

# DENOVO

MAR  
2019



## REMOVAL OF DIRECTORS – BY SHAREHOLDERS

**In terms of section 71 of the Companies Act (the “Act”), and despite anything to the contrary in a company’s Memorandum of Incorporation or rules, a director may be removed by way of an ordinary resolution of shareholders.**

Before the shareholders can remove a director as aforesaid, such director must be given notice of the meeting and the envisaged resolution. Pursuant to the director being notified, but prior to the resolution being adopted, the director must be afforded a reasonable opportunity to make a presentation (in person or through a representative) to the shareholders as to why he / she should not be removed.

It is however, important to note although section 71(2) does not explicitly require shareholders to provide a director with the reasons for the proposed dismissal it was confirmed in *Johannes Jacobs Pretorius & 1 Other v Steven Edward Timcke & 3 Others* that shareholders must provide a director with a statement setting out the grounds / reasons for the proposed resolution of removal in order for the director to make a presentation [as required in terms of section 71(2)].

It is therefore important to note that the Pretorius case (cited above) constitutes a binding precedent and that one must measure up the consequences if the Director/s being removed, approach the court for an order confirming the unfairness of their removal and therefore it is important that shareholders provide reasons for the removal of a Director prior to adopting the resolution of removal.

For more articles like this please visit

[OUR NEWSROOM](#)

We are a boutique law firm in Pretoria specializing in Corporate and Commercial law related matters.

Please contact us for further information and follow us on social media.

Die Klubhuis, 26 Pinaster Avenue,  
Hazelwood, Pretoria, South Africa



[www.vanhuyssteens.co.za](http://www.vanhuyssteens.co.za)