

Monthly Newsletter

This newsletter is to provide guidance of the requirement of the disclosure of director remuneration in term of the Companies Act.

Overview

Section 30(4) of the Companies Act, Act 71 of 2008 requires the disclosure of directors' and prescribed officers' remuneration in the annual financial statements. This disclosure must be provided per individual and must include all remuneration received by that individual for their services provided to all group entities.

Which companies are required to disclose this information?

The Act requires that each company that is required to have its annual financial statements audited must provide the required disclosure. Companies that would fall into this category are:

- Public companies
- State-owned companies (SOC)
- Any company that in the ordinary course of its primary activities, holds assets in a fiduciary capacity for persons who are not related to the company, where the aggregate value of such assets held exceeds R5 million
- Any company that has a public interest score of 350 or more OR at a public interest score of at least 100 where the annual financial statements were internally compiled
- Any non-profit company incorporated by the state, SOC, international entity, foreign state entity or where the non-profit company was incorporated to perform a statutory or regulatory function

Companies not falling in the above categories but are still audited in terms of a requirement in the company's memorandum of incorporation (MOI) are regarded as voluntary audits. It is therefore interpreted that Section 30(4) does not apply to such companies.

What is defined as remuneration in terms of the Act?

The definition of remuneration includes:

- fees paid to directors for services rendered by them to or on behalf of the company, including any amount paid to a person in respect of the person's accepting the office of director
- salary, bonuses and performance-related payments
- expense allowances, to the extent that the director is not required to account for the allowance
- contributions paid under any pension scheme
- the value of any option or right given directly or indirectly to a director, past director or future director, or person related to any of them
- financial assistance to a director, past director or future director, or person related to any of them, for the subscription of shares
- any loan or other financial assistance by the company to a director, past director or future director, or a person related to any of them, or any loan made by a third party to any such person

What information should be disclosed?

The requirement states that all remuneration paid to or receivable by a director/prescribed officer must be disclosed. This implies that not only the remuneration paid to the director or prescribed officer by the company, but also all other remuneration received by the director/ prescribed officer from any other company within the group must be disclosed. This would also mean that one person's remuneration may have to be disclosed by more than one company in the same group.

The amounts of remuneration or benefits paid to or receivable by directors/prescribed officers will include payments made in respect of the following:

- as directors or prescribed officers of any company within the same group of companies
- otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies

How can a company ensure proper disclosure?

1. The relationship of all entities within the group structure should be determined. This structure would include all trusts and foreign entities of the group.
2. Directors and prescribed officers for each entity within the group must be identified.
3. All amounts received or receivable by directors and prescribed officers must be determined.
4. It should be determined whether the amounts identified in 3 above was paid (is payable) for the services as director of the company (or another company in the group) or whether it was for services in connection with the carrying out of the affairs of any company.
5. The remuneration should be classified and disclosed accordingly.

Disclosure in the annual financial statements

Example:

Remuneration and benefits paid to directors / prescribed officers				
Name	Services to the company	Services to other group companies	Services in connection with the affairs of the company or group	Pensions paid or payable
Director A	XX		XX	XX
Director B	XX	XX		XX
Director C	XX	XX	XX	XX
Total	XXX	XXX	XXX	XXX

Note: All amounts paid to past directors and prescribed officers should also be disclosed

Name	Class of security	Number issued	Consideration received
Director C	Ordinary	xxx	XXX
Total		xxx	XXX