european corporate governance institute

Directors' Remuneration in Listed Companies

ITALY*

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

Respondent:

Name **Andrea ZANONI**

E-mail andrea.zanoni@cedif.org

Company/Institution **Centre for Law and Finance, University of Genoa**

Postal Address **Via Balbi 22, 16100 Genoa, Italy**

Phone **+39 0102099894**

Fax **+39 0102099890**

Reviewer:

Name **Guido FERRARINI**

E-mail guido.ferrarini@cedif.org

Company/Institution **Director, Centre for Law and Finance, University of Genoa**

Postal Address **Via D'Annunzio 2/57, 16100 Genoa, Italy**

Phone **+39 0105531814**

Fax **+39 0105536238**

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

Questionnaire

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

1. General

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

- Civil Code (as modified by Legislative Decree 6 of 17 January 2003, which will enter into force on 1 January 2004, available on www.giustizia.it)
- Legislative Decree 58 of 24 February 1998 (Consolidated Law on Financial Intermediation), available on www.consob.it and www.ecgi.org
- Consob Regulation 11971 of 14 May 1999 implementing the provisions on issuers contained in Legislative Decree 58 of 24 February 1998, available on www.consob.it
- Consob Communication 11508 of 15 February 2000, available on www.consob.it
- Rules of the Markets organised and managed by the Italian Exchange, adopted by the ordinary Shareholders' Meeting of Borsa Italiana S.p.A held on 29 April 2002 and approved by Consob in Resolution 13655 of 9 July 2002, available on www.borsaitalia.it (hereafter Markets Rules)
- Instructions accompanying the Rules of the Markets organised and managed by the Italian Exchange, available on www.borsaitalia.it (hereafter Markets Instructions)
- Rules of the Nuovo Mercato organised and managed by Borsa Italiana, available on www.borsaitalia.it (hereafter Nuovo Mercato Rules)
- Instructions accompaying the Rules of the Nuovo Mercato organised and managed by Borsa Italiana, available on www.borsaitalia.it (hereafter Nuovo Mercato Instructions)
- Corporate Governance Code, adopted by the Committee for the Corporate Governance of Listed Companies in October 1999 as amended in July 2002, available on www.borsaitalia.it and www.ecgi.org
- Guidelines for the preparation of the report on Corporate Governance, available on www.borsaitalia.it (Corporate Governance Code Guidelines)

Most of the rules on executive directors' remuneration apply only to domestically-incorporated companies.

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.

The best practices are described in the Corporate Governance Code. The Code does not give rise to legal obligations. However, the Markets and Nuovo Mercato Rules include a "comply or explain" principle; in fact, listed companies are required to disclose every year their system of

corporate governance and their compliance with the Corporate Governance Code; in case of non or partial compliance of these recommendations, an explanation is required.
Such information is included in a special report which is annexed to the documents for the annual general meeting available to the shareholders and sent to Borsa Italiana, which makes it available to the public. All reports are available at www.borsaitalia.it (Markets Instructions IA.2.12; Nuovo Mercato Instructions IA.2.13).

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.

The Corporate Governance Code was adopted by the Committee for the Corporate Governance of the Listed Companies, made up of 21 members from industry, banks and institutional investors, chaired by Prof. Stefano Preda, at that time president of Borsa Italiana and assisted by 3 academic experts and a secretary.

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?

Companies are not required to prepare a remuneration report. However, the Corporate Governance Code Guidelines recommends including in the Corporate Governance report summary information on the remuneration system adopted, specifying whether the remuneration paid to executive directors and senior managers is linked to a significant extent to the company's results or the achievement of specific objectives. Analogous information should also be provided on stock option plans where these are envisaged.

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?

The Corporate Governance report (including information on remuneration, see 2.1 above) is sent to Borsa Italiana (see 1.2 above).

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 companies must indicate in the notes to the accounts the remuneration paid to each director, member of the board of auditors and general manager (Consob Regulation 11971/1999 art. 78).
Such information is to be presented in tabular form and contains: fees, including those fixed by the shareholders' ordinary meeting, contingent profit sharing, attendance money, and flat expenses refunds; non-monetary benefits, including fringe benefits and insurance policies; bonuses and others rewards (stock options must not be enclosed here); other fees, including

those received from subsidiaries, salaries, and retirement bonuses (Consob Regulation 11971/1999 Annex 3C Scheme 1).
The companies must indicate in the notes to the accounts details about stock options and stock grants of each director and general manager by name (Consob Regulation 11971/1999 art. 78).
Such information is to be presented in tabular form and contain: options held at the beginning of the period under review; options granted during the period under review; options exercised during the period under review, together with the spot price at the moment of the exercise; options expired in the period under review; options held at the end of the period under review.
A description is required of the major elements of the plans in order to provide a full disclosure on the principles and aims characterising them. The disclosure requirements also apply to directors and general managers employed by the company. The stock grants are to be accounted as options vested and immediately exercised with strike price equal to zero (Consob Regulation 11971/1999 Annex 3C Scheme 2).
Consob recommends that the companies indicate in the management report information concerning the adopted stock option plans, including, but not restricted to, the reasons of the operation, a short description of the plan, the amount of shares involved, the offerees, the terms and the conditions of granting and exercise; and, if the plan is particularly important, the course of it with the indication of the options held and vested at the end and beginning of the period under review, granted, exercised and expired during the period, together with the strike prices and the spot prices (Consob Communication 11508/2000).

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

The companies must offer timely disclosure of the stock option (or stock grant) plans.
A stock option plan can be executed by means of several operations (i.e. increase of capital stock with exclusion of the pre-emption right, sale of own shares or sale of shares of controlling companies or of subsidiaries, see 4.4). As a matter of practice, the shareholders' meeting usually determines the general terms of the stock option plan and gives power to the board to execute it. Where a resolution by the shareholders' meeting is required, a directors' report on the relevant operations must be available to the public at the registered office of the company and at the stock exchange company at least fifteen days before the shareholders' meeting. Consob recommends that the report specify the reasons for the transaction, the offerees, the price of the issue, the specific conditions of the plan, and the amount of the increase, enclosing the plan, where available, in the report (Consob Regulation 11971/1999 artt. 66, 72, 73, Annex 3A Schemes 2-4; Consob Communication 11508/2000).
In any case, where a resolution by the board of directors is adopted, either as execution of the stock option plan approved by shareholders' meeting or as independent (autonomous) decision (i.e. sale of shares of controlling companies or of subsidiaries), Consob recommends disclosure of the resolution and full details of the operation approved, as a significant fact, by issuing a press release to the stock exchange company, which shall immediately make it available to the public, and to at least two news agencies. The press release shall be simultaneously sent to Consob (Consob Communication 11508/2000).

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

According to Markets Rules each company must adopt a code of dealings by insiders. This code is binding and gives rise to legal obligations in order to comply with the disclosure requirements in case of operations carried by or on behalf of the directors, the auditors, the general managers of the company, and any persons with access to, under the position in the company or in its major subsidiaries, such information on events as to determine significant variations on the

financial and economic prospective of the company and of the group and that, if made public, would be likely to have a significant effect on the price of the listed financial instruments (henceforth termed relevant persons).
The company must identify the relevant persons and the person in charge of the receipt, management and diffusion of the information to the market, specify the conduct and disclosure requirements, and set out the terms and the conditions of the transmission of the information to the company.
The Code or the board of directors, where permitted by the latter, can prohibit or limit in specific periods of the year the dealings of the relevant persons and prescribe a mandatory disclosure for the exercise of stock options and options rights (Markets Rules art. 2.6.3; Nuovo Mercato Rules art. 2.6.3).
Companies must inform the market, in accordance with the filing model available on the NIS (Network Information System), about all operations executed by the relevant persons and communicated to the company on: listed financial instruments issued by the company or its subsidiaries, excluding non convertible bonds; financial instruments, listed or not, vesting the right to underwrite, purchase or sell the above-mentioned instruments; derivatives and covered warrants on the underlying instruments.
If the total amount of the operations for each relevant person is under 50000€ in the quarter, there are no disclosure requirements to comply with; if the total amount of the operations is between 50000€ and 250000€, the company must inform the market by the tenth business day following the end of the quarter; if the total amount of the operations exceeds 250000€, the company must inform the market so far as such information is known to it, without delay. The companies can choose whether the dealings on stock options are to be computed in the amount of the operations. If so, companies must indicate the dealings concerning stock options.
Companies must inform the market promptly regarding adoption of the dealings' code, the decided timing of the disclosure, if different from that required under law, and the eventual close period; they are also to send the stock exchange company of the market a copy of the code (Markets Rules art. 2.6.4; Nuovo Mercato Rules art. 2.6.4; Markets Instructions art. IA.2.13.1; Nuovo Mercato Instructions art. IA.2.14.1).

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

The contents of the public offer prospectus are the same as those applicable to the admission to listing prospectus. The prospectus must contain:

- the total amount of remuneration under any kind or any form granted to each member of the board of directors and board of auditors (*collegio sindacale*) and to each general manager during the last financial year, distinguishing the sum paid by the company from the sum paid by its subsidiaries;
- the amount and the type of financial instruments, including the stock options granted, of the company and its subsidiaries held by each member of the board of directors and board of auditors (*collegio sindacale*) and by each general manager, or by connected persons; any options on the above-mentioned instruments, distinguishing for each person the instruments held at the beginning of the financial year, the instruments purchased and sold during the year, the instruments held at the end of the year;
- all relevant particulars regarding the nature and extent of any interests of each member of the board of directors and the board of auditors (*collegio sindacale*) and by each general manager of the issuer in transactions which are or were unusual in their nature or conditions or significant to the business of the group, and which were effected by the issuer during the current or immediately preceding financial year, or during an earlier financial year and remain in any respect outstanding or unperformed;
- any interests of the managers of the company in any member of the group;

- the total of any outstanding loans granted by any member of the group to the members of the board of directors and the board of auditors (*collegio sindacale*) and to the general managers and also of any guarantees provided by any member of the group for their benefit (Consob Regulation 11971/1999 art. 4, Annex 1B Schemes 1-2).

3. Remuneration of The Board of Directors

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

The shareholders' ordinary meeting fixes the remuneration of the members of the board of directors, if not determined in the articles of incorporation (Civil Code artt. 2364, 2389).
The remuneration of those directors who are appointed to particular positions in accordance with the articles of association is fixed by the board of directors, after consultation with the board of auditors (Civil Code art. 2389). This applies, in particular, to executives directors, whose remuneration is therefore fixed by the board.
New Italian Corporate Law (effective from 1 January 2004)
The reform (Legislative Decree 6 of 17 January 2003, Riforma organica della disciplina delle società di capitali e delle società cooperative) provides three corporate governance systems from which the companies are allowed to choose. The first is the traditional Italian system, made up of a board of directors and a board of auditors (collegio sindacale). The second is a two-tier system, consisting of a management board and a supervisory board, along the German model. The third is a one-tier system of Anglo-Saxon inspiration, consisting of a unitary board and an audit committee.
Traditional system
The provisions are similar to those already in force (Civil Code new artt. 2364, 2389, 2402).
Two-tier system
In companies with a supervisory board, the shareholders' ordinary meeting fixes the remuneration of the members of the supervisory board, if not set out in the articles of association (Civil Code new artt. 2364-bis).
One-tier system
The remuneration of the members of the board of directors is fixed by the shareholders' ordinary meeting (Civil Code new artt. combined 2389 and 2409-noviesdecies).
There are no rules concerning the remuneration of the members of the audit committee. However, in practice their remuneration is fixed by the shareholders' meeting. In fact, the art. 223-septies of the implementing provisions of the Civil Code refer to the provisions regulating the traditional system where no rules are provided for the one- or two-tier system (Civil Code art. 2402 is not quoted in art. 2409-noviesdecies).

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?

In practice, it is standard for directors' remuneration to be adopted by shareholders' meeting, which may either directly fix the amount for each director or a total amount to be distributed by the board of directors.
The board of directors shall allocate, where the shareholders' meeting has not already done so, the total amount to which the members of the board and of the executive committee are entitled (Corporate Governance Code art. 1.2).
The shareholders' ordinary meeting can determine a ceiling to the total remuneration of the directors, including those who are appointed to particular positions (i.e. executive directors), where permitted by the articles of association (Civil Code new art. 2389).

Various types of remuneration are permitted either for the executive or the non-executives directors (see 4.3).

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

Yes, they are allowed, but were forbidden until 2001 (Civil Code, deleted art. 2624).
However, a special regime applies to banks under art. 136 of Consolidated Law on Banking. In particular, who is in charge of management, supervision or control of a bank can not contract obligation (take on debt) of any kind or trade, neither directly nor indirectly, with the bank, unless the operation is approved by all the members of the board of directors and board of auditors. Regular provisions as being under obligation to abstain apply.
The same provisions apply to any member of the banking group but in that case an approval by the holding (parent company) is required (Legislative Decree 385 of 1 September 1993).

4. Executive Directors' Remuneration

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

The board of directors shall determine, after examining the proposal of the remuneration committee and consulting the board of auditors, the remuneration of the managing directors (and of those directors who are appointed to particular positions within the company) and, where the shareholders' meeting has not already done so, allocate the total amount to which the members of the board and of the executive committee are entitled (Corporate Governance Code art. 1.2).
The remuneration of the members of the management board is fixed by the supervisory board or, where permitted by the articles of association, by the shareholders' meeting (Civil Code new article 2409-terdecies).
The Corporate Governance Code does not yet cover the one-tier and two-tier systems adopted by the Reform.

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

Yes, the board is recommended to create a remuneration committee (Corporate Governance Code art. 8.1).

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 Corporate Governance Code provides that the majority of the remuneration committee's members are non-executive directors. Therefore, also executive directors can be members of the committee. However, they will abstain from voting on resolutions concerning their own remuneration. As a matter of practice, in some

companies most of the remuneration committee's members are independent[1], in the sense that they have no material relationships with the company which may influence their autonomous judgement (Corporate Governance Code artt. 3.1, 8.1).

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

The committee submits proposals to the board for the remuneration of the managing directors and of those directors who are appointed to particular positions and for the criteria to be used in determining the remuneration of the company's senior management (Corporate Governance Code art. 8.1).

(iii) how the committee operates

The committee may employ external consultants at the company's expense (Corporate Governance Code art. 8.1).

4.3 Which types of remuneration are permitted?

In answering, please consider each of the following:

(a) bonuses

They are permitted, as also shown by the fact that the required disclosure on directors' remuneration must include also bonuses (Consob Regulation 11971/1999, Annex 3C, Scheme 1).

(b) stock options, including discounted stock options

Stock option or equity based remuneration plans are recommended for listed companies. And, in determining the total remuneration payable to the managing directors, the board of directors of these companies shall provide for a part to be linked to the company's profitability and, possibly, to the achievement of specific objectives laid down in advance by the board of directors itself (Corporate Governance Code artt. 8.1,8.2).

The directors' remuneration can consist of, totally or partially, options on shares to be issued (Civil Code new art. 2389).

Admission to listing in the Star sector of the Italian Stock Exchange is reserved to issuers with high-profile corporate governance and disclosure systems. To gain admission, companies seeking listing have to provide that a significant extent of the remuneration of the executive directors and senior managers be linked to the achievement of individual targets laid down in advance and/or the company's profitability, *inter alia* by means of stock options or profit sharing (Markets Rules art. 2.2.3).

(c) stock grants

Stock grants are expressly permitted only to employees (Civil Code art. 2349).
They are allowed to executive directors if they are also employees.

(d) profit sharing

Profit sharing is expressly permitted (Civil Code art. 2389).

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[1] A director is independent if he has, or has recently had, no direct or indirect business relationships, also on behalf of third parties, with the company, its subsidiaries, the executive directors or the shareholder or group of shareholders who controls the company of a significance able to influence his autonomous judgement; furthermore he should not own, directly or indirectly or on behalf of third parties, a quantity of shares enabling him to control the company or exercise a considerable influence over it nor participate in shareholders' agreements to control the company; he is also not allowed to have immediate family relations with members of executive directors of the company or of persons in the situations referred above (Combined Code 3.1).

The directors' remuneration can consist of, totally or partially, profit sharing (Civil Code new art. 2389).

(e) benefits in kind

They are permitted, as also shown by the requirement that disclosure on directors' remuneration includes benefits in kind (Consob Regulation 11971/1999, Annex 3C, Scheme 1).

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

With regard to stock option plans, they can be executed in several ways. In case of an increase of capital stock with an exclusion of the pre-emption rights, the latter considered in the best interests of the company, the shareholders' meeting shall approve, by a extraordinary resolution, the proposal of exclusion with a majority of not less than half of the share capital. In the case of stock grants, the approval of an extraordinary shareholders' meeting is required. For the sale of own shares, approval by the ordinary shareholders' meeting is necessary. In case of sale of shares of controlling companies or of subsidiaries, no decision on the part of the shareholders' meeting is required.
However, the shareholders' meeting usually grants the board of directors powers, within certain limits, to carry out any one transaction (Civil Code artt. 2349; 2357-ter, 2441 c. 5-6-8, 2443; Consolidated Law on Financial Intermediation artt. 126, 134).
Profit sharing shall be computed on the amount of net profits shown in the balance sheet, after deduction of the portion set aside for the legal reserve fund (Civil Code art. 2432).

4.5 Are there any restrictions on how payments are made?

There are no specific provisions.

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

With regard to termination payments there are no specific requirements under general company law as to disclosure or shareholders' approval. Detailed and complex rules are applied to this area under labour law if the contract covers director's services as an employee. Collective national contracts provide minimum conditions as to salary, retirement allowances and compensation in lieu of notice.
In practice, stock option plans specify whether the director may still exercise the options granted in case of dismissal, voluntary or mandatory retirement, resignation, or rescission of contract.

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

The directors cannot be appointed for a period exceeding three years. The appointment may be renewed where permitted in the articles of association and the directors may be revoked at any time by the general meeting, with no loss of entitlement to damages in case of unfair dismissal (Civil Code art. 2383).

5. Non-executive Directors' Remuneration

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

As mentioned above (see 3.2), the shareholders' meeting may fix the total amount for the remuneration of all directors, which the board distributes among its members, taking into account the participation in committees. The shareholders' meeting may also fix the amount of the remuneration of each director, including non-executive directors, and the relevant amount for participation in committees. However, if the formation of committees is contemplated by the company's articles of association, the committee members' remuneration will be fixed by the board of directors (Civil Code art. 2389).
No restrictions apply to stock option grants to non-executive directors.

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

Yes, these services can be remunerated, subject to disclosure provisions (see 2.3).