

## Removal or Resignation of Auditors

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### Please note:

The Office of Consumer and Business Affairs (OCBA) undertakes the administration of the Act on behalf of the Corporate Affairs Commission.

The removal or resignation of an auditor is governed by various provisions of the Corporations Act applied by section 233 of the Co-operatives Act 1997 (the Act) and regulation 13. This information sheet sets out the main provisions of the Corporations Act to assist you in complying with the requirements of the legislation. These notes should be read with reference to the full provisions of the Act and the applied provisions of the Corporations Act. If you are in doubt as to what is required to ensure full compliance with your obligations, you should seek professional advice.

### Removal of Auditors

Under s329(1) of the Corporations Act, an auditor of a co-operative may only be removed by resolution of the co-operative at a general meeting of which notice under s329(1A) has been given, but not otherwise. The resolution required to remove an auditor is an ordinary resolution which must be passed by a simple majority of those voting in person at the meeting, or by proxy if applicable.

Section 329(1A) of the Corporations Act provides that notice of intention to move the resolution must be given to the co-operative at least two months before the meeting is to be held. However, if the co-operative calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than two months after the notice of intention is given.

A notice should be served on the co-operative secretary as representative of the co-operative by a person who is normally authorised to convene meetings. This is usually a director.

The Act provides for certain situations where members can convene a meeting. Where members can convene a meeting, they are also able to serve the notice. The circumstances of a meeting requisitionable by members are described at s204 of the Act.

The form of notice is not prescribed by the Act. However, an example of a notice may be:

"I, \_\_\_\_\_, intend (or request the co-operative) to convene a general meeting of the co-operative on at least two months after service) to consider, and if thought fit pass, the resolution: that (name of existing auditor) be removed as auditor of the co-operative signed and dated."

Under s329(2) of the Corporations Act the co-operative shall, as soon as possible, send a copy of the notice under s329(1A) to the auditor and lodge a copy with OCBA.

Within seven days of receiving a copy of the notice, the auditor may make representations in writing to the co-operative and request that a copy of the representations be sent by the co-operative (at its expense) to every member to whom notice of the meeting is sent [s329(3)].

Unless OCBA on the application of the co-operative otherwise orders, the co-operative must send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and has the right to be heard at the meeting [s329(4)].

The co-operative must give persons entitled to notice of the general meeting notice of the nomination of the new auditor.

**If the resolution is carried** - Within 14 days of removing the auditor from office, the co-operative must lodge with OCBA notice of the removal of the auditor (Form 24) Where there is a trustee for the holders of debentures of the co-operative, the co-operative must give to the trustee a copy of the notice lodged with OCBA [s329(11)].

**New auditor must be appointed**- Where the auditor is removed in accordance with s329 of the Corporations Act, the co-operative may without adjourning the general meeting at which the auditor was removed, appoint a new auditor by a resolution passed by a majority of not less than three quarters of those entitled to vote in person, or by proxy if applicable [s327(10)].

Notice of nomination of an auditor shall be sent by the co-operative to each auditor nominated, the existing auditor of the co-operative and to each person entitled to receive notice of a general meeting, not less than seven days before the meeting or at the time notice of the meeting is given [s328(3)].

If the resolution to appoint a new auditor is not passed or could not be passed because notice of the nomination of the auditor has not been sent, the meeting may be adjourned to a day between 20 and 30 days after the first meeting.

Nominations for appointment as auditor at the adjourned meeting must be received at least 14 days before the meeting and must be from a member. The resolution appointing an auditor at the adjourned meeting is by ordinary resolution [s327(10)(b)].

Where the co-operative fails to appoint a replacement auditor, the co-operative shall notify OCBA within seven days [s327(11)].

## Resignation of Auditors

An auditor must apply to OCBA for its consent to resign as auditor of a co-operative (Form 25). Written notification of the application must be given to the co-operative at or about the same time [s329(5)].

OCBA shall as soon as practicable notify the auditor and the co-operative of its decision [s329(6)].

Where OCBA consents to the resignation, the auditor may, by notice in writing, given to the co-operative, resign as auditor of the co-operative. The resignation takes effect on the day (if any) specified in the resignation, the day OCBA gives consent, or on the day (if any) fixed by OCBA whichever is the latest [s329(5) and (8)].

Within 14 days after receiving the notice of resignation from the auditor (not the notice of application to OCBA), the co-operative shall lodge notice of the resignation with OCBA (Form 24), and give a copy of the notice to the trustee for debenture holders (if any) [s329(11)].

In considering an application for consent to resign, OCBA's main concern is to ensure that the independence of the audit function is preserved. OCBA will not consent to an application unless it is satisfied, among other things, that:

- the auditor has not been induced to resign because of any suggestions made by, or actions of, the co-operative's management, indicating that the auditor will be replaced if the auditor deals with certain matters or items other than in accordance with a manner suggested by the co-operative;
- adequate assurance has been given by the auditor that the application does not follow as a consequence of a limitation on the scope of the auditors work or the existence of a significant uncertainty affecting the financial statements; and
- the auditor provides any other assurances and information on any other matters which the auditor believes OCBA should be made aware of, which may impinge on the independence of the audit function as it relates to the co-operative.

In completing the application form (Form 25) the auditor(s) should:

- provide full and appropriate replies to all questions.
- complete a separate application form for each co-operative

The annexure (if any) to the application (form 25) should have regard to the following:-

- The qualifying or adverse comment(s) includes any matters or changes in accounting principles or practices affecting the financial statements, or any other reason, not including changes necessitated by new or amended legislation.

- The disputes that must be reported include disputes, conflicts or disagreements about matters of accounting principle or practice; any action on the part of management of the registered co-operative to suggest that the auditor should resign or that the auditor will be removed from office if the audit deals with certain matters or items otherwise than in accordance with the approach desired by the management; or any other matter of a similar nature affecting the independence of the audit or the audit role.
- OCBA expects an auditor to be completely candid in setting out the reasons in support of their application for consent to resign. If the auditor needs to supply further information or details, which OCBA should take into account, then full details should be provided under separate cover or arrangements made to discuss the issues in strict confidence with the OCBA.

## Disclaimer

This information has been prepared to provide guidance only. It should not be relied upon as a substitute for detailed consideration of the legislation. The Office of Consumer and Business Affairs is not providing legal advice and disclaims any liability arising from the use of this document. Where users of this information seek to apply it to particular facts or situations they are advised to seek their own advice. Members of the board and other officers should familiarise themselves with the Act and the Regulations.

Further information, Forms, Fee details and Circulars are available from:

Office of Consumer and Business Affairs  
Corporate Affairs and Compliance  
Tel 1300 138 918  
[www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)

The Legislation can be purchased from:

INFORMATION SA  
77 Grenfell Street, Adelaide, SA 5000  
Tel (08) 8204 1900, Fax (08) 8204 1909  
SA Country Callers 1800 182234  
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