

71. Removal of directors.

(1) Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2).

(2) Before the shareholders of a company may consider a resolution contemplated in subsection (1)-

- (a) the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and
- (b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

(3) If a company has more than two directors, and a shareholder or director has alleged that a director of the company-

- (a) has become-
 - (i) ineligible or disqualified in terms of [section 69](#), other than on the grounds contemplated in section 69 (8) (a); or
 - (ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or

(b) has neglected, or been derelict in the performance of, the functions of director,

the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.

(4) Before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given-

- (a) notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and
- (b) a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.

(5) If, in terms of subsection (3), the board of a company has determined that a director is ineligible or disqualified, incapacitated, or has been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66 (4) (a) (i), if applicable, may apply within 20 business days to a court to review the determination of the board.

(6) If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be-

- (a) any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director, may apply to a court to review the

determination of the board; and

(b) the court, on application in terms of paragraph (a), may-

- (i) confirm the determination of the board; or
- (ii) remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated or has been negligent or derelict.

(7) An applicant in terms of subsection (6) must compensate the company, and any other party, for costs incurred in relation to the application, unless the court reverses the decision of the board.

(8) If a company has fewer than three directors-

- (a) subsection (3) does not apply to the company;
 - (b) in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection; and
 - (c) subsections (4), (5) and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.
- (9) Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have at common law or otherwise to apply to a court for damages or other compensation for-
- (a) loss of office as a director; or
 - (b) loss of any other office as a consequence of being removed as a director.
- (10) This section is in addition to the right of a person, in terms of section 162, to apply to a court for an order declaring a director delinquent, or placing a director on probation.