

70. Vacancies on board.-

(1) Subject to subsection (2), a person ceases to be a director, and a vacancy arises on the board of a company-

- (a) when the person's term of office as director expires, in the case of a company whose Memorandum of Incorporation provides for fixed terms, as contemplated in section 68 (1); or
- (b) in any case, if the person-
 - (i) resigns or dies;
 - (ii) in the case of an *ex officio* director, ceases to hold the office, title, designation or similar status that entitled the person to be an *ex officio* director;
 - (iii) becomes incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, subject to section 71 (3);
 - (iv) is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company, in terms of section 162;
 - (v) becomes ineligible or disqualified in terms of [section 69](#), subject to section 71 (3); or
 - (vi) is removed-
 - (aa)

- (bb) by resolution of the shareholders in terms of section 71 (1);
- (cc) by resolution of the board in terms of section 71 (3); or
by order of the court in terms of section 71 (5) or (6).

- (2) If, in terms of section 71 (3), the board of a company has removed a director, a vacancy on the board does not arise until the later of-
- (a) the expiry of the time for filing an application for review in terms of section 71 (5); or
 - (b) the granting of an order by the court on such an application, but the director is suspended from office during that time.
- (3) If a vacancy arises on the board, other than as a result of an *ex officio* director ceasing to hold that office, it must be filled by-
- (a) a new appointment, if the director was appointed as contemplated in section 66 (4) (a) (i); or
 - (b) subject to subsection (4), by a new election conducted-
 - (i) at the next annual general meeting of the company, if the company is required to hold such a meeting; or
 - (ii) in any other case, within six months after the vacancy arose-
 - (aa) at a shareholders meeting called for the purpose of electing the director; or (bb) by a poll of the persons entitled to exercise voting rights in an election of the director, as contemplated in [section 60 \(3\)](#).
- (4) If, as a result of a vacancy arising on the board of a company there are no remaining directors of a company, any holder of voting rights entitled to be exercised in the election of a director may convene a meeting for the purpose of such an election.
- (5) A person contemplated in subsection (4) may apply to a court for relief, and the court may grant a supervisory order relating to a meeting convened in terms of that paragraph if the court is satisfied that such an order is required to prevent the oppression, or preserve the rights, of any shareholder.
- (6) Every company must file a notice within 10 business days after a person becomes or ceases to be a director of the company.