

Talking Companies

Vacancies on the Board of Directors in terms of the Companies Act 2008

A person ceases to be a director, and a vacancy arises on the board of a company:

- In the case of a company whose Memorandum of Incorporation (“MOI”) provides for fixed terms of service, when the person’s term of office as director expires; or
- In any other case, if the person:
 - resigns or dies;
 - is an *ex officio* director and ceases to hold the office, title, designation or similar status that entitled the person to be an *ex officio* director; 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;
 - ineligible or disqualified;
 - is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing as a director of the company;
 - is removed from office as a director:
 - by a resolution of the shareholders;
 - by a resolution of the board;
 - by an order of the court.

If the board of a company has resolved to remove a director, a vacancy on the board does not arise until the later of:

- The expiry of the time for the filing of an application to review the decision of the board by the person removed as a director; or
- The granting of an order by the court on such an application.

The director is suspended from office until the matter referred to above is resolved.

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 new:

- Appointment, if the director was appointed by a person entitled to appoint a director;
- Election conducted:
 - at the next annual general meeting of the company, if the company is required to hold such a meeting; or



- in any other case, within six months after the vacancy arose:
 - at a shareholders’ meeting called for the purpose of electing the director; or
 - by a poll, conducted in writing, of the persons entitled to exercise voting rights in an election of the director.

Unless the MOI of a profit company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company on a temporary basis until the vacancy has been filled by election or appointment, and during that period any person so appointed by the board has all the powers, functions and duties and is subject to all of the liabilities of any other director of the company.

If, as a result of a vacancy arising on the board 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, and such person may apply to a court for relief if the court is satisfied that such an order is required to prevent the oppression, or preserve the rights, of any shareholder.

Every company must file a notice with the Companies Commission within ten business days after a person becomes or ceases to be a director of the company.

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