

**Company Law referred to in SSSA Memorandum of Incorporation**  
**Right to incorporate company**

**13.**

(1) One or more persons may incorporate a profit company, or three or more persons may incorporate a non-profit company, by—

(a) completing, and each signing in person or by proxy, a Memorandum of Incorporation—

(i) in the prescribed form; or

(ii) in a form unique to the company; and

(b) filing a Notice of Incorporation, in accordance with subsection (2).

**Memorandum of Incorporation, shareholder agreements and rules of company**

**15.**

(2) The Memorandum of Incorporation of any company may—

(a) include any provision—

(i) dealing with a matter that this Act does not address; or

(ii) altering the effect of any alterable provision of this Act;

(b) contain any special conditions applicable to the company, and any requirement for the amendment of any such condition in addition to the requirements set out in section 16; or

(c) prohibit the amendment of any particular provision of the Memorandum of Incorporation.

(3) Except to the extent that a company's Memorandum of Incorporation provides otherwise, the board of the company may make, amend or repeal any necessary or incidental rules relating to the governance of the company in respect of matters that are not addressed in this Act or the Memorandum of Incorporation, by—

(a) publishing a copy of those rules, in any manner required or permitted by the Memorandum of Incorporation, or the rules of the company; and

(b) filing a copy of those rules.

(4) A rule contemplated in subsection (3)—

(a) must be consistent with this Act and the company's Memorandum of Incorporation, and any such rule that is inconsistent with this Act or the company's Memorandum of Incorporation is void to the extent of the inconsistency;

(b) takes effect on a date that is the later of—

(i) 20 business days after the rule is published in terms of subsection (3)(a);

or

(ii) the date, if any, specified in the rule; and

(c) is binding—

(i) on an interim basis from the time it takes effect until it is put to a vote at the next general shareholders meeting of the company; and

(ii) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in subparagraph (i).

(5) If a rule that has been published in terms of subsection (3) is not subsequently ratified as contemplated in subsection (4)(c), the company's board may not make a substantially similar rule within the ensuing 12 months, unless it has been approved in advance by ordinary resolution at a shareholders meeting.

## **Amending Memorandum of Incorporation**

### **16.**

(1) A company's Memorandum of Incorporation may be amended—

(a) in compliance with a court order in the manner contemplated in subsection

(4);

(b) in the manner contemplated in section 36(3) and (4); or

(c) at any other time if a special resolution to amend it—

(i) is proposed by—

(aa) the board of the company; or

(bb) shareholders entitled to exercise at least 10% of the voting rights

that may be exercised on such a resolution; and

(ii) is adopted at a shareholders meeting, or in accordance with section 60,

subject to subsection (3).

(2) A company's Memorandum of Incorporation may provide different requirements than those set out in subsection (1)(c)(i) with respect to proposals for amendments.

(3) Despite subsection (1)(c)(ii), if a non-profit company has no voting members—

(a) the board of that company may amend its Memorandum of Incorporation in the manner contemplated in subsection (1)(c)(i)(aa); and

(b) the requirements of subsection (1)(c)(ii) do not apply to the company.

(4) An amendment to a company's Memorandum of Incorporation required by any court order—

(a) must be effected by a resolution of the company's board; and

(b) does not require a special resolution as contemplated in subsection (1)(c)(ii).

(5) An amendment contemplated in subsection (1)(c) may take the form of—

(a) a new Memorandum of Incorporation in substitution for the existing Memorandum; or

(b) one or more alterations to the existing Memorandum of Incorporation by—

(i) changing the name of the company;

(ii) deleting, altering or replacing any of its provisions;

(iii) inserting any new provisions into the Memorandum of Incorporation; or

(iv) making any combination of alterations contemplated in this paragraph.

(6) If a profit company amends its Memorandum of Incorporation in such a manner that it no longer meets the criteria for its particular category of profit company, the company must also amend its name at the same time by altering the ending expression as appropriate to reflect the category of profit company into which it now falls.

(7) Within the prescribed time after amending its Memorandum of Incorporation, a company must file a Notice of Amendment together with the prescribed fee, and—

(a) the provisions of section 13(3) and (4)(a) and section 14, each read with the changes required by the context, apply to the filing of the Notice of Amendment; and

(b) if the amendment to a company's Memorandum of Incorporation—

(i) has substituted a new Memorandum, as contemplated in subsection

(5)(a), the provisions of section 13 (2)(b), read with the changes required by the context, apply to the filing of the Notice of Amendment; or  
(ii) has altered the existing Memorandum, as contemplated in subsection (5)(b)—

(aa) the company must include a copy of the amendment with the Notice of Amendment; and

(bb) the Commission may require the company to file a full copy of its amended Memorandum of Incorporation within a reasonable time.

(8) If a company's amendment to its Memorandum of Incorporation includes a change of the company's name—

(a) the provisions of section 14(2) and (3), read with the changes required by the context, apply afresh to the company; and

(b) if the amended name of the company—

(i) is reserved in terms of section 12 for that company, the Commission must—

(aa) issue to the company an amended registration certificate; and

(bb) alter the name of the company on the companies register; or

(ii) is not reserved in terms of section 12 for that company, the Commission must take the steps set out in subparagraph (i), unless the name is—

(aa) the registered name of another company, registered external company, close corporation or co-operative; or

(bb) reserved in terms of section 12 for another person.

(9) An amendment to a company's Memorandum of Incorporation takes effect from the later of—

(a) the date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or

(b) the date, if any, set out in the Notice of Amendment.

## **Alterations, translations and consolidations of Memorandum of Incorporation**

(1) The board of a company, or an individual authorised by the board, may alter the company's rules, or its Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by—

(a) publishing a notice of the alteration, in any manner required or permitted by the Memorandum of Incorporation or the rules of the company; and

(b) filing a notice of the alteration.

(2) The Commission, or a director or shareholder of a company, may apply to the Companies Tribunal for an administrative order setting aside the notice of an alteration published in terms of subsection (1), only on the grounds that the alteration exceeds the authority to correct a patent error or defect, as contemplated in that subsection.

(3) At any time, a company that has filed its Memorandum of Incorporation may file one or more translations of it, in any official language or languages of the Republic.

(4) A translation of a company's Memorandum of Incorporation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete translation of the Memorandum of Incorporation.

(5) At any time after a company has filed its Memorandum of Incorporation, and subsequently filed one or more alterations or amendments to it—

(a) the company may file a consolidated revision of its Memorandum of Incorporation, as so altered or amended; or

(b) the Commission may require the company to file a consolidated revision of its Memorandum of Incorporation, as so altered or amended.

(6) A consolidated revision of a company's Memorandum of Incorporation must be accompanied by—

(a) a sworn statement by a director of the company; or

(b) a statement by an attorney or notary public,

stating that the consolidated revision is a true, accurate and complete representation of the company's Memorandum of Incorporation, as altered and amended up to the date of the statement.

## **Legal status of companies**

### **19.**

(1) From the date and time that the incorporation of a company is registered, as stated in its registration certificate, the company—

(a) is a juristic person, which exists continuously until its name is removed from the companies register in accordance with this Act;

(b) has all of the legal powers and capacity of an individual, except to the extent that—

(i) a juristic person is incapable of exercising any such power, or having any such capacity; or

(ii) the company's Memorandum of Incorporation provides otherwise;

(c) is constituted in accordance with—

(i) the unalterable provisions of this Act;

(ii) the alterable provisions of this Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the company's Memorandum of Incorporation; and

(iii) any further provisions of the company's Memorandum of Incorporation.

## **Access to company records**

### **26.**

(1) A person who holds or has a beneficial interest in any securities issued by a company—

(a) has a right to inspect and copy the information contained in the records of the company—

(i) mentioned in section 24(3)(a), (b), (c)(i) and (ii), (d) and (e); or

(ii) contemplated in section 24(4)(a) or (b);

(b) has a right to any other information to the extent granted by the Memorandum of Incorporation, as contemplated in subsection (2); and

(c) may exercise the rights set out in paragraph (a) or (b)—

- (i) by direct request made to the company in the prescribed manner, either in person or through an attorney or other personal representative designated in writing; or
- (ii) in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

### **Additional accountability requirements for certain companies**

#### **34.**

(1) In addition to complying with the requirements of this Part, a public company or state-owned company must also comply with the extended accountability requirements set out in Chapter 3.

### **Interpretation and restricted application of Part**

#### **57.**

(4) If every shareholder of a particular company, other than a state-owned company, is also a director of that company—

(a) any matter that is required to be referred by the board to the shareholders for decision may be decided by the shareholders at any time after being referred by the board, without notice or compliance with any other internal formalities, except to the extent that the Memorandum of Incorporation provides otherwise, provided that—

- (i) every such person was present at the board meeting when the matter was referred to them in their capacity as shareholders;
- (ii) sufficient persons are present in their capacity as shareholders to satisfy the quorum requirements set out in section 64; and
- (iii) a resolution adopted by those persons in their capacity as shareholders has at least the support that would have been required for it to be adopted

as an ordinary or special resolution, as the case may be, at a properly constituted shareholder's meeting; and

(b) when acting in their capacity as shareholders, those persons are not subject to the provisions of section 73 to 78 relating to the duties, obligations, liabilities and indemnification of directors.

### **Shareholder right to be represented by proxy**

#### **58.**

(3) Except to the extent that the Memorandum of Incorporation of a company provides otherwise—

(a) a shareholder of that company may appoint two or more persons concurrently as proxies;

(b) a proxy may delegate the proxy's authority to act on behalf of the shareholder to another person, subject to any restriction set out in the instrument appointing the proxy; and

(c) a copy of the instrument appointing a proxy must be delivered to the company, or to any other person on behalf of the company, before the proxy exercises any rights of the shareholder at a shareholders meeting.

(7) A proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent that the Memorandum of Incorporation, or the instrument appointing the proxy, provides otherwise.

### **Record date for determining shareholder rights**

#### **59.**

(1) The board of a company may set a record date for the purpose of determining which shareholders are entitled to—

(a) receive notice of a shareholders meeting;

- (b) participate in and vote at a shareholders meeting;
- (c) decide any matter by written consent or electronic communication, as contemplated in section 60;
- (d) exercise pre-emptive rights, as contemplated in section 39;
- (e) receive a distribution; or
- (f) be allotted or exercise other rights.

(2) A record date determined by the board in terms of subsection (1)—

- (a) may not be—
  - (i) earlier than the date on which the record date is determined; or
  - (ii) more than 10 business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and
- (b) must be published to the shareholders in a manner that satisfies any prescribed requirements.

(3) If the board does not determine a record date for any action or event, the record date is—

- (a) in the case of a meeting, the latest date by which the company is required to give shareholders notice of that meeting; or
- (b) the date of the action or event, in any other case, unless the Memorandum of Incorporation or rules of the company provide otherwise.

## **Shareholders meetings**

### **61.**

(3) Subject to subsection (5) and (6), the board of a company, or any other person specified in the company's Memorandum of Incorporation or rules, must call a shareholders meeting if one or more written and signed demands for such a meeting are delivered to the company, and—

- (a) each such demand describes the specific purpose for which the meeting is proposed; and

*(b)* in aggregate, demands for substantially the same purpose are made and signed by the holders, as the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

(9) Except to the extent that the Memorandum of Incorporation of a company provides otherwise—

*(a)* the board of the company may determine the location for any shareholders meeting of the company; and

*(b)* a shareholders meeting of the company may be held in the Republic or in any foreign country.

## **Notice of meetings**

### **62.**

(1) The company must deliver a notice of each shareholders meeting in the prescribed manner and form to all of the shareholders of the company as of the record date for the meeting, at least—

*(a)* 15 business days before the meeting is to begin, in the case of a public company or a non-profit company that has voting members; or

*(b)* 10 business days before the meeting is to begin, in any other case.

(2) A company's Memorandum of Incorporation may provide for longer minimum notice periods than required by subsection (1).

(3) A notice of a shareholders meeting must be in writing, and must include—

*(a)* the date, time and place for the meeting, and the record date for the meeting;

*(b)* the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a), if applicable;

*(c)* a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;

(d) in the case of an annual general meeting of a company—

(i) a summarised form of the financial statements to be presented; and

(ii) directions for obtaining a copy of the complete annual financial statements for the preceding financial year; and

(e) a reasonably prominent statement that—

(i) a shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the shareholder, or two or more proxies if the Memorandum of Incorporation of the company so permits;

(ii) a proxy need not also be a shareholder of the company; and

(iii) section 63(1) requires that meeting participants provide satisfactory identification

(4) If a company fails to give the required notice of a shareholders meeting, or if there was a material defect in the giving of the notice, the meeting may proceed, subject to subsection (5), if all of the persons who are entitled to exercise voting rights in respect of each item on the agenda of the meeting—

(a) acknowledge actual receipt of the notice;

(b) are present at the meeting;

(c) waive notice of the meeting; or

(d) in the case of a material defect in the manner and form of giving notice, ratify the defective notice.

(5) If a material defect in the form or manner of giving notice of a meeting relates only to one or more particular matters on the agenda for the meeting—

(a) any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

(b) the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of subsection (4)(d).

(6) An immaterial defect in the form or manner of giving notice of a shareholders meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular shareholder to whom it was addressed, does not invalidate any action taken at

the meeting.

(7) A shareholder who is present at a meeting—

(a) is regarded to have received or waived notice of the meeting;

(b) has a right to—

(i) allege a material defect in the form of notice for a particular item on the agenda for the meeting; and

(ii) participate in the determination whether to waive the requirements for notice, or ratify a defective notice; and

(c) except to the extent set out in paragraph (b),

is regarded to have waived any right based on an actual or alleged material defect in the notice of the meeting.

### **Conduct of meetings**

#### **63.**

(1) Before any person may attend or participate in a shareholders meeting—

(a) that person must present reasonably satisfactory identification; and

(b) the person presiding at the meeting must be reasonably satisfied that the right of that person to participate and vote, either as a shareholder, or as a proxy for a shareholder, has been reasonably verified.

(2) Unless prohibited by its Memorandum of Incorporation, a company may provide for—

(a) a shareholders meeting to be conducted entirely by electronic communication;

or

(b) one or more shareholders, or proxies for shareholders, to participate by electronic communication in all or part of a shareholders meeting that is being held in person, so long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

(3) If a company provides for participation in a meeting by electronic communication, as contemplated in subsection (2)—

(a) the notice of that meeting must inform shareholders of the availability of that form of participation, and provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication; and

(b) access to the medium or means of electronic communication is at the expense of the shareholder or proxy, except to the extent that the company determines otherwise.

(4) Any person present and entitled to exercise voting rights must on a show of hands have only one vote, irrespective of the number of shares he or she holds or represents.

(5) On a poll at any meeting of a company, any member including his or her proxy, must be entitled to exercise all the voting rights attached to the shares held or represented by that person.

### **Meeting quorum and adjournment**

#### **64.**

(1) Subject to subsections (2) to (8)—

(a) a shareholders meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and

(b) a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.

(4) If, within one hour after the appointed time for a meeting to begin, the requirements of subsections (1), or (3) if applicable,

(a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week;

(b) for consideration of a particular matter to begin have not been satisfied—

(i) if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or

(ii) if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.

(5) The person intended to preside at a meeting that cannot begin due to the operation of subsection (1)(a), or (3) if applicable, may extend the one-hour limit allowed in subsection (4) for a reasonable period on the grounds that—

(a) exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or

(b) one or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders, together with others in attendance, would satisfy the requirements of subsection (1), or (3) if applicable.

(9) Unless the company's Memorandum of Incorporation or rules provide otherwise, after a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.

(12) Subject to subsection (13), a meeting may not be adjourned beyond the earlier of—

(a) the date that is 120 business days after the record date determined in accordance with section 59; or

(b) the date that is 60 business days after the date on which the adjournment occurred.

(13) A company's Memorandum of Incorporation may provide for different

maximum periods of adjournment of meetings than those set out in subsection (12), or for unlimited adjournment of meetings.

### **Shareholder resolutions**

**65.**

(7) For an ordinary resolution to be approved by shareholders, it must be supported by more than 50% of the voting rights exercised on the resolution.

(9) For a special resolution to be approved by shareholders, it must be supported by at least 75% of the voting rights exercised on the resolution.

(11) A special resolution is required to—

(a) amend the company's Memorandum of Incorporation to the extent required by section 16(1)(c);

(b) approve the voluntary winding-up of the company, as contemplated in section 80(1); or

(c) approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5.

### **Board, directors and prescribed officers**

**66.**

(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.

(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

(iii) 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.

## **Ineligibility and disqualification of persons to be director or prescribed officer**

### **69.**

(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 a director immediately, subject to section 70(2).

(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;

(iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or

(iv) 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 Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

(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*).

(12) Despite being disqualified in terms of subsection (8)(*b*)(iii) or (iv), a person may act as a director of a private company if all of the shares of that company are held by that disqualified person alone, or by—

(*a*) that disqualified person; and

(b) persons related to that disqualified person, and each such person has consented in writing to that person being a director of the company.

(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.

## **Board committees**

### **72.**

(1) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, the board of a company may—

(a) appoint any number of committees of directors; and

(b) delegate to any committee any of the authority of the board.

(2) Except to the extent that the Memorandum of Incorporation of a company, or a resolution establishing a committee, provides otherwise, the committee—

(a) may include persons who are not directors of the company, but—

(i) any such person must not be ineligible or disqualified to be a director in terms of section 69; and

(ii) no such person has a vote on a matter to be decided by the committee;

(b) may consult with or receive advice from any person; and

(c) has the full authority of the board in respect of a matter referred to it.

## **Board meetings**

73.

(1) A director authorised by the board of a company—

(a) may call a meeting of the board at any time; and

(b) must call such a meeting if required to do so by at least—

(i) 25% of the directors, in the case of a board that has at least 12 members;

or

(ii) two directors, in any other case.

(2) A company's Memorandum of Incorporation may specify a higher or lower percentage or number in substitution for those set out in subsection (1)(b).

(3) Except to the extent that this Act or a company's Memorandum of Incorporation provides otherwise—

(a) a meeting of the board may be conducted by electronic communication; or

(b) one or more directors may participate in a meeting by electronic communication, so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

(4) The board of a company may determine the form and time for giving notice of its meetings, but—

(a) such a determination must comply with any requirements set out in the Memorandum of Incorporation, or rules, of the company; and

(b) no meeting of a board may be convened without notice to all of the directors, subject to subsection (5).

(5) Except to the extent that the company's Memorandum of Incorporation provides otherwise—

(a) if all of the directors of the company—

(i) acknowledge actual receipt of the notice;

(ii) are present at a meeting; or

(iii) waive notice of the meeting,

the meeting may proceed even if the company failed to give the required notice of that meeting, or there was a defect in the giving of the notice;

(b) a majority of the directors must be present at a meeting before a vote may be called at a meeting of the directors;

(c) each director has one vote on a matter before the board;

(d) a majority of the votes cast on a resolution is sufficient to approve that resolution; and

(e) in the case of a tied vote—

(i) the chair may cast a deciding vote, if the chair did not initially have or cast a vote; or

(ii) the matter being voted on fails, in any other case.

#### **Directors acting other than at meeting**

##### **74.**

(1) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, a decision that could be voted on at a meeting of the board of that company may instead be adopted by written consent of a majority of the directors, given in person, or by electronic communication, provided that each director has received notice of the matter to be decided.

(2) A decision made in the manner contemplated in this section is of the same effect as if it had been approved by voting at a meeting.

#### **Indemnification and directors' insurance**

##### **78**

(3) A company may not directly or indirectly pay any fine that may be imposed on the director of the company, or of a related company, who has been convicted of an offence in terms of any national legislation.

(5) Except to the extent that the Memorandum of Incorporation of a company provides otherwise, a company may indemnify a director in respect of any liability

arising other than as contemplated in subsection (6).

(6) A company may not indemnify a director in respect of—

(a) any liability arising—

(i) in terms of section 77(3)(a), (b) or (c); or

(ii) from willful misconduct or willful breach of trust on the part of the director; or

(b) any fine contemplated in subsection (3).

### **Consideration of business rescue plan**

**152.**

(6) To the extent necessary to implement an adopted business rescue plan—

(a) the practitioner may, in accordance with that plan, determine the consideration for, and issue, any authorised securities of the company, despite section 38 or 40 to the contrary; and

(b) if the business rescue plan was approved by the shareholders of the company, as contemplated in subsection (3)(c), the practitioner may amend the company's Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms the business rescue plan, despite any provision of section 16, 36 or 37 to the contrary.