



european corporate governance institute

Directors' Remuneration in Listed Companies

FRANCE*

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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 French law as of July 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.

Code de Commerce, Partie Législative, Art. from L225-44 to L225-46 ; Art. L225-53 ; Art. L225-102-1; Art. from L225-177, L225-187-1 (available www.legifrance.gouv.fr); *Décret* n. 67-236 du 23 mars 1967, Art. 93 and 94 (available www.legifrance.gouv.fr); COB's Regulation (available www.cob.fr), «*The board of directors of listed companies in France, Report of the committee chaired by Mr Marc VIENOT-1995*» (thereafter first Viénot report, available www.medef.fr), «*Report of the Committee on Corporate governance chaired by Mr Marc VIENOT – 1999*» (thereafter second Viénot report, available www.medef.fr), «*Promoting better Corporate governance in Listed Companies. Report of working group chaired by Daniel BOUTON, President of Société Générale Bank - 2002*» (thereafter *Code Bouton*, available www.medef.fr), “*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*”, May 2003 (available www.medef.fr).

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.

French best practices are described in several voluntary codes (Codes Viénot and Bouton) promoted by the main companies' Associations (*Mouvement des Entreprises de France*, MEDEF - French Business Confederation and *Association Française des Entreprises Privées*, AFEP).

The *Code Bouton* follows the publication of the two Viénot reports in July 1995 and July 1999, which had introduced in France a set of rules of corporate governance, promoting both efficiency and transparency.

A combined Code will be soon available.

The second Viénot report recommended that “listed corporations should specify clearly, in their annual reports, compliance with the recommendations in the 1995 report (first Viénot report) and these recommendations, and explain, if applicable, the reasons for not implementing some of them” (*Viénot report*, 1999, p. 9, available www.medef.fr). The *Code Bouton*, in accordance with the terms of the second Viénot report, recommends that the annual report of listed companies should include a discussion of to what extent its recommendations have been implemented (*Code Bouton*, p. 25).

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.

See the answer to para 1.2.

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?

French law now includes precise rules concerning transparency of compensation and benefits in kind granted to corporate officers (*mandataires sociaux*) of listed company. This information include remuneration's and advantages perceived from controlled companies. Those rules no more concern non listed companies, except if the company which pays the remuneration is controlled by a listed company.

The remuneration report is enclosed in the company's annual report of listed companies.

The MEDEF has recommended this publication before it was imposed by the law.

The annual reports of listed companies should include a chapter, drafted with assistance from the compensation committee, relating to disclosure to the shareholders of the compensation collected by the corporate officers (see *Viénot 2nd Report* p. 23 for details, and *Bouton Report* p. 13).

Moreover, according to the law every year the board of directors must submit to the shareholders general meeting a special report concerning stock options and stock grants awarded to directors. The report indicates the number of options or shares which executive directors are allowed to exercise or purchase during the year, their expiration date and exercise price. It also indicates the same information for options and shares effectively bought or subscribed by directors during the year (*Code de Commerce*, Art. L225-184).

The same rules apply to the ten top employees.

These rules concern also non listed companies.

These documents are retrievable on the COB's website in the database *SOPHIE* (<http://www.cob.fr/frset.asp?rbrq=sophie>).

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?

See the answer to para 2.1.

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.

The directors' annual report must contain an exposition of the total amount of compensation and benefits awarded to each corporate officer (*mandataire social*) (*Code de Commerce*, Art. L225-102-1).

COB's regulation requires that listed companies indicate in the prospectus and, eventually, in their reference documents (*document de référence*) the remuneration of corporate officers (including members of supervisory board) in the same form provided for the annual report and the special report (*Instruction de décembre 2001*).

The “*document de référence*”, which contains the same information prescribed for the company’s financial report and for the prospectus, is mandatory only for companies listed in the *Nouveau Marché*, but COB recommends also to the other companies the adoption of this form of disclosure. In its guide concerning the “*document de référence*” (August 2002 - available in French on the COB’s website http://www.cob.fr/docu_srp/S0120020603D0261N01.pdf) COB refers that 39 companies of the CAC40 index have already asked the registration of their “*document de référence*” (see also *Recommandation pour l’élaboration des documents de référence relatifs à l’exercice 2002*).

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

COB’s regulation does not require timely disclosure with respect of vesting and exercise of stock options. In fact rules on disclosure of shares transactions executed by the company’s insiders expressly exclude the exercise of stock options from their area of application (*Recommandation COB n. 2002-01*, p. 2).

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

COB’s regulation requires that company’s insiders (directors, supervisory board’s members, general managers) report to the company every transaction executed on its financial instruments. The procedure concerning this type of communications is fixed by the company.

At the end of every half-year companies must declare to the market and to the Commission (COB) the total amount of transactions executed by their insiders.

Recommendation COB n. 2002-011. It is also now a legal obligation (see: *loi de sécurité financière*).

Company’s insiders must not execute transactions on company’s shares in the following period:

- 15 market days before and after the publication of the company’s financial statements;
- from the date in which a price sensitive information comes to the company’s bodies knowledge to the moment of its publication (*Règlement COB n. 90-04*).

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

COB’s regulation (*Instruction de décembre 2001*) provides that prospectuses and listing particulars must include:

- the total amount of remuneration paid and benefits in kind granted – directly or indirectly – by the company and by its subsidiaries to each corporate officer (by name) (*mandataire social*);
- the number of stock options granted and the number of options exercised by each corporate officer (by name) during the previous financial year; the information must include the exercise price, the expiration date and the type of plan;
- the number of stock options granted and the number of options exercised by the ten most paid (with regard to these instruments) employees (non corporate officers) during the previous financial year; this information must be given in aggregated form and must include both the average of the exercise price and the type of plan.

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.)

One-Tier System

The board of directors' remuneration is fixed by the shareholders' general meeting (*Code de Commerce*, Art. L225-45). The shareholders' general meeting can fix the total amount of the directors' remuneration as attendance money (jetons de présence). The board of directors determines the distribution of this amount among its members and fixes the remuneration of its chairman (*Code de Commerce*, Art. L.225-45).

The board of directors may allocate to members of the board exceptional compensation for specific missions or mandates (Art. L. 225-46).

Two-Tier System

The supervisory board's remuneration is fixed by the shareholders' general meeting (*Code de Commerce*, Art. L225-83). The shareholders' general meeting can fix the total amount of the members of the supervisory board's remuneration as attendance money. The supervisory board determines the distribution of this amount among its members and can fix a special remuneration of its chairman and deputy chairman (*Code de Commerce*, Art. L. 225-83).

The supervisory board may allocate to members exceptional compensation for specific missions or mandates (Art. L. 225-84).

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 remuneration's amount among board members can be not proportional. For instance, the board of directors can create special committees, for example audit, compensation or nomination committees for specific purposes and award a particular compensation to their members (*Décret n. 67-236*, Art. 93). The allocation process should take into account the attendance record of each director at board and committee meetings, and therefore compensation should include a variable portion (*Code Bouton*, p. 17).

French law allows the following types of remuneration: fixed remuneration in the form of attendance money (*Code de Commerce*, Art. L225-45); stock options (*Code de Commerce*, Art. L225-177); stock grants (*Code de travail*: Art. L. 442-1 to L. 442-17).

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

Companies are strictly prohibited from making loans to their executive managers or directors, whether for the purpose of exercising options or for any other purpose. To do so, or to receive such loans, would represent a misappropriation of corporate assets which carries criminal liability (*Code de Commerce*, Art. L225-43).

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.)

One-Tier System

The executive directors' remuneration is fixed by the board of directors on a proposal by the compensation committee (*Code de Commerce*, Art. L.225-45, L.225-47 and 225-53, *Décret* n. 67-236, Art. 93, *Code Bouton*, p.13 and s.).

Two-Tier System

See para. 3.1.

The “*directoire*” members' remuneration is fixed by the supervisory board when they are appointed on a proposal by the competition committee (art. L. 225 63).

The information related to compensation is included in the annual report presented every year by the board of directors to shareholders' general meeting.

There is no obligation of a specific approval of the remuneration by shareholders.

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

The board of directors can create special committees for specific purposes (*Décret* n. 67-236, Art. 93).

The *Codes* recommend the creation of a remuneration committee (*See Code Bouton*, p. 14).

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 remuneration committee should not include any corporate officers (*mandataires sociaux*) and should include a majority of independent directors. (*Code Bouton*, p. 14).

A director is independent when he or she has no relationship of any kind whatsoever with the corporation, its group or the management of either that is such as to colour his or her judgment. (*Code Bouton*, p. 9).

The *Bouton Report* enumerates criteria that the committee and the board should examine in order to determine whether a director can be called independent and help avoid the risk of conflict of interests between the director and executive management.

Concerning the appointment of independent directors, the *Code Bouton* recommends that the board of directors should always create a nominating committee, that may or may not be distinct from the remuneration committee, which “should organize a procedure designed to select future independent directors, and carry out its own research on potential candidates before they have been approached in any way” (*Code Bouton*, p. 17).

The board of directors should review on a case by case basis the situation of each member with regard to the criteria mentioned above, then make known to the shareholders, in the annual report and at any general meeting of shareholders at which any directors are to be elected, the results of its review, so that the designation of independent directors is not carried out only by the company's executive management but by the board itself (*Code Bouton*, p. 8).

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

The main task of the remuneration committee concerns the determination of the performance-related directors' compensation. It should fix general rules for the determination of this part of the directors' remuneration and verify every year if these rules are followed by the board of directors. The *Code Bouton* recommends that

the general policy governing the granting of options be discussed within the remuneration committee and that this committee issue recommendations to the board of directors. This policy, which should be reasonable and suited to the needs of the company, should be presented in the annual report and during a general meeting of shareholders when a resolution on the granting of stock options is on the agenda (*Code Bouton*, p. 16).

A recent Report of MEDEF Committee on Business Ethics recommends to Remuneration Committees that the compensation paid to corporate officers (*mandataires sociaux*) “must at all times be justified and justifiable in view of relevant criteria: competitive practices in the industry concerned, international comparisons for multinational enterprises, enterprise’s size and complexity, etc. and must take into consideration risks incurred, knowing that each employee is facing risks. The compensation policy must thus be moderate, balanced and fair and must strengthen solidarity within the enterprise. Vis-à-vis shareholders, it is also necessary to prove that compensation is fair and duly justified” (“*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*”, May 2003, p. 2).

Further, the committee should be kept informed of policy governing remuneration of the main executive managers who are not corporate officers. Naturally, the committee may call upon the participation of the corporate officers in this area. (*Code Bouton*, p. 15).

(iii) how the committee operates

The remuneration committee should set internal rules and submit them to the approval of the board of directors. It should report periodically to the board.

The directors’ annual report (to the shareholders) should contain an exposition of the remuneration committee activity (*Code Bouton*, p. 14).

4.3 Which types of remuneration are permitted?

See *infra* for each type of remuneration.

In answering, please consider each of the following:

(a) bonuses

There are not provisions concerning bonuses. However, the Report of MEDEF Committee on Business Ethics describes bonuses as a component of corporate officers compensation, not related to the share price, which rewards short-term performance and progress made by the enterprise in the short or medium term. The Report recommends that the relationship between bonuses and salary must be clear and be defined either as a warning signal requiring a renegotiation between the parties or as a cap related to the base salary. The bonus may be awarded on the basis of quantitative and qualitative criteria, common to the entire management team, that must always be specific and predetermined (“*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*”, May 2003, p. 4-5).

(b) stock options, including discounted stock options

The shareholders’ general meeting can allowed the board of directors to award stock options to the generality of the employees or to a part of them (*Code de Commerce*, Art. L225-177).

(c) stock grants

The shareholders' general meeting can allow the board of directors to award stock grants to the generality of the employees (*Code de Commerce*, Art. L225-187 for the past and *Code du travail*: Art. L. 443-5 and s. since the law of 19 February 2001).

(d) profit sharing

Labour Code contains provisions concerning a mandatory regime of profit sharing for employees (*Code du travail*, Art. from L442-1 to L442-17).

(e) benefits in kind

They are implicitly permitted, on the basis that the required disclosure on directors' remuneration is supposed to include also benefits in kind (*Code de Commerce*, Art. L225-102-1).

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

Stock options are awarded by the board of directors on a proposal by the remuneration committee (*Bouton Report*). The shareholders' general meeting, on the basis of the auditors' report, can authorise the board of directors to award these types of compensation to employees or some of them.

The deadline of the authorisation to the board is fixed by the shareholders' general meeting. In any case, the authorisation must be exercised within 38 months.

Only the general meeting of shareholders has the power to authorize the granting of options, to set their maximum number and to determine the main conditions of the granting process (Art. L. 225-177) (*Code Bouton*, p. 15).

The board of directors fixes the conditions of the stock options program; these conditions can prohibit the immediate resale of the shares or a part of them. However, the prohibition must not be longer than three years from the exercise of the options (*Code de Commerce*, Art. L225-177).

The shareholders' general meeting fixes the term within which options must be exercised (*Code de Commerce*, Art. L225-183).

The board of directors fixes the exercise price of the options, based on stock prices at the time of granting, according to the conditions determined by the shareholders' general meeting. For listed companies, the strike price can not be lower than the 80% of the average of the spot prices in the last 25 business days (Art. L. 225-177).

Stock options can not be granted before 20 market days from the payment of the dividends or from a capital increase. Furthermore, stock options of listed companies can not be granted in the following periods:

- from 10 business days before to 10 business days after the publication of the company's financial statements;
- from the date in which a price sensitive information comes to the company's bodies knowledge to 10 business days after its publication (*Code de Commerce*, Art. L225-177).

The strike price can not be modified during the stock options program.

The holding period of options – the time between the granting of the options and the sale of the shares subscribed for or purchased upon exercise of the options – is directly determined in practice by tax rules: five years minimum from the date of grant for options granted prior to April 2000, four years minimum for options granted after that date (*Code Bouton*, p. 16).

To improve further on existing practices, the *Bouton Report* (p. 15) recommends:

- rejection of discounts in the granting of options, particular for options granted to the company's corporate officers;
- discussion of the general policy governing the granting of options within the compensation committee and issuing of recommendations by this committee to the board of directors;

- granting of options at set intervals to avoid opportunistic granting of options during an exceptional drop in stock prices.

4.5 Are there any restrictions on how payments are made?

There are neither provisions nor recommendations concerning this aspect.

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

Not in the law. However, the Report of MEDEF Committee on Business Ethics recommends that “the retirement terms offered to the chairman and chief executive officer and executive directors should not extend to the retirement period the highly special benefits that were granted to him because of his exceptional responsibilities. Pension benefits should be carefully monitored by compensation committees, and their determination or review must take into account the position of the group employing the chairman and chief executive officer and executive directors. It is logical to calculate pension benefits on a pro rata basis of the length of the term of office” (“*Chairman and Chief Executive Officer and Executive Directors compensation, Report of MEDEF, Committee on Business Ethics*”, May 2003, p. 5).

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

French law requires that duration of directors’ service contract must not exceed six years (*Code de Commerce*, Art. L225-18). The second Viénot report recommends that the duration of the Directors' term of office should not exceed a maximum of four years, in order to enable the shareholders to rule upon their appointment with sufficient frequency. The annual report should specify precisely the dates of the initiation and expiry of each director's term, so as to highlight the staggering.

COB’s regulation requires a specific disclosure about directors’ service contracts (duration, qualification, number of service contracts in other companies, etc.) in the “*document de référence*” or in the prospectus (*Recommandations pour l’élaboration des documents de référence relatifs à l’exercice 2002*).

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 board of directors can award special compensation to the members of the board’s committees (*Décret* n. 67-236, Art. 93). Non-executive directors are not allowed to be assigned either receive stock options or stock grants as compensation (Article L. 225-177 al. 1^{er}, *Code Bontou*, p. 15).

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?

The board of directors or the supervisory board can fix special remuneration for particular mission given to the directors (*Code de Commerce*, Art. L225-46, L. 225-86). This special compensation should be approved by the board but the involved director can not take part to the decision. The decision should be submitted to the auditors (*Commissaires aux comptes*) which have to prepare a special report for the shareholders' general meeting. Shareholders should agree to this special remuneration on the basis of the auditors report (*Code de Commerce*, Art. from L225-38 to L225-42).