Module: Company Law LML4806

Assignment 1: 868503

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**Introduction**

I will 1st examine the appointment of directors and whether it is allowed to vote on the appointment of Sifiso through a shareholder. I will explain what a Quorum

**Appointment of a director**

S1 of the Companies act 71 of 2008 defines a director:

‘*means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated’*

Directors can be appointed in various ways, however for the purposes of this assignment I will restrict myself to a director elected by shareholders. Directors in a profit company are appointed by the shareholders with the exception of those named in the Memorandum of incorporation (herein referred to as ‘MOI’), and an ex officio director( Holds the position of director by virtue of the position they hold within the company). The shareholders must at least elect 50 percent of all directors and alternative directors, this number can be increased through the MOI.[[1]](#footnote-1)

When a vacancy occurs in the board of directors the company must file a notice with the companies commission communicating this.[[2]](#footnote-2) The company shareholders must elect a new director in their next annual general meeting or within 6 months of the vacancy if they not required to hold such a meeting.[[3]](#footnote-3) So if Codex (PTY) LTD is not required to hold a general shareholders meeting, the notice of the meeting Ayanda got is allowed and the voting on Sifiso can be within the scope of this meeting.

**What is a Quorum?**

Now that we know the meeting to appoint Sifiso as a director is possible we will examine what a quorum is. A quorum:

*‘the minimum number of qualified persons whose presence at a*

*meeting is necessary before any business may be validly transacted at*

*the meeting’*

S64(1)(a) and (b) sets the minimum required people with voting power to an aggregate voting power of 25% of all voting rights relating to at least one matter or that matter to which the meeting has been called.[[4]](#footnote-4) The 25% requirement can either be increased or lowered by the MOI.[[5]](#footnote-5) S64(3) requires that a minimum of 3 directors to be present if the company has more than 2 directors, at the meeting before the meeting can commence or a matter can be debated. This despite the minimum voting percentage requirement being meet.[[6]](#footnote-6)

* **Memorandum of incorporation (MOI):** A director can be appointed by a person conferred such power by the MOI
* **Ex officio director:** A director can acquire directorship on virtue of the position they hold within the company. They have all the rights of a director and also subject to all liabilities directors are subjected to. This person however must not be excluded by the act.
* **Alternative director:**

What a quorum is, I will than examine the voting process and finally I will look at the appointment of directors various methods of notices of meetings and finally the voting process

1. Textbook page 299. [↑](#footnote-ref-1)
2. Textbook page 317. [↑](#footnote-ref-2)
3. Textbook page 317. [↑](#footnote-ref-3)
4. Companies act 71 of 2008 (herein referred to as ‘The Act’) S64(1)(a)(b). [↑](#footnote-ref-4)
5. The Act S64(2). [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)