



european corporate governance institute

Directors' Remuneration in Listed Companies

BELGIUM*

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* The information and opinions included in this document are not intended to provide legal advice, and should not be relied on or treated as a substitute for specific advice concerning individual situations. The law, regulation and best practices are stated as they stood at 30 June 2003.

Questionnaire

Answers to this questionnaire should be given from the perspective of provisions included in national laws, regulations and exchange rules, and of best practices as recommended by either official reports or corporate governance codes.

1. General

1.1 Please indicate, as a general reference, the laws, case law, regulations, exchange rules and best practices concerning directors' remuneration in your country with respect to listed companies. Please indicate where these provisions (such as, for example, exchange rules) apply only to domestically-incorporated companies.

- The Royal Decree of 30 January 2001 (taken in execution of the Companies Code) prescribes that the notes to the financial statements (both FS of the parent and consolidated FS) should contain global information about directors' remuneration (cf. 4th and 7th Directive). These provisions apply only to domestically-incorporated companies.
- The Royal Decree of 18 September 1990 about the prospectus that has to be established for listing in Belgium imposes information about directors' remuneration, the number of shares and stock options of the company held by directors, unusual transactions between the company and her directors and loans attributed to directors.
- Best practices: the recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC in 1998) say that it is recommended to disclose the total amount of the non-executives directors' remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed. They also recommend to disclose the rules and procedures with regard to the determination of the total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them. These provisions apply only to domestically-incorporated companies.
- Best practices: there also exist recommendations of the VBO-FEB (Federation of Belgian Entreprises) (a private business association) about "transparency of remunerations" (March 2002).

1.2 As to best practices, please specify whether they are described in either a private (voluntary or non-statutory) code or other official report, and whether a "comply or explain" principle is applicable to compliance with the relevant provisions by listed companies. Where the "comply or explain" principle applies, please indicate, where such evidence is available, whether companies generally comply with best practices.

As to the recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC) a "comply or explain" principle is indeed applicable.

As to the recommendations to disclose the total amount of the non-executives directors' remuneration etc., no specific research has been done. It is clear however that companies do not generally comply with these recommendations.

As to the information about the rules and procedures with regard to the determination of the total emoluments, annual fees, benefits in kind and share options granted to directors, as well as loans and advances which may have been granted to them: a 1999 study (based on annual accounts 1998) has shown that less than 50 % of the companies followed the recommendation. The CBF has experienced difficulties in enforcing these recommendations, as “comply and explain” cannot be imposed.

The recommendations of the VBO-FEB do not contain a “comply or explain” principle.

1.3 Please describe in summary: the institutional structure for adopting executive remuneration rules or best practice codes; and any major proposals for reform concerning directors’ remuneration.

A Parliamentary Bill seeks to impose on Belgian listed companies the obligation of publishing the remuneration of each director separately (once a year, in the directors’ report accompanying the financial statements), and also individual transactions in shares by directors. It seems not unlikely that the bill will be adopted before the May 2003 elections.

2. Disclosure

2.1 Are listed companies required to publish a remuneration report, indicating the details of the compensation paid to the members of the Board of Directors? How often must it be published and where is it retrievable?

They are not required to publish a true “remuneration report”.

As to best practices: see the recommendations concerning Corporate Governance (established by Euronext Brussels and the BFC). If these recommendations are followed, the information is published once a year, in the annual report, in the section about “Corporate Governance”.

If the annual report constitutes a so called “reference document” (self registration-procedure), it will also contain the information required by the Royal Decree of 18 September 1990 (prospectus).

2.2 Must these reports be submitted, or are recommended to be, to a Securities Market Regulator or to a public authority responsible for collecting these documents?

No, with one exception: annual reports that constitute a reference document have to be “approved” by the BFC.

2.3 What information on directors’ remuneration, individually and collectively, and on the remuneration committee, must be included, or is recommended to be included as best practice, in the financial reports? Please include in your answer any specific requirements which apply to particular elements of remuneration, such as stock options, bonuses, and termination payments.

In the notes to the FS: collective information (one single amount).

In the section about “Corporate Governance”: total amount of the non-executives directors’ remuneration (with specification of the fixed and the variable part of the remuneration). According to recommendations VBO-FEB: total amount of the non-executives directors’ remuneration with specification of the fixed part, the variable part and the stock options; total amount of managements’ remuneration with specification of the basic salary, the variable part and the long term incentives (stock options and pensions).

2.4 Is timely disclosure required with respect to stock options, their vesting, exercise, and the sale of the relevant shares to third parties?

No. However, when warrants are created, the board of directors has to establish a special report (according to the Companies Code) relating to terms and conditions. Disclosure could also have to be made under the law concerning disclosure of significant shareholdings (first threshold: 5% of the shares or 3% of the shares in case of a provision in the articles of association).

2.5 What are the rules on disclosure of share transactions executed by the company's insiders (such as directors, officers, auditors, etc)?

There are no specific rules.

2.6 What information on directors' remuneration must be included in public offer prospectuses and listing particulars?

The Royal Decree of 18 September 1990 about the prospectus that has to be established for listing in Belgium imposes information about directors' remuneration, the number of shares and stock options of the company held by directors, unusual transactions between the company and her directors and loans attributed to directors.

3. Remuneration of The Board of Directors

3.1 Who fixes the board of directors' remuneration? What are the relevant procedures? (In two-tier systems, please refer to the supervisory board.)

As far as the directors proper are concerned, the remuneration is fixed by the general meeting. Often in practice the decision is imprecise, and *de facto* delegated to the board.

3.2 Are there provisions and/or practices as to the amount of the remuneration and its distribution (for example, as to whether distribution should be proportionate) among board members? What types of remuneration are allowed?

The distribution of the global amount among board members can be decided by the board of directors.

All types of remuneration are allowed. There is no strict proportionality rule, as the chairman in practice gets somewhat more (+/- 20%).

3.3 Are personal loans to the company's directors and officers allowed?

Yes. But these are subject to procedures on conflict of interests, i.e. the conflicting interest should be disclosed, the directors cannot take part in the vote (unless the company is unlisted) and the auditor must report on the effect of the contract to the company. This information is made public. As it only relates to board decisions, it would not apply when the decision is taken by the general meeting.

4. Executive Directors' Remuneration

4.1 Who fixes the executive directors' remuneration? What are the relevant procedures? Are shareholders required to approve directors' remuneration, the remuneration policy, or the remuneration report (see question 2) on an annual or other basis? (In two-tier systems, please refer to the management board.)

Executive directors' remuneration is fixed by the board (within the limits of the decision of the shareholders meeting). In practice, the remuneration is agreed before the executive enters into function, by the board: this would not trigger the rules on conflicts of interest, as the executive is not yet a director. Once he has been appointed director, the rules on conflicts will apply. The latter is important if the board wants to grant perks, options, etc. Sometimes, with stock options, the decision is therefore submitted to the general meeting, as in that case the cumbersome rules on conflicts are not applicable.

4.2 Is the board required, or recommended as best practice, to create a remuneration committee?

A recommendation as best practice exists. It is increasingly practised.

If yes, please specify:

- (i) the committee's composition (if independent directors should be appointed to this committee, please give the relevant definition and indicate whether any special procedures apply to the appointment of independent non-executive directors)
- (ii) the committee's competences and which company body it reports to
- (iii) how the committee operates

The recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC) state: "The executive management's pay should be subject to the recommendations of a remuneration committee, where such exists, made up of a majority of non-executive directors. In case no remuneration committee is created, the board of directors should decide on the principles of the remuneration of the executive management, in the absence of the executive directors".

The committee is a committee of the board and should report to the board.

4.3 Which types of remuneration are permitted?

In answering, please consider each of the following:

- (a) bonuses
- (b) stock options, including discounted stock options
- (c) stock grants
- (d) profit sharing

(e) benefits in kind

All of these types of remuneration are permitted. For warrants, specific rules exist (special report of the board of directors). The rules about conflicts of interest also have to be complied with (when applicable). In practice, due to high taxation, it often happens that part of the salary is paid abroad, often by a subsidiary. The practice is recognized in tax law, if proportionate to foreign activity.

4.4 Are there specific rules, including shareholder approval requirements, as to these different types of remuneration?

Yes for directors, in principle no for executives. Not even in case of conflict of interest are the shareholders involved.

4.5 Are there any restrictions on how payments are made?

No.

4.6 Are there any specific requirements for termination payments made on loss of office, whether through dismissal, retirement, on a takeover, or otherwise?

No, but it's practice.

4.7 Are there any specific requirements concerning directors' service contracts with respect to, for example, their duration and disclosure?

No.

5. Non-executive Directors' Remuneration

5.1 Are non-executive directors separately paid for their participation in committees of the board of directors? Do any restrictions apply to the payment of non-executive directors' *via* stock options?

The recommendations concerning Corporate Governance for listed companies (established by Euronext Brussels and the BFC) state: "The remuneration received by the non-executive directors should reflect the amount of time which they commit to the company. Their remuneration should not be performance-related, but may be related to the evolution of the value of the company. Therefore, remuneration can take the form of company shares. However, it is recommended that the remuneration of non-executive directors should not take the form of stock options, nor of a participation in the pension scheme of the company. It is recommended to disclose the total amount of the non-executives directors' remuneration separately in the annual report and to specify both the fixed and the variable part of the remuneration. In addition, the principles underlying the calculation of the variable part, if any, should be disclosed".

Payment for committee work is not unusual.

The CBF objects to paying independent directors by way of stock options. It's action is not always successful.

5.2 May a company make payments to non-executive directors, additional to their directors' fees, for services, such as legal or brokerage services, outside the usual scope of directors' duties?

Yes, but rather unusual.