

# TOPIC 4

## DIRECTORS

### TOPIC OVERVIEW

The Companies Act provides that a company's board of directors must manage the business and affairs of that company. The board of directors of a company has the authority to exercise all of the powers and perform any of the functions of the company (except to the extent that the Act or the company's MOI provides otherwise). The Act and Memorandum of Incorporation (MOI) can restrict the powers of the board of directors and, for instance, ensure that

- for certain transactions, the directors cannot act alone
- certain matters be referred to the shareholders of a company for consideration and approval

The topic deals with the board, directors and prescribed officers, their appointment and removal, board meetings, directors having a financial interest in a matter, standards of directors' conduct, directors' liability, indemnification and insurance. This is a very important topic.

**Topic 4 is divided into the following learning units:**

<b>Learning unit</b>	<b>Title</b>
<b>4.1</b>	<b>The board, directors and prescribed officers, election, ineligibility and disqualification, and vacancies</b>
4.1.1	The board, directors and prescribed officers (sec 66) - also refer to Regulation 38
4.1.2	Election and removal of directors (sec 67–71)
<b>4.2</b>	<b>Board committees, meetings and directors acting other than at meetings</b>
4.2.1	Board committees (sec 72) - also refer to Regulation 43(1)
4.2.2	Board meetings/directors' meetings (sec 73)
4.2.3	Directors acting other than at board meetings (sec 74)
<b>4.3</b>	<b>Directors' personal financial interests</b>
4.3.1	Directors' personal financial interests (sec 75)
<b>4.4</b>	<b>Standards of directors' conduct, liability of directors and prescribed officers, indemnification and directors' insurance</b>
4.4.1	Standards of directors' conduct (sec 76)
4.4.2	Liability of directors and prescribed officers (sec 77)
4.4.3	Indemnification and directors' insurance (sec 78)

## TEXTUAL AMENDMENTS AND ADDITIONS

Before you proceed with the study of this topic, please refer to Tutorial Letter 102 for this module to acquaint yourself with any textual amendments and additions that may have been indicated.

## LEARNING OUTCOMES

<b>Learning unit</b>	<b>In this topic, we will focus on the following learning outcomes:</b>	<b>Level</b>
4.1 The board, directors and prescribed officers, election, ineligibility and disqualification, and vacancies	<ul style="list-style-type: none"> <li>Give advice, discuss concerns and apply the requirements for directors' appointment and removal, and vacancies.</li> </ul>	2
4.2 Board committees, meetings and directors acting other than at meetings	<ul style="list-style-type: none"> <li>Give advice, discuss concerns and apply the requirements for board committees and their meetings.</li> </ul>	2
4.3 Directors' personal financial interests	<ul style="list-style-type: none"> <li>Give advice, discuss concerns and apply the requirements for directors' personal financial interests.</li> </ul>	2
4.4 Standards of directors' conduct, liability of directors and	<ul style="list-style-type: none"> <li>Give advice, discuss concerns and apply the requirements for: <ul style="list-style-type: none"> <li>standards of directors' conduct</li> </ul> </li> </ul>	2

prescribed officers, indemnification and directors' insurance	– the liability of directors and prescribed officers – indemnification and directors' insurance.	
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# LEARNING UNIT 4.1

## THE BOARD, DIRECTORS AND PRESCRIBED OFFICERS, ELECTION, INELIGIBILITY AND DISQUALIFICATION, AND VACANCIES

### INTRODUCTION

A **director** is a member of the body of people that manages a company. Together, the directors of a company are called the **board of directors**.

In this learning unit, we will discuss the number of directors that different types of companies are required to appoint, as well as those persons ineligible or disqualified from being appointed as directors. This learning unit also deals with the process for electing directors to and removing them from the board.

#### 4.1.1 THE BOARD, DIRECTORS AND PRESCRIBED OFFICERS (SEC 66) – ALSO REFER TO REGULATION 38

This section deals with the board, directors and prescribed officers. In terms of the definition in section 1, a director is a member of the board of a company or an alternate director (person appointed to act on behalf of a director).

The minimum number of directors required for different types of companies is indicated in table 4.1.1 below.

Table 4.1.1  
Requirements for number of directory

Type of company (as explained in topic 1.1.3 of this study guide)	Minimum number of directors
Private company [(Pty) Limited]	1
Incorporated company (Inc)	1
Public company (Limited)	3
State-owned company (SOC Limited)	3 (refer to sec 9(1))
Not-for-profit company (NPC)	3

The MOI of a company may specify a higher number of directors. The MOI of a profit company (other than a state-owned company) requires that the shareholders should elect at least 50% of the directors (including alternates). Any other person stipulated in the MOI may appoint the remaining directors.

A director's remuneration for services as a director must be approved by a special resolution adopted within the previous two years.



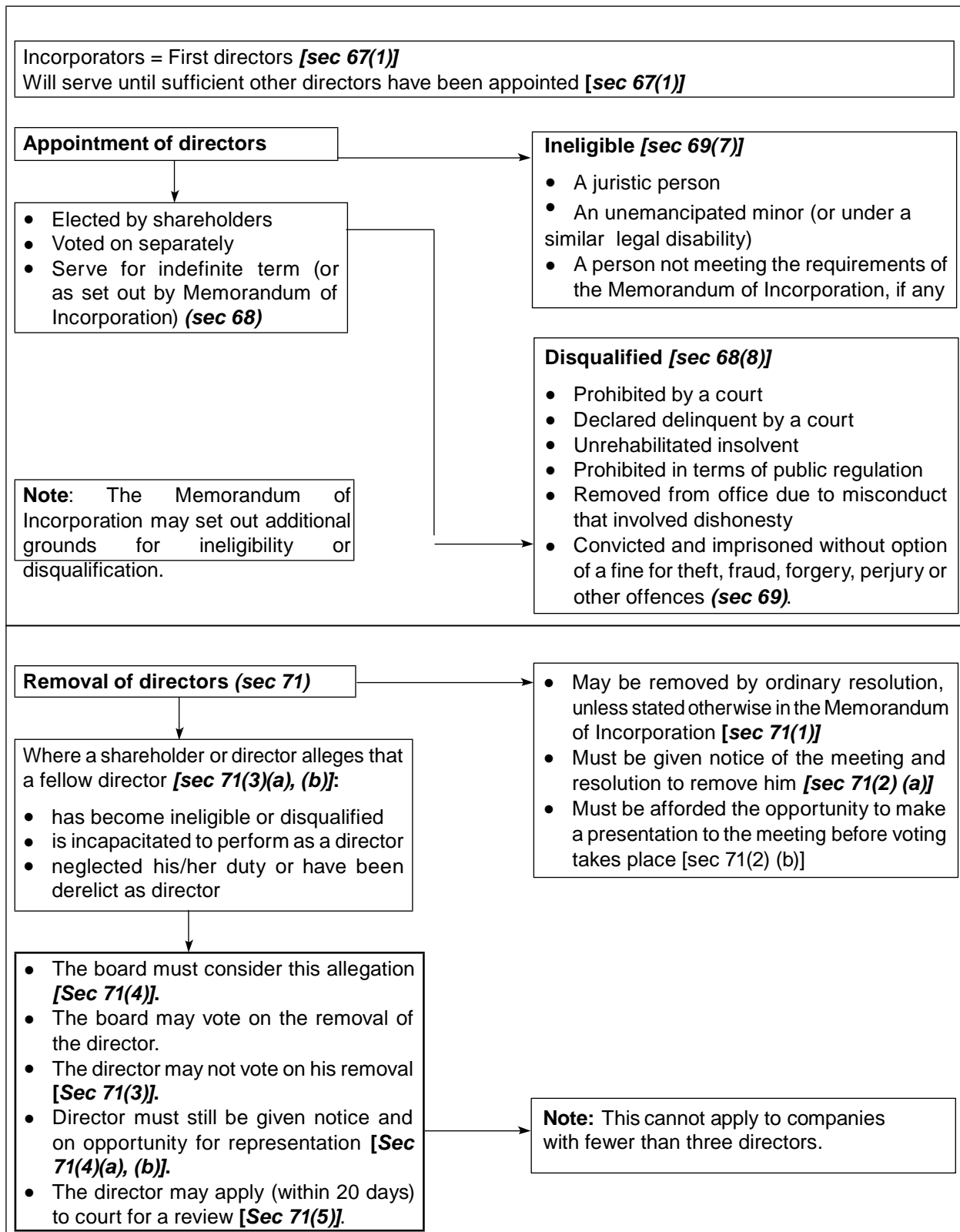
### STUDY

Study section 66 of the Companies Act - as well as Regulation 38.

## 4.1.2 ELECTION AND REMOVAL OF DIRECTORS (SEC 67–71)

Diagram 4.1.2 below illustrates the election and removal of directors. Persons who are ineligible or disqualified from being directors may not be appointed. Take note that the shareholders may remove a director [sec 71(1)] and that certain steps must then be followed [sec 72(a) & (b)]. In some circumstances, the board of directors may remove a director [sec 71(3)–(5)], for example if it is found that the director was negligent.

## Diagram 4.1.2 Election and removal of directors





## STUDY

Study sections 67 to 71 of the Companies Act.

### ACTIVITY 1

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Canyon (Pty) Ltd is a private company in the paint wholesaling business. John Wayne, the newly appointed chief executive officer, is keen to improve the company's corporate governance. He has approached you for some advice on various aspects of the Companies Act, 2008, which directly affect governance.

John Wayne informs you that since he has joined the company, he has been somewhat concerned about the attitude and performance of one of the directors, Doc Hudson. He wants to know whether Doc Hudson can be removed from his position as a director and if so, what procedures will have to be followed. John Wayne is aware that Doc Hudson will not resign his directorship. The company has six directors in total.

Canyon (Pty) Ltd's Memorandum of Incorporation is consistent with the Companies Act, 2008, and contains no variations regarding quorums, notice periods, approval of resolutions, appointments of directors, etc. The company has twenty shareholders.

### REQUIRED

Advise John Wayne on whether Doc Hudson can be removed from his position as a director of Canyon (Pty) Ltd. Do not include meeting requirements in your answer. (8)

### FEEDBACK ON ACTIVITY 1

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If the MOI contained a clause that designated an individual such as John Wayne, in his capacity as CEO, the power to remove a director (like Doc Hudson) from the board of the company, that power could be exercised.

Doc Hudson can also be removed by an ordinary resolution of the shareholders at any general meeting.

Doc Hudson may also be removed if a shareholder or fellow director (for example, John Wayne) alleges, inter alia, that he has been negligent or derelict in his duties as a director. The board must consider the allegation and vote on his removal.

Irrespective of the "method" used to remove Doc Hudson, he must be afforded the chance to defend himself, and

- he must be given notice of the meeting (10 business days) and a copy of the resolution to remove him
- he must be afforded a reasonable opportunity to make a presentation (in person or through a representative) before voting takes place

If the board has to remove Doc Hudson, he may not vote on his removal. For the removal resolution to be accepted, the majority of directors voting would need to vote in favour.

If Doc Hudson is removed by the board, he has 20 business days to go to court for a review.

If he is **not** removed, any director or shareholder who voted to have him removed, may go to court for a review (20 business days).

## SUMMARY

In this learning unit, we explained and applied the requirements regarding the board, directors and prescribed officers, election, ineligibility and disqualification, and vacancies in terms of the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, determine if you are able to:

Give advice, discuss concerns, and apply the requirements regarding the board, directors and prescribed officers, election, ineligibility and disqualification, and vacancies.
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# LEARNING UNIT 4.2

## BOARD COMMITTEES, MEETINGS AND DIRECTORS ACTING OTHER THAN AT MEETINGS

### INTRODUCTION

A board committee is a committee formed to perform specific functions of the board. This learning unit deals with board committees and board/directors' meetings.

#### 4.2.1 BOARD COMMITTEES (SEC 72) – ALSO, REFER TO REGULATION 43(1)

Section 72 of the Companies Act provides that, except when the MOI provides otherwise, the board of directors may appoint any number of committees and may delegate any of the authority of the board to a committee. The board is responsible for performing its duties properly, and a director or the board cannot use the appointment of a committee as a shield against their own responsibility [sec 72(3)].

The audit committee is one of the possible committees that can be formed, and it has an important function to fulfil. In terms of section 94 of the Companies Act, it is compulsory for a public company and a state-owned company to have an audit committee. The King III report (a report on corporate governance that is prescribed in South Africa) recommends that all other companies also appoint an audit committee and define its composition, purpose and duties in the MOI.

You are not required to study the material on the appointment of a social and ethics committee set out in sections 72(4) to (10).

**Section 94(7)** of the Companies Act 2008 stipulates the duties of the audit committee of a public/state-owned company. The King III confirms and expands on these duties. You are not required to study King III, however. Audit committees as such are discussed in topic 5; they are merely mentioned here as one of the possible committees that a company may appoint.



#### STUDY

Study section 72 of the Companies Act as well as Regulation 43(1).

## 4.2.2 BOARD MEETINGS/DIRECTORS' MEETINGS (SEC 73)

Section 73 provides that a director, authorised by the board (unless a company's MOI provides otherwise)

- may call a meeting of the board at any time
- must call such meeting if required to do so by at least
  - 25% of the directors (where the board consists of at least 12 members); or
  - two directors, in any other case.

Section 73 also provides that, unless the Companies Act or a company's MOI provides otherwise

- a meeting of the board may be conducted by electronic communication
- one or more directors may participate in a meeting by means of electronic communication, as long as all persons participating in that meeting are able to communicate effectively and concurrently with each other without an intermediary.

A meeting of the board must be convened by means of a notice to all directors. (An exception to this requirement is included in sec 73(5)(a).

The company's board may determine the form of and time for giving notice (of a meeting) as long as these comply with any requirements included in the company's MOI or rules.

Except to the extent that the company's MOI provides otherwise, section 73(5) (a–d) provides certain requirements that have to be met at board meetings, including the voting rights of each director.

Section 73 also provides for the keeping of the minutes of meetings.

Directors should keep a written record of how and why they voted for matters at board meetings. This requirement flows from their duties and possible liabilities in terms of sections 76 and 77, respectively.



### STUDY

Study section 73 of the Companies Act.

### ACTIVITY 2

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Answer the following questions:

1. Is the following statement true or false? A resolution at a directors' meeting will be approved if 50% of the directors vote in favour of the resolution. (1½)
2. What is the quorum for a directors' meeting where the company has
  - (i) two directors?
  - (ii) three directors?
  - (iii) nine directors?
  - (iv) twelve directors?

3. When the directors of a public company have a meeting, the following individuals cannot be included in determining the quorum for that meeting. Indicate “true” or “false”, and give a reason for your choice.
- (i) Company secretary
  - (ii) Independent non-executive chairperson
  - (iii) Other non-executive directors
  - (iv) The chief audit executive (head of internal audit) (4)

## FEEDBACK ON ACTIVITY 2

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1. False: For a resolution to be approved at a directors’ meeting, a majority of the votes cast must be in favour. If 50% of the directors vote in favour and 50% vote against, the vote is tied. If this occurs, the chairperson will have a casting vote **but only** if he or she (the chairperson) initially did not have a vote or did not cast a vote. (The chairperson does not get 2 votes.)
2.
  - (i) two directors
  - (ii) two directors
  - (iii) five directors
  - (iv) seven directors
3.
  - (i) True: Not a director
  - (ii) False: The chairman is a director (non-executive directors have the same status as executive directors)
  - (iii) False: All (properly appointed) directors, executive or otherwise, can form part of the quorum
  - (iv) True: The chief audit executive is not a director

### 4.2.3 DIRECTORS ACTING OTHER THAN AT BOARD MEETINGS (SEC 74)

Except where the MOI of a company provides otherwise, section 74 provides that a decision, on which could be voted at a board meeting, may instead be adopted by the written consent of a majority of the directors, given in person, or by electronic communication, provided that each director received notice of the matter to be decided. A decision taken in such way has the same effect as if it had been approved by voting at a meeting.



#### STUDY

Study section 74 of the Companies Act.

#### SUMMARY

In this learning unit, we explained and applied the requirements regarding board committees, meetings, and directors acting other than at meetings in terms of the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, determine if you are able to:

Give advice, discuss concerns, and apply the requirements regarding board committees, meetings, and directors acting other than at meetings.

# LEARNING UNIT 4.3

## DIRECTORS' PERSONAL FINANCIAL INTERESTS

### INTRODUCTION

In section 75 of the Companies Act a director's personal financial interests are specifically dealt with. This section provides that if a director's personal interests are in conflict with those of the company, the director should disclose the conflict of interest in the manner described in section 75.

#### 4.3.1 DIRECTORS' PERSONAL FINANCIAL INTERESTS (SEC 75)

The Companies Act sets out procedures that a director should follow in order to disclose his or her personal financial interest or that of a person related to him or her, in respect of any matter the board must consider. Study the definition of the term "personal financial interest" in section 1.

If a director of a company has a personal financial interest in a matter to be considered at a board meeting, or knows that a person related to him or her has a personal financial interest in the matter, the director must make certain specified disclosures. Immediately after disclosing this information, the director must leave the meeting and may not take part in any consideration of the matter.

A decision of the board or a transaction or agreement that the board has approved is valid despite any personal financial interest of a director or person related to the director. However, it is valid only if it was approved following disclosure; or despite having being approved without disclosure if it has subsequently been ratified by an ordinary resolution of the shareholders following disclosure of that interest or after having been declared valid by a court.



#### STUDY

Study section 75 of the Companies Act.

### ACTIVITY 3

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You are the auditor of Craft (Pty) Ltd, a manufacturing company in the marine engineering sector. The Memorandum of Incorporation contains, inter alia, the following clause:

Any director or prescribed officer of the company who has a personal financial interest in a contract into which this company has entered or will enter, either directly or indirectly, shall comply with the Companies Act, 2008. The contract will be binding, provided that the authority of the company in general meetings is obtained by poll for the contract, prior to the contract being entered into.

Your scrutiny of the minutes of directors' meetings reveals that the company entered into a contract with Marine (Pty) Ltd for the purchase of 10 highly sophisticated and expensive radar systems valued at approximately R1 million each. Tony Teak is a director of Craft (Pty) Ltd and his brother Terry is the majority shareholder of Marine (Pty) Ltd.

### REQUIRED

Discuss the requirements of the Companies Act, 2008, relating to the contract that Craft (Pty) Ltd entered into with Marine (Pty) Ltd, particularly in view of the relationship between Tony and Terry Teak. (12)

### FEEDBACK ON ACTIVITY 3

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In terms of the Companies Act (sec 76), the following holds true:

- Tony Teak, as a director of Marine (Pty) Ltd, should not have used his position of director, or any information obtained while acting as a director, to gain advantage for himself or for another party (his brother Terry). He must act **for the company**, for example, he should not pass confidential information on to Terry about the price that Marine (Pty) Ltd is prepared to pay for the radar systems.
- Tony Teak should have communicated to the board of Craft (Pty) Ltd at the earliest practicable opportunity, any information that was material to Marine (Pty) Ltd. (For example, it would be important for the board to know that Tony and Terry are related, as a R10 million deal could be influenced by their relationship.)
- Tony Teak must perform his function and exercise his powers as a director at all times
  - in good faith; and
  - in the best interests of the company.

In effect, Tony Teak has a conflict of interest (the company or his brother?).

In terms of the Companies Act (sec 75), if Tony Teak had a personal financial interest in the matter to be considered at a meeting of the board (purchase of the radar systems), or had known that a **related** person had a personal financial interest, he should have

- disclosed the interest and its general nature before the matter was considered at the meeting

- disclosed to the meeting any material information relating to the purchase, which was known to him
- disclosed any observations of or pertinent insights into the matter if he had been requested to do so by the other directors
- left the meeting (if he was present) immediately after having made the disclosures to the meeting
- taken no further part in the meeting
- had no right to vote on the decision

As Tony and Terry Teak are brothers and they are within two degrees of consanguinity, they are regarded as related for the purposes of the Companies Act (see section 2).

The information need only be disclosed if it is material (sec 76(2)(b)). A R10 million contract would most probably be regarded as material.

## SUMMARY

In this learning unit, we explained and applied the requirements regarding directors' personal financial interests in terms of the Companies Act.

After having worked through the learning unit and the references to the prescribed study material, determine if you are able to:

Give advice, discuss concerns, and apply the requirements regarding directors' personal financial interests.
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# LEARNING UNIT 4.4

## STANDARDS OF DIRECTORS' CONDUCT, LIABILITY OF DIRECTORS AND PRESCRIBED OFFICERS, INDEMNIFICATION AND DIRECTORS' INSURANCE

### INTRODUCTION

The Companies Act lays down certain common-law duties and additional statutory duties of directors. This learning unit deals with these duties as well as instances in which a director and prescribed officer may be held liable for losses suffered by the company.

#### 4.4.1 STANDARDS OF DIRECTORS' CONDUCT (SEC 76)

A director of a company must exercise the powers and the functions of a director in good faith and in the best interest of the company, and must act with a certain degree of care, diligence and skill. The section also extends the duty to apply to a subsidiary.

Directors, for the purpose of this section, include prescribed officers and members of board committees.

The most important statutory duties that directors owe to their company, are to

- act in good faith and for a proper purpose
- act in the best interests of the company
- avoid using their position as director or using corporate information to their own advantage or knowingly cause harm to the company or its subsidiary
- convey the company information that may be of importance to the company
- exercise reasonable care, skill and diligence in the performance of their duties
- declare any personal financial interest in a matter in which the company is interested (refer to sec 75).



#### STUDY

Study section 76 of the Companies Act.



## ACTIVITY 4

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The shareholders of Tracshion Ltd, a large electronics company specialising in tracking systems in vehicles, have recently appointed a friend of yours named Carmen de Villiers. The company is not listed. Carmen de Villiers is technically well qualified and is considered an important individual with regard to the future of the company, particularly its research and development programmes.

However, Carmen de Villiers has not filled the role of a company director before, and although she is excited about her promotion, she is concerned about her responsibilities as a director, particularly in terms of the Companies Act, 2008. She has heard that the Act contains sections dealing with standards of directors' conduct and is afraid that if she does not perform, she will be removed from the board and dismissed from the company. She has also heard that the chairperson of the board can put her on probation as a director or that she can be declared delinquent. She has put the following questions to you:

1. Can I be removed from the board and dismissed from the company if I do not perform as a director? (6)
2. If I think things are not going well, may I resign as a director without leaving the company? (2)
3. What are the standards of conduct with which I must comply as a director? (13)
4. Can the chairperson put me on probation? (3)
5. Is there anyone in the company that I can officially approach to help me understand my duties and responsibilities? (3)

## REQUIRED

Respond to Carmen de Villiers' questions. (27)

## FEEDBACK ON ACTIVITY 4

You should have responded as follows:

1. Yes, you can be removed from the board. However, this does not mean that you will be dismissed from the company – being on the board is a role to which you are elected over and above your employment by the company for your skills in the electronics field. As Tracshion Ltd regards your research and development skills as important, it is highly unlikely that the company will dismiss you.

Certain Companies Act requirements must also first be satisfied before the board may remove you as a director.

- If the shareholders wish to remove you, they must pass an ordinary resolution to do so. This means that a majority of the voting rights held by the shareholders, who had the right to vote on your appointment, must support your removal.
- However, if the shareholders intend to remove you, they must give at least 10 business days' notice of the meeting and that they are intending to remove you.
- Before the meeting votes on your removal, the shareholders should give you or your representative a reasonable opportunity to make a

presentation on your removal. (Note: The MOI may stipulate a longer or shorter notice period.)

The shareholders will not take a decision lightly to remove you. Remember, they have appointed you.

You should perhaps also bear in mind that if you are negligent or derelict in your duties, the board might resolve to remove you. Negligence or dereliction of your duties is a serious matter, but if you comply with the standards of director conduct, there is no chance of this happening. Even in this situation, you would still be allowed to make representations, and a majority of the directors would have to support your removal.

2. Yes. Your appointment as a director is an action separate from your employment contract.

You may resign at any time by giving written notice to the board.

Your company's Memorandum of Incorporation may have other requirements for resignation of a director, but these are unlikely to be very onerous, for example, minimum notice periods.

Within 10 business days of your resignation, the company (not you) will need to notify the Commission (CIPC) of your resignation.

3. The standards are laid out in section 76:

- 3.1 Firstly, you may not use the position of director, or any information obtained while acting in the capacity of director, to

- gain an advantage for yourself or any other person; or
- knowingly cause harm to the company (For example, when hearing at a board meeting that the company is going to call for tenders for a large contract, you may not pass any confidential information about the tender to a friend who is tendering for that contract).

- 3.2 Secondly, you must communicate to the board at the earliest practical opportunity, any information that comes to your attention (about the company), unless you

- believe the information is immaterial to the company
- believe the information is generally known to the public or other directors
- would be breaching a legal or ethical obligation of confidentiality (for example, you may have information about technical developments in your field, which might affect Tracshion Ltd's business strategy).

- 3.3 Thirdly, you are required to exercise the powers and perform the duties of a director

- in good faith and for proper purpose
- in the best interests of the company
- with the degree of care, skill and diligence that may be reasonably expected of a person performing the same functions as a director
- having a general knowledge, skill and experience of that director

- 3.4 Essentially this will require you to

- take reasonably diligent steps to become informed about matters serving before the board
  - have a rational basis for supporting a board decision and believing it was in the best interests of the company (in other words, you must be able to justify your decision when voting on a matter before the board).
- 3.5 You are not expected to be “experienced”. You are a new director but you will need to be conscientious, diligent, enquiring, and willing to learn.
- 3.6 A particularly important aspect of point 3.3 is that if you or anyone related to you (as defined), for example, your husband, has any personal financial interest in any matter brought to the board, or which you think the company should know about anyway, you should notify the board of the nature of the interest. For example, if Tracshion Ltd was proposing to enter into a contract with a company in which your husband is a shareholder, the board must be informed.
- 3.7 As a director, in making decisions, you are entitled to rely on other people who provide information, reports, or opinions to the board, for example, employees, accountants, and legal counsel, unless you have reason to believe they are not reliable or competent.
4. No, it is only the court that can declare a director under probation. No chairperson may take this decision.
- However, the company, a shareholder, a director, company secretary, or a trade union representative (or similar representative) can apply to the court to have a director declared “on probation”.

Certain company regulatory bodies can also make such an application to the court.

Being declared “on probation” is not an everyday occurrence for directors and is not something you need to worry about if you comply with the required standards. In any event, if things are not going well, you can resign! In a sense, probation is a last option.

5. You are fully entitled to seek advice from the chairperson of the board, or from any other director.

You are also entitled to seek assistance from individuals not on the board, as long as you do not breach confidentiality.

However, the best person to assist you in this regard will be the company secretary of Tracshion Ltd. One of the functions of the company secretary stipulated in the Companies Act is to advise directors on their rights, duties and responsibilities.

#### 4.4.2 LIABILITY OF DIRECTORS AND PRESCRIBED OFFICERS (SEC 77)

This section deals with instances in which a director and prescribed officer may be held liable for losses suffered by the company. (Two examples of such instances found in sec 77(2)(a) & (b), and another three examples found in section 77(3) (a)–(c). You should study the various instances carefully to be able to apply one or more of them to a scenario. We will not request you to list all the instances found in the various subsections of section 77.

In addition to the list of prescribed officers outlined in this section, directors could also be liable to shareholders for fraudulent acts or acts of gross negligence **[refer to sec 20(6)]** or to any third party who has suffered a loss because of directors breaching the Companies Act **[refer to sec 218(2)]**.

Bear in mind that members of board committees and audit committees have the same liability as directors under **section 77**, even if the members of the board committees are not directors and even though they have no right to vote on any matters considered by board committees.



## STUDY

Study section 77 of the Companies Act.

## ACTIVITY 5

May a company recover loss, damages or costs sustained by the company from the director under the following circumstances? Give reasons for your answer:

The director participated in a resolution approving a distribution (dividends) despite knowing that the distribution was contrary to the provisions of section 46 of the Companies Act.

## FEEDBACK ON ACTIVITY 5

Reference: Section 77(3)(e)(vi) of the Companies Act

Yes, the company may recover loss, damages or costs sustained by the company from a director, in view of the section mentioned above. This section specifically provides that where directors participated in a resolution approving a distribution (dividends) despite knowing that the distribution was contrary to the provisions of section 46 of the Companies Act, they will be held liable.

### 4.4.3 INDEMNIFICATION AND DIRECTORS' INSURANCE (SEC 78)

A company may not indemnify (protect against loss or damage) a director against a liability arising from

- wilful misconduct or breach of trust by the director
- the director acting without the necessary authority
- reckless trading
- trading under insolvent circumstances
- fraudulent acts of the director
- a fine relating to an offence committed by the director

Other than the specific instances mentioned above, a company might indemnify a director against any liability, including the liability arising from the director's negligence. In terms of section 78(7), a company may also purchase insurance to protect a director of the company against any liability in respect of which the company is permitted to indemnify a director.



## STUDY

Study section 78 of the Companies Act.

## SUMMARY

In this learning unit, you learned about the requirements regarding standards of directors' conduct, liability of directors and prescribed officers, indemnification, and directors' insurance in terms of Companies Act.

After having worked through the learning unit and the references to the prescribed study material, determine if you are able to:

Give advice, discuss concerns, and apply the requirements regarding standards of directors' conduct, liability of directors and prescribed officers, indemnification, and directors' insurance.
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## CONCLUSION

In this topic about the **standards of directors' conduct, liability of directors and prescribed officers, indemnification, and directors' insurance**, we explained and applied the Companies Act requirements regarding the topic. The next topic deals with enhanced accountability and transparency.