

PRESENTATION OF THE COMPANIES ACT  
2015 AND ITS IMPLICATIONS ON  
REPORTING  
TO  
FINANCIAL REPORTING WORKSHOP –  
NAIROBI  
CPA EDWIN MAKORI

Tuesday, December 6, 2016

# Introduction



- Overview of the Companies Act
- Duties of Directors
- Provisions affecting Financial Reporting
- Status and way Forward

# Introduction



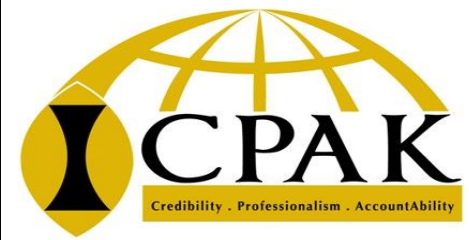
The Companies Act, 2015 was assented by the President on 11<sup>th</sup> September 2015 with only Section 2 of the Act coming into operation on the date of gazettelement on 15<sup>th</sup> September 2015.

It has 1,026 sections grouped into 42 parts each of which has several divisions and supplemented by 6 schedules.

The first phase of implementation of the laws was published in Gazette Notice 233 of 2015 where the following parts became operational; **Parts 1 to 14, Part 23, Part 31, Part 32, Part 38, Part 40, Part 42 and the First, Second and Sixth Schedules of the Act.**

The Companies Act, 2015 became fully operational in June 2016 via Legal Notice dated 15 June 2016

## Who is a Director?



The Companies Act 2015 defines a director as including any person occupying the position of a director, whatever the title.

There is therefore no distinction between executive (management) and non-executive (supervisory) directors and all directors of a company have the same duties and liabilities to the company.

## Director's Duties



The Act provides that directors owe the following duties:-

- a. to act within power and to use powers for the right purpose
- b. to promote the success of the company;
- c. to exercise independent judgement;
- d. to exercise reasonable care, skill and diligence;
- e. to avoid conflicts of interest;
- f. not to accept benefits from third parties; and
- g. to declare interests in proposed transactions and arrangements.

## Director's Duties



The board of directors is ultimately responsible for the company's business affairs and governance as stated in its governing documents, including the articles of incorporation, the by laws, and shareholder agreements.

The success of the board of directors depends on the composition, structure, resources, diligence, and authority of the entire board, as well as their working relationships with other participants of corporate governance, including management, external auditors, internal auditors, legal counsel, professional advisors, regulators and investors.

# Section 3: Interpretation – definition of “auditor”

## Page 325 and 329



"auditor" means-

(a) a person or firm appointed as an auditor of a company under Part XXVII; or

(b) a person or firm appointed as an auditor of a body of a kind prescribed by the regulations for the purposes of this definition;

"body corporate" includes a firm that is a legal person under the law **by** which it is governed;

“firm” means an entity, whether or not a legal person, that is not a natural person; and includes a body corporate, sole proprietorship, partnership or other unincorporated association;

## Section 3: Interpretation

### Page 332



“Prescribed financial accounting standards” means statements of standard accounting practice issued by a professional body or bodies **in accounting and finance recognized by law in Kenya;**



# Section 772 – Eligibility for appointment as a statutory auditor.

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The purpose of this Part is to ensure—

- ✓ persons who are properly supervised and appropriately qualified are appointed as statutory auditors; and
- ✓ that audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.

For the purposes of this Part, a person is a member of a director's family if the person is-

1. the director's spouse
2. a child or a step-child of the director;
3. a child or step-child of the director's spouse who lives with the director and has not reached eighteen years of age; or
4. a parent of the director

## Section 151 (3): Duty to declare interest in proposed or existing Transaction or arrangement.



151(3) A declaration is not effective for the purpose of subsection (2) unless the valuation of the goods or services and the valuation of the assets of the company are certified by the company's auditors as being the true market value of those goods or services and those assets.

Amount or value of the goods or services valued should exceed 10% of the valued assets of a company

**Section 620 – interpretations under part XXV and 660 – Regulations may prescribe requirements for contents of directors' remuneration report.**



620. (1) In this Part- annual financial statement", in relation to a company, means the company's individual financial statement for a financial year, and includes any group financial statement prepared by the company for that year.

(2) In the case of an unquoted company, its annual financial statement and reports for a financial year consist of —

- a) its annual financial statement;
- b) **the directors' report;** and
- c) the auditor's report on the financial statement and directors' report unless the company is exempt from audit.

**Section 620 – interpretations under part XXV and  
660 – Regulations may prescribe requirements for  
contents of directors' remuneration report.**



(3) In the case of a quoted company, its annual financial statement and reports for a financial year consist of-

1. its annual financial statement;
2. the directors' remuneration report;
3. the directors' report; and
4. the auditor's report on-
5. the financial statement;
6. the auditable part of the directors' remuneration report;

**Section 620 – interpretations under part XXV and  
660 – Regulations may prescribe requirements for  
contents of directors' remuneration report.**



660. (1) The regulations may prescribe:-

1. the information that is required to be included in a directors' remuneration report;
2. how information is to be set out in the report; and
3. what is to be the auditable part of the report.

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## Section 624 and 625

### Companies qualifying as small: general rules.



624(3)- The qualifying conditions are satisfied by a company in a year in which it satisfies two or more of the following requirements-

1. It has a turnover of not more than fifty million shillings;
2. The value of its net assets as shown in its balance sheet as at the end of the year is not more than twenty million shillings; and
3. It does not have more than fifty employees;

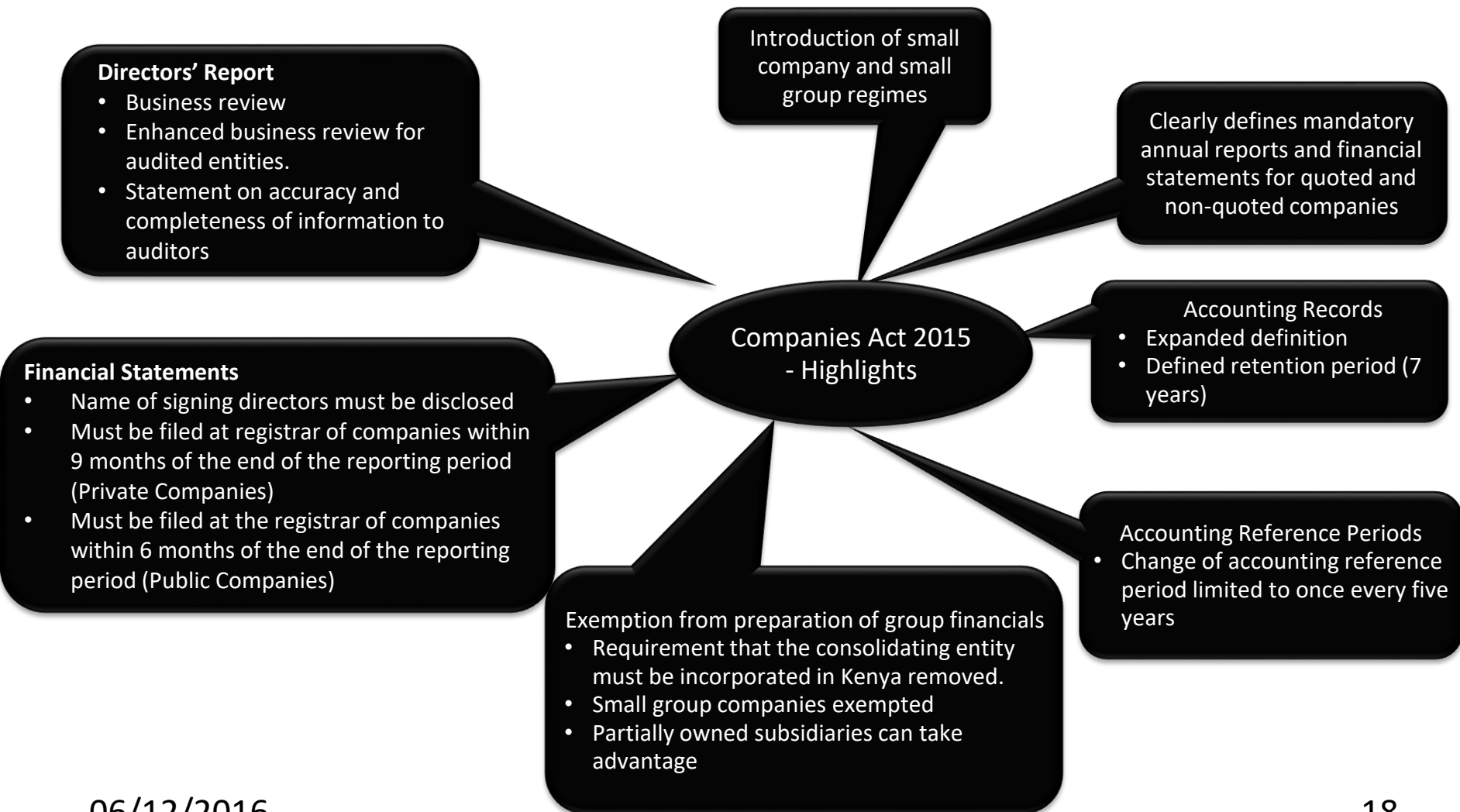


**Section 624 and 625**  
**Companies qualifying as small: general rules.**



Companies qualifying in this regime are exempted from auditing requirements under Section 724.

# Overview of the Companies Act 2015 on Financial Reporting



# Accounting Records



- 628. (1) Every company shall -keep proper accounting records.
- (2) For purposes of subsection (1), -accounting records, are proper only if they —
  - (a) show and explain the transactions of the -company;
  - (b) disclose with reasonable accuracy, up to the end of the previous three month trading period, the financial position of the company at that time; and
  - (c) enable the directors to ensure that every financial statement required to be prepared complies with the requirements of this Act.
- 629. (1) If a company fails to comply with a provision of section 628, the company, and each officer of the company who is in default, commit an offence.

# Financial Statements



635. (1) The directors of every company **shall prepare** a financial statement for the company for each of financial year of the company.
636. (1) The directors of a company **may approve** financial statement for the purposes of this Division **only if they are satisfied** that the statement **gives a true and fair view** of the assets, liabilities and profit or loss —
- a. in the case of an individual financial statement of the company;
  - b. in the case of a group a financial statement—of the undertakings comprising the consolidation as a whole, so far as concerns members of the company.
- (2) In performing the auditing functions under this Act relating to a company's annual financial statement, the **company's auditor shall have regard to the directors' duty** under subsection (1).
- (3) If the directors of a company in contravention of subsection (1), each of the directors who is in default commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

## Section 626 (2) Companies excluded from the small companies regime.

Page 723.



- (2) A group is ineligible if any of its members is
- a. a public company;
  - b. a body corporate (other than a public company) whose shares are admitted to trading on a securities exchange or other regulated market in Kenya; or
  - c. a person who carries on insurance market or banking activity.

# Section 628 – Duty of company to keep proper accounting records.

## Section 629



628. (1) Every company shall -keep proper accounting records.

(2) For purposes of subsection (1), -accounting records, are proper only if they —

- (a) show and explain the transactions of the -company;
- (b) disclose with reasonable accuracy, up to the end of the previous three month trading period, the financial position of the company at that time; and
- (c) enable the directors to ensure that every financial statement required to be prepared complies with the requirements of this Act.

629. (1) If a company fails to comply with a provision of section 628, the company, and each officer of the company who is in default, commit an offence.

## Section 628 – Duty of company to keep proper accounting records.

### Section 629



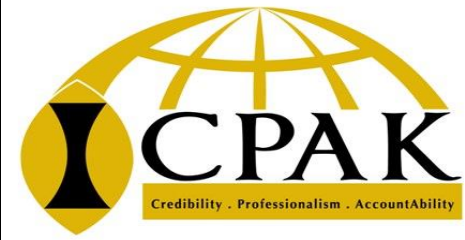
(2) A person who is found guilty of an offence under subsection (1) is, liable on conviction.—

(a) in the case of a body corporate, to a fine not exceeding two million shillings; or

(b) in the case of a natural person, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

## Section 630:

**Where and for how long Company is required to keep its records.**



630(2) A company shall preserve its accounting records for not less than seven years from and including the date on which they were created.



## •PART XXV Sections 620-704— Company accounting records and financial statements

- Responsibilities for financial statements
- Reporting period and record keeping
- Annual reports including business review

**Unquoted company** - annual financial statement and reports for a financial year consist of

- its annual financial statement;
- the directors' report; and
- the auditor's report on the financial statement

directors' report unless the company is exempt from audit

**Quoted company** - annual financial statement and reports for a financial year consist of-

- its annual financial statement;
- the directors' remuneration report;
- the directors' report; and
- the auditor's report on-
- the financial statement;
- the auditable part of the directors' remuneration report
- the directors' report

# Are you familiar with this?



## Statement of Director's Responsibilities

- The Companies Act requires the directors to prepare financial statements which give a true and fair view of the state of affairs of the company as at the end of the financial period and of the operating results for that period. It also requires the directors to ensure that the company maintains proper accounting records which disclose with reasonable accuracy the financial position of the company. The directors are also responsible for safeguarding the assets of the company.
- The directors accept responsibility for the preparation and fair presentation of financial statements that are free from material misstatements whether due to fraud or error. They also accept responsibility for:-
  - i. designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements;
  - ii. selecting and applying appropriate accounting policies; and
  - iii. making accounting estimates and judgements that are reasonable in the circumstances.

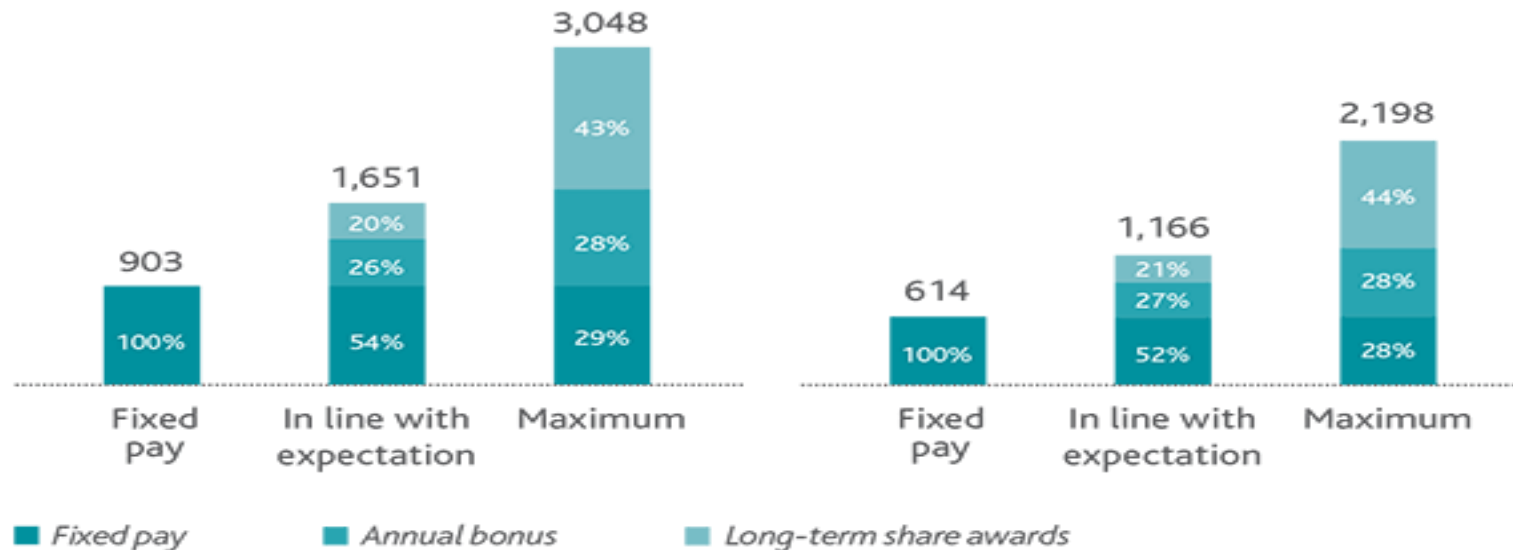
How does CA 2015 Affect it?

# Director's Remuneration Report



John Walden  
Chief Executive (£000)

Richard Ashton  
Finance Director (£000)



- Include the remuneration policy
- Should the remuneration be aggregated or disaggregated??
- Are the requirements of IAS 24 sufficient???

# Audit Committees



- The Act now legislates audit committees for quoted companies.
- The Code, 2015 also provides requirements for audit committees.
- ICPAK and CMA believe that effectiveness of audit committees is the cornerstone to establishing robust internal control framework and quality financial reporting process.

*Include in the annual reports and audited financial statements a report of the audit committee, separate from directors' report which shall provide:-*

- comment on the internal controls and the effectiveness of the audit committee on overseeing the internal control framework*
- how the audit committee oversees external auditor independence (impact of non-audit services, audit firm tenure and audit partner rotation)*
- any significant audit matters considered and how the committee has addressed the matters.*

# Directors' Report



- 654.(2) The directors **shall include** in their report a statement that with respect of each of the persons, who was a director at the time the report was approved —
- a) there is, so far as the person is aware, **no relevant audit information of which the company's auditor is unaware**; and
  - b) the person has taken **all** the steps that the person ought to have, taken as a director **so as to be aware of any relevant audit information** and to **establish that the company's auditor is aware** of that information.

# Section 655: Business review to be included in certain directors' report.



655. (1) Unless the company is subject to the small companies regime, the directors shall include in their report a business review that complies with subsection (3), so far as relevant to the company.
- (2) The purpose of the business review is to inform members of the company and assist them to assess how the directors have performed their duty under section 144.
- (3) The business review complies with this subsection if —
- (a) it contains-
    - ✓ a fair review under subsection (1) of the company's business; and
    - ✓ a description of the principal risks and uncertainties facing the company-
- (4) In the case of a quoted company, the directors shall specify in the business review (to the extent necessary for an understanding of the ' development, performance or position of the company)
1. the main trends and factors likely to affect the future development, performance and position of the business of the company;
    - ✓ information about
    - ✓ environmental matters (including the impact of the business of the company- on , the environment);
    - ✓ the employees of the company; and
    - ✓ social and community issues, including information on any policies of the company in relation to those matters and the' effectiveness of those policies-, and
  2. information about persons with whom the company has contractual or other arrangements that are essential to the business of the company.

## Section 657 – content of directors' report: statement as to disclosures to auditor



657. (1) This section applies to a company unless-

- ✓ it is exempt for the relevant financial year from the requirements of Part XXVII with respect to the auditing of company's financial statement; and
- ✓ the directors take advantage of that exemption.

(2) The directors shall include in their report a statement that with respect of each of the persons, who was a director at the time the report was approved —

- a) there is, so far as the person is aware, no relevant audit information of which the company's auditor is unaware; and
- b) the person has taken all the steps that the person ought to have, taken as a director so as to be aware of any relevant audit information and to establish that the company's auditor is aware of that information.

(3) In subsection (2) “relevant audit information” means information needed by company's auditor in connection with preparing the auditors' report.

## Section 665 – Option to provide summary financial statements



665 (1) A company may in such circumstances as may be prescribed by the regulations for the purpose this section, send to its members a summary financial statement instead of the copy of the financial statement required -to be sent out in accordance with Section 662, subject to compliance with any conditions so prescribed



## Section 686/Section 687 (3) (b) (i)/688 (2) (b) (1)



686 (5) (b) the copy of the auditor's report lodged with the Registrar under this section-

1. states the name of the auditor and, if the auditor is a firm, the name of the person who signed it as senior statutory auditor; or
2. if the conditions specified in section 737 are satisfied—state that a resolution has been passed and notified to the Cabinet Secretary in accordance with that section.

## Section 773 - Eligibility for appointment as a statutory auditor.



773. A natural person or firm is eligible for appointment as an auditor only if the person, or each partners of the firm-

- 1) is a holder of a practicing certificate issued under section 21 of the Accountants Act;  
and
- 2) has a valid annual license issued under section 22 of the Accountants Act

## Section 779-Power of Cabinet Secretary to recognize qualifications of foreign auditors for purposes of this Act.



The section is amended in the Act as follows

778 (1) The Cabinet Secretary may, **on the recommendation of the Institute of Certified Public Accountants of Kenya**, by notice published in the Gazette, declare that persons of the following classes are to be recognized as being holders of an approved foreign qualification for the purposes of this Act-

1. persons who are qualified to audit company financial statements of accounts under the law of a specified foreign country;
2. Persons who hold a specified professional qualification in accountancy obtained in a specified foreign country.

# TRANSITIONAL AND SAVING ARRANGEMENTS



If the financial year of an existing company began before, but has ended after, the repeal of sections 147 to 163 of the repealed Act (or of such of those sections as are applicable), those sections continue to apply to the company with respect to its accounts for that year, and to the audit of those accounts, as if that repeal had not taken effect.

# Where are we???



- The AG held a consultative meeting with stakeholders to support with the implementation of the Act.
- Three work streams were established to deal with the following:-
  1. identification of matters requiring amendment in the CA 2015, so that they can be processed as miscellaneous amendments in September 2016
  2. development of required regulations for CA 2015
  3. development of practice notes and forms
- Reports submitted to the AG, whose office is now finalising the regulations and the draft amendments.
- To be subjected to the legislative process during the month of September.

# Interactive Session



**QUESTIONS**  
**And**  
**Answers**

**Suggestions**  
**Comments?**

# THANK YOU