



CORPORATE MERGERS & ACQUISITIONS

Remuneration governance under the amended Companies Act: A closer look at some of the key questions

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1. Introduction

On 22 May 2026, a proclamation by President Ramaphosa enacted amendments to the Companies Act 71 of 2008 ("**Companies Act**") that impact remuneration governance for public and state-owned companies. Two long anticipated sections are now in force: Section 30A imposes a statutory duty to prepare a remuneration policy ("**Policy**"), and section 30B requires companies to prepare an annual remuneration report ("**Report**"). Both the Policy and the Report must be presented to shareholders for approval by ordinary resolution at prescribed intervals.

The legislative intervention is significant. Prior to the amendments, unlisted public companies were largely free to determine remuneration policy and disclosure at their discretion, while companies listed on the Johannesburg Stock Exchange ("**JSE**") were subject to the relevant Listings Requirements ("**Requirements**") which required advisory, non-binding shareholder approval of a remuneration policy and report, and compliance with the relevant King Code of Governance on an apply and explain basis. In response to the enactment, the JSE has proposed amendments to its Requirements that would effectively defer to the Companies Act in relation to the compilation and approval of the Policy and Report and the consequences of rejection (with exceptions for foreign primary issuers). King V was drafted in anticipation of sections 30A and 30B and takes a similar approach whilst retaining additional recommendations on remuneration governance, assurance and disclosures.

The general scope and contents of the recently enacted amendments have been widely discussed and do not bear revisiting. Instead, this note considers three specific matters relevant to the new framework. First, the characteristics of the Policy and the Report and the extent to which the wording of the relevant sections underscore the distinction between these documents. Second, the consequences of a Policy being rejected by shareholders and the risks associated with the implementation of a rejected Policy. The discussion will turn, finally, to the application of the framework to group companies.

2. Policy and report – the importance of distinction

Although section 30A requires all public and state-owned companies to prepare a Policy and present it for shareholder approval by ordinary resolution, the section does not prescribe the contents of the Policy. In contrast, section 30B sets out more detailed guidance regarding the Report and stipulates that it must comprise at least a background statement; a copy of the Policy; and an implementation report containing, among other things, the total remuneration received by each director and prescribed officer and the remuneration of the highest and lowest paid employees.

A clear distinction between the Policy and the Report has important strategic implications. The newly inserted section 30(4A) indicates that the legislature recognised the distinct characteristics and purposes of the two documents. The subsection provides that where any provisions of the Report are subjected to an audit under section 30 ‘any company policy or the background statement of the remuneration report, must not be subjected to that audit’.

The exclusion speaks to the fact that the Policy is a prospective, strategic document with a three-year approval cycle. The Report, on the other hand, is focused on retrospective and specific factual and financial disclosures and is approved on an annual basis. When assessing the Policy, the question is not whether particular calculations are correct but instead whether the calculations should have been made at all, and whether the chosen metrics and formulas incentivise desired behaviour. The latter question is one of strategic judgment, not financial accuracy, and an audit is not the mechanism suited to answering it, not least in the absence of a formal standard that would provide a meaningful basis for assurance. The exclusion in section 30(4A) avoids practical difficulties, delays and expenses that could arise where auditors are asked to express an opinion on matters of judgment and strategy inherently within the board’s discretion. The Policy should confine itself to principles, frameworks, performance metrics, and strategic intent. Verifiable financial details should not be included in a document that has sensibly been excluded from audit.

In practical terms, a Policy that confines itself to principles and frameworks can remain stable over the three-year approval cycle without requiring material amendment each year. A clear demarcation that takes into account the interaction between the Policy and the Report could also minimise risks associated with undisclosed discretionary adjustments. Discretionary adjustments to performance metrics for remuneration purposes could result in a divergence between the performance reported to shareholders in the financial statements and the performance used to assess executive pay. Where such adjustments are applied without adequate prior disclosure, the remuneration committee may be assessing performance against a more favourable picture than that presented to shareholders, and pay outcomes might appear disproportionate to reported performance. A well-structured Policy can mitigate this risk by defining performance metrics clearly while preserving appropriate discretion for the board. This enables the board to respond flexibly where required but allows shareholders to assess the Report against transparent criteria, reducing the likelihood of rejection due to perceived inconsistency or lack of disclosure.

3. The consequences of a rejected remuneration policy

Section 30A(2)(a) provides that a Policy that is rejected by shareholders must be presented at the next annual general meeting (“AGM”) or at a shareholders’ meeting called for that purpose. The section offers no guidance beyond this requirement and does not address the interim validity of a rejected Policy, the validity of decisions or actions taken on the basis of a rejected Policy, or the liability, if any, that could follow where the board continues to act on the basis of a rejected Policy. This stands in contrast to the instances where a Report is rejected, in which case section 30B sets out more specific consequences, including the requirement that members of the remuneration committee must stand for re-election.

As a preliminary point, where the Policy is not tabled for shareholder approval at all, certain consequences are relatively clear. First, the failure to present the Policy could form the basis of a complaint to the Companies and Intellectual Property

Commission, which in turn could result in the issuance of a compliance notice. In addition, shareholders could approach the court in terms of section 161 of the Companies Act to seek an order to rectify any harm done to them by the company as a consequence of an omission that contravened the Companies Act. Directors could also face liability in terms of sections 76 and 77 for contravening the provisions of the Companies Act. Finally, shareholders have the power to remove directors as an ultimate deterrent to non-compliance.

The consequences are less apparent where the Policy is tabled as required but is then rejected by the shareholders. In such instances, the better view appears to be that the shareholders' rejection would not invalidate a rejected Policy or any actions taken on the basis thereof. Section 30A does not expressly indicate that the validity of the Policy is affected by the shareholders' rejection thereof, instead requiring only that the Policy should again be tabled for approval at a subsequent meeting or the following AGM.

As a governance instrument, the Policy is intended to act as a barometer of shareholder sentiment, to ensure transparency, and to facilitate engagement. The remuneration amendments were designed to improve disclosure of senior executive remuneration, to ensure reasonable remuneration, and to provide more objective benchmarks. These aims can be achieved without an implied sanction of invalidity. Tying the consequences of a rejected Policy to the rejection of the Report, on the other hand, provides the necessary degree of oversight and accountability whilst avoiding the disruptive and commercially impractical consequences of a policy vacuum.

Unlike instances where no Policy is tabled at all, legal consequences following its rejection appear less likely. A board that implements a rejected Policy may fall foul of statutory and common law directors' duties and it is conceivable that the board's actions could form the basis for an application to protect shareholders' rights in terms of section 161. An application for relief from oppressive or prejudicial conduct in terms of section 163 would, on the face of it, be even less likely to succeed. Section 30A requires only that a rejected Policy should be presented at a subsequent meeting and imposes no further restrictions on the board's general authority to manage the business and affairs of the company. Absent extraordinary circumstances, it is not clear how a board that otherwise acts with the necessary care and skill and in the best interests of the company would breach directors' duties by reason only of implementing a rejected Policy.

This does not imply that the rejection of a Policy is without risk, and companies should especially anticipate the practical consequences that could arise. Section 30B requires a copy of the Policy to form part of the Report that must be presented for approval annually. Prior rejection of the Policy would be a strong indication that shareholders are likely also to reject the Report that gives effect to it. This would trigger the two-strike mechanism introduced by section 30B(4) and (5). Boards must prepare for a subsequent AGM without absolute certainty that the newly tabled Report will be approved, in which case members of the remuneration committee would have to stand for re-election to the board and are excluded from committee membership. Where there is any indication that a Report might be rejected for a second consecutive year, these eventualities would have to be taken into account when preparing for the relevant AGM.

4. Group companies and remuneration governance

A final question that has been raised in connection with sections 30A and 30B relates to the fact that the provisions do not address their application to group companies. Where a public holding company has limited employees of its own, while executive management and the broader workforce are employed by operational subsidiaries, an incongruity could arise: the holding company is required to table a Policy and Report for shareholder approval even though the economically significant remuneration arrangements exist at subsidiary level. If the subsidiary is a private company, it would not be subject to the statutory provisions at all. However, the reporting duties of sections 30(4) and 30(5), which extend to some private companies by means of the public interest score, would still require certain remuneration-related disclosures in the financial statements.

Proposed amendments to the JSE Requirements appear not to address this issue. However, listed companies remain subject to the King V Code on Corporate Governance ("**King V**"), which indirectly addresses the omission. Compliance with King V's principles and the disclosures required by its Disclosure Framework would not permit a listed holding company to entirely exclude subsidiaries when preparing its Policies and Reports, even where the Companies Act technically allows this. Nonetheless, given the discretion inherent in King V's apply and explain regime and the fact that its recommendations are less prescriptively set out, some uncertainty remains. Listed companies would have to determine for themselves how their Policies

and Reports should explain group-wide remuneration governance, including where key executives are employed and how the board has assessed relevant governance principles across the group.

5. Conclusion

The framework introduced by sections 30A and 30B represents a notable shift in remuneration governance, and company boards and remuneration committees in particular will have to consider remuneration practices with even greater strategic care than before. This note discussed three considerations that should inform implementation of the relevant statutory provisions. First, the distinction between the Policy and the Report and the strategic importance of proper classification when determining the contents and scope of the two documents. Second, the consequences of a rejected Policy in relation to the validity of the Policy, the validity of actions taken in its implementation, and the potential for legal liability under these circumstances. On a proper interpretation of section 30A, it appears appropriate that the risks associated with a rejected Policy are tied to the two-strike mechanism triggered by the rejection of the Report, thereby avoiding the uncertainty and potential disruptions associated with invalidity. Finally, the application of the framework to group companies creates uncertainty, addressed in part by compliance with King V in the context of listed companies.



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