



European **corporate governance** institute

## **Directors' Remuneration in Listed Companies**

### **Denmark\***

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# Questionnaire

## 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 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.

In addition to Art. 64, Article 69b of the Danish Companies Act provides that the supervisory board of the company must have specified general guidelines for incentive programmes for the company's supervisory board or executive board before the company can enter into a specific agreement on incentive pay with a member of the supervisory board or the executive board. The guidelines must be considered and approved by the company in general meeting.

Under the Disclosure Obligations for Issuers adopted by the OMX Nordic Exchange Copenhagen, section 18, the annual report must disclose information on remuneration. This information must cover what is considered ordinary remuneration, cf. the Limited Companies Act article 64 as well as any other remuneration the director receives from the company. Moreover, 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.

Under the Disclosure Obligations for Issuers adopted by the OMX Nordic Exchange Copenhagen, 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.

Pursuant to non-binding recommendations issued by the Committee on Corporate Governance (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. Moreover, it is recommended that the board of directors adopts a remuneration policy, and that the company disclose the contents of such policy in its annual report and on the company's website. Additionally, The Committee on Corporate Governance recommends that the general guidelines for incentive pay (as adopted pursuant to art. 69a) reflect the interests of the shareholders and the company match the specific conditions of the company and be reasonable in relation to the tasks and responsibilities undertaken. 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. The Committee on Corporate Governance recommendations have been implemented in the Disclosure Obligations for Issuers adopted by the OMX Nordic Exchange Copenhagen on a "comply or explain" basis, of § 36 of the Disclosure Obligations.

Regarding a takeover situation the Executive Order on Takeover Bids does not allow that the supervisory board or management board of the offeree company enter agreements on bonuses (stay on bonuses) and similar benefits from the date on which the offeror initiate negotiations with the offeree company and until the negotiations are stopped, or a takeover bid is implemented, cf. section 11.

**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 the committee’s remit was to examine 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 primarily directed at listed companies, are, indeed, nonbinding and thus voluntary. However, on the day when the report was released, the OMX Nordic Exchange Copenhagen 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.

Subsequent in the autumn of 2002 the OMX Nordic Exchange Copenhagen established the Committee on Corporate Governance, again chaired by Mr. Nørby Johansen. In 2004 the committee was asked to revise the existing corporate governance recommendations. In August 2005 the Committee presented its revised recommendations to the Stock Exchange. The revised recommendations were applicable under the “comply or explain” principle. Moreover, the recommendations consider the 2004 recommendations from the EU Commission on directors’ remuneration and independent directors. Shortly hereafter the Exchange announced its decision to implement the revised recommendations into the disclosure requirements for listed companies, obliging the companies to include in their future annual report a statement on how they address the recommendations. The obligation for companies to include in their annual reports a statement on how they address the revised recommendations is found in section 36 of the Disclosure Obligations for Issuers.

The revised recommendations and subsequently section 36 of the Disclosure Obligations for Issuers were most recent revised on the 6<sup>th</sup> of February 2008 after the adoption of section 69b of the Public Companies Act. The full text of the revised recommendations may be found at [www.corporategovernance.dk](http://www.corporategovernance.dk). The earlier reports and recommendations may be found at the OMX Nordic Exchange Copenhagen website at <http://www.omxnordicexchange.com/marketprofessional/rulesregulations/copenhagenrulesregulations/corpoategovernance/?languageId=1>

A recent article (Nordisk Tidsskrift for Selskabsret, vol. 4, 2007, p. 94ff.) based on a study of 24 companies listed on the OMX Nordic Exchange Copenhagen has shown that in general the companies have a tendency to comply. When they deviate from the recommendations they mostly explain, but the level of information in the explanations vary.

**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, as described above, in 2002 the Copenhagen Stock Exchange established the Committee on Corporate Governance 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?**

Pursuant to article 98b 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.

However, according to the revised recommendations of the Committee on Corporate Governance, not only the aggregate remuneration should be disclosed in the annual report, but also the total remuneration of each board member and member of management.

Pursuant to the Disclosure Obligations for Issuers section 18, the annual report must contain information about fees – in addition to the general director's fees – and other kinds of remuneration received by each member of the board of directors from the company. Thus, this requirement includes fees and salaries paid for tasks undertaken as part as a member's work on the board.

Under the Disclosure Obligations for Issuers adopted by the OMX Nordic Exchange Copenhagen, 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 individuals included in the program broken down by categories, (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.

The annual report must be filed annual with the Danish Commerce and Companies Agency, which make the reports available from their website. The reports are typically available on the company's website as well. Moreover, the annual report must be submitted to the OMX Nordic Exchange Copenhagen.

### **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.

### **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.**

For the requirements and recommendations on information on remuneration, see section 2.1. above. Please note that remuneration committees are not mandatory under Danish law. However, according to the revised recommendations of the Committee on Corporate Governance the Supervisory Board should consider and decide whether to establish committees, including a remuneration committee.

### **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 (2) 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, 10, 15, 20, 25, 50 or 90 % 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 28a of the Securities Trading Act, senior employees as well as persons associated with any of these, as defined, must notify the company of transactions conducted on their own relating to the company's. Senior employees include members of the board of directors and the management board. Moreover, the obligation is extended to close relatives of senior employees. Notification shall be given no later than on the next business day. However, the obligation to give notification only commences if the market price of the transactions carried out over the course of a calendar year exceeds € 5.000. In such case, the obligation only apply for transactions carried out after the limit was exceeded.

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

Besides the requirements found in the Commission Regulation (EC) No 809/2004 on information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements, there are no additional national information requirements for public offer prospectuses.

## **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.

Pursuant to Art. 69b of the Danish Public Companies Act the Supervisory Board must have specified general guidelines for incentive programmes for the company's supervisory board or management board before the company can enter into a specific agreement on incentive pay with a member of the supervisory board or management board. The guidelines must be considered and approved by the general meeting.

### **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 revised recommendations the Committee on Corporate Governance proposes that no stock option programs be adopted which include members of the supervisory board.

### **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 Art. 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?**

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)**

The Committee on Corporate Governance recommends in appendix A that a supervisory board committee consist of at least three persons and that the majority of the members are independent persons. In section V.4. it is stated that an independent supervisory board member elected by the general meeting may not:

- be an employee of the company or have been employed by the company within the past five years.
- be or have been a member of the executive board of the company.
- be a professional consultant to the company or be employed by, or have a financial interest in, a company which is a professional consultant to the company.
- have some other essential strategic interest in the company other than that of a shareholder.

Furthermore, any person related, in terms of business or in any other way, to the company's major shareholder, is not regarded as an independent person. Finally, family ties with persons not regarded as independent persons also imply a situation of non-independence.

The recommendations give no recommendations on the appointment procedure given.

**(ii) the committee's competences and which company body it reports to**

It is recommended that the supervisory board draw up terms of reference for the committee setting out its responsibilities and powers. Further, it is recommended that the appointment of a supervisory board committee take place only in connection with matters relating to specific issues for the purpose of preparing decisions to be made by all the members of the supervisory board. Thus, according to the Danish Public Companies Act it is not possible to delegate decision competence to a supervisory board committee, only the competence to prepare a decision to be made by the board.

**(iii) how the committee operates**

See above, section 4.2 (ii)

**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

Please see 3.2. above.

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

Please see 4.1. above and 1.1 (regarding Public Companies Act, Art. 69b)

**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?**

According to the Committee on Corporate Governance's revised recommendations the total remuneration including pension, severance pay and other benefits should be reasonable and reflect the results which the individual manager has achieved. Moreover, in relation to severance programs the Committee recommends that the most important aspects of such programs be disclosed in the company's annual report.

Pursuant to section 107a of the Danish Financial Statements Act a company's annual report shall include information on special retirement agreements resulting from a successfully completed takeover bid.

Moreover, pursuant to article 98b of the said rules the value of any aggregate pension obligation to members of either the supervisory board or the management board would have to be included in the annual report.

Concerning takeovers see section 1.1 above.

**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. 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 rule 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, e.g. 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.