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Do shareholders need any reasons whatsoever, to remove a director from the board of a company?

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In the recent decision of *Weir v Wiehahn Formwork Solutions (Pty) Ltd & others*, the High Court was faced with a fairly simple question: do shareholders who seek to remove a director from a company's board in terms of a shareholders' meeting, need to give that director their reasons for wanting the removal, in advance of the shareholders' meeting?

Briefly, the facts: Weir, a director of PR Wiehahn (Pty) Ltd ("the Company"), was given notice of a shareholders' meeting to discuss and vote on his removal as a director, and was informed that he was entitled to make representations at that meeting, as was his right in terms of s71(2)(b) of the Companies Act 71 of 2008, as amended ("the Act"). In response, Weir requested the reasons for his intended removal. The Company declined to furnish Weir with reasons, and Weir requested a postponement of the meeting. Once again, the Company responded, stating that shareholders do not need a reason to remove a director, but that Weir remained entitled to make a presentation at the meeting. Whilst the matter was not decided solely on this fact, it is worthwhile to note that at the meeting, reasons for Weir's proposed removal were given.

The meeting was held, and the resolution to remove Weir as a director of the Company was passed unanimously by the Company's shareholders. Weir did not accept this outcome, and challenged it in the High Court.

The High Court considered the Act's procedures for the removal of a director by the other directors, and by the shareholders. The crucial distinction between the two processes is this:

1. Where fellow directors seek, in a directors' meeting, to remove a director, the notice of the directors' meeting must include a statement setting out reasons for the proposed resolution. Given that there are only defined grounds on which directors can remove a fellow director, it makes sense to have to provide reasons for the intended removal: to ensure that the removal falls within one of the valid removal grounds. The process is thus more onerous, and one determined in accordance with the directors' fiduciary duties owed to a company, to act in its best interests and in good faith.
2. However, where shareholders, seek, in a shareholders' meeting, to remove a director, there is no similar requirement in the Act to furnish such reasons or state the grounds for removal.

The complication was that the same High Court, in a prior decision in a matter called *Timcke*, decided (on the basis of natural justice and to give effect to the right to be heard) that an additional requirement must be 'read into' the s71(2) process of shareholders seeking to remove a director, namely, that reasons for the intended removal must be provided to the director. To add to the confusion, other High Courts' judgments conflicted with the *Timcke* decision.

The Court stated that it could depart from *Timcke* only if it found *Timcke* was mistaken in requiring shareholders to furnish reasons in advance for the intended removal of a director.

This is exactly the conclusion reached by the Court: the Court found that there was no basis for *Timcke* to have 'read in' the additional requirement, that the additional requirement was unwarranted, and the provisions of the Act were clear. There was thus no need, and indeed no basis, to add a further requirement.

The Court affirmed that shareholders need not give reasons for a director's removal and may do so at will, without any requirement that the removal be reasonable or based on good and sufficient cause. The power of removal is a proprietary right bound up in the shareholding itself. On that basis, Weir's removal, by the shareholders, as a director of the Company was valid, and his application failed.

Generally speaking, shareholders are the owners of a company. They are entitled to appoint directors to manage the company on their behalf, and are entitled to remove those directors when they wish to do so. The process and requirements to do so, are clearly prescribed and described in the Act, and hopefully this judgment now provides clarity to this issue.



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