



european corporate governance institute

Directors' Remuneration in Listed Companies

LUXEMBOURG*

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

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.

Company law, accounting law, prospectus regulation, on going disclosure rules and regulations concern directors' remuneration. The company law and the accounting law only apply to domestically incorporated companies, whereas prospectus regulation and ongoing disclosure rules and regulations apply to all companies the securities of which are listed on the LSE.

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.

There does presently not exist any code or other official report issued by a Luxembourg authority and governing best practices to be complied with by listed companies. The Recommendation of the European Commission of 25 July 1977 (77/534/CEE) was published in the Luxembourg Official Administrative Gazette ("Memorial - Recueil B") on 25 June 1997, comprising the "Code of conduct". However on 8 July 2003 the first instance court of Luxembourg ruled that that Recommendation had not been made part of the Luxembourg law and was not compulsory.

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 remuneration of directors of a Luxembourg limited company ("*société anonyme*") is resolved by the annual shareholders' meeting. There does not exist any law setting forth rules for determining such remuneration and even less the amount thereof.

To the best of our knowledge, there does not presently exist any proposals for reform concerning directors' remuneration.

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?

Listed companies are not required to publish a detailed remuneration report, indicating the details of the compensation paid to the members of the Board of Directors. The annual accounts submitted for approval to the shareholders will normally contain an item which specifies the remuneration of the board as a whole without however providing details of the amount paid to each individual director. As regards the remuneration paid to executive directors, it will normally be included in the balance sheet item of “wages and salaries”, subject however to what is said under 4.1.

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?

There is no such requirement.

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.

Not applicable, save that in case stock options have been granted during the fiscal year covered by the annual accounts, details in relation thereto will have to be provided either in the directors’ report or in the notes to the accounts.

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, if it is deemed to be price sensitive information.

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

Insider trading is governed by the law of May 3, 1991. That law implements Directive 89/592 CE on the subject matter.

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

See chapter 6 schedule A of the Grand-Ducal decree of December 28, 1990 on the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published where transferable securities are offered to the public or of listing particulars to be published for the admission of transferable securities to official stock exchange listing enclosed hereunder.

Information concerning administration, management and supervision

6.1. Names, addresses and functions in the issuing company of the following persons, and an indication of the principal activities performed by them outside that company, where these are significant with respect to that undertaking:

- a) members of the administrative, management or supervisory bodies;
- b) partners with unlimited liability, in the case of a limited partnership with a share capital;
- c) founders, if the company has been established for fewer than five years.

6.2. Interests of the members of the administrative, management and supervisory bodies in the issuing company.

6.2.0. Remuneration paid and benefits in kind granted, during the last completed financial year for any reason whatsoever, and charged to overheads or the profit appropriation account, to members of the administrative, management and supervisory bodies, these being total amounts for each category of body.

The total remunerations paid and benefits in kind granted to all members of the administrative, management and supervisory bodies of the issuer by all the dependent undertakings with which it forms a group, must be indicated.

6.2.1. Total number of shares in the issuing company held by the members of its administrative, management and supervisory bodies and options granted to them on the company's shares.

6.2.2. Information about the nature and extent of the interests of members of the administrative, management and supervisory bodies in transactions effected by the issuer which are unusual in their nature or conditions (such as purchases outside normal activity, acquisition or disposal of fixed asset items) during the preceding financial year and the current financial year. Where such unusual transactions were concluded in the course of previous financial years and have not been definitively concluded, information on those transactions must also be given.

6.2.3. Total of all the outstanding loans granted by the issuer to the persons referred to in heading 6.1. (a), and also of any guarantees provided by the issuer for their benefit.

6.3. Schemes for involving the staff in the capital of the issuer.

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.)

As already mentioned under 1.3, the remuneration of the directors is in the competence of the shareholders. It is made at the annual ordinary shareholders' meeting which convenes for the purpose of approving the annual accounts.

The Luxembourg unlimited company ("*société anonyme*") is administered by a Board of Directors. There does not presently exist a two-tier system for that type of company. However a draft bill which is expected to come into force in a foreseeable future grants that type of company the option between a one-tier and a two-tier system.

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?

There are no provisions as to the amount of the remuneration and its distribution among board members. Usually, the amount of remuneration is the same for all the directors. However, it is

not uncommon that the chairman, and sometimes the vice-chairman, receive a somewhat higher amount.

There are no rules governing types of remuneration. In former times, it was not uncommon that the overall remuneration allocated to the board as a whole represented a given percentage of the net annual profit. That type of remuneration is not any longer practiced. Nowadays the amount of remuneration is generally a fixed one.

In the case of banks whose shares are listed, the banking supervisory authority, which is the “Commission de Surveillance du Secteur Financier” (“CSSF”), might recommend a reduction of the remuneration of the board as a whole if it deems such remuneration disproportionate to the bank’s size, activities, profits and to the time directors spend on performing their duties.

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

In a general way personal loans to the company’s directors and officers are allowed. However if granted to directors they create a situation of conflict of interest. The law provides that that situation is to be dealt with in the following way: the director involved must abstain from taking part in the board’s deliberation on the subject matter, and its conflict and corresponding abstention must be reported to the next following shareholders’ meeting.

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 executive directors’ remuneration is fixed by the board of directors.

In case the board delegates to one of its members the day to day management of the company, which customarily boards do, the law requires that the amount of remuneration paid to such director(s) be disclosed to the annual shareholders meeting which is to approve the annual accounts.

It is quite common that that remuneration is fixed in an employment agreement between the company and the executive director concerned.

That agreement is governed by the provisions of labour law.

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

The board is not required to create a remuneration committee. However in large companies, whether listed or not, the setting up of such a committee becomes more and more common. For listed companies it is strongly recommended by the LSE.

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)**

It comprises one or more independent directors, being directors who do not directly represent the controlling shareholder(s). No special procedures apply to the appointment of independent non-executive directors; they would be selected by the controlling shareholder(s) though they would be independent;

- (ii) the committee's competences and which company body it reports to**
The committee will either make proposals to the board or, if so entrusted by the board, directly fix the remunerations and report to the board;
- (iii) how the committee operates**
The committee operates according to internal rules which would be set by the board or by the committee itself pursuant to a delegation from the board.

4.3 Which types of remuneration are permitted?

Obviously the first type of remuneration will be in form of cash.

Executive directors will normally be entitled to cash bonuses.

In large companies, whether listed or not, it becomes more and more common that they be granted stock options, more exceptionally stock grants.

Profit sharing in one or the other way is also practiced. The amount of cash bonus normally takes into account the profit generated during the past financial year.

Benefits in kind are not common, though executives may be entitled to the use of a company car, free accommodation for the executive and his family, etc.

In answering, please consider each of the following:

- (a) bonuses**
- (b) stock options, including discounted stock options**
- (c) stock grants**
- (d) profit sharing**
- (e) benefits in kind**

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

See under 4.1 above.

4.5 Are there any restrictions on how payments are made?

Subject to what has been said so far, there are no special restrictions on how payments are made.

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

According to the company law a director may be dismissed any time with or without cause. In principle he is not entitled to any kind of compensation. However in the case of executive directors the position is different in as much as they usually have an employment contract governed by labour law. In that case termination can only be made as provided in the contract and as permitted by labour law.

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

See under 4.1 and 4.2 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?

Absent any provision in any law or regulation, there are no rules commonly applicable in the case non-executive directors participate in committees of the board of directors: it all depends on the policy which individual companies apply in that respect.

Whilst there are no restrictions applicable to the payment of non-executive directors via stock options, such type of payment is in practice not used.

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?

If a non-executive director provides to the company special services in his capacity as professional, he is entitled to appropriate compensation additional to his directors' fees, because it is considered that he then acts in a different capacity. Such services typically are those provided by a member of the legal profession (lawyer, notary), or of the financial profession (banker, broker, consultant). It is understood that such compensation must correspond to real services and cannot represent a disguised director's remuneration.