

**Deloitte.**

The Companies Act, 2008  
Disclosure of directors and  
prescribed officers' remuneration



For external distribution

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*\* The latest version of this guide is deemed to replace and supersede all previous versions of the guide.*

# Frequently Asked Questions

The Companies Act, 2008 (the Act) requires certain companies to include the disclosure of directors and prescribed officers' remuneration in the financial statements. Many companies have struggled with the interpretation of section 30(4) to (6) of the Act, and for that reason we have collated a number of the frequently asked questions.

## 1. Which companies need to apply the requirements of S30 (4) of the Companies Act (the Act)?

Sections 30(4) of the Act applies to each company that is required in terms of the Act to have its annual financial statements audited. Companies that fall into this category are:

- 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 R 5 million
- Any company that has a public interest score of 350 or more OR at least 100 if the annual financial statements for that year were internally compiled
- Any non-profit company if it was incorporated by the state, an organ of the state, a state-owned company, an international entity, foreign state entity or a foreign company; or a non-profit company that was incorporated to perform a statutory or regulatory function as per Regulation 28(2)(b)(i) and (ii)

It should be noted that companies who do not fall in the above categories and are audited in terms of a requirement in the company's MOI are considered to be audited voluntarily. Accordingly, the provisions of S30(4) would not apply to such companies.

## 2. Must we disclose remuneration paid to directors and prescribed officers that relates to their services rendered to other group companies?

Section 30(5) of the Act requires that the disclosure 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.

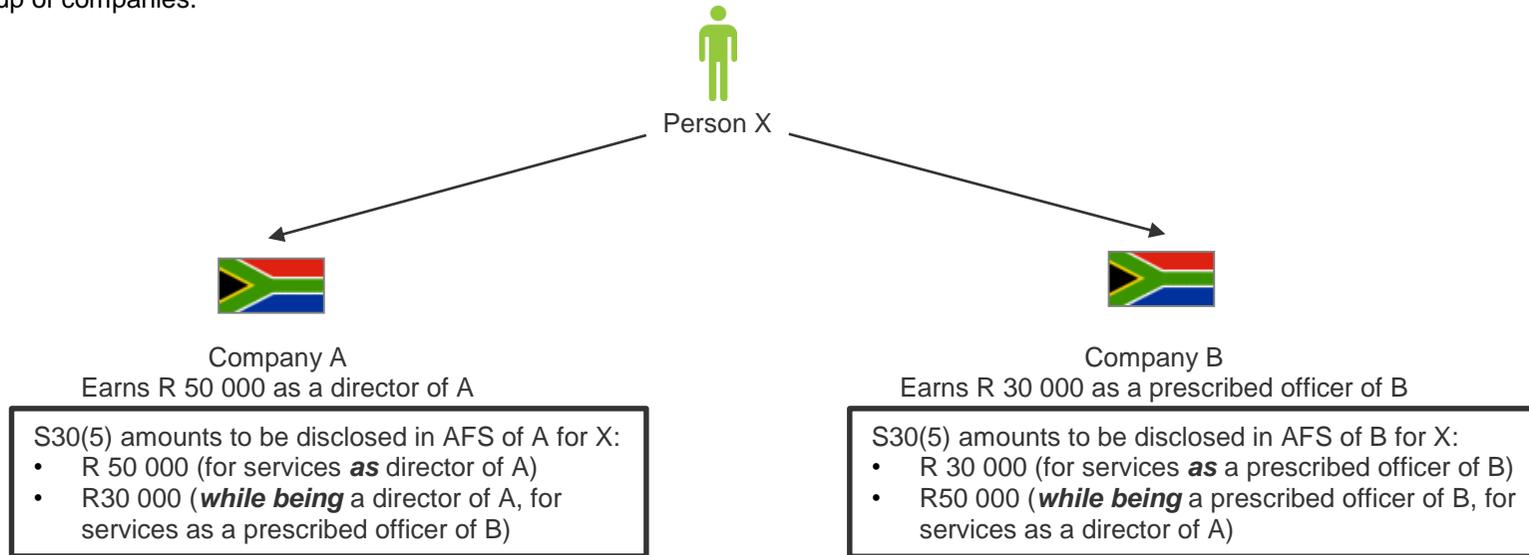
The effect of these requirements is that all remuneration paid to or receivable by a director or prescribed officer must be disclosed - thus, not only the remuneration paid to or received by the director or prescribed officer for services to **the company**, but also all other remuneration received by the director or prescribed officer *for services rendered as a director or prescribed officer to **any other company with the group***, or in connection with the **carrying on of the affairs of the company**. One person's remuneration may have to be disclosed by more than one company in the same group of companies.

In order to ensure compliance a company will have to make a list of all its directors and prescribed officers (the individuals for which disclosure will be made), and then determine the structure of the group of which the company forms a part. Refer to Appendix 1 for a roadmap to determine the disclosure. Refer to Appendix 2 for suggested illustrative disclosure of S30 (4)-(6) of the Act.

# Frequently Asked Questions

Consider the following:

Company A and company B are in the same group of companies. Both companies are incorporated in South Africa. Person X is a director for A, for which he earns R50 000. Person X is also a prescribed officer for B, for which he earns R30 000. Assume that Person X does not perform any other services in the group of companies.



### 3. If a person is a director or prescribed officer of the holding company and a subsidiary, but is only paid remuneration by the holding company, must this be disclosed in the subsidiary?

Consider the following:

Company B is a subsidiary of Company A. Person X is a director of Company A, and is also a prescribed officer of Company B (as he takes decisions that, in his capacity as director of the holding company, impacts the subsidiary to such an extent that it constitutes executive management or control with respect to the subsidiary). He receives remuneration from company A, but is not paid by Company B for any of the services rendered to Company B. In terms of the requirements as set out above, his remuneration for services as a director of the company (Company A) must be disclosed in the annual financial statements of Company A (see 30(5)(a) above). From the perspective of the subsidiary, Company B, the remuneration paid to person X by Company A must be disclosed in the annual financial statements of Company B. This is so because all remuneration paid to or receivable while being a prescribed officer of the company (in this case Company B) **for services as a director of any other company within the same group of companies** (Company A) must be disclosed (see 30(5)(b)(i) above).

It should be noted that if any of the amounts paid by Company A to person X are in respect of his services as a prescribed officer of Company B, then such amounts would be disclosed in the AFS of both Company A and Company B.

# Frequently Asked Questions

## 4. The Act refers to all companies within the same group of companies. Does this only include the subsidiaries of that company and its holding company or is it wider than this?

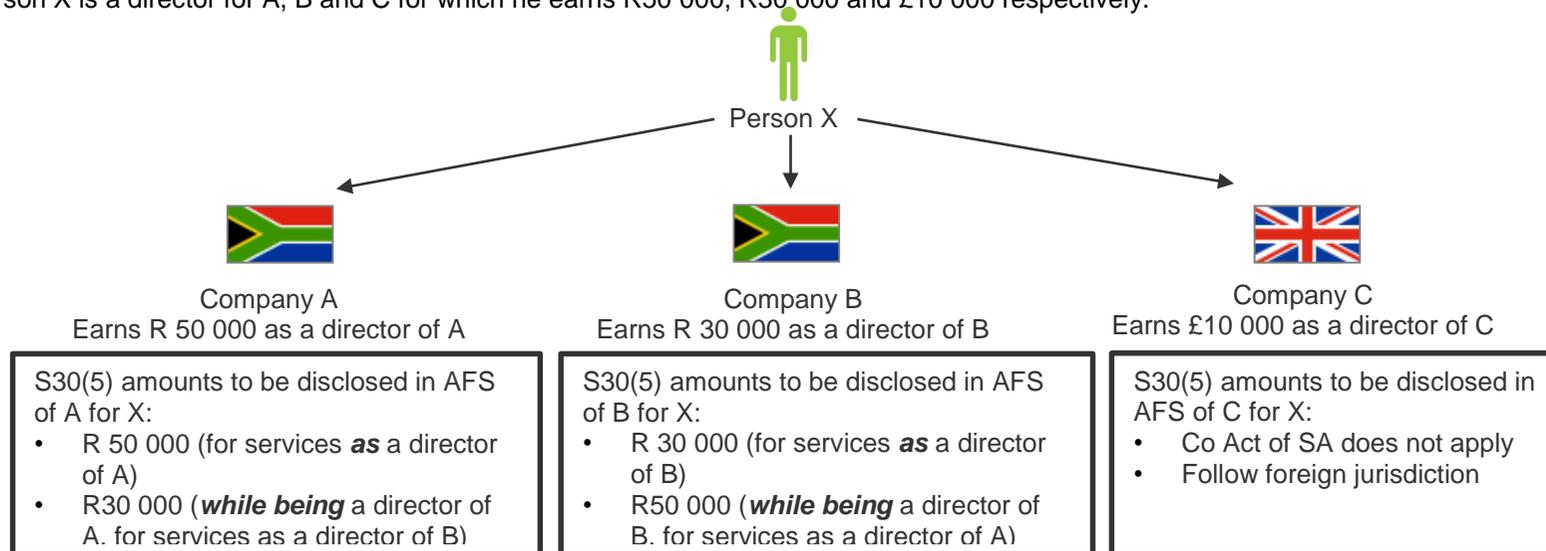
Disclosure is required of all remuneration paid to or receivable by the directors and prescribed officers of the company **for services as a director or prescribed officer of any other company within the same group of companies**. In this regard the definition of a group should be considered. This means disclosure will have to account for all other companies in the group, and not only the subsidiaries of the company in question, therefore the company will have to take into account all companies in the group – thus upward, downward and sideways.

## 5. Should the company only disclose amounts received by the directors and prescribed officers for their services to South African companies, or should the disclosure also include the remuneration for services to other entities, such as trusts and foreign subsidiaries?

The Companies Act requires the company to disclose all amounts received by the directors and prescribed officers of the **company**, for their services as directors and prescribed officers to this company, as well as to any **other company** within the group. As a result, the requirement applies only with respect to all “companies” within the group. In terms of the Companies Act a “company” is a juristic person incorporated in terms of the previous or current Companies Act, i.e. only South African companies. Therefore, any amounts paid to directors and prescribed officers for services rendered to a trust or a foreign subsidiary within the group would not be included in the disclosure, since **a trust or a foreign subsidiary (company) is not a “company” for purposes of the Companies Act**.

Consider the following:

Companies A, B and C are in the same group of companies. Companies A and B are South African companies. Company C is incorporated in the UK. Person X is a director for A, B and C for which he earns R50 000, R30 000 and £10 000 respectively.



# Frequently Asked Questions

## 6. In determining which South African companies form part of a group, do we only include a group where the holding company is a South African company, or should we also consider group structures where the holding company is a trust or a foreign company?

In circumstances where the holding company of the group is a trust or a foreign company, all companies controlled by that trust or foreign company form a group for the purposes of the Companies Act, since a holding company is defined as any juristic person that controls a subsidiary (Note: in terms of the definitions of the Act, both a trust and a foreign company qualify as a “holding company”, even though they are not “companies” as defined in the Act). Therefore, all of the companies within this group need to disclose the remuneration paid to directors and prescribed officers for their services to all of the companies within the group, although anything paid in respect of their services to a trust or a foreign company, including the “holding trust” or the foreign holding company, need not be disclosed.

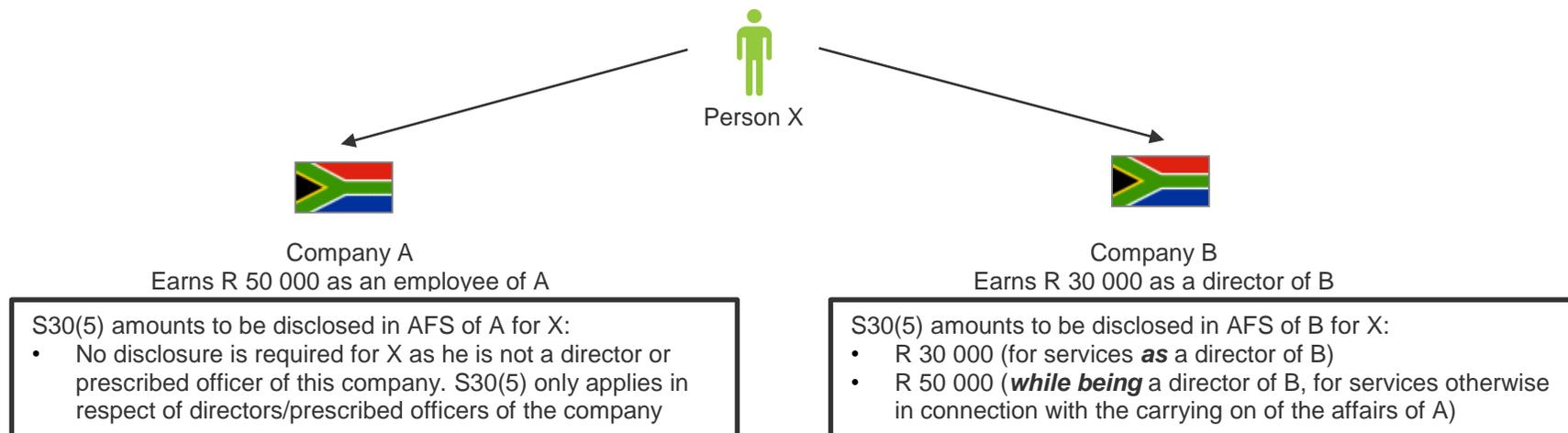
## 7. What is the meaning of “otherwise in connection with the carrying on of the affairs of the company”?

In May 2015, the firm obtained legal opinion regarding the interpretation of the terms “otherwise in connection with the carrying on of the affairs of the company” as stated in section 30(5)(b)(ii). Based on the legal opinion, we understand that “carrying on of the affairs of the company” is wide enough to include **any services, whether in the capacity of an employee or otherwise**, to any company in the same group.

Section 30(5)(b)(ii) refers to the word “otherwise” which is indicative of the fact that remuneration and benefits received by a director/prescribed officer for services other than those rendered as a director/prescribed officer of the company, must be additionally disclosed.

Consider the following:

Company A and company B are in the same group of companies. Both companies are incorporated in South Africa. Person X is an employee (financial manager) of A, for which he earns R50 000. Person X is not a director nor a prescribed officer of A. Person X is also a director for company B, for which he earns R30 000. Assume that Person X does not perform any other services in the group of companies.



# Frequently Asked Questions

## 8. What is the meaning of “benefits” in section 30(5) and how wide should it be interpreted?

In line with the purpose of the Act to “encourage[ing] transparency and high standards of corporate governance as appropriate”, companies are required to include all benefits paid to or receivable by directors and prescribed officers. Whereas “remuneration” is clearly defined in section 30(6), no definition is provided for “benefits”. Based on legal opinion obtained, “benefits” is widely defined and includes amounts beyond those already included in the definition of “remuneration”. For example, a share option is captured under the definition of “remuneration”. However, if a director is entitled to a portion of an interest that a management trust (of which the director is a beneficiary) holds in shares of the company, this would qualify as a benefit.

## 9. Should the source of the payment of the remuneration be considered?

The Act requires all remuneration ***paid to or receivable by*** directors and prescribed officers to be disclosed – it does not only account for remuneration ***paid by*** the company, or another company in the group. Rather, it focuses on the amounts a director or prescribed officer earns for services as a director or prescribed officer (to the company or any other company within the group), or for the carrying on the affairs of the company (or any other company within the group). A situation may arise where a person is employed by company A but spends all his time as a director of company B. Let’s assume that company A and B are not in the same group of companies. Company A pays the person a salary of R250 000, which is effectively an amount paid for services as a director of company B (as 100% of this person’s time is spent in that capacity). In the AFS of company B, the director’s remuneration earned for services to company B is shown as R250 000.

Where a person receives a lump sum for services as a director of many companies, it would be necessary for such a director to determine the amount received in respect of services for each company, in order to make the appropriate remuneration disclosure for each company. This should be done on a rational apportionment basis (for e.g. a time apportionment basis).

Accordingly, for the purpose of disclosure of director and prescribed officer remuneration, the ***source of the payment*** of the remuneration does not necessarily need to be considered. Rather, one would need to consider the ***reason*** for which the remuneration is paid or payable.

## 10. If the director of a South African company is paid by a trust or a foreign company for their services to the South African company, should this be included in the disclosure?

The source of the remuneration is not relevant – the considering factor is all amounts paid for their services to the company or group companies, regardless of who paid it. Therefore, if a “holding trust” or foreign company, or any other entity for that matter paid remuneration to a director for his services to a South African company, this must be included.

# Frequently Asked Questions

## 11. Can companies use the CIPC Non-binding Legal Opinion to avoid the disclosure of directors' and prescribed officers' remuneration for Private Companies?

In 2011, the CIPC issued a non-binding legal opinion in which they conclude that only public companies and state owned companies need to disclose directors and prescribed officers' remuneration in the annual financial statements.

**On 12 March 2015, the CIPC published a notice on its website stating that non-binding legal opinion had been withdrawn.** Accordingly, companies will no longer be able to use the non-binding legal opinion as a defence against non-disclosure of directors' and prescribed officers' remuneration.

## 12. How should prior year comparative amounts be disclosed?

In terms of IAS 1, *Presentation of financial statements*, comparative figures must be disclosed in exactly the same manner as the current year figures. Thus, even though disclosures for directors' remuneration may have been made on an aggregate basis in the past, if the current year amounts are disclosed on an individual basis, the comparative figures should also be disclosed on an individual basis.

Where a company has relied on the non-binding legal opinion for non-disclosure of director and prescribed officer remuneration in the prior year (before the withdrawal of the aforementioned opinion) and can no longer do so in the current year and accordingly must disclose as per S30 (4) of the Act, it appears that in order to maintain the comparability of the information in the current year annual financial statements, the prior year disclosure should also be made.

# Appendix 1: Roadmap to determining the disclosure



## Appendix 2: Illustrative disclosure of the requirements of S30(4)-(6) of the Act

The following disclosure is an illustration of how the requirements of Section 30(4) – (6) may be disclosed in the annual financial statements:

[YEAR END DATE]							
	Remuneration and benefits paid to directors / prescribed officers:			Current or past directors and prescribed officers:			Total
	Services to the company	Services to other group companies	Otherwise in connection with the company / group companies' affairs	Pensions paid/payable	Amounts paid/payable to a pension scheme	Compensation for loss of office	
<b>Director A. Alpha</b>	XX	XX			XX		XXX
<b>Director B. Bravo</b>	XX			XX			XXX
<b>Prescribed Officer C. Charlie</b>	XX		XX		XX		XXX
<b>Total</b>	XXX	XXX	XX	XX	XXX	X	XXXX

Securities in the company issued to a director, prescribed officer or a person related to them:

	Class of securities issued	Number of securities issued	Consideration received for the securities
<b>Director A. Alpha</b>	Ordinary shares	1000	X
<b>Director B. Bravo</b>	Ordinary shares	2000	XX
<b>Total</b>		3000	XXX

Details of service contracts of current directors and prescribed officers in the company:

*[Include details of service contracts]*

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