



Republic of Kenya

*Office of The Attorney General and Department of Justice*  
**BUSINESS REGISTRATION SERVICE**  
*Ease of Doing Business*

## PN/08: Specific compliance obligations for quoted/listed companies.

This publication is not a legal document. It contains general information intended as a basic guide on specific compliance obligations for Quoted Companies/Listed Companies under the Companies Act 2015. This guide should not be deemed to substitute any need to take specialist professional advice.

This guide will be relevant to quoted/listed 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.

### **1. Director's remuneration report?**

Under section 659, a Director's remuneration report is a report that tabulates fees and emoluments earned by Directors of Quoted Companies in any given financial year.

### **2. How often should a Director's remuneration report be prepared?**

A Director's remuneration report is to be prepared for each financial year.

### **3. What are the Contents of a Director's remuneration report?**

The Director's remuneration report should contain;

- a. Name and address of each of the directors;
- b. Basic pay for each of the directors (Executive directors & non-executive directors fees and executive directors & non-executive directors emoluments);
- c. Non-cash benefits;
- d. Pension or gratuity for each of the directors;
- e. Bonus paid to any of the directors;
- f. Share options and other forms of executive compensation that have been made during the course of the financial year, to include terminal dues, if any;
- g. Aggregate directors loans
- h. Any other allowances paid to the directors

The directors shall approve the remuneration report and it should be signed by a designated director or the company secretary. See note 10 below on the filing instructions.

**4. What offences and penalties are prescribed in the Act in relation to preparation of Director's remuneration report?**

Offences and penalties are provided under Section 659-660 of the Companies Act. They are:

- a. It is an offence for any director who is a director or who has been a director the preceding 5 years to fail to give to the company personal details necessary for compliance with this section and will be liable for a fine not exceeding Kshs. 500,000 on conviction.
- b. If a remuneration report is not prepared, any person who is or was a director and failed to take all reasonable steps to ensure compliance commits an offence and may be liable for a fine not exceeding Kshs. 1,000,000 on conviction or imprisonment not exceeding 3 years or both.

**5. What are Summary financial statements?**

Section 668 of the Companies Act defines summary financial statements as follows:

Summary financial statements are financial statements derived from the company's annual financial statements and the director's remuneration report.

**6. In what Instances may summary financial statements be prepared?**

- a. When publishing in the daily newspapers as required by any regulatory body;
- b. Prior submission for regulatory purposes; and
- c. Any other required context.

**7. The form and information that should be contained in summary financial statements:**

Sections 667 – 668 of the Companies Act highlights the various forms and information to be contained in a summary financial statements. These are:

- a) statement of financial position;
- b) income statement;

- c) cash flow statements;
- d) Statement of changes in equity;
- e) A statement that it is a summary of information derived from the company's annual financial statements and the directors' remuneration report;
- f) A statement that indicates how a person is entitled to the Company's annual financial statement, director's remuneration report or director's report can obtain full copies of the same;
- g) A statement on whether the auditor's report on the annual financial statement was unqualified or qualified. If qualified, it should set out the report with any further material needed to understand the qualification.

**8. What offences and penalties are prescribed in the Act in relation to summary financial statements?**

Offences and penalties regarding summary financial statements are provided for under section 669 of the Companies Act as follows:

- a. If a company fails to comply with section 666, 667, 668, the company and each officer of the company who is in default commits an offence and on conviction are liable to a fine not exceeding KShs. 250,000 each;
- b. If after conviction, the non-compliance continues, each officer of the company who is in default commits a further offence on each day the failure continues and is liable to a fine not exceeding KShs. 25,000 for each such offence.

**9. Is there a requirement to publish the financial statements on Company's website?**

Yes, under section 670 of the Companies Act, it is now mandatory for quoted companies in addition to submission, to post the annual financial statements and directors' report in the company's website and the same shall remain so posted until the next financial reports are published and uploaded.

Section 670 (2) and (3) of the Companies Act makes it an offence for a quoted company failing to post the annual financial statements and directors' report of the company, and each officer of the company who is in default, commits an offence and on conviction are each liable to a fine not exceeding KShs. 500,000.

## 10. Lodgment requirements for quoted/listed companies

Pursuant to Section 688 of the Companies Act, the following shall be lodged with the Registrar of Companies for each financial year of the company,

A copy of;

- a. The company's annual financial statements
- b. The Director's remuneration report
- c. The Director's report
- d. The Auditor's report on all the above

Note: Other ongoing compliance requirements are detailed in Practice Note 4 - Ongoing Compliance Requirements.

## 11. Deadline for Lodging the above requirements (in note 10)

- (1) Section 684 provides the deadline for lodging financial statements for a public company is within six months after the end of the company's financial year-end (relevant accounting reference period), but this is subject to the sub-note (2) below.
- (2) If the relevant financial year end is the company's first and is a period of *more than twelve months*, the deadline is-
  - a. nine months from the first anniversary of the incorporation of the company; or
  - b. three months after the extended financial year end;

whichever ends later.

## 12. The quoted company's balance sheet and director's report lodged with the Registrar under Section 688 shall state;

- a. the name of the person who signed it on behalf of the company,
- b. The auditors report indicating the name of the auditor, name of the firm and name of the person who signed as senior statutory auditor.

Please note that the name of the auditor may be omitted in circumstances highlighted in Section 737 of the Act. (For instance, where the inclusion of the auditor's name would occasion a serious personal risk to the auditor or senior statutory auditor or any such other person. A Resolution on the omission is to be submitted to the Cabinet Secretary).

It is also worth noting the requirements under section 770 of the Companies Act on corporate governance, functions of the Audit Committee and corresponding

mandatory compliance obligations vis-a-vis the Capital Markets Authority Act and regulations.

### 13. 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.

### 14. Effective Date.

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

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