



MEMO

To: Board of Directors
From: Company Secretary
Subject: **RESIGNATION OF DIRECTOR**

With the receipt of a resignation letter from Mr S_____, you have asked a basic question: “*what happens when a director resigns?*”

Reasons for Resigning

A director can resign for no reason at all – that’s his business – but most times there is a reason and often it’s personal, even if covertly.

He can also resign because he’s ‘forced’ to. That might be because of coercion from a major shareholder (who doesn’t like him) or other reason such as he’s disqualified from acting as a director – see Part 2D.6 of the Corporations Act.

Form of Resignation Letter

Apart from situations where a director ‘suddenly’ ceases to act – for example, becomes of unsound mind, dies – a director must either put his resignation in writing, or be removed (such as by the shareholders at a general meeting) – see Division 3 of Part 2D.3 of the Act.

Where the director signs a letter of resignation it can be very short – for example: “I hereby resign as a director of _____ Pty Ltd” and sign/date it – or long and verbose, going into reasons for his actions, saying what’s wrong with the company, losing the confidence of the board, wishing the company well in the future, etc, etc.

Process

Appropriate practice might be that on receipt of a director’s resignation letter the board might convene and formally resolve to accept the resignation, or at least note it and decide to fill the vacancy.

Some companies have an article in their constitution such as the following:

A Director may resign from office upon giving one (1) month's notice in writing to the Company of his intention to do so. Such resignation shall take effect upon the expiration of such notice, or its earlier acceptance by the Board.



However, in practice, such a provision may have little practical application and a director's resignation is probably effective either the date of the letter, or on receipt by 'the company', not at some later date when the board decides to accept it, unless the letter is framed in such a way that the date of resignation is effective on that basis. Moreover, a resignation letter will often have the words 'effective immediately' included in it, so the board has no scope to delay its effectiveness.

Minimum Directors

Another reason for the remaining directors to meet when a director resigns could be to bring the board composition back up to the minimum number of directors stated in the constitution or the Corporations Act. For example, a public company must have at least 3 directors of which at least 2 must be Australian residents – sec.201A.

ASIC Notification

When a director resigns, or he ceases to be a director for any other reason, a Form 484 (Part B) "Change to Company Details" must be lodged with ASIC within 28 days, noting the effective date, etc – sec.205B(5).

Also, under sec.205A a director is at liberty to separately lodge a Form 370 "Notification by Officeholder of Resignation or Retirement" with ASIC, to which he must attach a copy of his resignation letter.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.

