

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

86. Mandatory appointment of company secretary.

(1) A public company or state-owned company must appoint a company secretary.

[Sub-s. (1) substituted by s. 54 (a) of Act No. 3 of 2011.]

(2) Every company secretary, irrespective of whether the appointment is made as required by subsection (1) or in terms of a requirement in a company's Memorandum of Incorporation, as contemplated in section 34 (2) and 84 (1) (c) (ii), must-

(a) have the requisite knowledge of, or experience in, relevant laws; and

(b) be a permanent resident of the Republic, and remain so while serving in that capacity. [Sub-s. (2) substituted by s. 54 (a) of Act No. 3 of 2011.]

(3) The first company secretary of a public company or state-owned company may be appointed by-

(a) the incorporators of the company; or

(b) within 40 business days after the incorporation of the company, by either-

(i) the directors of the company; or

(ii) an ordinary resolution of the holders of the company's securities.

(3A) The first company secretary of a company that is required only in terms of its Memorandum of Incorporation to appoint a company secretary as contemplated in sections 34 (2) and 84 (1) (c) (ii), must be appointed-

(a) in accordance with subsection (3), if the requirement to appoint a company secretary applies to that company when it is incorporated; or

(b) within 40 business days after the date on which the requirement first applies to the company, by either-

(i) the directors of the company; or

(ii) an ordinary resolution of the holders of the company's securities. [Sub-s. (3A) inserted by s. 54 (b) of Act No. 3 of 2011.]

(4) Within 60 business days after a vacancy arises in the office of company secretary, the board must fill the vacancy by appointing a person whom the directors consider to have the requisite knowledge and experience.