Disclosure of directors’ and prescribed officers’ remuneration

Frequently asked questions

Please note:

1. Every effort has been made to ensure that the information in this frequently asked questions document is correct. Nevertheless, information is given purely as guidance to assist with particular problems related to the subject matter and SAICA will have no responsibility to any person for any claim of any nature whatsoever that may arise out of or relate to the contents of this guide.

2. The information provided in this document does not constitute legal advice and should be read in that context.

3. Where the document suggests a particular view, such a view is based on SAICA’s interpretation, at a point in time, of the Companies Act and the relevant sections of the Companies Act. Although SAICA has consulted widely, it is possible that a different view may ultimately be followed in practice; for example, in instances where the Companies and Intellectual Property Commission provides specific guidance.

Introduction

The Companies Act, No. 71 of 2008 (“the Act”) requires that certain companies must include the disclosure of directors’ and prescribed officers’ remuneration per individual in the company’s annual financial statements. (Refer to Annexure A for an extract of section 30(4) to (6) of the Act and Annexure B for an extract of regulation 38 of the Companies Regulations, 2011.) This list of frequently asked questions has been compiled to assist SAICA members with the interpretation of the Act’s requirements. These frequently asked questions do not deal with disclosures as required by the financial reporting standards or the JSE Listings Requirements.

The Close Corporations Act, No. 58 of 1984 has also been amended to require close corporations to disclose members’ remuneration. (Refer to Annexure C for an extract of the amendments to the Close Corporations Act.) Where applicable, the reference to a company will include reference to a close corporation.
Questions

1. **Which companies must disclose directors’ and prescribed officers’ remuneration, as required by section (“S”) 30(4) of the Act, in their annual financial statements?**

   The Act states that the annual financial statements of “each company that is required in terms of this Act to have its annual financial statements audited” must include the particulars set out in S30(4). This requirement therefore applies to:

   - public companies;
   - state-owned companies;
   - 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, and the aggregate value of such assets held at any time during the financial year exceeds R5 million;
   - “any non-profit company, if it was incorporated –
     - directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company; or
     - primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of state, a state-owned company, an international entity, or a foreign state entity, or for a purpose ancillary to any such function”;
   - any other company that has a public interest (PI) score of 350 or more; and
   - any other company that has a PI score of at least 100 if the annual financial statements for that year were internally compiled.

   Annexure D contains a table that summarises the Act’s requirements for companies to be audited and how these requirements relate to the Act’s requirements for annual financial statements to disclose directors’ and prescribed officers’ remuneration.

2. **Does a company have to disclose directors’ and prescribed officers’ remuneration, as set out in S30(4) of the Act, in its annual financial statements, if the company does not meet any of the requirements as listed in FAQ 1 but requires an audit in terms of**
   a. the Memorandum of Incorporation (MOI) of the company; or
   b. shareholders’ resolution; or
   c. a board of director’s decision?

   The requirement to disclose directors’ and prescribed officers’ remuneration, as set out in S30(4) of the Act, applies only to those companies required to be audited in terms of the Act. Accordingly, companies that are audited voluntarily i.e. where the requirement arises in terms of the company’s MOI, a shareholders’ resolution, or a decision of the board of directors, are not required to disclose directors’ and prescribed officers’ remuneration in their annual financial statements, as set out in S30(4) of the Act.
3. Will a company comply with the requirements of S30(4) of the Act by using number or letter references when identifying directors or prescribed officers, instead of the names of its directors and prescribed officers; for example, by referring to “Director A”, “Director B” and “Director C”?

Section 5 of the Act prescribes the interpretation and application of the Act. It provides that the Act must be applied in accordance with the “purposes” of the Act as contained in S7. These purposes are diverse and include matters such as the encouragement of the efficient and responsible management of companies and transparency.

The Act states in S30(4)(a) that the remuneration and benefits received by each director or individual that holds any prescribed office in the company must be disclosed. This is interpreted as stating that the name of each director or prescribed officer must be disclosed in the annual financial statements, together with the particulars required by S30(4) in line with the concept of transparency (S7). Also note that this disclosure is on an individual basis per director or prescribed officer and not in aggregate as per the Companies Act, 1973.

4. Does the remuneration disclosure only reflect directors’ and prescribed officers’ in office at year end?

No, the Act states that disclosure of all remuneration and benefits paid to or receivable by the directors’ and prescribed officers’ of the company for services rendered as a director or prescribed officer of any company must be disclosed.

If the director or prescribed officer is not a director or prescribed officer at the end of the financial year, the director or prescribed officer still received remuneration during the financial year and the remuneration and benefits was still paid to or receivable by the directors and the prescribed officers. As such, the remuneration or benefits paid to or received by the director or prescribed officer during the financial year must be disclosed.

It is therefore SAICA’s view that the disclosure should include any directors or prescribed officer who had been in office during the course of the year. The only exception to this, in SAICA’s view, is S30(4)(e), which specifically only requires the disclosure of the details of service contracts of current directors and prescribed officers.

5. Company A is required to be audited by the Act. Must remuneration paid to or receivable by directors and prescribed officers of Company A for services rendered by these directors or prescribed officers to other companies in the same group of companies be disclosed in the annual financial statements of Company A?

Yes, S30(5) of the Act states that the information to be disclosed under S30(4) “must satisfy the prescribed standards, and must show the amount of any remuneration or benefits paid to or receivable by persons in respect of:

- services rendered as directors or prescribed officers of the company; or
services rendered while being directors or prescribed officers of the company:
  o as directors or prescribed officers of any other company within the same group of companies; or
  o otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.” [our emphasis]

The effect of these requirements is that all remuneration paid to or receivable by directors and prescribed officers of Company A in respect of services rendered to Company A or any other company within the same group of companies must be disclosed in the annual financial statements of Company A. If a person serves as director and/or prescribed officer of more than one company in a group of companies, that person’s total remuneration would be disclosed in the annual financial statements of all the companies in the group that are required to disclose remuneration. The detail of the person’s total remuneration, i.e. the split between the disclosure required by S30(5)(a) and S30(5)(b) would however differ in the various sets of annual financial statements.

6. Company A has one director, person X. Company A’s holding company pays person X R50 000 for services rendered as director of Company A. Both company A and its holding company are required to be audited in terms of the Act. Person X is not a director or a prescribed officer of the holding company. In which set of annual financial statements must person X’s remuneration be disclosed?

Person X

HOLDCO
Pays Person X R50 000

S30(5) amounts to be disclosed in the AFS of B for X
  • No disclosure required as X is not a director or prescribed officer of HOLDCO)

COMPANY A
Earns R50 000 as a director of A

S30(5) amounts to be disclosed in the AFS of A for X
  • R50 000 (received by X for services as a director of A)

Section 30(4) of the Act requires remuneration paid to or receivable by directors and prescribed officers of the company to be disclosed in the company’s annual financial statements. Section 30(5) of the Act elaborates on this requirement by requiring the disclosure in the company’s annual financial statements of “the amount of any remuneration or benefits paid to or receivable by persons in respect of:
• services rendered as directors or prescribed officers of the company; or
• services rendered while being directors or prescribed officers of the company
   o as directors or prescribed officers of any other company within the same group of companies; or
   o otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.”

The source of payment does not determine the disclosure – rather, the question is whether or not a particular director/prescribed officer received any remuneration for his/her services to the company. Accordingly, even if payment is made from a foreign source, disclosure is nevertheless required if a director/prescribed officer received the remuneration/benefit for services as director/prescribed officer of a South African company which is required to disclose the remuneration/benefit.

Therefore, there will be circumstances where the amount recognised as an expense in a company’s Statement of Comprehensive Income does not agree with the amounts disclosed in its annual financial statements in terms of S30(4) of the Act.

7. What does “in connection with the carrying on of the affairs of the company or any other company within the same group” mean?

“Carrying on of the affairs” as referred to in S30(5)(b)(ii) has a broad meaning and extends to services provided in the director/prescribed officer’s capacity as an employee. If a person is a director of a company (that is required to be audited by the Act) in a group of companies and the same person is also an employee of another company in the group, the company where the person is a director will have to disclose in its annual financial statements the person’s remuneration received as director of the company and the salary earned as an employee of the other company within the same group of companies (i.e. for the carrying on of the affairs of the company).

Example:

South African Companies A and B are in the same group of companies. Both companies are required to be audited in terms of the Act. Person X is an employee of A for which she earns R500 000. Person X is not a director or prescribed officer of A. Person X is a director of Company B where she receives R100 000. We assume that Person X does not provide any other services in the group.
8. **Section 30(5) of the Act refers to all companies “within the same group of companies”. Does a “group of companies” refer only to the company in question and its own subsidiaries or does the term extend to the entire group of companies of which the company in question forms a part?**

The Act defines a “group of companies” as meaning: “a holding company and all of its subsidiaries”. A “group of companies” therefore consists of every holding company (as defined in the Act) and every subsidiary (as defined in the Act) of that holding company.

Consider, for example, a holding company with one subsidiary. The “group of companies” will consist of the holding company and its subsidiary. The subsidiary will thus be part of a “group of companies” even though the subsidiary itself has no subsidiaries. For purposes of S30(5), services rendered to every company in the same group of companies therefore includes the holding company, all subsidiaries and fellow subsidiaries (thus looking upward, downward and sideways in the group structure).

Refer to FAQ 10 for further guidance on what constitutes a “holding company”.

9. **Should remuneration received by directors and prescribed officers for their services to trusts and foreign companies also be disclosed?**

No, the Act requires the company to disclose all amounts payable to or received by its directors and prescribed officers in respect of services rendered as directors or prescribed officers of the company. Amounts in respect of services rendered as directors or prescribed officers of any other company within the same group of companies or otherwise in connection with the carrying on of affairs of the company or any other company within the company.
same group of companies are also required to be disclosed. In terms of the Act, a “company” is defined as a juristic person incorporated in terms of the previous or current Companies Act and would include South African companies only. Therefore, any amounts paid to directors and prescribed officers in respect of services rendered to a trust or a foreign company within the group would not be disclosed, since trusts and foreign companies are not “companies” as defined by the Act.

10. South African Companies B and C (both public companies) are subsidiaries of a foreign company, Company A. Companies B and C are required to be audited in terms of the Act. Person X is a director of Company A, Company B and of Company C, where he receives $5,000, R100,000, R20,000 for services rendered to the respective companies. Should the remuneration of R20,000 received by person X for services rendered to Company C be disclosed in the annual financial statements of Company B?

Person X

COMPANY A (FOREIGN COMPANY)
Person X earns $5,000 as a director of A

S30(5) amounts to be disclosed in the AFS of A for X
- SA Companies Act does not apply
- Follow requirements of the foreign jurisdiction

COMPANY B (SA COMPANY)
Earnings R100,000 as a director of B

S30(5) amounts to be disclosed in the AFS of B for X
- R100,000 (For services as a director of B)
- R20,000 (While being a director of B for services rendered as a director of C)

COMPANY C (SA COMPANY)
Earnings R20,000 as a director of C

S30(5) amounts to be disclosed in the AFS of C for X
- R20,000 (For services as a director of C)
- R100,000 (While being a director of C for services rendered as a director of B)
The Act defines a “company” as a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date was registered in terms of the Companies Act, 1973 (Act No. 61 of 1973) “....”. A holding company is defined in the Act as follows: “in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a)”. A foreign company would qualify as a “holding company” even though it does not meet the definition of “company” in the Act.

Fellow subsidiaries B and C are therefore “within the same group of companies” even though their holding company is not a South African company. The remuneration earned by the person in question for services rendered to Company C should thus be disclosed in the annual financial statements of Company B and vice versa.

Remuneration received in respect of Company A need not be disclosed in the annual financial statements of the South African subsidiaries as company A is a foreign company and accordingly not a “company” as defined in the Act. Refer to FAQ 9.

11. **Would it be acceptable for a company to include the disclosure required by S30(4) of the Act in the directors’ report, as opposed to in the notes to the financial statements?**

Section 30(4) of the Act requires the company’s annual financial statements to include particulars regarding directors’ and prescribed officers’ remuneration. The annual financial statements include the directors’ report. Although SAICA recommends that the disclosure required by S30(4) be made in the notes to the financial statements, it is permissible for the directors to include the disclosure required by S30(4) in the directors’ report. However, the auditor remains responsible for auditing the directors’ and prescribed officers’ remuneration disclosure.
Annexure A – Section 30(4) – (6) of the Companies Act, No. 71 of 2008

“(4) The annual financial statements of each company that is required in terms of this Act to have its annual financial statements audited, must include particulars showing-

(a) the remuneration, as defined in subsection (6), and benefits received by each director, or individual holding any prescribed office in the company;

(b) the amount of-

(i) any pensions paid by the company to or receivable by current or past directors or individuals who hold or have held any prescribed office in the company;

(ii) any amount paid or payable by the company to a pension scheme with respect to current or past directors or individuals who hold or have held any prescribed office in the company;

(c) the amount of any compensation paid in respect of loss of office to current or past directors or individuals who hold or have held any prescribed office in the company;

(d) the number and class of any securities issued to a director or person holding any prescribed office in the company, or to any person related to any of them, and the consideration received by the company for those securities; and

(e) details of service contracts of current directors and individuals who hold any prescribed office in the company.

(5) The information to be disclosed under subsection (4) must satisfy the prescribed standards, and must show the amount of any remuneration or benefits paid to or receivable by persons in respect of-

(a) services rendered as directors or prescribed officers of the company; or

(b) services rendered while being directors or prescribed officers of the company-

(i) as directors or prescribed officers of any other company within the same group of companies; or

(ii) otherwise in connection with the carrying on of the affairs of the company or any other company within the same group of companies.

(6) For the purposes of subsections (4) and (5), ‘remuneration’ includes-

(a) 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;

(b) salary, bonuses and performance-related payments;

(c) expense allowances, to the extent that the director is not required to account for the allowance;

(d) contributions paid under any pension scheme not otherwise required to be disclosed in terms of subsection (4)(b);

(e) 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, as contemplated in section 42;

(f) financial assistance to a director, past director or future director, or person related to any of them, for the subscription of options or securities, or the purchase of securities, as contemplated in section 44; and
(g) with respect to 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, as contemplated in section 45, if the company is a guarantor of that loan, the value of-

(i) any interest deferred, waived or forgiven; or

(ii) the difference in value between-

(aa) the interest that would reasonably be charged in comparable circumstances at fair market rates in an arm’s length transaction; and

(bb) the interest actually charged to the borrower, if less.”
Annexure B – Regulation 38 of the Companies Regulations, 2011

“Regulation 38

Prescribed officers of companies

See s. 66 (10)

(1) Despite not being a director of a particular company, a person is a “prescribed officer” of the company for all purposes of the Act if that person—

(a) exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the company; or

(b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company.

(2) This regulation applies to a person contemplated in sub-regulation (1) irrespective of any particular title given by the company to—

(a) an office held by the person in the company; or

(b) a function performed by the person for the company.”
Annexure C – Section 58(2A) of the Close Corporations Act, No. 58 of 1984

Application of Section 30(4) – (6) to Close Corporations

“S58(2A) Section 30(2)(b) and (3) to (6) of the Companies Act, read with the changes required by the context, apply to a corporation that is required by the Regulations made in terms of section 30(7) of the Companies Act, to have its annual financial statements audited.”
### Annexure D – Summary of audit and remuneration disclosure requirements

<table>
<thead>
<tr>
<th>Company Type</th>
<th>Companies Act reference</th>
<th>Audit required?</th>
<th>Disclosure of directors’ and prescribed officers’ remuneration required in the company’s annual financial statements?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public company or state-owned company</td>
<td>S30(2)(a)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Profit or non-profit company/close corporation which, in the ordinary course of its primary activities, holds assets in a fiduciary capacity for persons who are not related to the company/close corporation, the value of which exceeded R5 million at any time during the year</td>
<td>S30(2) read with S30(7), R28(2)(a)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-profit company that was incorporated directly or indirectly by the state, an organ of state, a state-owned company, an international entity, a foreign state entity or a foreign company</td>
<td>S30(2) read with S30(7), R28(2)(b)(i)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-profit company incorporated primarily to perform a statutory or regulatory function in terms of any legislation, or to carry out a public function at the direct or indirect initiation or direction of an organ of state, a state-owned company, an international entity, or a foreign state entity, or for a purpose ancillary to any such function</td>
<td>S30(2) read with S30(7), R28(2)(b)(ii)</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Company/close corporation’s PI score is</td>
<td>S30(2) read with S30(7), R28(2)(c)</td>
<td>Yes</td>
<td>Yes</td>
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<td>• 350 or more points; or</td>
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<td>• at least 100 points and the annual financial statements were internally compiled</td>
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<tr>
<td>Description</td>
<td>Companies Act reference</td>
<td>Audit required?</td>
<td>Disclosure of directors’ and prescribed officers’ remuneration required in the company’s annual financial statements?</td>
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<tr>
<td>Company/close corporation’s PI score below 100 points</td>
<td>S30(2) read with S30(7) and R29(4)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Company/close corporation’s PI score is 100 to 349 and its annual financial statements were externally compiled</td>
<td>S30(2) read with S30(7) and R28(2)(c)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Company/close corporation that is audited only because of a requirement in its MOI, a requirement of a shareholders’ resolution or because its directors so require it</td>
<td>S30(2)(b)(ii)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>The company is required to be audited in terms of any other law or regulation or contract to which the company is a party</td>
<td>S30(2A)(b)</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>The company is a company where every person who is a holder of, or has a beneficial interest in, any “securities” issued by the company is also a director of the company</td>
<td>S30(2A)</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>