

## AN EXTRACT FROM THE CLOSE CORPORATIONS ACT

### 29. Requirements for membership

(1) Subject to subsection (1A) or (2)(b) and (c), only natural persons may be members of a corporation and no juristic person or trustee of a trust *inter vivos* in that capacity shall directly or indirectly (whether through the instrumentality of a nominee or otherwise) hold a member's interest in a corporation.

[Sub-s. (1) substituted by s. 3 (1) of Act 64 of 1988 and s.2 of Act 25 of 2005].

(1A) A natural or juristic person in the capacity of a trustee of a trust *inter vivos* may be a member of a corporation: Provided that-

(a) no juristic person shall directly or indirectly be a beneficiary of that trust;

(b) the member concerned shall, as between himself or herself and the corporation, personally have all the obligations and rights of a member;

(c) the corporation shall not be obliged to observe or have any obligation in respect of any provision of or affecting the trust or any agreement between the trust and the member concerned of the corporation; and

(d) if at any time the number of natural persons at that time entitled to receive any benefit from the trust shall, when added to the number of members of the corporation at that time, exceed 10, the provisions of, and exemption under, this subsection shall cease to apply and shall not again become applicable notwithstanding any diminution in the number of members or beneficiaries.

[Sub-s. (1A) inserted by s. 1 of Act 17 of 1990 and s.2 of Act 25 of 2005]

(2) The following persons shall qualify for membership of a corporation:

(a) Any natural person entitled to a member's interest;

(b) a natural or juristic person, *nomine officii*, who is a trustee of a testamentary trust entitled to a member's interest, provided that-

(i) no juristic person is a beneficiary of such trust; and

(ii) if the trustee is a juristic person, such juristic person is not directly or indirectly controlled by any beneficiary of the trust; and

(c) a natural or juristic person, *nomine officii*, who, in the case of a member who is insolvent, deceased, mentally disordered or otherwise incapable or incompetent to manage his affairs, is a trustee of his insolvent estate or an administrator, executor or curator in respect of such member or is otherwise a person who is his duly appointed or authorized legal representative.

(3) (a) The membership of any person qualified therefor in terms of subsection (2) shall commence on the date of the registration of a founding statement of the corporation

containing the particulars required by section 12 in regard to such person and his member's interest.

(b) Where any person is to become a member of a registered corporation the existing member or members of the corporation shall ensure that the requirements of section 15 (1) regarding the lodging of an amended founding statement with the Registrar are complied with.

(c) A trustee of an insolvent estate, administrator, executor or curator, or other legal representative, referred to in subsection (2) (c), in respect of any member of a corporation, who is not obliged or who does not intend to transfer the interest of the member in the corporation in accordance with the provisions of this Act within 28 days of his assuming office to any other person, shall within that period, or any extended period allowed by the Registrar on application by him, request the existing member or members of the corporation to lodge with the Registrar in accordance with section 15 (1) an amended founding statement designating him, *nomine officii*, as representative of the member of the corporation in question.

(d) Where the corporation has no other member, any such representative himself shall, in the circumstances contemplated in paragraph (c), act on behalf of the corporation in accordance with the provisions of section 15 (1), read with the said paragraph (c).

(e) The provisions of paragraphs (c) and (d) shall not affect the power of such representative, as from the date of his assuming office, and whether or not any such amended founding statement has been lodged, to represent the member concerned in all matters in which he himself as a member could have acted, until the interest of that member in the corporation has in accordance with the provisions of this Act been transferred to any other qualified person.

(4) A corporation is not concerned with the execution of any trust in respect of any member's interest in the corporation.