



PROCEDURE FOR REMOVAL OF NOMINEE DIRECTORS UNDER THE COMPANIES AND ALLIED MATTERS ACT 2020

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In today's business environment, nominee directors serve as governance assets, appointed by specific shareholders or investors to safeguard their interests on a company's board. Under the Companies and Allied Matters Act 2020 ("CAMA"), removing a director involves navigating statutory requirements, contractual obligations, and corporate governance considerations. While their presence is a commercial necessity, the procedure for their removal often creates a friction point, demanding a careful balance between contractual obligations and mandatory statutory requirements. This article delves into the legal status of a nominee director under CAMA, exploring not only the prescribed procedure for director removal but, more importantly, the critical interplay between the shareholders' overriding statutory power and binding contractual agreements.

THE LEGAL STATUS AND APPOINTMENT OF NOMINEE DIRECTORS

The CAMA defines a director of a company as any person duly appointed by the company to direct and manage its business.¹ A nominee director is a person appointed by shareholders to represent their interests on the Board. Although CAMA does not explicitly define or provide for nominee directors, companies in practice often establish the position through their internal governance documents. In particular, companies may expressly provide for nominee directors in their Articles of Association or Shareholders' Agreement, clearly outlining their roles, terms of

appointment and conditions for removal. It should be noted, however, that nominee directors fall within CAMA's broad definition of directors and are therefore legally required to uphold the same duties of care, diligence, and loyalty to the company as any other director.²

REASONS FOR APPOINTING NOMINEE DIRECTORS



Shareholders appoint nominee directors for various strategic reasons, which include preserving the privacy of beneficial owners by keeping their names off public records and ensuring local representation for regulatory compliance in foreign jurisdictions. They help maintain operational control of the company while safeguarding a specific shareholder's interests on the Board. For example, if a Nigerian business owner wants to set up a company in Singapore, they may find it necessary or at least beneficial to appoint a director who is ordinarily resident in Singapore to meet regulatory requirements.³

PROCEDURE FOR REMOVAL OF DIRECTORS UNDER CAMA

The method of appointing directors generally determines the procedure for their removal. In the case of executive directors, removal typically falls within the realm of employment and labour law, distinct from the statutory framework governing the removal of directors. Executive directors are appointed for the convenience and

¹ Section 269, CAMA 2020

² Section 305 and 306 CAMA, 2020

³ Section 145 (1) Singapore Companies Act 1967
<https://sso.agc.gov.sg/Act/CoA1967>

interest of running the company by the Board of Directors through an employment or service contract.⁴ The Board usually retains the power to remove them from their executive office based on the common law principle "*he who has the right to hire, has the right to fire*". In doing so, the Board must comply with the procedure stipulated in the contract, and it should be noted that such removal is primarily an employment matter.⁵

In contrast, the removal of non-executive directors is strictly governed by CAMA.⁶ The director to be removed must be given 28 days' special notice of the company's intention to remove him, and he may make a representation in writing. If the director to be removed sends in his written representation in the nick of time, the company must circulate the written representation to members.⁷ Provided that where the representation is not circulated as required because it was received too late, the director to be removed may request that the representation be read at the meeting.⁸ The representation need not be circulated or read out if an aggrieved party can show a court of competent jurisdiction that circulating or reading it out is being abused to secure needless publicity for a defamatory matter.⁹

By the provisions of CAMA, a company may, by ordinary resolution, remove directors before the expiration of their term, *notwithstanding anything contained in the company's Articles of Association or in any agreement with the director*. The effect of this provision is that a person appointed by a shareholder as its representative on a company's Board may be removed by the general meeting. Another rationale behind Section 288 is to serve as a check on the power of directors by empowering shareholders to remove them, when necessary,

thereby reinforcing the principle that ultimate authority lies with the company's owners.

CAMA also acknowledges alternative mechanisms for removing nominee directors, and its statutory removal power does not diminish any removal rights granted by the company's Articles or contractual agreements.¹⁰ Thus, if the Articles of Association empowers any person to remove a director or other officer, that person can enforce this power even if he is not a member or an officer of the company.¹¹ This is particularly common in joint ventures and private equity structures, where investors often reserve the right to appoint and remove their nominee directors in the company's Articles.

NAVIGATING THE INTERPLAY BETWEEN STATUTORY AND CONTRACTUAL POWERS OF REMOVING NOMINEE DIRECTORS UNDER CAMA



A combined reading of Sections 288(1) and 46(3) of CAMA reveals that the power to remove a nominee director is not restricted to shareholders in a general meeting. Rather, CAMA permits a dual mechanism: the power can be exercised either by the shareholders in a general meeting, the appointing shareholder or by a third party pursuant to the provisions of the company's Articles or any agreement that governs the appointment and removal of the director.

If the appointing shareholder is unwilling to remove the nominee director, and it is in the company's interest that the nominee director is

⁴ See *Yalaju-Amaye v Association of Registered Engineering Contractors Limited* (1990) 4 NWLR (PT.145) 422

⁵ *Unity Bank Plc V. Alonge* (2024) LPELR-61898(CA)

⁶ Section 288, CAMA 2020

⁷ Section 288 (1) and (2), CAMA 2020

⁸ Section 288(3), CAMA 2020

⁹ Section 288(3b), CAMA 2020

¹⁰ Section 288(6), CAMA 2020

¹¹ Section 46(3), CAMA 2020

removed from the Board, the company's shareholders in a general meeting can remove the nominee director by an ordinary resolution in compliance with Section 288 of the CAMA. Although shareholders' statutory powers to remove directors cannot be contractually taken away and remain legally valid, their successful exercise depends on the ability to secure a simple majority vote at a general meeting. When an appointing shareholder holds a significant portion of voting rights, particularly more than 50%, this practical obstacle will deter the removal of its nominee director by the general meeting.

CONCLUSION

The statutory power to remove directors by ordinary resolution does not extinguish other removal rights granted by a company's constitutional documents or agreements, nor does it prevent directors from claiming compensation if removed wrongfully.¹² Where an appointing shareholder holds a majority of the voting rights, their contractual right to appoint their nominee effectively grants them an undisputable veto over any statutory removal attempt.

Where a Nominee Director acts solely in the interest of the appointing shareholder, to the detriment of the company, such conduct constitutes a breach of that fiduciary duty. The exceptions to the rule in *Foss v. Harbottle*¹³ ensure that minority shareholders are not without remedy, providing them with legal recourse even when majority shareholders are in control of the company.

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¹² Section 288(6), CAMA 2020

¹³ 67 ER 189, (1843) 2 Hare 461



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