



## PN/04: Ongoing Compliance Requirements

This publication is not a legal document. It contains general information intended as a basic guide on the main requirements for the incorporation of a limited company under the Companies Act 2015 and searching and reservation of company names. This guide should not be deemed to substitute any need to take specialist professional advice.

This guide will show you what information you shall deliver to the Companies Registry when a particular change occurs within your company. Records of these changes must be filed at the Companies Registry so that the Registry can update the records of your company so that searchers will always have an up to date picture of your company.

[This Practice Note does not include requirements by foreign companies. Please refer to PN/07 for details on foreign companies].

These Practice Notes were prepared by the Joint Liaison Committee (“JLC”) comprised of members from Business Registration Service, Law Society of Kenya – Nairobi Branch and Institute of Certified Secretaries.

## EVENT DRIVEN FILINGS

### 1. Which filings should be made when a company changes its articles of association?

Under section 24 of the companies Act, a company may amend its articles only by special resolution. The company should file a notice of the special resolution at the Registry within 14 days of passing the resolution. This notification should be done by filing the following documents:

- a) Minutes;
- b) Form CR19; and
- c) Members' Resolution.

The Company should also lodge a copy of the amended articles of association within 14 days of passing the resolution.

### 2. What responsibilities do directors have to the Companies Registry?

Directors have a duty to prepare and deliver/file documents on behalf of the company to the Companies Registry. These documents include:

- a) Annual Financial Statements of the company;
- b) Notifications of any changes in particulars of the company's shareholders, directors and company secretary;
- c) Notification on the appointment and/or cessation of an officer of the Company.
- d) Notification of changes in the company's registered office;
- e) notification of allotment of shares; and
- f) Registration of charges and security agreements

### 3. What happens when there is a change in the company's directors or secretaries?

A company must keep statutory registers that contain details of its directors, shareholders and secretaries. Any changes that occur in their particulars must be notified to the Companies Registry.

| Change:  | Notification form    | Other documents                                      |
|--|----------------------|--|
| (a) Changes in the residential address of a director       | Form CR8             |  |
| (b) Changes in any other particulars of directors          | Form CR7             |  |
| (c) A director ceasing to act for the company              | Form CR9             | Resignation letter, Affidavit, Minutes / resolution. |
| (d) Appointment of a new director to the company           | Form CR6             | Letter of consent, resolution / minutes              |
| (e) Changes in the residential address of a secretary      | Form CR12            |  |
| (f) Changes in other registered particulars of secretaries | Form CR 11           |  |
| (g) Secretary ceasing to act for the company               | Form CR13            | Resignation Letter and Minutes / resolution.         |
| (h) Appointment of a new secretary to the company          | Form CR 10           | An extract from the Minutes / resolution.            |
| (i) Appointment of an auditor <sup>1</sup>                 | (No Prescribed Form) | Members' Resolution                                  |
| (j) Resignation of an auditor                              | Form CR 43           |  |

#### 4. How can a company change its name?

A company may change its name by special resolution or by any other means that may be provided for in its articles of association. A change of name should be notified to the registry within 14 days after the company passes a resolution to change its name or after it changes its name by a means provided for in its articles. This notification is made using the following forms:

<sup>1</sup> there is need create a standard form for appointment of an auditor.

- a) Form CR 15;
- b) Form CR19; and
- c) Members' Special Resolution

It is important to note that a change of name will only become effective once the company is issued with a certificate of change of name. The company should not start using its new name until the certificate has been issued.

#### **5. How does a company change its registered office?**

If a company wishes to change the address of its registered office, it must notify the Companies Registry using a form CR16. Please note that the new address will not take effect until after it has been registered at the Companies Registry.

#### **6. How can a company change its accounting reference date**

Under section 634 of the Companies Act, a company may change its accounting reference date by filing form CR 42 with the Companies Registry. The notice must state whether the current or previous accounting reference period is to be shortened or whether it is to be extended. An accounting reference period may however not be extended so as to exceed 18 months and should not be extended more than once in five years unless there is specific approval from the Cabinet Secretary.

#### **7. Are there any notifications to be made if a company creates a charge or a security agreement?**

If a company creates a charge it must register particulars of the charge together with the document (if any) by which the charge is created or evidenced within 30 days from the day when the charge was created in Kenya. If the charge was created outside Kenya, the company must register the details of the charge within 21 days from the day the document creating or evidencing the charge was received in Kenya.

Particulars of a charge over any property or undertaking of a company registered in Kenya should be notified to the Companies Registry using form CR25.

When a company purchases property that is already subject to a charge, this should be notified using form CR26 while a charge that is part of a series of debentures should be notified using form CR27.

When a company satisfies a charge either fully or partially, this should be notified using form CR28.

## **8. Changes to share capital, Sub-division, consolidation or other alteration of share structure**

[Prior to the Companies Act 2015, a company limited by shares was required to state in its memorandum of association the amount of the share capital with which the company proposed to be registered, class of shares and the number and nominal value of the shares into which its share capital was divided.

The directors could not allot shares in excess of the authorised share capital as specified in the company's memorandum without first obtaining shareholder approval to increase the authorized capital by the requisite amount.

The Companies Act 2015 has however repealed this provision thereby abolishing the concept of authorized share capital. The default position currently is that there is no limit on the number of shares that a company may allot unless its articles of association expressly provide otherwise.

For companies that were incorporated under Cap 486, a restriction on the authorized share capital set out in the memorandum of association is treated as a provision in the articles setting the maximum amount of shares that the company may allot.

When a company alters its share structure by way of subdivision, consolidation, reduction and/or increase by allotment of new shares it must lodge a notice with the Registrar specifying the shares that are affected<sup>2</sup>. Notifiable changes relating to a company's share capital are as set out below:

### **Change:**

### **Notification form:**

- |  |   |
|--|---|
| (a) Subdividing, consolidation or redemption of shares | Form CR 34 to be filed within one month |
| (b) Reduction of share capital                         | Form CR 35 to be filed within 14 days   |

|   |   |
|---|---|
| (c) Increase and Allotment of new shares                                    | Statement of increase of nominal share capital <sup>3</sup><br><br>Form CR19 – Form of Special Resolution, where applicable.<br><br>Form CR 20 to be filed within one month of making the allotment of shares<br><br>Interim Annual Return <sup>4</sup> |
| (d) Cancellation of shares by a public company                              | Form CR 36 to be filed within one month   |
| (e) Notice of Cancellation of shares on purchase of own shares by a company | Form CR 38 to be filed within one month   |
| (f) Notice of Cancellation of treasury shares                               | Form CR 41 to be filed within one month   |
| (g) Changing the name or designation of a class of shares                   | Form CR 32 to be filed within 14 days   |
| (h) Notice of particulars of variation of the rights attached to s shares   | Form CR 33 to be filed within 14 days   |
| (i) Return of Purchase of own shares  | Form CR 37 to be filed within 14 days   |

in addition to the forms highlighted above, the Companies Registry will require the resolutions/minutes and Form CR 19.

Ongoing compliance requirements for Foreign Companies are detailed in *PN/07: Foreign Companies*.

Please refer to <https://brs.go.ke/fees-companies-registry.php> for the fee schedule.

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<sup>3</sup> To be amended to delete the reference to section 65 of the repealed Act.

<sup>4</sup> To be filed until Form CR20 is amended to include a “Statement of Capital”, see Section 333 (2) (b)

## 9. Review of this Practice Note.

This Practice Note shall be reviewed at least once every two years by the JLC at its discretion and subject to any change in the Companies Act.

## 10. Effective Date.

This Practice Note shall come into effect from 16th June 2020.

| Version Control |             |                            |                         |
|-----------------|-------------|----------------------------|-------------------------|
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| V1.0            | 16.06.2020  | The Registrar of Companies | First published version |
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