BREGMAN MOODLEY ATTORNEYS INC.

The Executive Removal Checklist

Removing a director from the board, or ending an executive's employment, in South Africa: what to gather, what to send, and what to diary.

An executive director holds **two positions**: a seat on the board (governed by the Companies Act 71 of 2008) and a job (governed by the employment contract and the Labour Relations Act 66 of 1995). Removing one does not automatically end the other. Work through both parts below, and tick each item as you go.

Part A: For the board or shareholders

1. Gather the documents first

- [ ] The company's Memorandum of Incorporation (MOI), its founding rules, and any board charter.
- [ ] Any shareholders' agreement, especially clauses on who may appoint and remove directors.
- [ ] The executive's employment contract, including notice period, fixed term, restraint and any clause linking the job to the board seat.
- [ ] The company's disciplinary code and performance management policy.
- [ ] Objective evidence of the problem: board minutes, targets, performance reviews, emails and complaints.

2. Identify the true reason

- [ ] Write down the real reason in one sentence. "Loss of confidence" or "poor fit" on its own is not enough.
- [ ] Decide which lawful category it falls into: **conduct** (misconduct), **capacity** (poor performance, ill health or incompatibility) or **operational requirements** (genuine business needs such as restructuring).
- [ ] Check that the evidence actually supports that category, and that the executive contributed to any incompatibility.
- [ ] Record any steps already taken to fix the problem, such as feedback, meetings or mediation.

3. Choose the correct route for the board seat

- [ ] **Shareholders, section 71(1):** an ordinary (simple majority) resolution at a shareholders' meeting. No specific reason is required.
- [ ] **Board, section 71(3):** only if the company has more than two directors, and only where the director is ineligible or disqualified, incapacitated, or has neglected or been derelict in (seriously failed to perform) their duties.
- [ ] **Companies Tribunal, section 71(8):** where the company has two or fewer directors.
- [ ] Do **not** rely on an MOI clause that allows removal with no reasons and no hearing. A court has struck down such a clause as against public policy.

4. Send the right notices

- [ ] **Shareholder route:** give the director notice of the meeting and a copy of the proposed resolution, at least equal to the notice shareholders receive.
- [ ] **Board route:** give the director notice of the meeting, a copy of the proposed resolution and a written statement of reasons specific enough to prepare a reply.
- [ ] Offer a reasonable opportunity to make a presentation before the vote, in person or through a representative.
- [ ] Hold an actual meeting. Do not use a signed written (round robin) resolution to remove a director.
- [ ] The director concerned does not vote on a board resolution to remove them.

5. Deal with the job separately

- [ ] Run a fair employment process: tell the executive the concerns, share the evidence, and give a genuine chance to respond.
- [ ] Remember the Code of Good Practice: Dismissal (in force since 4 September 2025). Senior executives may need fewer warnings, but they must still be heard.

- [ ] Consider alternatives to dismissal, such as a different role, a restructured position or a negotiated exit.
- [ ] If negotiating a separation, cover final pay, notice, leave, bonus or incentive entitlements, restraint, confidentiality and a full and final settlement, in writing.
- [ ] Do not quietly strip the executive of status or duties to force a resignation. That invites a constructive dismissal claim.

6. After the decision

- [ ] Minute the meeting accurately, including the director's representations and the reasons for the decision.
- [ ] Give the executive the outcome in writing.
- [ ] Announce the change accurately. Never describe a removal as a resignation.
- [ ] File the change of directors with the Companies and Intellectual Property Commission (CIPC) within 10 business days.
- [ ] Process final pay, a certificate of service and the return of company property.

Part B: For the executive who has been removed

- [ ] Do not resign in protest, and do not sign anything, before taking legal advice.
- [ ] Keep every notice, set of minutes, email and message, and write down the dates of each event.
- [ ] Check which route was used to remove you, and whether you received notice, reasons and a chance to be heard.
- [ ] Ask whether your employment has also been ended, or only your board seat.
- [ ] Check your contract for notice pay, a fixed term, incentives and any restraint of trade.
- [ ] Challenge the decision itself. A court application that does not ask for the removal to be reviewed and set aside may fail.

Key deadlines to diary

- **20 business days:** to apply to court to review a removal by the board under section 71(5) of the Companies Act.
- **30 days:** to refer an unfair dismissal dispute to the CCMA (the Commission for Conciliation, Mediation and Arbitration).
- **10 business days:** for the company to file the change of directors with the CIPC.
- **Up to 12 months' remuneration:** maximum compensation for an ordinary unfair dismissal (24 months if automatically unfair).

Six mistakes that end up in court

- Announcing a resignation that never happened.
- Relying on an MOI shortcut that gives the director no reasons and no hearing.
- Sending a letter that says only "the board has lost confidence in you".
- Treating removal from the board as the end of the employment contract.
- Asking the court for declarations instead of reviewing the removal decision.
- Resigning in anger before taking advice.

Need advice before the vote, or after the letter?
Call Roy Bregman on +27 (0)11 646 0335 or email roy@bmalaw.co.za. Admitted attorney since 1974.

This checklist is general information as at 29 October 2026 and is not legal advice. Every matter turns on its own facts, the company's MOI and the executive's contract. Please take advice on your specific situation.