

CORPORATE GOVERNANCE

Kenya



Corporate Governance

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into corporate governance issues worldwide, including sources of rules and practice; responsible agencies and notable opinion formers; shareholder powers, decisions, meetings, voting, duties and liabilities; employee role in governance; corporate control issues; board structure and composition, duties, leadership, committees, meetings and evaluation; director and senior management remuneration; director protections; disclosure and transparency; hot topics, such as shareholder engagement, and sustainability, pay ratio and gender gap reporting; and other recent trends.

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The primary sources of law relating to corporate governance are determined by the type of entity. These can be (non-exhaustively) summarised as follows.

The primary source of corporate governance law for unlisted public and private limited liability companies is the Companies Act, No. 17 of 2015 (Companies Act).

The corporate laws, codes and standards for listed companies are:

- the Capital Markets Act, No 17 of 1989;
- the Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 (CMA Code); and
- the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011.

Apart from the establishing statute, state owned entities rely on:

- the State Corporations Act, No 11 of 1986; and
- the Code of Corporate Governance for State Corporations 2015 (Mwongozo).

Banks and microfinance institutions are guided by:

- the Banking Act, Cap 488;
- the Microfinance Act, No 19 of 2006; and
- the Prudential Guideline on Corporate Governance (Prudential Guidelines).

The insurance industry is regulated under:

- the Insurance Act, Cap 487; and
- the Corporate Governance Guidelines for Insurance and Reinsurance Companies, 2011.

The pensions sector relies on the following laws and guidelines relating to corporate governance:

- the Retirement Benefits Act, No 3 of 1997; and
- the Retirement Benefits (Good Governance, practices in the Management of retirement benefits schemes) guidelines, 2018.

Sacco societies make reference to the following.

- the Sacco Societies Act, No 14 of 2008;

- the Sacco Societies (Non-Deposit-Taking Business) Regulations, 2020; and
- the Sacco Societies (Deposit-Taking Sacco Business) Regulations, 2010.

Listed companies are required to comply with listing rules. The Code of Corporate Governance Practices for Issuers of Securities to the Public 2015 adopts an 'apply or explain' standard that requires full compliance. Where the listed entity has not complied, a satisfactory explanation will be acceptable.

Law stated - 20 July 2022

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

Many government agencies are empowered to make rules relating to corporate governance. In respect of limited liability companies, The Attorney General is empowered by the Companies Act, No 17 of 2022 to make regulations for purposes of the Act. These include rules on governance of companies.

The Capital Markets Authority (CMA) regulates the capital markets sector and is empowered by section 11 of the Capital Markets Act, No. 17 of 1989 to prescribe notices or guidelines on corporate governance of companies which have issued their shares or securities to the public or a section of the public.

The Central Bank of Kenya (CBK) is empowered by section 33 of the Banking Act, Cap 488 to issue guidelines to be followed by institutions for the maintenance of a stable and efficient banking and financial system.

The Insurance Regulatory Authority (IRA) regulates the insurance sector. It is empowered by the Insurance Act, Cap 487 to formulate and enforce standards for conducting insurance and reinsurance business in Kenya. Further, it is mandated to issue supervisory guidelines and prudential standards for the better administration of insurance business.

The pensions sector is regulated by the Retirement Benefits Authority (RBA), which has the authority to issue guidelines, practice notes or codes of conduct for better administration of the retirement benefits schemes. These powers are provided for under section 55 of the Retirement Benefits Act, No 3 of 1997.

The Sacco Societies Regulatory Authority (SASRA) licenses, regulates and supervises Sacco Societies and is empowered under the Sacco Societies Act, No 14 of 2008 to exercise such incidental powers as may be necessary to carry out its functions. This, therefore, includes the publishing of guidelines on corporate governance in the Sacco societies sector.

Law stated - 20 July 2022

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

Upon incorporation, shareholders can appoint directors by ordinary resolution at a general meeting or through written resolutions. This is subject to the articles of association (articles) of a company, which may provide for a higher or lower threshold for appointment of directors.

Shareholders have power to remove directors prior to the end of their term at a meeting by passing an ordinary resolution. A special notice is required for a resolution to remove a director or to appoint another director to replace the removed director. A director has a right to pretest against removal in writing and to be heard at the meeting discussing the removal of the director.

An ordinary resolution is one which is passed by a simple majority of the shareholders.

Power to require the board to pursue a course of action

Shareholders can direct the company's course of action by passing a resolution in that regard at a general meeting of shareholders. In addition to this, shareholders may require directors to convene a general meeting if the thresholds stipulated in the Companies Act are met. The directors must convene the general meeting within 21 days from the date of the request.

Law stated - 20 July 2022

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The Board of Directors is tasked with the management and operations of the company. However, Shareholders have the power to reserve decisions under the articles of association of a company. In addition, the Companies Act has provided for some shareholder reserved matters. These include, but are not limited to, the following.

Appointment of directors

Save for an appointment to fill a casual vacancy, the appointment of directors is reserved for shareholders at a general meeting.

Removal of directors

The directors have the power to remove directors prior to the expiry of their term at a general meeting.

Alteration of capital and allotment of shares

A company may increase its share capital by allotting new shares or reduce its share capital. Any form of alteration of the share capital can only be valid if the shareholders have passed an ordinary resolution authorising the alteration.

Amendment of articles of association

An amendment of a company's articles can be done only by way of special resolution of the shareholders of the company. A special resolution is one which is passed by a majority of at least 75 per cent.

Change of name

Subject to the articles, change of name of a company is reserved to the shareholders by passing a special resolution. The directors may resolve to change the name of the company if so directed by the Registrar of Companies.

Conversion of company

A private company may convert itself to a public company. This action requires a special resolution by the shareholders of the company. Likewise, by a special resolution of the shareholders a public company can be converted to a private company.

Liquidation of companies

A voluntary liquidation of a company requires a resolution by the shareholders. If a company is a fixed-term company an ordinary resolution of the shareholders will be required to liquidate it. In any other circumstance, a special resolution will be required to liquidate the company voluntarily or by the court.

Variation of class rights

Variation of class rights requires the consent of the holders of a particular class of shares. This may be given in writing by at least three quarters in nominal value of the issued shares of that class or a special resolution of the holders of that class of shares.

Payment for loss of office

There are instances where a director is compensated for loss of office as a director or as consideration for retirement as a director. The Companies Act provides that no payment as compensation for loss of office may be made unless such payment has been approved by a resolution of the shareholders.

Substantial Property Transactions

As a general rule companies require the approval of the shareholders to enter into substantial property transactions. Such arrangements are defined as:

- acquisition from the company of a substantial non-cash asset by a director of the company or its holding company or a person connected to the director; or
- acquisition by the company of a substantial non-cash asset from a director of the company or its holding company or a person connected to the director.

A substantial non-cash asset is one which exceeds 10 per cent of the company's asset value and is more than five million shillings or any non-cash asset of a value greater than ten million shillings.

Law stated - 20 July 2022

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

Voting rights

The general rule is that each shareholder has one vote for each share held by the member in the company. However, Companies may have different classes of shares with different rights, including voting rights.

Limits to exercise of voting rights

There are limitations on who is entitled to vote on a written resolution. If a resolution is proposed as a written resolution, the shareholders entitled will be those who were entitled to vote on the resolution on the date of circulation of the resolution.

There is a limit on the voting rights relating to ratification of acts of a director where the director is a shareholder. The limitation extends to shareholders who are connected to the director.

Law stated - 20 July 2022

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Requirements for meetings

Directors have an obligation to convene an annual general meeting of the company each year. They also have power to convene a general meeting that is not an annual general meeting. To convene a general meeting, private companies are required to issue at least 21 days' notice while public companies require 21 days' notice for the annual general meeting and 14 days' notice for any other meeting.

The notices should be given to each shareholder and director in hard copy, electronic, on the company's website or a mixture of the foregoing.

Shareholders are permitted to appoint a proxy to attend the general meeting on their behalf and to exercise their rights of voting and to speak during the meeting.

Shareholders of a private company may make a written resolution save for purposes of removing a director or auditor before the end of their term in office.

Virtual meetings

The Companies Act does not have provisions for holding of virtual or hybrid meetings. However, the Business Registration Service (BRS) issued guidelines for holding of hybrid and virtual meetings. CMA issued guidelines on conducting virtual and hybrid annual general meetings of issuers of securities to the public on 27 May 2020.

The Institute of Certified Secretaries (ICS) has also issued a Governance Guideline for Virtual Meetings to provide guidance for the convening and conduct of virtual meetings for boards, shareholders or other stakeholders of an organisation. The guideline provides that virtual meetings have to be permitted by the constitutive documents or applicable law.

Law stated - 20 July 2022

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

Shareholders can require directors to convene a general meeting if members representing 10 per cent of the paid-up capital of the company request so. For private companies, where the directors have not convened a general meeting of shareholders within 12 months, shareholders representing 5 per cent of the paid-up capital of the company may direct the directors to convene a general meeting. The directors are obligated to convene the general meeting within 21 days from the date of the request.

A request to the directors to convene a general meeting should state the agenda of the meeting.

Law stated - 20 July 2022

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Minority shareholders are protected by having the right to apply to court for relief if the company's affairs are being conducted in a manner that is oppressive or unfairly prejudicial to the interests of shareholders.

The law also provides safeguards against variation of class rights. The consent of the holders of a particular class of shares may be given in writing by at least three quarters in nominal value of the issued shares of that class or a special resolution of the holders of that class of shares.

Law stated - 20 July 2022

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

The liability of shareholders in a limited liability company is limited by the company's articles to the amount unpaid on the shares held by the member. However, if an unlawful distribution is made to a shareholder, and the shareholder knew or had reasonable grounds to believe that the distribution was not a proper distribution, the shareholder will be liable to pay the company the amount of the distribution.

Law stated - 20 July 2022

Employees

What role do employees have in corporate governance?

Corporate governance includes elements of board composition and structure, transparency and disclosure, risk management, internal control, corporate citizenship and stakeholder engagement. This means that the chief executive officer, company secretary, internal auditor, chief risk officer and chief financial officer play a key role in promoting and implementing good corporate governance practices within a company.

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

A company may opt-in for purposes of the company takeover provisions in the Companies Act if it is traded on a regulated market. The company also has the option of opting out by passing an opting-out resolution.

In private companies, there is a restriction on transfer of shares typically buttressed by inclusion of pre-emption rights in the articles of association.

Law stated - 20 July 2022

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

A company is allowed to increasing its share capital by allotting new shares. An ordinary resolution of shareholders is required for an allotment of shares to be valid.

Law stated - 20 July 2022

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Private companies have a restriction on transfer of shares in the company.

In public companies, there are no restrictions on transfer of shares and invitations to the public to subscribe to the company's shares.

Law stated - 20 July 2022

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

A company with share capital may purchase its own shares subject to restrictions or prohibitions within its articles. In the purchase of own shares, companies require the authority of the shareholders. Purchase of one's own shares can be an off-market or market purchase. An off-market purchase requires the approval of the terms of the contract by a special resolution of the company while a market purchase requires the approval of a simple resolution.

Law stated - 20 July 2022

Dissenters' rights

Do shareholders have appraisal rights?

Offerors in company takeovers have a right to buy out minority shareholders if they meet the thresholds of a squeeze in. Minority shareholder also have the right to force an offeror to buy their shares if the offer meets the threshold of a sell-out. A minority shareholder may apply to court for relief for the court to impose a higher consideration if the current consideration is unfair.

Law stated - 20 July 2022

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The board structure adopted by most companies is a one-tier structure which comprises of both executive and non-executive directors. In a majority of the boards, there is one managing director and non-executive directors.

Law stated - 20 July 2022

Board's legal responsibilities

What are the board's primary legal responsibilities?

The responsibility of the board is to approve and oversee the implementation of a company's strategy. This is achieved by overseeing the activities of management. The Companies Act provides that the directors owe a fiduciary duty to the company. Directors have a duty to act within the powers conferred upon them by the company's constitution. Directors also have a duty to promote the success of the company, exercise independent judgement, exercise reasonable care, skill and diligence and avoid conflicts of interest.

For issuers of securities to the public, the CMA Code requires each board member to:

- act in the best interests of the company;
- devote sufficient time to carry out their responsibilities and enhance their skills;
- promote and protect the image of the company;
- owe their duty to the company and not to the nominating authority; and
- owe the company a duty to hold in confidence all information available to them by virtue of their position as a board member.

Law stated - 20 July 2022

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

Fiduciary duties of directors of a company are owed to the company and not to the nominating shareholders or authority.

Law stated - 20 July 2022

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgment rule?

Directors are the agents of the company appointed by the shareholders to manage the company. The shareholders are entitled to exercise their rights by passing resolutions at general meetings. In addition, a derivative action can be brought in respect of an action or inaction or planned action or inaction involving negligence, default, breach of duty or breach of trust by a director of the company.

It was determined in paragraph 44 of the ruling in *Ghelani Metals Limited & three others v Elesh Ghelani Natwarlal & another* [2017] eKLR that the procedure set out under the Companies Act is the exclusive method of pursuing derivative claims.

Law stated - 20 July 2022

Care and prudence

Do the duties of directors include a care or prudence element?

Directors are expected to exercise the care, skill and diligence that may reasonably be expected of a person performing the functions performed by the director in relation to the company and the general knowledge, skill and experience that the director has.

Law stated - 20 July 2022

Board member duties

To what extent do the duties of individual members of the board differ?

The Companies Act does not provide for the differentiation of the duties of directors with different skills and experience.

Law stated - 20 July 2022

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The board of directors has the authority to delegate its functions to a board committee, the managing director and management. This may be achieved through an instrument of delegation of authority that outlines functions reserved to the board and its committees and those delegated to management. Generally, the board should not delegate matters to the extent that the delegation will prejudice its functions. For example, the board cannot delegate responsibilities imposed by statute such as convening general meetings.

Law stated - 20 July 2022

Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Private companies are required to have at least one director while public companies are required to have at least two directors. In both cases, companies are required to have at least one director being a natural person. The minimum and maximum number of directors can be set in the articles of association. For listed companies, the CMA Code requires companies to have a balance of both executive and non-executive directors with a majority of non-executive directors. It further requires the companies to have independent non-executive directors constituting at least one third of the total board members. An independent director is one who does not have a material or pecuniary relationship with the company or related persons, is compensated through sitting fees or allowances and does not own shares in the company. A continuing independent director's term is nine years.

Under the Prudential Guidelines an independent non-executive director must not have been employed by the company within the preceding five years, must not have had a business relationship with the company for the preceding five years and does not have any interest in the company that exceeds 5 per cent of its equity interest.

Law stated - 20 July 2022

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

At incorporation, the size of the company is determined by the promoters of the company. The ideal size of a board is premised upon consideration to the industry, regulatory environment, business model, risks to be managed and the composition of the committees.

The CMA Code recommends that the size should not be so small that it excludes wider expertise and skills and the formation of its committees is compromised or too big and undermines interactive discussions.

Law stated - 20 July 2022

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

For listed companies that the functions of the board should be separate from those of management with the CEO being different from the board chairman. As best practice, the board chairman should be an independent non-executive director. Separation of the chairman and CEO positions is a key component of board independence because of the fundamental differences and potential conflicts between these roles. A non-executive chairman can serve as a valuable sounding board, mentor, and advocate to the CEO.

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Listed companies are required to establish board committees to cover functions such as audit, board nominations, risk management, remuneration, finance, investment and governance. The committee tasked with audit should be composed of at least three independent and non-executive directors and should be chaired by an independent and non-executive director. Furthermore, at least one of the committee members should hold a professional qualification in audit or accounting and be in good standing with his or her respective professional body.

For companies licensed to conduct banking business, the Board Audit Committee, Board Risk Management Committee and Board Credit Committee are mandatory committees.

In state corporations, the board must establish not more than four committees. However, the board may establish ad-hoc committees to deal with ad-hoc matters as and when they arise such as recruitment of the Chief Executive Officer and other disruptive matters. Additionally, the board is required to establish an audit committee and another three committees to discharge the functions including: governance, risk, compliance, finance, technical matters, strategy and human resource.

Law stated - 20 July 2022

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

Most organisations internally prescribe the number of meetings to be held by the board in the board charter as well as the articles. Governance Standard 002: Meetings of the Board and Committees issued by ICS under guide 5.3 recommends that the authority to convene a board meeting should either be as prescribed by the law or the constitutive documents of the organisation.

Prudential Guidelines prescribe that the Board should meet regularly, preferably at least once each quarter for purposes of being informed on the business condition of the financial institution. In addition to this, the board audit committee is required to meet at least once every quarter and should report to the board regularly.

Listed companies must oversee the corporate management operations, management accounts, major capital expenditures and review corporate performance and strategies at least on a quarterly basis. This means the board should meet at least once quarterly.

For state corporations, board members are required to dedicate adequate time and effort for meetings and meet at least once quarterly to effectively lead the organisation.

Law stated - 20 July 2022

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

Disclosures of board practices including the board composition and structure, attendance of meetings and board

evaluation results are contained in the annual reports of the company. Listed companies must disclose in their annual reports a statement of policy on good governance, status of application of the code of governance, board structure including qualifications and skills mix, board remuneration policies and procedures, highlights of the financial performance and board evaluation.

Boards of state corporations must include in the annual report the following information.

- the governance structure including the composition and size of the board, the committees of the board and the management;
- details of the board members including the names, qualifications, date of appointments, terms served, other board memberships and any other relevant information; and
- a summary of the board evaluation results.

Law stated - 20 July 2022

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

Listed companies must conduct a board evaluation annually. The directors agree on the parameters of their evaluation.

Banks and financial institutions must regularly review the required mix of skills and experience and other qualities to assess the effectiveness of the board. The review is a peer and self-evaluation of the board as a whole, its committees and the contribution of each and every director, including the chairman, and should be conducted annually.

Boards of state corporations must determine their performance criteria and undertake an annual evaluation of performance that results in a report with recommendations for implementation and should be shared with the relevant stakeholders. It is the responsibility of the State Corporation Advisory Committee to facilitate the annual evaluation that covers the board as a whole, its committees, individual members, the chairperson, the CEO and the corporation secretary.

Law stated - 20 July 2022

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

Listed companies must remunerate board members fairly and responsibly. It is recommended that the board of a listed company should establish and approve formal and transparent remuneration policies and procedures that attract and retain board members. The remuneration policy for board members should stipulate the elements of such remuneration including directors' fees, attendance allowances and bonuses. The board remuneration policies and procedures should be disclosed in the annual report.

In state corporations, the remuneration of board members must comply with the provisions and guidelines under the State Corporations Act Cap 446 and in accordance with the prevailing relevant legislative provisions and guidance from

the relevant authorities such as the Salaries & Remuneration Commission, State Corporation Advisory Committee and as approved by the relevant Ministry.

Law stated - 20 July 2022

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

Boards of listed companies and banks must put in place remuneration policies for employees. While the specific range of remuneration is not provided, the level of remuneration should be sufficient to attract and retain high calibre talent balanced against ensuring that the company's funds are not used to subsidise excessive remuneration packages.

Law stated - 20 July 2022

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

Subject to the articles of association, the shareholders' powers regarding remuneration of directors are limited to the approval of the directors' remuneration report at a general meeting.

Law stated - 20 July 2022

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability insurance is permitted under the Companies Act.

Law stated - 20 July 2022

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Section 194(3) of the Companies Act voids any arrangement that seeks to provide, whether directly or indirectly, an indemnity for a director of the company, or associated company, against a loss to the director for reasons of negligence, default, breach of duty or breach of trust. Directors may, however, be indemnified for liability incurred by the director to a party other than the company or associated company to the extent that the director is not liable to pay a fine imposed in criminal proceedings or a penalty to a regulator for non-compliance with a regulatory requirement.

Law stated - 20 July 2022

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

As a general rule, the shareholders' approval is required for advancement of funds to directors. The Companies Act, however, has an exception for expenditure on defending proceedings. A company may therefore advance expenses to directors in connection with litigation to provide the director with funds to meet expenditure incurred or to be incurred by the director in defending any criminal or civil proceedings in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company and in connection with an application for relief.

The financing may be done on the terms that:

- the loan is to be repaid, or any liability of the company incurred under any transaction connected with the thing done is to be discharged, if:
 - the director is convicted in the proceedings
 - judgment is given against the director in the proceedings; and
 - the Court refuses to grant the director relief on the application; and
- that it is to be so repaid or discharged not later than:
 - the date on which the conviction becomes final;
 - the date on which the judgment becomes final; or
 - the date on which the refusal of relief becomes final.

A director may also be financed to meet the expenses incurred or to be incurred by the director defending himself in an investigation by a regulatory authority and against action proposed to be taken by a regulatory authority, in connection with any alleged negligence, default, breach of duty or breach of trust by the director in relation to the company or an associated company.

Law stated - 20 July 2022

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

A provision of a company's constitution, contract, scheme or arrangement that purports to exempt a director from any liability of a director in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

Law stated - 20 July 2022

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

The memorandum of association and articles of association of a company are available at the Registry of Companies at a fee.

Law stated - 20 July 2022

Company information

What information must companies publicly disclose? How often must disclosure be made?

Public disclosure requirements for private companies and unlisted companies are not prominent. The main disclosures required are disclosures of changes in the company (such as changes in directorship, shareholding, articles of association and share capital) being made to the Registrar of Companies. Annually, all companies must file a return with the Registrar of Companies.

Law stated - 20 July 2022

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Shareholders may nominate directors and have them included in shareholder meeting material.

Law stated - 20 July 2022

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

Shareholder engagement is primarily limited to engagements in the annual general meeting and general meetings. At the general meetings both shareholders, executive directors and non-executive directors participate. Independent auditors also present their report at the general meeting.

Law stated - 20 July 2022

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

The Companies Act requires quoted companies to have a business review in their annual reports with information about environmental matters and the impact of the business of the company on the environment, the employees of the company and information on any policies of the company in relation to social and community issues and the

effectiveness of those policies.

Law stated - 20 July 2022

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

The remuneration of directors, including the CEO, who is typically the managing director, is disclosed in the annual financial statements. However, in reporting executive compensation there is no obligation to disclose the CEO's pay ratio.

Law stated - 20 July 2022

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

The principle of equal pay is enshrined in the Constitution of Kenya. However, there is no legislation requiring disclosure on the gender pay gap.

Law stated - 20 July 2022

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

There has been a keen interest by investors on environmental, social and governance (ESG) matters. In November 2021 the Nairobi Securities Exchange (NSE) published the NSE ESG Disclosures Guidelines. Under the guidelines, listed companies are expected to report at least once annually on their ESG performance.

Law stated - 20 July 2022

Jurisdictions

	Australia	Kalus Kenny Intalex
	Belgium	White & Case LLP
	Brazil	Loeser e Hadad Advogados
	France	Aramis Law Firm
	Germany	POELLATH
	India	Chadha & Co
	Italy	Ughi e Nunziante
	Japan	Anderson Mōri & Tomotsune
	Kenya	Robson Harris Advocates LLP
	Luxembourg	Bonn & Schmitt
	Malaysia	SKRINE
	Malta	GVZH Advocates
	Mexico	Chevez Ruiz Zamarripa
	Nigeria	Streamsowers & Köhn
	North Macedonia	Polenak Law Firm
	South Korea	Lee & Ko
	Switzerland	BianchiSchwald LLC
	Thailand	Chandler MHM Limited
	Turkey	Gün + Partners
	USA	Sidley Austin LLP