european corporate governance institute

Directors' Remuneration in Listed Companies

Ireland*

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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.
Irish law, regulation and best practices are stated as they stood at November 2007.

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.

- Companies Acts 1963-2006.
- The Irish Stock Exchange's Listing Rules are available at
http://www.ise.ie/index.asp?locID=444&docID=-1
Until recently, the Irish Stock Exchange applied the Listing Rules made by the Financial Services Authority ('FSA') in the United Kingdom with a supplement adapting the Listing Rules to Irish conditions and the Irish legal context. However, it now produces its own set of Listing Rules. These Rules tend to track the FSA's Listing Rules closely. For example in October 2007, the Irish Stock Exchange made the latest amendment to its Listing Rules to reflect the recent listing rule amendments made by the FSA. That amendment also reflected the implementation of the Transparency Directive into Irish law.
- The Combined Code on Corporate Governance (2006) is available on
http://frc.org.uk/corporate/combinedcode.cfm. This non-statutory Code sets the principles of good corporate governance for Irish listed companies applied through the Listing rules. Although the original version was published in 2000, in 2003 a second version of the Combined Code incorporating recommendations from the Higgs Report on non-executive directors and the Smith Report on audit committees was published. This version of the Code applied to reporting years ending before 31 October 2007. Following a review of the implementation of the Combined Code in 2005, a small number of changes were incorporated in an updated version of the Code published in June 2006. The updated Code applies to reporting years beginning on or after 1 November 2006.
Case law: While UK law is not the national law, the Irish courts will refer to UK case law on UK statutory provisions which are similar to Irish provisions in interpreting the law: many Irish statutes are based on UK statutes, particularly in the corporate field. The courts will also refer to the common law rules on company law as developed by the UK courts where relevant.
There is some overlap between general company law and the Listing Rules: all listed companies incorporated in Ireland must comply with general company law, as set out in the Companies Acts 1963 -2001 and with the Listing Rules. The two sets of rules are complementary but there are some overlaps.

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.

(a) Best Practices and "Comply or Explain"
The Listing Rules require companies to comply with the Principles set out in section 1 of the *Combined Code*. In relation to the specific provisions of section 1, however, companies are required to state whether they have complied throughout the accounting period with all relevant provisions and if they have not, they are required to set out:
(i) those provisions it has not complied with; (ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and (iii) the *company's* reasons for non-compliance. (para.6.8.3.7)

(b) Evidence of Compliance with Best Practice
In February 2002, the Irish Association of Investment Managers published a review of compliance by all companies listed on the ISEQ with the Combined Code. It is available at http://www.iaim.ie/default.asp?nc=8098&id=29. It concluded that Irish companies have a very high level of compliance with the Combined Code. As would be expected, it indicated that there were a number of areas where it would like to see improvements or where the basic principles underlying the Combined Code need to be fleshed out.

	Percentage of companies on ISEQ
Separate Chairman & Chief Executive	79%
A majority of NEDs on the Board	60%
A Nomination Committee	53%
Re-election of all directors every 3 years	97%
Audit Committee comprised of NEDs only	79%
Remuneration Committee comprised of NEDs only	85%
Senior Independent Director	53%

	Market Cap		
	> €1b	€1b-€100m	< €100m
Separate Chairman & Chief Executive	77%	81%	79%
A majority of NEDs on the Board	77%	42%	67%
A Nomination Committee	92%	58%	33%
Re-election of all directors every 3 years	84%	96%	82%
Audit Committee comprised of NEDs only	100%	81%	70%
Remuneration Committee comprised of NEDs only	100%	88%	76%
Senior Independent Director	69%	69%	33%

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) Institutional Structure
The Irish Stock Exchange is authorised by the Financial Regulator to carry out the activities of a recognised stock exchange. It is the competent authority for listing and produces the Listing Rules which also contains a number of requirements pursuant to the Consolidated Admissions and Reporting Directive.

(b) Reform
The Company Law Review Group, the body set up on a statutory basis to review company law and present proposals for its reform, presented in March 2007 a general scheme to bring togther the existing companies legislation into one streamlined and comprehensive Act. Pillar A of the General Scheme sets out the law as it applies to private companies and Pillar B then states how this law is applied, disapplied or varied for each other company types including public

limited companies (Part 2). Many of the provisions of Part B2 are underpinned by EU Directives – the *Second Directive* 77/91/EEC (recently amended by Directive 2006/68/EC) on maintenance of capital, the *Prospectus Directive* 2003/71/EC, the *Market Abuse Directive* 2003/6/EC and the *Transparency Directive* 2004/109/EC. In its Second Report (2004, para 76) it recommended that Model Regulation 76 Of Part I of Table A of the First Schedule to the Companies Act be imported into statute. This provides as follows "Unless the constitution otherwise provides the remuneration of the directors shall from time to time be determined by the company in general meeting and such remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or at general meetings of the company or in connection with the business of the company." This is reflected in Part A4 Head 24 of the General Scheme of the Companies Bill.

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?

(a) Companies Act 1963-2006

Unlike the UK regime, a specific remuneration report is not required under companies legislation. Companies must under general company law include basic remuneration information in the annual accounts which the Companies Act 1963 requires to be laid before the annual general meeting of the company. Section 191(1) of the Companies Act 1963 states that the accounts must disclose (a) the aggregate amount of the directors' emoluments; (b) the aggregate amount of directors' or past-directors' pensions; and (c) the aggregate amount of any compensation to directors or past-directors in respect of loss of office. The term "emoluments" include fees and percentages, any taxable expense allowances, pension contributions and the estimated money value of any other taxable benefits received by the director otherwise than in cash. It is, however, supplied on an aggregate basis only.

Section 159 of the Companies Act 1963 provides that the annual report and accounts, including the Directors' Report must be distributed to every member and debenture-holder of the company. Section 125 of the Companies Act 1963 requires the Company, once at least a year, to make a return to the registrar of companies by its "annual return date". Section 127 provides that this is a specific date in each year within 28 days of which a company must file its annual return.

(b) Listing Rules/Combined Code

Listing Rule 6.8. sets out the information to be included in the annual report and accounts. As noted above (Q1.2(a)), the annual report and accounts required of listed companies must, under Listing Rule 6.8.3.7 (a) include a statement of how it has applied the principles set out in Section 1 of the Code in a manner that would allow shareholders to evaluate how the principles have been applied; and (b) a statement as to whether or not it has complied throughout the accounting period with the Code provisions set out in Section 1 of the Combined Code. Where the company has not complied with the Code, or complied with only some of the Code's provisions, or, in the case of ongoing requirements, complied for only a part of an accounting period, it must specify the

provisions with which it has not complied, the period of time over which non-compliance continued, and give reasons for the noncompliance.
In addition, Listing Rule 6.8.3(8) provides that the annual report and accounts must include a report to the shareholders by the board which contains all the matters set out in Listing Rule 6.8.5. (see Q.2.3 below)

Listing Rule 6.8.6 requires that the auditors to review inter alia the parts of the statement required by Listing Rule 6.8.3 (7) that relate to the following provisions of the Combined Code: (a) C1.1; (b) C.2.1; and (c) C3.1 – C3.7.

Listing Rule 6.8.7 obliges the company to ensure that the auditors review the following disclosures:
(1) LR 6.8.5 (2) (amount of each element in the remuneration package & information on share options);
(2) LR 6.8.5 (3), (4) and (5) (details of long term incentive schemes for directors);
(3) LR 6.8.5 (11) (defined contribution schemes);
(4) LR 6.8.5 (12) (defined benefit schemes);

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?

(a) **Companies Act 1963-2001**

Outside of the obligation to deliver the report and accounts to the Registrar of Companies, no.

(b) Listing Rules/Combined Code
No.

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.

(a) Companies Act 1963-2006
Basic, aggregate disclosure with respect to directors' remuneration is required in the annual accounts under the Companies Act 1963. The information must be disclosed either in the accounts, or in a statement annexed to them. Under section 191(1) disclosure is required of: the aggregate amount of directors' emoluments; the aggregate amount of directors' and past directors' pensions; and the aggregate amount of any compensation paid to directors or past directors for loss of office.
"Emoluments" is broadly defined in s191(2) as covering fees, salaries, commissions, pension contributions made by the company in respect of the director, an estimate of chargeable non-cash benefits, and chargeable expenses. Emoluments include any amounts paid to or receivable by any person in respect of his services as director of the company (as well as services as director of any subsidiary or otherwise in connection with the management of the affairs of the company or any subsidiary (s191(2)). The accounts must also distinguish between emoluments paid in respect of services rendered/holding office as a director and payments made in respect of other services and offices (s191 (2)).

With respect to the pension disclosure, the disclosure required is not to include any pension paid or receivable under a pension scheme if the scheme is such that the contributions made are substantially adequate for the maintenance of the scheme (s191(3)): contributions made to such a scheme, made other than by the director, will be covered as "emoluments" (Ussher, *Company Law in Ireland* (1986) Sweet and Maxwell 349). Section 191(3) also provides that pension payments include any pension paid or receivable in respect of any services as director or past director (the scope of these activities tracking those outlined with respect to the payment of emoluments), whether to or by him, or, on his nomination or by virtue of dependence on or other connection with him, or to any other person.
With respect to compensation for loss of office, this disclosure must include (under s191(4)) any sums paid to or receivable by a director or past director by way of compensation for loss of office as director of the company or for the loss, while director of the company, or on or in connection with his ceasing to be a director of the company, of any other office in connection with the management of the company's affairs or of any office as director or otherwise in connection with the management of the affairs of any company subsidiary. The disclosure must also distinguish between compensation in respect of the office of director (of the company or a subsidiary) and compensation paid in respect of other offices. Compensation in this context includes payments made in consideration for or in connection with retirement.
Section 191 disclosure must include all sums paid by or receivable from the company, its subsidiaries, and any other person (s191(5)) and, with respect to compensation for loss of office payments only, distinguish between the sums paid by or receivable from the company, its subsidiaries, and other persons. The reference to "other person" ensures that it not relevant whether or not the company carries the cost of remuneration.
Remuneration disclosure is further amplified by the Companies Amendment Act 1986, Sch, Part IV, which covers the notes to the annual accounts and duplicates, in part, s191. The notes must describe the company's pension scheme (para 36), and the aggregate amount of directors' emoluments and compensation for loss of office (para 39(6)). Para 39(6) simply states that disclosure be made of "the aggregate amounts of the emoluments of and compensation in respect of loss of office to, directors and compensation in respect of loss to past directors." The pension disclosure required is more detailed. Under para 36(4), particulars are to be given of any pension commitments included under any provision in the company's balance sheet, and any such commitments for which such provision has not been made. Where any such commitment relates wholly or partly to pensions payable to past directors of the company, separate particulars shall be given of that commitment insofar as it relates to pensions. More generally, under para 36(5), disclosure is also to be made as to: the nature of every pension scheme operated by or on behalf of the company, including information as to whether or not each scheme is a defined benefit scheme or a defined contribution scheme; whether each such scheme is externally or internally financed; whether any pensions cost and liabilities are assessed in accordance with the advice of a professionally qualified actuary and the date of the most recent relevant actuarial evaluation; and if so, whether the valuation is made available for public inspection.
Finally, under the Companies Act 1990 s63, disclosure is required of directors' interests in company shares in the notes to the accounts or in the Directors' Report (see Q2.5(b)).

(b) Listing Rules/Combined Code Requirements for Disclosure in Annual Report and Accounts

Listing Rule 6.8.1 provides that the annual report and accounts must include inter alia:
(2) details of any small related party transaction as required by LR 8.1.10 (2)(c);

(3) details of any long-term incentive schemes as required by LR 6.4.3;
(4) details of any arrangements under which a director of the company has waived or agreed to waive any emoluments from the company or any subsidiary undertaking;
(5) where a director has agreed to waive future emoluments, details of such waiver together with those relating to emoluments which were waived during the period under review;
(9) details of any contract of significance subsisting during the period under Review to which the listed company, or one of its subsidiary undertakings, is a party and in which a director of the listed company is or was materially interested.

Listing Rule 6.8.3(1) provides that the annual report and accounts of a listed company incorporated in Ireland, must include:
a statement as at the end of the period under review showing by way of note, any change in the interests of each director of the company disclosed to the company under the provisions of section 53 (duty of director to disclose shareholdings in own company) as extended by section 64 (extension of section 53 to spouses and children) of the Companies Act 1990, together with any right to subscribe for shares in, or debentures of, the company distinguishing between beneficial and non-beneficial interests occurring between the end of the period under review and a date not more than one month prior to the date of the notice of the general meeting at which the annual accounts are to be laid before the company or, if there has been no such change, disclosure of that fact.

6.8.5 provides that the Board's report to the shareholders must contain the following:
(1) a statement of the company's policy on executive directors' remuneration;
(2) information presented in tabular form, unless inappropriate, together with explanatory notes as necessary on:

> (a) the amount of each element in the remuneration package for the period under review of each director, by name, including but not restricted to, basic salary and fees, the estimated money value of benefits in kind, annual bonuses, deferred bonuses, compensation for loss of office and payments for breach of contractor other termination payments;
> (b) the total remuneration for each director for the period under review and for the corresponding prior period;
> (c) any significant payments made to former directors during the period under review; and
> (d) information on share options for each director by name in accordance with the recommendations of the Accounting Board's Urgent Issues Task Force Abstract 10; such information to be presented in tabular form together with explanatory notes as necessary;

(3) details of any long-term incentive schemes, other than share options as required by paragraph 2 (d), including the interests of each director, by name, in the long-term incentive schemes at the start of the period under review;
(4) details of any entitlements or awards granted and commitments made to each director under any long-term incentive schemes during the period, showing which crystallize either in the same year or subsequent years;
(5) details of the monetary value and number of shares, cash payments or other benefits received by each director under any long-term incentive schemes during the period;
(6) details of the interests of each director in the long-term incentive schemes at the end of the period;
(7) an explanation and justification of any element of a director's remuneration, other than basic salary, which is pensionable;
(8) details of any directors' service contract with a notice period in excess of one year or with provisions for pre-determined compensation on termination which exceeds one year's salary and benefits in kind, giving the reasons for such notice period;
(9) details of the unexpired term of any directors' service contract of a director proposed for election or re-election at the forthcoming annual general meting, and, if any director proposed for election or re-election does not have a directors' service contract, a statement to that effect;

(10) a statement of the company's policy on the granting of options or awards under its employees' share schemes and other long-term incentive schemes, explaining and justifying any departure from that policy in the period under review and any change in the policy from the preceding year;
(11) for defined contribution schemes details of the contribution or allowance payable or made by the listed company in respect of each director during the period under review;
(12) for defined benefit schemes:

(a) details of the amount of the increase during the period under review (excluding inflation) and of the accumulated total amount at the end of the period in respect of the accrued benefit to which each director would be entitled on leaving service or is entitled having left service during the period under review;
(b) either:
(i) the transfer value (less director's contributions) of the relevant increase in accrued benefit (to be calculated in accordance with Actuarial Guidance Note GN11 but making no deduction for any under-funding) as at the end of the period; or
(ii) so much of the following information as is necessary to make a reasonable assessment of the transfer value in respect of each director:

(A) age;
(B) normal retirement age;
(C) the amount of any contributions paid or payable by the director under the terms of the scheme during the period under review;
(D) details of spouse's and dependants' benefits;
(E) early retirement rights and options;
(F) expectations of pension increases after retirement (whether guaranteed or discretionary); and
(G) discretionary benefits for which allowance is made in transfer values on leaving and any other relevant information which will significantly affect the value of the benefits.

(c) No disclosure of voluntary contributions and benefits.

Section B.2.1 of the Combined Code provides that the remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. This information may be made available on the company's web site.
Schedule C to the Combined Code includes the following in its specific requirements for disclosure (in addition to those set out in the Listing Rules) in the annual report:

- the names of the chairmen and members of the remuneration committees (A.1.2);
- the number of meetings of the board and those committees and individual attendance by directors (A.1.2);
- how performance evaluation of the board, its committees and its directors has been conducted (A.6.1);

It provides that the report should also include:

- a description of the work of the remuneration committee and including, where an executive director serves as a nonexecutive director elsewhere, whether or not the director will retain such earnings and, if so, what the remuneration is (B.1.4);

Schedule C also requires inter alia that the following information should be made available (which may be met by placing the information on a website that is maintained by or on behalf of the company):

- the terms of reference of the remuneration committee, explaining its role and the authority delegated to it by the board (B.2.1);
- the terms and conditions of appointment of non-executive directors (A.4.4) and
- where remuneration consultants are appointed, a statement of whether they have any other connection with the company (B.2.1).

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

Yes. For the disclosure required with respect to options, see Q2.5 and Q2.6.

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

(a) Companies Act 1963-2006/Listing Rules

The disclosure rules with respect to share and share option transactions arise from a combination of the disclosure required of directors for all companies under ss53-66 Companies Act 1990 as strengthened by the Company Law Enforcement Act 2001 which improves the enforcement regime) and Listing Rule 6.10.

Sections 53(1) and section 56 provide that any person who becomes a director of a company at a time when he is "interested in" shares in or debentures of the company (or a subsidiary of the company, or its holding company, or any other subsidiary of its holding company) must disclose his interests, and the number of shares or debentures, to the company by written notice. Under 53(2) such a person must also notify the company of any alteration (via: an event occurring while that person is a director in consequence of which the person ceases to be interested in the shares or debentures; that person entering into a contract to sell any such shares or debentures; the assignment by the person of a right granted by the company to subscribe for shares or debentures; and the grant to that person by another company in the group of a right to subscribe for its shares or debentures and the exercise of such rights in his interest in shares or debentures in the company (as defined previously) within five working days of the alteration. The notification must state the number or amount and class of shares involved and, under section 57 the price. The term "interest" is widely defined and sections 54 and 55 sets out what should be included and excluded. Section 64 extends section 53 to spouses and children and section 26 of the Companies Act 1990 extends it to connected body corporates. The definition of interest covers, as in the UK, almost all possible legal or equitable interests. Section 65(1) requires listed companies to notify the Stock Exchange of information supplied to them in pursuance of section 53 before the end of the day following the transaction. The Stock Exchange may publish this information.

Section 59 requires every company to keep a register for the purposes of section 53. Under section 59(3), the company is required, whenever it grants a director a right to subscribe for shares in, or debentures of, the company to enter in the register against the director's name:

- the date on which the right was granted;
- the period during which, or time at which, it is exercisable;
- the consideration (where applicable for the grant);
- the description of the shares or debentures involved, the number, and price to be paid.

Under section 59(4), disclosure is required by the company, against the name of the director on the register, whenever the right is exercised, of the number of shares or debentures in respect of which the right was exercised, the names of the persons in whose names the shares or debentures are registered, and the number held in the name of each person.

Listing Rule 6.10.1 obliges an issuer to notify a Regulatory Information Service (this includes any of the services set out in Schedule 12 of Appendix 2 of the Listing Rules and/or the Company Announcements Office of the Stock Exchange as appropriate) of the following information:

(1) any information relating to interests in securities that are, or are to be, listed which is disclosed to the issuer in accordance with section 53 as extended by section 64 of the Companies Act, 1990 or entered in the issuer's register in accordance with section 59 of that Act;
(2) information (unless notified under (1) above) relating to any interest of a connected person of a director in securities that are, or are to be, listed which, if the connected person were a director, would be required to be disclosed by him to the issuer or entered in the issuer's register as referred to in (1) above; the notification by the issuer must identify the director, the connected person and the nature of the connection between them, give the particulars specified in LR 6.10.2 and state the nature and extent of the director's interest (if any) in the transaction; and
(3) details of (unless notified under (1) or (2) above):
(a) the grant to, or acceptance by, a director or a person connected with a director of any option (whether for the call or put or both) relating to securities of the company or of any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any securities in the issuer which are or will be listed or any interest of whatsoever nature in such securities; and
(b) the acquisition, disposal, exercise or discharge of, or any dealing with, any such option, right or obligation by a director or a person connected with a director;

Listing Rule 6.10.2 provides that the aforementioned notification must contain the following information:
(1) the name of the director and, where relevant, the name of the connected person and the nature of the connection between them;
(2) the reason for the responsibility to notify;
(3) the name of the relevant issuer;
(4) a description of the securities concerned;
(5) the nature of the transaction (e.g. acquisition or disposal);
(6) the date and place of the transaction;
(7) the price and volume of the transaction;
(8) the date on which the notification was made to the issuer; and
(9) total holding following notification and total percentage holding following notification (excluding treasury shares).
Listing Rule 6.10.3 provides that the notification must be made without delay, and in any event by no later than the end of the business day following the receipt of the information by the issuer. An issuer not subject to the Companies Acts, 1963 to 2005 must notify to a Regulatory Information Service equivalent information to that required under LR 6.10.2 without delay after the issuer becomes aware of the information.

The Model Code set out in Appendix 1 to chapter 6 of the Listing Rules imposes restrictions on "dealing" in the securities of a listed company beyond those imposed by law. Its purpose is to ensure that "persons discharging managerial responsibilities and employee insiders do not abuse, and do not place themselves under suspicion of abusing, inside information that they may have or be thought to have, especially in periods leading up to an announcement of the company's results". For the purposes of the Code 'dealing' includes:
(i) any acquisition or disposal of, or agreement to acquire or dispose of any of the securities of the company;
(ii) entering into a contract (including a contract for differences) the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the price of any of the securities of the company;
(iii) the grant, acceptance, acquisition, disposal, exercise or discharge of any option (whether for the call, or put or both) to acquire or dispose of any of the securities of the company;

(iv) entering into, or terminating, assigning or novating any stock lending agreement in respect of the securities of the company;
(v) using as security, or otherwise granting a charge, lien or other encumbrance over the securities of the company;
(vi) any transaction, including a transfer for nil consideration, or the exercise of any power or discretion effecting a change of ownership of a beneficial interest in the securities of the company; or
(vii) any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any securities of the company
Listing Rule 6.2.7 provides that a listed company must require every person discharging managerial responsibilities, including directors, to comply with the Model Code and take all proper and reasonable steps to secure their compliance. Indeed, Listing Rule 6.2.8 allows companies to impose more rigorous dealing obligations than those required by the Model Code. Listing Rule 6.2.9 provides that where clearance is given to a person to deal in exceptional circumstances (pursuant to paragraph 9 of the Model Code) in a close period, the notification to a RIS required by LR 6.11 and/or Regulation 12 of the Market Abuse Regulations (managers' transactions) must also include a statement of the exceptional circumstances.

(b) Companies Act 1963-2006/Listing Rules and the Directors' Report
Section 63 of the Companies Act 1990 requires that the Directors' Report, or the notes to the company's accounts, include disclosure as to the interests of directors. In particular, under s63(1) the Report, or the notes, must state whether or not the director was interested in shares in, or debentures of, the company, in any of the company's subsidiaries or its holding company, or in any subsidiary of the company's holding company at the end of the year and, in each case, the number of shares or debentures involved. The disclosure must also state whether or not the director was, at the beginning of the year (or if he was not then a director, when he became a director) interested in shares or debentures in the company (as defined above) and, if he was, the number of shares or debentures in which he was interested.
Listing Rule 6.8.3 requires that the report and accounts include, by way of note, any change in the interests of each director of the company disclosed to the company under section 53 as extended by section 64, together with any right to subscribe for shares in, or debentures of, the company, distinguishing between beneficial and non-beneficial interests, occurring between the end of the period under review and a date not more than one month prior to the date of the notice of the general meeting at which the annual accounts are to be laid before the company or, if there has been no such change, disclosure of that fact.

2.6 What information on directors' remuneration must be included in public offer prospectuses and listing particulars?
The Prospectus (Directive 2003/71/EC) Regulations, 2005 (S. I. No. 324 of 2005), which came into operation on 1 July 2005, transposed **Directive 2003/71/EC** of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC. The Prospectus Regulations are available at:

http://www.ifsra.ie/frame_main.asp?pg=%2Findustry%2Fin%5Fmark%5Fintr%2Easp&nv=%2Findustry%2Fin_nav.asp.

The Financial Regulator has delegated certain tasks relating to the scrutiny of prospectuses to the Irish Stock Exchange. However, approval of a prospectus rests with the Financial Regulator.

Part 5 of the Prospectus Regulations set out inter alia the content of the prospectus. Regulation 20 of the Prospectus Regulations requires that the prospectus must contain the minimum information specified in chapter III of the EU Prospectus Regulation (Commission Regulation No.809/2004) which is directly applicable in Ireland. Paragraph 15.1 of Annex A refers to the amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to directors by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person. Paragraph 15.1 provides for the total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits. Paragraph 16.2 provides for information about members of the administrative, management or supervisory bodies' service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.

In addition to regulating the contents of the prospectus document, the Prospectus Regulations also impose annual reporting obligations on issuers. Part 11 of the Prospectus Regulations deal with the annual information document. This document must contain or refer to all information published or made available by the issuer to the public over the preceding 12 months in one or more Member State and in third countries in compliance with their obligations under Community acts dealing with the regulation of securities, issuers of securities and securities markets. Issuers must submit this document to the Stock Exchange within 20 working days of the publication of the issuer's annual financial statements in an agreed electronic format. These are forwarded to the Financial Regulator and published on its website.

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.)

Although a director has no right as such to remuneration for acting as a director, Article 76 of Table A (the statutory default form of Articles of Association) provides that: "The remuneration of the directors shall from time to time be determined by the company in general meeting. Such remuneration shall be deemed to accrue from day to day." An ordinary resolution of the shareholders will be required to fulfill this requirement.

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?

This is not regulated by statute. The Combined Code (B.1) provides that:

> "Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance."

The supporting Principle states:

> "The remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in

performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases."

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

Detailed and complex rules are now applied to the provision of personal loans to directors under sections 31-40 of the Companies Act 1990. In essence, under section 31, companies cannot make a loan or quasi-loan to a director, enter into a credit transaction as creditor for such a director, enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such a director.. The prohibition extends to the company's holding company and covers any transactions of a similar nature with persons "connected" with the director. Exemptions are set out which cover inter alia transactions below a certain value, intra-group loans, directors' expenses, business transactions on a normal basis and advances on directors' expenses. Furthermore a company may enter into a guarantee or provide security for a loan, quasi-loan or credit transaction where it is authorized to do so by a special resolution passed not more than 12 months earlier or a written resolution under section 141(8) of the Companies Act 1963. A statutory declaration of solvency must accompany the notice of the meeting or be appended to the resolution. Provision is made for an application to court by aggrieved shareholders holding at least 10% in nominal value of the issued share capital.

Both civil remedies (section 38) and criminal sanctions (section 40) are provided for breach of section 31. The latter applies to an officer of a relevant company who authorises or permits the company to enter into a prohibited transaction, knowing, or having reasonable cause to believe the company was breaching s31, is guilty of an offence. Under section 38(1) the transaction is voidable by the company, unless restitution is impossible, a third party has acquired an interest, or the company has been indemnified. Section 38(2) provides that the director concerned and any director who authorised the transaction is liable to account to the company for any gain made directly or indirectly from the transaction, and to indemnify the company for any loss or damage. Section 39 also provides for personal liability for company debts where an insolvent company is being wound up and the court considers that a transaction prohibited by section 32 "contributed materially" to its insolvency or has substantially impeded the orderly winding up of the company.

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.)

(a) Procedures

(i) Company Law

As part of the company law rule that directors' may not make a profit from their activities as directors unless this has been expressly sanctioned by the company (the secret profit rule), the director of a company does not have a right to remuneration for services performed for the company, unless its payment has been provided for in the company's constitutional documents or approved by its members (*Hutton v West Cork Railway Co* (1883) 23 ChD 654).

As noted above a director has no right as such to remuneration for acting as a director. Article 76 merely provides for the determination of the remuneration by the company in

general meeting. (Only Article 110 allows the board of directors to set remuneration with respect to a particular executive function and that is in the case of the managing director. In his or her case they may set such terms of remuneration “as they think fit”.) Where the articles of association do not provide how remuneration is to be determined, the court will not usually make a determination of its own *(Guinness plc v Saunders* [1990] 2 AC 663). Alternatively, where a company has adopted Article 76 and where the members do not determine remuneration, the directors are not entitled to receive any remuneration. In certain circumstances the courts may grant a *quantam meruit* payment on the basis of an implied obligation to pay arising from the performance and acceptance of services *(Craven-Elis v Canons Ltd* [1936] 2 KB 403).

A decision by shareholders in general meeting on remuneration is normally regarded, via an amendment of Article 53, as “ordinary business”. Under section 141(8) of the Companies Act 1963, a resolution in writing signed by all the members for the time being entitled to attend and vote on the resolution is valid and effective as if it had been passed at a general meeting. In the English case of *Re Duomatic* [1969] 2 Ch 365 however, directors paid themselves remuneration without obtaining the formal approval of the general meeting, as required by the articles. For one of the years in question, two directors, who were also the only shareholders with voting rights, signed the accounts which showed the remuneration. This was regarded by the courts as a resolution in general meeting, but it is not clear whether this would suffice in Ireland, given s141 (8). In a second year, the accounts were neither drawn up nor approved, but all the voting shareholders informally agreed on remuneration for a director. This was found to be sufficient authorisation but, again, the absence of a formal resolution suggests that it would not be sufficient in Ireland.

It should be noted that excessive remuneration, where Table A is adopted, cannot be struck down as ultra vires the company *(Re Halt Garage 1964 Ltd* [1982] 3 All ER 1016). With respect to the power of the general meeting in this regard (as under art 76), it has been stated that: remuneration “whether it be mean or generous, must be a matter of management for the company to determine in accordance with its constitution which expressly authorises payment for directors’ services. Shareholders are required to be honest but…there is not a requirement that they must be wise and it is not for the court to manage the company” *(Re Halt Garage,* 1039). Similarly, with respect to the power of the Board of Directors in this area, the court found in *Guinness v Saunders [1990] 2 AC 663* that:

> “the shareholders…run the risk that the board may be too generous to an individual director at the expense of the shareholders but the shareholders have…..chosen to run this risk and can protect themselves by the number, quality and impartiality of the members of the board who will consider whether an individual director deserves special reward”.

(ii) Listing Rules/Combined Code

The Combined Code provides that “

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.”

The Supporting Principle provides:

"The remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.
The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters."

(b) Approval
There is no statutory requirement for a directors' remuneration report to be laid before shareholders.
As noted above, Listing Rule 6.8.3.8 requires the annual report to contain a report to the shareholders by the board which contains all the matters set out in Listing Rule 6.8.5. The annual report must be laid before the annual general meeting pursuant to section 148 of the Companies Act 1963.

The Combined Code (B.2.4) provides that shareholders should be invited specifically to approve all new long-term incentive schemes (as defined in the Listing Rules) and significant changes to existing schemes, save in the circumstances permitted by the Listing Rules.

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

Yes under the Combined Code.

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 Combined Code (B.2.1) recommends that the board should establish a remuneration committee of at least three, or in the case of smaller companies, two, independent non-executive directors. In addition the company chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as chairman. The Code (A.3.1) refers to "independent in character and judgement" and involves a consideration as to "whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement".

(ii) the committee's competences and which company body it reports to
The Combined Code (B.2.2) provides that the remuneration committee should have delegated responsibility for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. Furthermore the Code (B.2.3) recommends that the board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors within the limits

set in the Articles of Association. Where permitted by the Articles, the board may however delegate this responsibility to a committee, which might include the chief executive.

(iii) how the committee operates

Principle B.1 of the Combined Code provides that levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but that the company should avoid paying more than is necessary for this purpose. The supporting Principle notes that the remuneration committee should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in performance. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when determining annual salary increases.

The Code also notes that the performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels. It notes that the Committee is responsible for designing schemes of performance-related remuneration, the remuneration committee should follow the provisions in Schedule A to the Code (B.1.1).

The Combined Code (B.2.1) provides that the remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. Supporting Principle B.2 provides that the remuneration committee should consult the chairman and/or chief executive about their proposals relating to the remuneration of other executive directors.

(iv) 4.3 Which types of remuneration are permitted?

As for UK, there are a wide range including benefits in kind, bonuses, share options, stock grants, termination payments and pension payments. Tax free payments are prohibited pursuant to section 185 of the Companies Act 1963. Payments to directors for loss of office or in connection with the transfer of property are strictly regulated pursuant to sections 186-189 of the Companies Act 1963. The power of the Board of Directors to grant pensions is covered by Table A, article 90. In addition, Schedule A of the Combined Code (paragraph 6) provides that only basic pay should be pensionable.

In answering, please consider each of the following:

bonuses

Schedule A of the Combined Code deals with "Provisions on the design of performance related remuneration". Paragraph 1 provides that the remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, it provides that "performance conditions should be relevant, stretching and designed to enhance shareholder value. Upper limits should be set and disclosed. There may be a case for part payment in shares to be held for a significant period."

stock options, including discounted stock options

The Combined Code (B.1.3) provides that remuneration for nonexecutive directors should not include share options. If, exceptionally, options are granted, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least one year after the non-executive director leaves the board. Holding of share options could be

relevant to the determination of a non-executive director's independence (as set out in provision A.3.1).

Schedule A of the Combined Code states as follows:

> "2. The remuneration committee should consider whether the directors should be eligible for benefits under long-term incentive schemes. Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable, in less than three years. Directors should be encouraged to hold their shares for a further period after vesting or exercise, subject to the need to finance any costs of acquisition and associated tax liabilities.
> 3. Any new long-term incentive schemes which are proposed should be approved by shareholders and should preferably replace any existing schemes or at least form part of a well considered overall plan, incorporating existing schemes. The total rewards potentially available should not be excessive.
> 4. Payouts or grants under all incentive schemes, including new grants under existing share option schemes, should be subject to challenging performance criteria reflecting the company's objectives. Consideration should be given to criteria which reflect the company's performance relative to a group of comparator companies in some key variables such as total shareholder return.
> 5. Grants under executive share option and other long-term incentive schemes should normally be phased rather than awarded in one large block."

Listing Rule 6.4.1 provides that where a listed company has (a) an employees' share scheme if the scheme involves or may involve the issue of new shares or the transfer of treasury shares; and (b) a long-term incentive scheme in which one or more directors of the listed company is eligible to participate, the listed company must ensure that the schemes are approved by an ordinary resolution of the shareholders of the listed company in general meeting before being adopted. Exceptions are set out in Listing Rule 6.4.2.
Listing Rule 6.4.4 deals with the granting to a director or employee of the listed company or of any subsidiary undertaking of the listed company of an option to subscribe, warrant to subscribe or other similar right to subscribe for shares in the capital of the listed company or any of its subsidiary undertakings. It provides that the company must not, without the prior approval by an ordinary resolution of its shareholders, grant the option, warrant or other right if the price per share payable on the exercise of the option, warrant or other similar right to subscribe is discounted. Exceptions are set out in Listing Rule 6.4.5.

stock grants

See Q.4.3(b).

profit sharing -

(e) benefits in kind -

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

See Q.4.3(b).
Listing Rule 6.4.2 provides that an arrangement where the only participant is a *director* of the *listed company* (or an individual whose appointment as a *director* of the *listed company* is being contemplated) and the arrangement is established specifically to facilitate, in unusual circumstances, the recruitment or retention of the relevant individual, shareholder approval will not be required. However, Listing Rule 6.4.3 provides that the following information must be disclosed in the first annual report published by the *listed company* after the date on which the relevant individual becomes eligible to participate in the arrangement:
(1) all of the information prescribed in *LR* 10.8.11;
(2) the name of the sole participant;
(3) the date on which the participant first became eligible to participate in the arrangement;
(4) explanation of why the circumstances in which the arrangement was established were unusual;
(5) the conditions to be satisfied under the terms of the arrangement; and
(6) the maximum award(s) under the terms of the arrangement or, if there is no maximum, the basis on which awards will be determined.

Listing Rule 10.8.11 provides that c*irculars* to shareholders about the approval of an *employees' share scheme* or a *long-term incentive scheme* must:
(1) include either the full text of the scheme or a description of its principal terms;
(2) include, if *directors* of the *listed company* are trustees of the scheme, or have a direct or indirect interest in the trustees, details of the trusteeship or interest;
(3) state that the provisions (if any) relating to:
(a) the persons to whom, or for whom, *securities*, cash or other benefits are provided under the scheme (the "participants");
(b) limitations on the number or amount of the *securities*, cash or other benefits subject to the scheme;
(c) the maximum entitlement for any one participant; and
(d) the basis for determining a participant's entitlement to, and the terms of, *securities*, cash or other benefit to be provided and for the adjustment thereof (if any) if there is a capitalisation issue, *rights issue* or *open offer*, subdivision or consolidation of *shares* or reduction of capital or any other variation of capital, cannot be altered to the advantage of participants without the prior approval of shareholders in general meeting (except for minor amendments to benefit the administration of the scheme, to take account of a change in legislation or to obtain or maintain favourable tax, exchange control or regulatory treatment for participants in the scheme or for the *company* operating the scheme or for members of its group);
(4) state whether benefits under the scheme will be pensionable and, if so, the reasons for this; and
(5) if the scheme is not circulated to shareholders, include a statement that it will be available for inspection:
(a) from the date of sending of the *circular* until the close of the relevant general meeting, at a place in or near Dublin or such other place as the Irish Stock Exchange may determine; and
(b) at the place of the general meeting for at least 15 minutes before and during the meeting."
Listing Rule 10.8.12 provides that the resolution contained in the notice of meeting accompanying the *circular* must refer either to the scheme itself (if circulated to shareholders); or the summary of its principal terms included in the *circular*.

Listing Rule 10.8.13 provides that the resolution approving the adoption of an *employees' share scheme* or *long-term incentive scheme* may authorise the *directors* to establish further schemes based on any scheme which has previously been approved by shareholders but modified to
take account of local tax, exchange control or securities laws in overseas territories, provided that any *shares* made available under such further schemes are treated as counting against any limits on individual or overall participation in the main scheme.

Listing Rule 10.8.14 deals with amendments to employees' share schemes. It provides that a circular to shareholders about proposed amendments to an *employees' share scheme* or a *long-term incentive scheme* must include an explanation of the effect of the proposed amendments and the full terms of the proposed amendments, or a statement that the full text of the scheme as amended will be available for inspection.

Listing Rules 6.4.4 and 10.8 .15 deal with discounted option agreements Rule 6.4.4 (2) prohibits, without the prior approval by an ordinary resolution of the shareholders of the *listed company* in general meeting, the granting to a *director* or *employee* of the *listed company* or of any *subsidiary undertaking* of the *listed company* of an option to subscribe, warrant to subscribe or other similar right to subscribe for *shares* in the capital of the *listed company* or any of its *subsidiary undertakings* if the price per *share* payable on the exercise of the option, warrant or other similar right to subscribe is less than whichever of the following is used to calculate the exercise price:
(a) the market value of the *share* on the date when the exercise price is determined;
(b) the market value of the *share* on the *business day* before that date; or
(c) the average of the market values for a number of dealing days within a period not exceeding 30 days immediately before that date.
Exceptions to the prohibition set out in Listing Rule 6.4.5 *include grants* (1) under an *employees' share scheme* if participation is offered on similar terms to all or substantially all *employees* of the *listed company* or any of its *subsidiary undertakings* whose *employees* are entitled to participate in the scheme; or (2) following a take-over or reconstruction, in replacement for and on comparable terms with options to subscribe, warrants to subscribe or other similar rights to subscribe held immediately before the takeover or reconstruction for *shares* in either a *company* of which the *listed company* thereby obtains control or in any of that *company's subsidiary undertakings*. Listing Rule 10.8 .15 provides that if shareholders' approval is required by *Listing Rule* 6.4.4, the *circular* to shareholders must include details of the persons to whom the *options*, *warrants* or rights are to be granted; and a summary of the principal terms of the *options*, *warrants* or rights.

4.5 Are there any restrictions on how payments are made?

As in the UK, it is not lawful for a company to pay a director remuneration free of income tax, or otherwise calculated by reference to or varying with the amount of his income tax, or to or with any rate of income tax (Companies Act 1963 s185). Companies are not, therefore, permitted to vary a director's remuneration to track changes in income tax levels.

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

(a) Companies Act 1963-2006

Article 90 of Table A provides that the directors on behalf of the company may pay a gratuity or pension or allowance on retirement to any director who has held any other salaried office or place of profit with the company and may contribute to any fund and pay premiums for the purchase or provision of any such benefit. Article 90 does not require the approval of the shareholders in the general meeting for this payment.

However section 186 of the Companies Act 1963 provides that it is not lawful for a company to make to a director of the company any payment by way of compensation for loss of office, or as consideration for or in connection with his retirement from office, without particulars of the proposed payment (including its amount) being disclosed to members of the company and the proposal being approved by the company. A similar

provision applies under section 187 to payments made in connection with the transfer of the whole or any part of the undertaking or property of the company to compensate a director for loss of office or as consideration for or in connection with his retirement. In such a case, shareholder approval is required for such a payment. Takeovers are addressed by section 188(1) which provides that shareholder approval is required for payments made as compensation for loss of office or as a consideration for or in connection with his retirement from office in connection with a "transfer" of all or any of the company's shares, as defined in section 188(1). Such a transfer includes a transfer resulting from: (a) an offer made to the general body of shareholders; or (b) an offer made by or on behalf of some other body corporate, with a view to the company becoming its subsidiary or a subsidiary of its holding company; or (c) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise or control the exercise of not less than one third of the voting power at any general meeting of the company; or (d) any other offer which is conditional on acceptance to a given extent. Under section 188(1), the director is subject to a duty to take all reasonable steps to secure that information relating to the payment is included with any notice of the offer sent to shareholders. Section 189(3) provide that the requirements in sections 186-188 do not apply, however, to any bona fide payments by way of damages for breach of contract or by way of pension for past services. As section 186 thus applies only to voluntary payments, controversially, the section does not apply to payments which the company is contractually bound to make. Thus, in *Taupo Totara Timber Co. Ltd v. Rowe,* [1987] AC 537, the contract of employment of a managing director which allowed him to terminate his contract in the event of a takeover of the company and to claim a lump sum payment was found to escape the section's protection of shareholder approval.

Section 182 of the Companies Act 1963 governs the removal of directors by shareholders. Under section 182(7), the shareholders' power of removal cannot deprive a director of a claim for damages in respect of the termination. The Irish Supreme Court confirmed in *Carvil v Irish Industrial Bank Ltd* [1968] IR 325 that dismissal under section 182 was without prejudice to any rights the director may have had to damages for breach of contract of employment. The terms of the director's service contract may provide a basis for such a claim. Where these terms are set by the directors, if the company's Articles of Association so provide, directors can entrench their position and make their removal potentially financially onerous for the company. The five year limit on the term of directors' service contracts (without shareholder approval) (see Q4.7), acts as a restriction, however, on the quantum of damages payable.

Section 157 requires a Directors Report to be annexed to the balance sheet. As a result of Article 10 of the Takeovers Directive 2004/25 implemented into Irish law by Regulation 21 of the European Communities (Takeover Bids)(Directive 2004/25/EC) Regulations 2006, the directors report must contain details of significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company and also agreements providing for termination payments if their retire, are made redundant or if their employment ceases because of a takeover bid.

(b) **Listing Rules/Combined Code**

As noted above (Q2.1 and 2.3), termination payments must be disclosed in the annual report and accounts. Paragraph B.1.5 of the Combined Code provides that the remuneration committee should carefully consider what compensation commitments (including pension

contributions and all other elements) their directors' terms of appointment would entail in the event of early termination. The aim should be to avoid rewarding poor performance. It advises that the committee should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. Paragraph 7 of Appendix A to the Combined Codes states that the remuneration committee should consider the pension consequences and associated costs to the company of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.

(c) Listing Particulars/Prospectuses

See Q.2.6 above.

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

(a) Companies Act 1963-2006

Directors' contracts of employment of more than five years which contain a term providing that during its term the contract cannot be terminated by the company or can only be terminated in specified circumstances, must receive prior approval from the general meeting via a resolution (Companies Act 1990 section 28). Approval must be given on a case-by-case basis: the board may not be given a general consent from the shareholders to appoint directors beyond five years. Approval must be received before the contract is made ***(Atlas Wright (Europe) Ltd v Wright*** [1999] BCC 163). If approval is sought, a memorandum setting out the proposed agreement must be made available for inspection by company members not less than 15 days before the meeting and at the meeting itself (section 28(4)). Any such term is void unless approval is received and the appointment can then be terminated by the company giving reasonable notice (section 28(5)).

Service contracts (i.e, contracts covering services as an employee, such as, as a managing director, but not contracts for services, such as contracts covering service as a director) for each director must be made available for inspection by the members of the company (Companies Act 1990 section 50) in an "appropriate place", such as the company's registered office, the place where the register of members' is kept, or its principal place of business (section 50(3)). All copies or memoranda must be kept in the same place and the company must notify the Registrar of Companies where the contracts are kept (section 50(4)). Where the contract is not in writing, a memorandum of its terms must be made available. The copies and memorandum must be open to inspection to members of the company during business hours without charge(section 50(6)).

(b) **Listing Rules/Combined Code**

Listing Rule 6.8.8(8) provides that the shareholders report should contain details of any *directors'* service contract with a notice period in excess of one year or with provisions for pre-determined compensation on termination which exceeds one year's salary and benefits in kind, giving the reasons for such notice period. Listing Rule 6.8.8(9) provides that it should also include details of the unexpired term of any *directors'* service contract of a *director* proposed for election or re-election at the forthcoming annual general meeting, and, if any *director* proposed for election or re-election does not have a *directors'* service contract, a statement to that effect.

Paragraph B.1.6 of the Combined Code provides that notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, the Code advises that such periods should reduce to one year or less after the initial period.

(c) **Listing Particulars/Prospectuses**

See Q.2.6 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?

The board itself, or the shareholders if required by the articles of association, determines the remuneration of non-executive directors. Paragraph B.2.3 of the Combined Code provides that the board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors within the limits set in the Articles of Association. Where permitted by the Articles, the Code advises that the board may however delegate this responsibility to a committee, which might include the chief executive.

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 statutory form of Articles of Association (Table A) provides in article 87 that: "Any director may act by himself or his firm in a professional capacity for the company, and he or his firm shall be entitled to remuneration for professional services as if he were not a director."