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HH&M NEWS ALERT

ISSUE: 19
NOVEMBER 2017



NSE COMPANY DIRECTORS FACE DEEPER PAY AND PERFORMANCE SCRUTINY

By Legal Notice No. 240 of 2017, the Attorney General gazetted the Companies (General) (Amendment) Regulations 2017. The Regulations came into effect on 15th September 2017.

The Regulations amend the Companies Act 2015 and the Companies (General) Regulations 2015 by including new Section 50A to the Companies Act and a Tenth Schedule to the 2015 Regulations which outlines significant disclosure and reporting requirements in relation to the remuneration and compensation of directors of listed companies.

Details of what Kenyan listed companies pay their executives are expected to become clearer with the new Regulations requiring publicly listed entities to prepare a directors remuneration report which discloses directors' remuneration and the basis of such payments. The report shall be included in the annual financial statement of a listed company.

The directors' remuneration report will relate to current directors and also any person who was a director of the listed company at any time during the preceding five years.

Nairobi

1st Floor, Delta Office Suites,
P.O. Box 30333-00100,
Waiyaki Way,
Nairobi, Kenya

T: +254 20 325 8000
M: +254 703 068 000
+254 720 213 400
+254 733 382 341
F: +254 20 325 8222

Mombasa

2nd Floor, Sea View Plaza,
Mama Ngina Drive,
P.O. Box 84759-80100,
Mombasa, Kenya

T: +254 772 446 446
M: +254 703 068 000
F: +254 203 258222

Key Disclosures

The following are the key disclosures to be included in the directors' remuneration reports to be prepared by listed companies:

(1) Annual statement	The annual statement should outline any significant decisions or changes in directors' remuneration for the relevant financial year including the context in which occurred and decisions taken.
(2) Policy statement	A listed company must prepare a policy statement with details on each directors' performance for the relevant financial year for the directors to be entitled to share options or long term investment schemes or why the entitlement of a director in this regard is not subject to performance conditions.
(3) Share options	The statements should disclose any share options accruing to each director of a listed company and should include terms relating to the share options including when they were issued, terms of their exercise, whether they have been exercised how much the directors paid to acquire the shares and if there have been any variations relating to the terms and conditions of the share options.
(4) Contracts of service	The report should contain the details and terms of each directors' contract of service so as to enable members of a listed company estimate the liability of the company in the event of a director's early termination.
(5) Statement of voting at a general meeting	The report should contain a statement of the previous general meeting of the listed company in respect of a resolution to approve the director's remuneration report and directors' remuneration policy. The statement should contain the percentage of votes cast for and against the resolution. Where there were significant votes cast against the resolutions, a summary must be provided with reasons why members voted against and any actions taken by directors' in response to members' concerns.
(6) Information from individual directors	The report must disclose in the form of a table which contains the following total amounts accruing or paid to each director for previous financial year the following details in relation to each director: a) salaries and fees; b) bonuses; c) expense allowances; d) monies payable for loss of office or termination of services; and e) value of any benefits other than in cash.

Conclusion

By increasing the disclosure requirements in relation to directors of listed companies in Kenya and seeking to tie any incentives given by these companies to their directors to the performance of the directors, the Regulations aim to increase accountability and transparency mechanisms relating to remuneration of these directors in line with best corporate governance practices worldwide.

For any further information regarding this alert, please write to your usual contact at HH&M or contact the following:



Andrew Mugambi
Partner
amugambi@hhm.co.ke



Sigee Koech
Partner
skoech@hhm.co.ke

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