

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

**69. Ineligibility and disqualification of persons to be director or prescribed officer.-(1)**

In this section, "director" includes an alternate director, and-

- (a) a prescribed officer; or
  - (b) a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.
- (2) A person who is ineligible or disqualified, as set out in this section, must not-
- (a) be appointed or elected as a director of a company, or consent to being appointed or elected as a director; or
  - (b) act as a director of a company.
- (3) A company must not knowingly permit an ineligible or disqualified person to serve or act as a director.
- (4) A person who becomes ineligible or disqualified while serving as a director of a company ceases to be entitled to continue to act as a director immediately, subject to [section 70 \(2\)](#).
- [[Sub-s. \(4\)](#) substituted by s. 46 (a) of [Act No. 3 of 2011](#).]
- (5) A person who has been placed under probation by a court in terms of [section 162](#), or in terms of [section 47](#) of the Close Corporations Act, 1984 ([Act No. 69 of 1984](#)), must not serve as a director except to the extent permitted by the order of probation.
- (6) In addition to the provisions of this section, the Memorandum of Incorporation of a company may impose-
- (a) additional grounds of ineligibility or disqualification of directors; or

- (b) minimum qualifications to be met by directors of that company.
- (7) A person is ineligible to be a director of a company if the person-
  - (a) is a juristic person;
  - (b) is an unemancipated minor, or is under a similar legal disability; or
  - (c) does not satisfy any qualification set out in the company's Memorandum of Incorporation.
- (8) A person is disqualified to be a director of a company if-
  - (a) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of [section 162](#), or in terms of [section 47](#) of the Close Corporations Act, 1984 ([Act No. 69 of 1984](#)); or
  - (b) subject to [subsections \(9\) to \(12\)](#), the person-
    - (i) is an unrehabilitated insolvent;
    - (ii) is prohibited in terms of any public regulation to be a director of the company;
  - (i) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
  - (ii) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence-
    - (aa) involving fraud, misrepresentation or dishonesty;
    - (bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in [subsection \(2\)](#) or [\(5\)](#); or
    - (cc) under this Act, the Insolvency Act, 1936 ([Act No. 24 of 1936](#)), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 ([Act No. 38 of 2001](#)), the Financial Markets Act, 2012, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 ([Act No. 12 of 2004](#)).

[Sub-item (cc) substituted by [s. 111](#) of [Act No. 19 of 2012](#).]
- (9) A disqualification in terms of [subsection \(8\) \(b\) \(iii\)](#) or [\(iv\)](#) ends at the later of-
  - (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or
  - (b) at the end of one or more extensions, as determined by a court from time to time, on application by the Commission in terms of [subsection \(10\)](#).
- (10) At any time before the expiry of a person's disqualification in terms of [subsection \(8\) \(b\) \(iii\)](#) or [\(iv\)](#)-
  - (a) the Commission may apply to a court for an extension contemplated in [subsection \(9\) \(b\)](#); and
  - (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.

(11) A court may exempt a person from the application of any provision of [subsection \(8\) \(b\)](#).

(11A) The Commission must, upon-

- (a) the issue of a sequestration order;
- (b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or
- (c) a conviction for an offence referred in [subsection \(8\) \(b\) \(iv\)](#),

send a copy of the relevant order or particulars of the conviction, as the case may be, to the Commission. [[Sub-s. \(11A\)](#) inserted by s. 46 (b) of [Act No. 3 of 2011](#).]

(11B) The Registrar of the Court must notify each company which has as a director to whom the order or conviction relates, of the order or conviction.

[[Sub-s. \(11B\)](#) inserted by s. 46 (b) of [Act No. 3 of 2011](#).]

(12) . . . . .

[[Sub-s. \(12\)](#) deleted by s. 46 (c) of [Act No. 3 of 2011](#).]

(13) The Commission must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a director, or who are subject to an order of probation as a director, in terms of an order of a court pursuant to this Act or any other law.