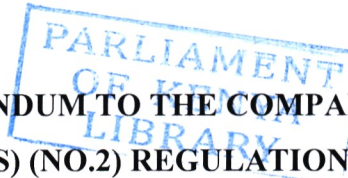


**EXPLANATORY MEMORNDUM TO THE COMPANIES (GENERAL)
(AMENDMENTS) (NO.2) REGULATIONS, 2017**



PART I

Name of the Statutory Instrument: The Companies (General) (Amendments) (No.2) Regulations, 2017

Name of the Parent Act: The Companies Act, 2015

Enacted Pursuant to: Section 1022 of LN. NO.240 of 2017

Name of the Ministry/ Department: Office of the Attorney General and the Department Of Justice, Business Registration Service

Gazetted on: 15th September, 2017

Tabled on:

PART II

1. The Purpose of the Companies (General) (Amendment) (No.2) Regulations, 2017

The purpose of these Regulations is to provide for the information not subject to audit, information subject to audit and disclosure of share option in relation to a directors remuneration report to be prepared by directors of a quoted company for each financial year.

The objectives of the regulations are in line with the spirit of the ease of doing business and more so the Protection of Minority Investors.

2. Legislative Context

The Companies Act, 2015 empowers the Attorney General to make regulations necessary or convenient for carrying out or giving effect to the Act. The Companies (General) (Amendment)

(No.2) Regulations, 2017 are therefore issued to provide a guideline in relation to the information that is required to be included in a directors' remuneration report, how information is to be set out in the report and what is to be auditable part of the report.

3. Policy Background

The regulatory framework on the director's remuneration report of quoted companies is an initiative of the Office of the Attorney General and the Institute of Certified Public Accountants with a view of Protecting Minority Investors interests.

The Companies General Regulations 2015 makes provision for information about directors' remuneration to be included in notes to financial statements, these regulations offer a clear guideline on information that is required to be included in a directors' remuneration report, how information is to be set out in the report and what is to be auditable part of the report.

Further, these regulations will significantly improve Kenya's ranking on the ease of doing business index under the 'Protection of Minority Investors' indicator.

4. Consultations Outcome

The Companies (General) (Amendment) (No.2) Regulations, 2017 have taken into account the views of the key personnel in the Office of the Attorney General and Department of Justice who are versed with the operational aspects the companies act. The Attorney General in coming up with the regulations has sought the extensive input of the Ag- Director General who is the accounting officer and administrator of the Business Registration Service.

There were interactions between the Law Society of Kenya (LSK), Institute of Certified Public Secretary Kenya (ICPSK), Central Bank of Kenya (CBK), Sacco Societies Regulatory Authority, Insurance Regulatory Authority, Capital Markets Authority, Kenya Bankers Association, Nairobi Security Exchange, and the Office of the Attorney General.

5. Guidance

The Business Registration Service will sensitize its officers for adherence to the objectives of accountability and efficiency in the management of the Registry. The Service will also engage key stakeholders such as Parliament and the Ministry of Industry, Trade and Co-operation whose participation and cooperation remains instrumental in the successful implementation of the key aspects of the Companies Act, 2015 and the regulations.

6. Impact Assessment

An impact assessment has not been prepared for this Instrument. The instrument is made pursuant to the objectives as operationalised by the Companies Act.

7. Review of the Regulations

The Ag. Director General shall monitor the application of the Companies (General) (Amendment) (No.2) Regulations, 2017. This will be done through the reports prepared at regular intervals. In addition, the implementers of the regulations will carry out regular monitoring and evaluation of the specific provisions of these regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

8. Contact Person

The contact person at the Office of the Attorney General is Hon. Prof. Githu Muigai, EGH, SC Attorney General or Mr. Kenneth Gathuma, Ag- Director General, Business Registration Service.

SPECIAL ISSUE

2193

Kenya Gazette Supplement No. 139

15th September, 2017

(Legislative Supplement No. 73)

LEGAL NOTICE NO. 240

THE COMPANIES ACT

(No. 17 of 2015)

IN EXERCISE of the powers conferred by section 1022 of the Companies Act, 2015, the Attorney-General makes the following Regulations:—

**THE COMPANIES (GENERAL) (AMENDMENT) (NO. 2)
REGULATIONS, 2017**

1. These Regulations may be cited as the Companies (General) (Amendment) (No.2) Regulations, 2017.

Citation

2. The Companies (General) Regulations, 2015 (in these Regulations referred to as “the principal Regulations”) are amended by inserting the following new regulation immediately after regulation 50—

L N No 239 of
2015

Directors of a quoted
company remuneration
report

50A. The directors of a quoted company shall prepare a directors’ remuneration report for each financial year as prescribed in the Tenth Schedule.

3. The principal Regulations are amended by inserting the following new schedule immediately after the Ninth Schedule—

**TENTH SCHEDULE—QUOTED COMPANIES: DIRECTORS’
REMUNERATION REPORT [Reg. 50A]**

PART I—INTRODUCTION

Application of this
Schedule

1. This Schedule applies to directors of quoted companies who shall submit directors’ remuneration report for each financial year of a company.

2. In this schedule “director” means a person who is or was a director of a company at any time during the preceding five years.

**PART II—INFORMATION NOT SUBJECT TO
AUDIT**

Annual Statement

3. Every company shall prepare an annual statement, which shall be included in the directors remuneration report for the relevant financial year, summarizing—

- (a) the major decisions on directors’ remuneration;
- (b) any substantial changes relating to the directors’ remuneration made during the year; and

- (c) the context in which the changes occurred and decisions taken.

Statement of company's
policy on directors'
remuneration

4. (1) Every company shall prepare a policy statement on the director's remuneration for the subsequent financial years.

(2) The policy statement shall include—

- (a) a detailed summary of each director's performance conditions, for the director to be entitled to—
- (i) share options; or
 - (ii) a long term investment scheme;
- (b) a detailed summary of the methods to be used in assessing the performance conditions;
- (c) a description of, and an explanation for, any significant amendment proposed to be made to the terms and conditions of any entitlement of a director to share options or under a long term incentive scheme; and
- (d) an explanation why an entitlement of a director to share options, or under a long term incentive scheme, is not subject to performance conditions.

(3) The policy statement shall explain the elements of performance of each director's terms and conditions relating to their remuneration.

(4) The company's policy statement shall summarise and explain, the—

- (a) duration of the directors' contracts; and
- (b) notice periods and termination payments, under the contracts.

Contract of service

5. A directors' remuneration report shall contain, in relation to a director's contract of service—

- (a) the date of the contract, the unexpired term and the details of any notice periods;
- (b) any provision for compensation payable upon early termination of the contract; and
- (c) other details in the contract that enable members of the company to estimate the liability of the company in the event of early termination of the contract.

Statement of voting at
general meeting

6. A directors' remuneration report shall contain a statement of the previous general meeting—

- (a) in respect of a resolution to approve the directors' remuneration report, the percentage of votes cast for and against the report and the number of votes withheld;
- (b) in respect of a resolution to approve the directors' remuneration policy, the percentage of votes cast for and against the report and the number of votes withheld; and
- (c) where there was a significant percentage of votes against the resolution, a summary of the reasons for those votes, as far as is known to the directors, and any actions taken by the directors in response to those concerns.

PART III— INFORMATION SUBJECT TO AUDIT

Amount of each directors' emoluments and compensation in the relevant year.

7. (1) A directors' remuneration report for the relevant financial year, in relation to each director who served at any time during the year, shall state—

- (a) the total amount of the salary and fees paid to or receivable by the director in respect of qualifying services;
- (b) the total amount of bonuses paid or receivable;
- (c) the total amount paid as expense allowances that are—
 - (i) chargeable to income tax, or would be if the director were an individual; and
 - (ii) paid to or receivable by the director in respect of qualifying services;
- (d) the total amount of—
 - (i) any compensation for loss of office paid to or receivable by the director; and
 - (ii) any other payments paid to or receivable by the director in connection with the termination of qualifying services;
- (e) the total estimated value of any benefits received by the director, other than in cash, that—
 - (i) do not fall within any of subparagraphs (a) to (d) or paragraphs (8) to (9);
 - (ii) are emoluments of the person; and

(iii) are received by the person in respect of qualifying services; and

(f) the amount that is the total of the sums mentioned in sub-paragraphs (a) to (e).

(2) A directors' remuneration report shall state, for each person who has served as a director of the company at any time during the relevant financial year, the total of the sums mentioned in paragraph (1) (a) to (e) for the financial year preceding the relevant financial year.

(3) A directors' remuneration report shall state the nature of any element of a remuneration package which is not cash.

(4) The information required under paragraphs (1) and (2) shall be in tabular form.

Share option

8. A directors' remuneration report shall contain, in respect of each person who served as a director of the company at any time during the relevant financial year, the following share option information –

- (a) the number of shares subject to a share option—
 - (i) at the beginning of the relevant financial year or if later, the date the director was appointed; and
 - (ii) at the end of the relevant financial year or if earlier, the date the director ceased to be one;
- (b) the share options in that relevant financial year—
 - (i) awarded;
 - (ii) exercised;
 - (iii) unexercised and have expired; and
 - (iv) whose terms and conditions have been varied;
- (c) the unexpired share option at any time in the relevant financial year including—
 - (i) the price paid for the award;
 - (ii) the exercise price;
 - (iii) the date from which the option may be exercised; and
 - (iv) the date on which the option expires;

- (d) a description of any variation made in the relevant financial year in relation to the terms and conditions of the share option;
- (e) a summary of any performance criteria upon which the award or exercise of a share option is conditional, including a description of any variation made in such performance criteria during the relevant financial year;
- (f) the market price of the shares, at the time which each share option is exercised during the relevant financial year;
- (g) for each unexpired share option at the end of the relevant financial year—
 - (i) the market price; and
 - (ii) the highest and lowest market prices during that year, of each share that is subject to the option.

Long term incentive schemes.

9. (1) A directors' remuneration report shall contain, in respect of each person who served as a director of the company at any time during the relevant financial year, the following long term incentive schemes information—

- (a) details of the scheme interests that the director has at the beginning of the relevant financial year or if later on, the date of their appointment as a director of the company;
- (b) details of the scheme interests awarded to the director during the relevant financial year;
- (c) details of the scheme interests that the director has at the end of the relevant financial year or if earlier, on their cessation as a director of the company;
- (d) for each scheme interest in sub-paragraph (a) to (c)—
 - (i) the end of the period over which the qualifying conditions for that interest have to be fulfilled (or if there are different periods for different conditions, the end of whichever of those periods that ends last); and
 - (ii) a description of any variation made in the terms and conditions of the

scheme interests during the relevant financial year; and

- (e) for each scheme interest that has vested in the relevant financial year—
 - (i) the relevant details of any shares;
 - (ii) the amount of money; and
 - (iii) the value of other assets, that have become receivable in respect of the interest.

(2) For the purpose of this paragraph—

“long term incentive scheme” means an interest in respect of which assets may become receivable under the scheme in respect of qualifying services of the person;

“scheme interest” means an interest under a long term incentive scheme;

“relevant details” in relation to any shares that have become receivable in a scheme interest, means—

- (a) the number of those shares;
- (b) the date on which the scheme interest was awarded;
- (c) the market price of each of those shares when the scheme interest was awarded;
- (d) the market price of each of those shares when the scheme interest vested; and
- (e) details of qualifying conditions that were conditions with respect to performance;

“an interest vests at the earliest time” when—

- (a) it has been ascertained that the qualifying conditions have been fulfilled; and
- (b) the nature and quantity of the assets receivable under the scheme in respect of the interest have been ascertained.

Pension

10. A directors’ remuneration report shall contain the following pension information in respect of a director of the company who has served during the relevant financial year, and has rights under a pension scheme that is a defined benefit scheme—

- (a) the details of the pension arrangement and any changes to those arrangements during the year; and

- (b) the management of the assets and financial affairs of the pension scheme.

Compensation for past directors

11. A directors' remuneration report shall contain details of any significant award, made in the relevant financial year to any person who was not a director of the company at the time the award was made but had previously been a director of the company, including (in particular) compensation in respect of loss of office and pensions but excluding any sums which have already been shown in the report under paragraph 7(1)(d).

Sums paid to third parties in respect of a director's services

12. (1) A directors' remuneration report shall contain, in respect of each person who served as a director of the company at any time during the financial year, the aggregate amount of any consideration paid to or receivable by third parties for making available the services of the person—

- (a) as a director of the company, or
- (b) while a director of the company—
 - (i) as a director of any of its subsidiary undertakings; or
 - (ii) as a director of any other undertaking of which he was a director by virtue of the company's nomination (direct or indirect); or
 - (iii) dealt with the management of the affairs of the company or any such other undertaking.

(2) For the purpose of this paragraph—

“consideration” includes benefits other than in cash and particularly estimated money value of the benefit, and

“third parties” excludes—

- (a) the person himself or a person connected with him or a body corporate controlled by him; and
- (b) the company or any such other undertaking as is mentioned in subparagraph (1)(b)(ii).

PART IV— DISCLOSURE OF SHARE OPTION

Disclosure

13. (1) For purposes of this Schedule, disclosure of share option shall be in respect of each individual director.

(2) If, in the opinion of the directors of the company, disclosure of share option would result in a disclosure of excessive length—

- (a) the information disclosed under paragraph 8(a) need not differentiate between share options having different terms and conditions;
- (b) the share options may be aggregated and, instead of disclosing prices for each share option, disclosure may be made of weighted average prices of aggregations of share options, under paragraph 8(c)(i) and (ii) and (g);
- (c) the share options may be aggregated and, instead of disclosing dates for each share option, disclosure may be made of ranges of dates for aggregation of share options, under paragraph 8(c)(iii) and (iv).

(3) Sub-paragraph (2)(b) and (c) does not permit the aggregation of—

- (a) share options in respect of shares whose market price at the end of the relevant financial year is below the option exercise price;
- (b) share options in respect of shares whose market price at the end of the relevant financial year is equal to, or exceeds, the option exercise price.

(3) Sub-paragraph (2) does not apply in respect of share options, that during the relevant financial year, have been awarded or exercised or had their terms and conditions varied.

Made on the 28th August, 2017.

GITHU MUIGAI,
Attorney-General.