s312 (1a) Duty of directors to call for the meeting required by members within 14 days from the date of the requisition

4 requirements under s311(2) CA 2016
(a) shall be in hard copy or electronic form;
(b) shall state the general nature of the business to be dealt with at the meeting;
(c) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting; and
(d) shall be signed or authenticated by the person making requisition

Board meetings need not be convened based on the availability of all board directors. The articles of association or constitution of the company generally provides for a minimum quorum for a board meeting. If that minimum quorum is met, the board will have the required numbers to make decisions and to pass resolution as are required that will bind the company. (Source)

Sample #13: Email - No Quorum in BOD
Sample #14: Notice of EGM pursuant to s313(1)
Sample #17: Minutes of EGM

Sample #15: Notice of EGM pursuant to s313
Sample #16: Notice to Shareholders EGM

S322 (1) Has notice of the intention to move it given to the company at least 28 days before the meeting at which it is moved ?

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Hold Actual Meeting of Members (Physical or Virtual)

S 321 CA 2016, notice of meeting of members shall be given to every member, director and auditor of the company.

Removal of Director via Extraordinary General Meeting (EGM)

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Removal of Director via Annual General Meeting (AGM)

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Directors to call for EGM

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Directors to call for EGM

Directors to call for EGM

Directors to call for EGM

Directors to call for EGM

Directors to call for EGM

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

Quorum met?

s312 (1b) Has directors hold the EGM on a date not more than 28 days after the date of the notice to convene the meeting ?

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Members/Shareholders to call for EGM

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Public Company?

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S207(1) On receipt of special notice for a resolution to remove a director under S206(3), the company shall send to the director proposed to be removed a copy of the special notice

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S207(2) The director proposed to be removed shall be given the right to make oral or written representation not exceeding a reasonable length on the resolution to remove him

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S207(3) Affected director makes written representation and request the written representation to be notified to the members

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