

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

66. Board, directors and prescribed officers.

(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company's Memorandum of Incorporation provides otherwise.

(2) The board of a company must comprise-

(a) in the case of a private company, or a personal liability company, at least one director; or

(b) in the case of a public company, or a non-profit company, at least three directors,

in addition to the minimum number of directors that the company must have to satisfy any requirement, whether in terms of this Act or its Memorandum of Incorporation, to appoint an audit committee, or a social and ethics committee as contemplated in [section 72 \(4\)](#).

[[Para. \(b\)](#) substituted by s. 44 (a) of [Act No. 3 of 2011](#).]

(3) A company's Memorandum of Incorporation may specify a higher number in substitution for the minimum number of directors required by [subsection \(2\)](#).

(4) A company's Memorandum of Incorporation-

(a) may provide for-

(i) the direct appointment and removal of one or more directors by any person who is named in, or determined in terms of, the Memorandum of Incorporation;

(ii) a person to be an *ex officio* director of the company as a consequence of that person holding some other office, title, designation or similar status, subject to [subsection \(5\) \(a\)](#); or

(i) the appointment or election of one or more persons as alternate directors of the company; and

(b) in the case of a profit company other than a state-owned company, must provide for the election by shareholders of at least 50% of the directors, and 50% of any alternate directors.

(5) A person contemplated in [subsection \(4\) \(a\) \(ii\)](#)-

(a) may not serve or continue to serve as an *ex officio* director of a company, despite holding the relevant office, title, designation or similar status, if that person is or becomes ineligible or disqualified in terms of [section 69](#); and

(b) who holds office or acts in the capacity of an *ex officio* director of a company has all the-

(i) powers and functions of any other director of the company, except to the extent that the company's Memorandum of Incorporation restricts the powers, functions or duties of an *ex officio* director; and

(ii) duties, and is subject to all of the liabilities, of any other director of the company.

(6) The election or appointment of a person as a director is a nullity if, at the time of the election or appointment, that person is ineligible or disqualified in terms of [section 69](#).

- (7) A person becomes entitled to serve as a director of a company when that person-
- (a) has been appointed or elected in accordance with this Part, or holds an office, title, designation or similar status entitling that person to be an *ex officio* director of the

company, subject to [subsection \(5\) \(a\)](#); and

(b) has delivered to the company a written consent to serve as its director.

[Sub-s. (7) amended by s. 44 (b) of [Act No. 3 of 2011](#).]

(8) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, the company may pay remuneration to its directors for their service as directors, subject to [subsection \(9\)](#).

(9) Remuneration contemplated in [subsection \(8\)](#) may be paid only in accordance with a special resolution approved by the shareholders within the previous two years.

(10) The Minister may make regulations designating any specific function or functions within a company to constitute a prescribed office for the purposes of this Act.

(11) Any failure by a company at any time to have the minimum number of directors required by this Act or the company's Memorandum of Incorporation, does not limit or negate the authority of the board, or invalidate anything done by the board or the company.

(12) Save as otherwise provided elsewhere in this Act or in the company's Memorandum of Incorporation, any particular director may be appointed to more than one committee of the company, and when calculating the minimum number of directors required for a company in terms of [subsections \(2\)](#) and [\(3\)](#), any such director who has been appointed to more than one committee must be counted only once.

[Sub-s. (12) inserted by s. 44 (c) of [Act No. 3 of 2011](#).]