

## SECTIONS OF THE COMPANIES ACT NO. 71 (2008) (AS AMENDED)

### 15. Memorandum of Incorporation, shareholder agreements and rules of company.

(1) Each provision of a company's Memorandum of Incorporation-

- (a) must be consistent with this Act; and
- (b) is void to the extent that it contravenes, or is inconsistent with, this Act, subject to [section 6 \(15\)](#). [[Para. \(b\)](#) substituted by s. 10 (a) of [Act No. 3 of 2011](#).]

(2) The Memorandum of Incorporation of any company may-

- (a) include any provision-
  - (i) dealing with a matter that this Act does not address; [[Sub-para. \(i\)](#) substituted by s. 10 (b) of [Act No. 3 of 2011](#).]
  - (ii) altering the effect of any alterable provision of this Act; or [[Sub-para. \(ii\)](#) substituted by s. 10 (b) of [Act No. 3 of 2011](#).]
  - (iii) imposing on the company a higher standard, greater restriction, longer period of time or any similarly more onerous requirement, than would otherwise apply to the company in terms of an unalterable provision of this Act; [[Sub-para. \(iii\)](#) substituted by s. 10 (c) of [Act No. 3 of 2011](#).]
- (b) contain any restrictive conditions applicable to the company, and any requirement for the amendment of any such condition in addition to the requirements set out in [section 16](#); [\\_\\_\\_\\_](#) [[Para. \(b\)](#) substituted by s. 10 (d) of [Act No. 3 of 2011](#).]
- (c) prohibit the amendment of any particular provision of the Memorandum of Incorporation; or [[Para. \(c\)](#) substituted by s. 10 (e) of [Act No. 3 of 2011](#).]
- (d) not include any provision that negates, restricts, limits, qualifies, extends or otherwise alters the substance or effect of an unalterable provision of this Act, except to the extent contemplated in [paragraph \(a\) \(iii\)](#). [[Para. \(d\)](#) substituted by s. 10 (f) of [Act No. 3 of 2011](#).]

(3) Except to the extent that a company's Memorandum of Incorporation provides otherwise, the board of the company may make, amend or repeal any necessary or incidental rules relating to the governance of the company in respect of matters that are not addressed in this Act or the Memorandum of Incorporation, by-

- (a) publishing a copy of those rules, in any manner required or permitted by the Memorandum of Incorporation, or the rules of the company; and
- (b) filing a copy of those rules.

(4) A rule contemplated in [subsection \(3\)](#)-

- (a) must be consistent with this Act and the company's Memorandum of Incorporation, and any such rule that is inconsistent with this Act or the company's Memorandum of Incorporation is void to the extent of the inconsistency;
  - (b) takes effect on a date that is the later of-
    - (i) 10 business days after the rule is filed in terms of [subsection \(3\) \(b\)](#); or [~~Sub-para. (i)~~ substituted by s. 10 (g) of [Act No. 3 of 2011](#).]
    - (ii) the date, if any, specified in the rule; and
  - (c) is binding-
    - (i) on an interim basis from the time it takes effect until it is put to a vote at the next general shareholders meeting of the company; and
    - (ii) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in [subparagraph \(i\)](#).
- (5) If a rule that has been filed in terms of [subsection \(3\)](#) is subsequently-
- (a) ratified as contemplated in [subsection \(4\) \(c\)](#), the company must file a notice of ratification within five business days in the prescribed manner and form; or
  - (b) not ratified when put to a vote-
    - (i) the company must file a notice of non-ratification within five business days after the vote, in the prescribed manner and form; and
    - (ii) the company's board may not make a substantially similar rule within the ensuing 12 months, unless it has been approved in advance by ordinary resolution of the shareholders.

[~~Sub-s. (5)~~ substituted by s. 10 (h) of [Act No. 3 of 2011](#).]

(5A) Any failure to ratify the rules of a company does not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in [subsection \(4\) \(c\) \(i\)](#).

[~~Sub-s. (5A)~~ inserted by s. 10 (i) of [Act No. 3 of 2011](#).]

- (6) A company's Memorandum of Incorporation, and any rules of the company, are binding-
- (a) between the company and each shareholder;
  - (b) between or among the shareholders of the company; and
  - (c) between the company and-
    - (i) each director or prescribed officer of the company; or
    - (ii) any other person serving the company as a member of a committee of the board,

in the exercise of their respective functions within the company.

[[Sub-para. \(ii\)](#) substituted by s. 10 (j) of [Act No. 3 of 2011](#).]

(7) The shareholders of a company may enter into any agreement with one another concerning any matter relating to the company, but any such agreement must be consistent with this Act and the company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with this Act or the company's Memorandum of Incorporation is void to the extent of the inconsistency.

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