



european corporate governance institute

## Directors' Remuneration in Listed Companies

### DENMARK\*

#### Contact Details of Person(s) Answering and Reviewing the Questionnaire

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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. **Please note that there are changes in Danish law as of December 2003. The changes have been included in the Report.**

# 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.**

Article 64 of the Limited Companies Act provides that members of the board of directors and management board may receive as remuneration either a fixed payment or a payment determined on the basis of the member's or the company's performance. In any event, the compensation must not exceed what is deemed reasonable, given the nature of the tasks of the members, the amount of work involved, and the financial position of the company and, in the case of a parent company, of the group of companies.

Under the Disclosure Obligations for Issuers adopted by the Copenhagen Stock Exchange, section 19, issuers that adopt share-based incentive programs must immediately disclose a number of features with respect to such programs. For details, please see 2.1. below. Also, pursuant to section 18 of the said rules extraordinary agreements between the issuer and a member of the board of directors or management board, including on redundancy payments, must be disclosed in the annual report.

Pursuant to non-binding recommendations issued by the so-called Nørby Committee (explained further under 1.2 below), article VI, the remuneration of directors and managers should be competitive and reasonable given the assigned tasks, and the responsibilities connected thereto. The recommendations suggest that there be a relation between the aggregate remuneration on the one hand, and the performance of the directors and managers and the value they have created for the company, on the other hand. Stock option schemes are not recommended for members of the board of directors. Openness and transparency are key words regarding performance-related share-based incentive programs. Redundancy arrangements or schemes must be reasonable as set out in the recommendations by the Nørby Committee. Please see under 4.6. below.

**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.**

In 2001, a committee was established at the initiative of the Danish Minister for Business and Industry and charged with examining whether there was a need for developing recommendations to promote good corporate governance and, in the affirmative case, to suggest appropriate recommendations. The committee consisted of four top executives and was headed by Mr. Lars Nørby Johansen. In December 2001 the committee released its report, known as "The Nørby Committee's report on Corporate Governance in Denmark". The

recommendations in the report, which are chiefly directed at listed companies, are, indeed, non-binding and thus voluntary. However, on the day when the report was released, the Copenhagen Stock Exchange recommended that issuers with securities listed at the Stock Exchange indicate how they relate to the recommendations, cf. section 36 of the Disclosure Obligations for Issuers. Many issuers already relate to the Committee's recommendations and thus, in fact, "comply or explain". The full text of the Nørby Committee's recommendations may be found at [www.corporategovernance.dk](http://www.corporategovernance.dk).

**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.**

No formal institutional structure exists for adopting such rules or codes. Upon the adoption and release of its recommendations in December 2001, the Nørby Committee had exhausted its agenda. However, in 2002 the Copenhagen Stock Exchange established a new committee (again chaired by Mr. Nørby Johansen) the purpose of which is to monitor developments within the corporate governance field and, if deemed appropriate, amend or modify the Nørby-recommendations.

## **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?**

Under the Disclosure Obligations for Issuers adopted by the Copenhagen Stock Exchange, section 19, issuers that adopt share-based incentive programs must immediately disclose certain information with respect to such programs. The disclosure obligation must include, as a minimum, information on (i) the type of the share-based incentive program used, (ii) the categories of individuals included in the program, (iii) the time of the grant of rights, (iv) the aggregate number of shares underlying the program and the allocation of such shares among the categories of individuals included, (v) the goals pursued by the program, (vi) the period within which rights under the program may be exercised, (vii) the exercise price, (viii) any particular conditions that will have to be met in order for the beneficiaries to exercise their rights, and (ix) the market value of the share-based incentive program, including a description of the valuation method and the basic assumptions underlying the valuation. Also, the adoption of extraordinary bonus programs must be disclosed.

In addition, pursuant to article 69 of the Annual Accounts Act, the annual report must contain information on the aggregate remuneration (irrespective of the form) paid to the board of directors in the relevant fiscal year. The report must also state any incentive programs that include members of the board of directors or board of management with an indication of the categories of members included as well as the kinds of benefits involved and information necessary to evaluate the program. Also, pursuant to the above-mentioned rules issued by the Copenhagen Stock Exchange, section 19, the annual report must contain information on such part of the program that has not been exercised as per the expiry of the relevant financial year, stating the non-exercised parts related to members of the board of directors, members of the management board, and other members of senior management, respectively. According to the Nørby Committee's recommendations, the remuneration of each board member and member of management under share-based incentive programs should be disclosed in the annual report.

**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?**

Annual reports must be filed with the Danish Commerce and Companies Agency. The reports are typically available on the company's web site as well.

**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.**

Please note that remuneration committees are not mandatory under Danish law and that, likewise, no code of best practice recommends the use of such committee. The annual report must include the aggregate remuneration paid to the board of directors as explained under 2.1. above.

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

Like other share-based incentive programs, the adoption of stock option programs must be disclosed as explained under 2.1. above. No particular disclosure obligations apply to the vesting or exercise of stock options. However, the obligations under the Securities Trading Act referred to under 2.5. may lead to (indirect) disclosure. In addition, article 29 of the Securities Trading Act requires anybody who acquires shares in a listed company to disclose this if the holding of shares reaches 5 per cent of the votes or nominal value of the shares of the company. Also, changes that lead to thresholds of 5 per cent (i.e. 10, 15, 20 etc.) as well as one-third and two-thirds being reached or not being reached any more must be disclosed.

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

Pursuant to article 37 of the Securities Trading Act, shares of a company held by individuals considered insiders (including members of the board of directors and the management board) as well as persons associated with any of these, as defined, must be reported to the company. Likewise, changes in the holding of such shares must be reported to the company immediately. Every day of trading the company must prepare a statement showing the net result of acquisitions and disposals that day by insiders of the company. In the event the net result of trading by insiders exceeds DKK 50,000 in market value, the company shall report the information received to the stock exchange.

Moreover, on a quarterly-year basis, the company shall prepare a statement showing the holdings of shares of insiders and those associated with insiders as well as the aggregate holdings of shares held by members of the board of directors and the board of management, respectively. The statement shall show both the numbers of shares and the market value of the shares in question.

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

Under the listing rules issued by the Copenhagen Stock Exchange, section 34, issuers that have decided to adopt share-based incentive programs must provide certain information with respect

to such programs when issuing prospectuses. The obligation to disclose includes information on (i) the type(s) of the share-based incentive program(s) (ii) the categories of individuals included in such programs, (iii) the time of the grant of rights, (iv) the aggregate number of shares underlying the programs and the allocation of such shares among the categories of individuals included, (v) the goals pursued by the programs, (vi) the period within which rights under the programs may be exercised, (vii) the exercise price, (viii) any particular conditions that will have to be met in order for the beneficiaries to exercise their rights, and (ix) the market value of the share-based incentive programs, including a description of the valuation method and the basic assumptions underlying the valuation. The prospectus must contain information on incentive instruments granted to each member of the board of directors and management board. Such parts of the programs that have not been exercised must be disclosed. Also, the adoption of extraordinary bonus programs must be disclosed.

### **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.)**

The remuneration of the board of directors is fixed (approved) by the annual general meeting of shareholders.

#### **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?**

Under Article 64 of the Limited Companies Act, remuneration of the board of directors and management must be reasonable, as explained under 1.1. above. It has been established by the Danish courts that board members (whether elected by the shareholders or appointed by the employees under the rules on co-determination) must receive equal payment, unless a different treatment is justified, given differences in workload. For the same reason, the chairman of the board, who normally spends more time preparing for and following up on board meetings than the average board member, typically receives an amount which is considerably higher than the amount paid to the other board members.

The law does not restrict the types of remuneration that could be paid to the members of a board of directors. However, in its recommendations the Nørby Committee proposes that no stock option programs be adopted which include members of the board of directors.

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

Loans granted by the company to members of the board of directors or management board would violate the prohibition in Article 115, subsection 1, of the Limited Companies Act. The said provision also prohibits the company from offering any security to a third party in favour of any board member or member of the management board. Officers who are not member of any of the boards may receive loans from the company to the extent this is in the interest of the company.

## **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.)**

The remuneration of the management board is fixed by the board of directors. Typically, the board of directors will enter into a contract with each member of the management board in which the remuneration is stipulated. No particular procedures apply, and shareholders are generally not required to approve the policy or any specific remuneration. However, an exception applies in the event a remuneration program requires a change of the company's articles of association in which case the program would have to be approved by the general meeting of shareholders. Consequently, warrant programs require the approval of the general meeting. Similarly, the approval of the general meeting of shareholders would have to be obtained if the program requires that the company buy back its own shares (treasury shares).

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

No, please see 2.3. above.

**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**

**4.3 Which types of remuneration are permitted?**

Please see 3.2. above.

**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**

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

Please see 4.1. above.

**4.5 Are there any restrictions on how payments are made?**

Please see 1.1. and 4.1 above.

**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 specific legal requirements apply. According to the Nørby Committee's recommendations any redundancy arrangement for managers should be reasonable and reflect the results which the individual manager has achieved, the cause of the resignation and the manager's responsibilities, as well as the remuneration which the manager has received. This probably reflects the same type of reasoning that a court would apply. The Nørby recommendations also suggest that the main contents of the arrangement be included in the company's annual report. Pursuant to article 69 of the Annual Accounts Act the value of any redundancy arrangement would have to be included in the annual report.

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

With respect to members of the board of directors no service contract is entered into. Under article 49 of the Limited Companies Act members of the board of directors are elected by the general meeting for a period stipulated in the company's articles of association, however in no event for a period longer than 4 years. However, reelection may take place. Members of the board of directors elected by employees under the co-determination rules serve for 4 year terms. In any event, those who elected a member of the board of directors may remove such member at any point in time (observing the relevant procedural rules regarding the convening of the general meeting) and without cause.

As regards members of the management board service contracts are used. No particular requirements apply to such contracts in addition to those mentioned under 1.1. and 2.1. above.

## **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?**

As a point of departure non-executive directors (board members) must receive the same payment as other board members. However, it is possible to increase payment to members whose workload is increased due to membership of a committee. Non-executive directors may receive stock options just as it is the case with executive directors. Please also refer to 3.2. above.

**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?**

Danish law does not prohibit these kinds of payments. However, in the case of the chairman of the board article 51 of the Limited Companies Act provides that he may not carry out tasks that are not a natural part of his duties as chairman. Irrespective of this, the board may ask the chairman to carry out specific tasks for the board.