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## **PROCEDURE FOR RESIGNATION OF DIRECTOR UNDER COMPANIES ACT, 2013**

Dear All,

As we are aware that Companies Act, 2013 is already in force from April 01, 2014, and every professional is trying his/her best to unlock and decode the provisions of Companies Act, 2013. In this regard an attempt has been made from my side to compile the procedure for resignation of Director in Public Company/Private Company.

Companies Act, 2013 has prescribed a detailed procedure for effecting the resignation of Director which was not there in erstwhile Companies Act, 1956. Through this write up we shall discuss the relevant changes brought in by Companies Act, 2013 along with relevant secretarial practice.

### **Position under Erstwhile Companies Act, 1956**

Companies Act, 1956 was silent about the procedure of resignation of director as there was no section on the same. However position w.r.t. resignation by director made clear by Courts through various decisions. In Companies Act, 1956, there were various case laws which we used to refer regarding effective date of resignation for Executive Directors or Ordinary Directors or whether acceptance by Board required or not.

Under Companies Act, 1956, it was duty of the Company to file form 32 in case of change in board of directors under section 303(2) due to resignation by a director. No liability prescribed for the resigning Director to intimate Registrar of Companies about his/her resignation. Whenever a Director resigns from his position of Director, form 32 is to be filed by the Company with ROC within 30 days from the effective date of resignation.

### **Position under Companies Act, 2013**

Position under Companies Act, 2013, was quite clear about the procedure of resignation of director. Section 168 of the Companies Act, 2013 regulates the procedure for resignation of director.

#### **Duty of Company in case of Resignation by Director**

As per section 168 (1), a director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same by passing a board resolution to that effect and the company shall intimate the Registrar through filing of form **DIR.12** within 30 days from the effective date of resignation. Company is also required to place the fact of such resignation in the **report of directors** laid in the immediately following general meeting by the company.

As per Rule 15 of Companies (Appointment and Qualification of Directors) Rules, 2014, the company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form **DIR-12** and post the information on its website, if any.

#### **Duty of Resigning Director in case of Resignation**

A director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation through filing of **Form DIR.11**.

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As per Rule 16 of Companies (Appointment and Qualification of Directors) Rules, 2014, where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form **DIR-11** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

### **Effective date of Resignation**

As per section 168 (2), the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

### **Resignation of Director u/s 168 [DIR-11]**

As per first proviso to section 168(1), if a director wants to resign, he has to file copy of his resignation letter with reasons of resignation directly with ROC also with Form **DIR.11** under his Digital Signature. It means it will be mandatory for all directors to have Digital Signature sooner or later.

### **Discussion regarding Form DIR-11 under Companies Act, 2013**

I have gone through form **DIR.11** prescribed for the resignation of Director. As per new rule it is duty of resigning director to file **DIR.11** along with his resignation letter. I have 2 observations w.r.t. form **DIR-11** which is to be filed by the director who has resigned from his post:

1. Point no. 6 in form **DIR-11** inquires whether confirmation is received from the company w.r.t. the resignation of Director. As per my understanding if we mention "NO" in the E-form, there will be no issue in future as confirmation of resignation from company is not mandatory u/s 168.
2. Further attachment section of form **DIR-11**, asks for proof of dispatch. Now the question is --- Is there any requirement of formal dispatch through post which generates proof of dispatch? My Answer is "NO".

We can very well use scan copy of "receiving" of resignation letter given by responsible official of the company in case of personal delivery. Further scan copy of printout of E-mail through which resignation tendered would be enough as proof of dispatch.

### **SECRETARIAL PRACTICE**

As discussed above E-forms to be filed in case Resignation of Director are form **DIR.11** and **DIR.12**. Filing of Form DIR.11 is the responsibility of resigning director under his/her digital signature whereas Filing of Form DIR.12 is the responsibility of Company. Documents to be arranged/attached for filing of **DIR.11** and **DIR.12** are:

1. Notice of Resignation filed with the Company (Resignation Letter);
2. Proof of Dispatch of resignation;
3. Evidence of Cessation (Resignation acceptance Letter by the Company);
4. Board Resolution for taking note of resignation.

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We can use Board Resolution for taking note of resignation or Resignation acceptance Letter by the Company as Evidence of Cessation. Further Resignation Letter given by the Director shall act as Notice of Resignation filed with the Company.

You may download soft copy of above mentioned Letters, Board resolution etc from the link given below:

<http://www.caclubindia.com/forum/procedure-for-resignation-of-director-under-ca-2013-299123.asp>

However, for convenience and observation of the readers, sample resignation letter, Resignation acceptance Letter by the Company along with sample Board Resolution for taking note of resignation required in filing form **DIR.12** and **DIR.11** are given at the end of this article.

### **Other Corporate Secretarial work under Companies Act, 2013**

You may download new set of MOA and AOA as per Companies Act, 2013, from the link given below:

[Sample MOA and AOA as per Companies Act, 2013](#)

For my other Corporate Law Articles on Companies Act, 2013, kindly refer the links mentioned below:

1. [Useful Interpretations about Companies Act, 2013 - Part-1](#)
2. [List of Resolutions to be filed with ROC in Form MGT.14](#)
3. [Procedure for Appointment of Additional Director in CA 2013](#)
4. [Different Monetary Limits under Companies Act 2013](#)
5. [Companies to have Uniform Financial year under CA 2013](#)
6. [Procedure for Increase in Authorise Share Capital under Companies Act, 2013.](#)
7. [Intimation to ROC for Auditor appointment in form ADT.1](#)

### **DOCUMENT FORMATS REGARDING RESIGNATION OF DIRECTOR**

Please find below sample formats of relevant documents required for resignation of Director:

#### **1. Sample Resignation Letter**

Date:

To,

The Board of Directors,  
ABC Private Limited  
Address

**Sub: Resignation from the position of Director**

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Dear Sir/Madam,

Due to personal and unavoidable circumstances, I hereby tender my resignation from the Directorship of the Company with immediate effect. Kindly accept this letter as my resignation with immediate effect, from the post of Director of ABC Private Limited, and relieve me of my duties.

Kindly acknowledge the receipt of this resignation letter and arrange to submit the necessary forms with the office of the Registrar of Companies, NCT of Delhi and Haryana to that effect.

Thanking You

Yours sincerely,

**(Mohit Chauhan)**

Address:

**DIN No.:**

## **2. Resignation acceptance Letter by the Company**

To,

Dated:

Mr. Mohit Chauhan

Address:

### **Subject: Acknowledgement of Resignation**

Dear Sir,

This has reference to your resignation letter dated \_\_\_\_\_. In this regard, please be informed that, the Board of Directors have approved your resignation w.e.f. \_\_\_\_\_, in the duly held Board meeting dated \_\_\_\_\_.

The Board sincerely appreciated your association with the Company and the support which you have rendered during your tenure. We would like to wish you all the best with respect to your future.

Thanking you,

**Yours Faithfully**

**For ABC Private Limited**

**(Rakesh Singh)**

**Director**

**DIN:**

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### **3. Board Resolution for taking note of resignation**

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS  
OF ABC PRIVATE LIMITED HELD ON \_\_\_\_\_ AT 03.00 P.M. AT**

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#### **RESIGNATION OF MR. MOHIT CHAUHAN AS DIRECTOR**

**"RESOLVED THAT** resignation of Mr. Mohit Chauhan as Director, from the Board of Directors of the Company, be and is hereby accepted with effect from \_\_\_\_\_.

**FURTHER RESOLVED THAT** for the purpose of giving effect to this resolution, Mr. Rakesh Singh, Director of the Company be and is hereby authorised to do all acts, deeds, matters and things as deem necessary, proper or desirable and to sign and execute all necessary documents, applications and returns along with filing of necessary E-form with the Registrar of Companies, NCT of Delhi and Haryana."

**Certified True Copy  
For ABC Private Limited**

**(Rakesh Singh)**

**Director**

**Address:**

**DIN:**

#### **Disclaimer:**

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am very hopeful that this write up would be of some help to understand the concepts in new Companies Act, 2013.

Thanks

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