

Resigning

Sometimes it is necessary for a supervisory director or a supervisor to resign. I am not talking about instances of abuse or when his position has become untenable. Then it is not so much about resignation but more about dismissal or forced resignation. More difficult and more interesting is the instance where the supervisory director personally feels that it is better to resign.

Suppose you are a member of a supervisory board. It adopts a resolution that you pertinently disagree with. Should you resign? Basically not. The collective of the board of supervisory directors is responsible and you only have a vote in it. Hence, your opinion may lose out. If you cannot deal with that then you are unsuitable as a supervisory director. So put up with it and continue. This becomes more difficult if the relevant resolution is of a more principal nature. There may be a time where you, as an individual, no longer want to bear the results of the said decision-making. That time should not be determined by feelings or emotions. Decisive is whether the relevant resolution violates, according to reasonably objectifiable criteria, the interests of the corporation, that the consequences of it can have a serious negative impact on the continuity of the business operations. Only then has the time come to withdraw yourself from the collective. Not sooner. Namely, as a supervisory director you were appointed to be a beacon of peace and wisdom in troublesome times.

Abandoning the ship at an early stage is not in line with that. And do not forget that the responsibility and liability of supervisory directors is also collective. Resignation as a supervisory director does not release you from that responsibility, certainly not in respect of the period that you were in office. All the more so, resignation in a crisis situation can even create liability. At some public enterprises the situation occasionally occurs that the (representative of the) stockholder fails to fill vacancies in a timely fashion. Sometimes our islands have a situation where only one supervisory director holds office. He will undoubtedly feel lonely and uncomfortable. He cannot resign. He must make every effort to ensure that supervisory directors are added to strengthen the team.

Suppose that resigning is truly relevant, then how do you handle this? As a supervisory director you are also held to organize your departure in a manner that befits the responsibility of a supervisory director. The corporation cannot incur damages, not even if you have deep feelings of discontent as a resigning supervisory director. Reputational damages can be avoided by keeping the content of the difference of opinion indoors. It is also recommended to verify whether the resignation can be adjourned to the end of the term of office or the moment that a successor is available.

It occasionally happens that a board of supervisory directors as a whole has a fundamental and apparently unsolvable difference of opinion with the board of directors. This can result in all sorts of rough and in general very adverse situations for the corporation, e.g. suspension of the board members. By definition I am of the opinion that the primary responsibility for arriving at a solution in these kinds of situations is vested in the board of supervisory directors. The latter is responsible for preventing unnecessary escalation. This means that soft methods of conflict resolution must be sought in a timely fashion, e.g. mediation. Collective resignation as a board of supervisory directors is almost never a good solution. You then completely ignore your responsibility. It is actually a public expression of incompetence. And resignation will not get you any further, because the board of directors will continue as usual.



[Frank Kunneman](#)

VanEps Kunneman VanDoorne
Attorney at law | Partner

T +5999 461 3400 ext. 254

E kunneman@vandoorne.com
