european corporate governance institute

Directors' Remuneration in Listed Companies

Luxembourg*

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Questionnaire

1. General

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

(a) Rules and best practices on directors' remuneration

Rules on directors' remuneration can be found in the company law (Law of August 15, 1915 on commercial companies, hereinafter "LSC 1915", available at www.legilux.public.lu/leg/textescoordonnes), in the accounting law (for consolidated accounts: LSC 1915; for annual accounts: Law of December 19, 2002 on the Commercial registrar and the accounting and annual accounts of businesses, Art. 24 et seq.), in the law on prospectus (Law of July 10, 2005 regarding the prospectus on securities), and in the law on transparency requirements (Law of January 11, 2008 regarding the transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market).

Rules can also be found in Regulation (CE) No 809/2004 of the Commission of April 29, 2004 on the prospectus, which is directly applicable in Luxembourg law.

There is also a corporate governance Code, adopted in April 2006 (entered into force on January 1st, 2007) which is called the Ten principles of Corporate Governance of the Luxembourg Stock Exchange (available at www.bourse.lu). The Code includes several provisions on directors' remuneration.

Finally, 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" (available at www.bourse.lu). However on 8 July 2003 the first instance court of Luxembourg ruled that this Recommendation had not been made part of the Luxembourg law and was not compulsory.

(b) Scope of application of rules and best practices on directors' remuneration

The company law and the accounting law only apply to Luxembourg incorporated companies, whereas prospectus regulation and ongoing disclosure rules and regulations apply to all companies the shares of which are listed on the Luxembourg Stock Exchange.

The ten principles of Corporate Governance of the Luxembourg Stock Exchange (hereinafter the « Luxembourg Corporate Governance Code » or the Code) only apply to Luxembourg incorporated companies whose shares are listed on the Luxembourg Stock Exchange. The Code does not apply to Luxembourg incorporated companies whose shares are listed on the MTF of Luxembourg stock exchange (Euro-MTF). As of September 1st, 2008, there were 31 Luxembourg incorporated companies whose shares were listed on the Luxembourg stock exchange. The companies listed in Luxembourg are very heterogeneous, with some companies being mutinationals, other small companies and others investment companies. However, most companies have a controlling shareholder or group of shareholders.

The Code provides that it can be applied voluntarily by foreign companies whose shares are listed on the Luxembourg Stock Exchange and by Luxembourg incorporated companies whose shares are listed on a foreign stock exchange.

In case of multiple listing of a Luxembourg company already listed on the Luxembourg stock exchange, the Code applies, but the company can apply the more stringent provisions included in the Codes of the other countries in which they are listed. Because of the fact that more than one third (12 out of 31) of Luxembourg incorporated companies listed on the Luxembourg Stock exchange, including all major Luxembourg companies, are also listed abroad, sometimes on several markets including the NYSE, the Code was drafted taking into account the international environment of Luxembourg companies, in order that it would not conflict with foreign Codes or corporate governance listing standards. Many Luxembourg companies have to apply several Codes and listing standards, and not only the Ten principles of Corporate Governance.

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"

Concerning Best practices, they appear in the Luxembourg Corporate Governance Code. It is a voluntary Code.

Regarding compliance with the Code, there should be a distinction between different provisions.

> The Code incluces 10 general principles which are to be complied with, without any exception. However, the principles are general. The principle concerning the remuneration states that "the company will secure the services of good quality directors and executive managers by means of a suitable remuneration policy that is compatible with the long-term interests of the company. » (Principle 8). Concerning the committees, the Code state that the board of directors "will ensure that any special committees necessary for it to properly fulfil its duties are set up » (Principle 3 al. 2).
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> Then, each principle is being fleshed out into more precise recommendations which are subject to a a "comply or explain" approach. The ten principles "are based on a " comply or explain " system, which allows companies to deviate from the recommendations when this is justified by their specific circumstances, provided that adequate explanation is provided » (Foreword to the Code).
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> Finally, some recommendations are being complemented by Guidelines, which are advised on the way the company should apply or interpret the Principles and the Recommendations. The Guidelines are not subject to a "comply or explain" approach.

(b) Evidence of Compliance with Best Practice

According to the Code, « The monitoring of compliance with the Ten Principles of Corporate Governance relies on the shareholders and the market authorities, possibly supplemented by other mechanisms » (Foreword to the Code). Because of the large number of controlled companies, control by the market was deemed not to be enough and therefore there is a control by the stock

exchange.

The Luxembourg Stock Exchange provides « moral support and will bring its full authority to bear in facilitating the implementation of the disclosure arrangements recommended by these principles for listed Luxembourg companies » (Code, p. 9). However, the « Luxembourg Stock Exchange will limit its role to verifying whether the " comply or explain " principle is being applied and recommending that companies follow it. The Luxembourg Stock Exchange reserves the right to publish from time to time general comparisons of the corporate governance practices within listed Luxembourg companies » (Code, p. 9).

The jurisdiction of the Luxembourg banking and securities commission (*Commission de Surveillance du Secteur Financier* or CSSF) is being kept when the disclosure obligation is imposed by law.

The Luxembourg Stock Exchange has undertaken to do and publish a report every year on the implementation of the Code. The study will be published on the website of the stock exchange (www.bourse.lu). The report for the fiscal year 2006 (although the Code was not yet applicable) should be published by the end of 2008. Each study takes time since the stock exchange allows companies to provide their remarks on the draft. Another study for the fiscal year 2007, using the annual reports, is in process.

According to the 2006 report (on 33 companies) which includes the year 2006 (based on a survey of annual reports and company websites) and 2007 (if information was available on the company website), a minority (6) of companies had established a remuneration committee. Some more companies (8) had established a joint nomination and remuneration committee, which is not surprising given the fact that many companies are rather small or just family controlled holding companies. Of the remaining companies, only a few (5) explained why they had not established a compensation committee, following the « comply or explain » approach. The lack of remuneration committee is then justified by the small size of the company. Almost half (14) of all companies gave no explanation. According to the report, the compliance with the Code is much higher when it comes to the seven Luxembourg incorporated companies which are part of the LuxX index.

For the same period, the report showed that almost all companies provided information on the remuneration of directors, but not always in a very clear way. Only a small number disclosed their remuneration policy.

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 Luxembourg stock exchange established a "Corporate Governance" working group. The group was asked to draw up a text that would be in line with international practice and the recommendations of the European Commission, whilst taking into account the interests of all the stakeholders. A consultation was organized in February 2006 and a draft was posted on the Stock Exchange website, which gave rise to several comments.

The working group was composed of 16 members which reflected the diversity of the companies listed on the Luxembourg stock exchange with a strong representation of Arcelor SA, of investment and holding companies (ie: investors) and of the Luxembourg Stock exchange. The working group was chaired by the chairman of an investment company. The working group was also advised on

several topics by André Prüm, currently Dean of Luxembourg University's Faculty of Law, Economy and Finance.

The Luxembourg stock exchange is working on a limited update of the Code. The reform would imply a clarification of certain points and an adaptation of the Code to the two-tier structure. However, there should be no substantive change to the remuneration part of the Code.

A major reform project of Luxembourg company law was introduced in the Luxembourg Parliament on June 2007 (Project n°5730; available at www.chd.lu/archives/ArchivesPortlet). The project allows the board of director to establish an executive committee (*comité de direction*), which can include directors and non directors. The remuneration of the members of the executive committee are decided by the articles of incorporation or, if they are silent, by the board of directors. There are no other substantive change to the remuneration of directors and managers.

In addition, the directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, which was due to be implemented by September 5, 2008 in Luxembourg, includes a provision on the corporate governance Code that listed companies apply. This should lead to a legislative recognition of the Ten principles of Corporate Governance.

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) LSC 1915 (and 2002 accounting law)

Under the 1915 company law, 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 situation has not been changed by EU regulation. EU accounting directives (1978 for annual accounts; 1983 for consolidated accounts) require only that the global remuneration of directors be disclosed. In addition, Item 15 of Regulation (CE) No 809/2004 of the Commission of April 29, 2004 on the prospectus provides that the individual compensation of directors and the CEO must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer. Since the 1915 Company law does not provide for an individual disclosure of the compensation of directors and senior executives, it does not have to be included in the prospectus.

The annual accounts submitted for approval to the shareholders must contain an item (generally a note to the financial statements) which specify the remuneration of the board as a whole without providing details of the amount paid to each individual director (for consolidated accounts, Art. 337 12°, LSC 1915; for annual accounts, Art. 65 (1) 12° of the Law of December 19, 2002 on the Commercial registrar and the accounting and annual accounts of businesses). The company must also disclose retirement benefits which were decided during the fiscal year for the benefit of the directors (for consolidated accounts, Art. 337 12°, LSC 1915; for annual accounts, Art. 65 (1) 12°

of the Law of December 19, 2002 on the Commercial registrar and the accounting and annual accounts of businesses).

(b) Code

The Luxembourg Corporate Governance Code also provides only for a global information on directors' remuneration. Recommendation 8.14. states that « The total amount of direct and indirect remuneration received by directors and executive managers by virtue of their position should be disclosed in the annual report. A distinction should be made between the fixed and the variable components of this remuneration. The company should disclose the number of options granted to those individuals and the conditions of their exercise. »

The Code also provides that a Corporate Governance Chapter, which is to be included in the annual report should provide information on the (global) annual remuneration of members of the board. The Code also provides that the company must publish its remuneration policy in a Corporate Governance Charter.

(c) Places where the information is retrievable.

Concerning the amount of remuneration, the Corporate Governance Chapter is included in the annual report which must be filed (Art. 9 and 341, LSC 1915 for the consolidated annual report) with the registry of commerce and companies (registre du commerce et des sociétés) and can be accessed from there. The global amount of the remuneration must also be included in the financial statements to the annual accounts or the consolidated accounts.

The annual report is also normally available on the company website.

Concerning the remuneration policy, the Code provides that the Corporate Governance Charter must be posted on the company's website.

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.

(a) information on directors' remuneration

The Code provides that a Corporate Governance Chapter, which is to be included in the annual report, should provide information on the annual remuneration of members of the board. Specifically, the chapter should include, in connection with the remuneration and other benefits of executive and non-executive directors and executive managers, the following information (Appendix C: Transparency requirements):

« - the total amount of remuneration and other benefits granted directly or indirectly by the company or any other undertaking belonging to the same group.

- with regard to shares or entitlements to share options and all other share-incentive schemes:

a) the number of share options offered or shares granted by the company during the relevant financial year and their conditions of application ;

b) the number of share options exercised during the relevant financial year and, for each of them, the number of shares involved and the exercise price or the value of the stakes in the share-incentive scheme at the end of the relevant financial year ;

c) the number of share options unexercised at the end of the financial year, their exercise price, their exercise date and the main conditions for the exercise of the rights ;

d) any changes in the terms and conditions of exercise of share options occurring during the financial year ;

e) the number and, where relevant, the specific characteristics of the shares thus acquired while in office. »

(b) information on the remuneration committee

According to the Code, the corporate governance charter, which should be on the company website, should include the internal regulations for each committee (Appendix B: Transparency requirements).

The corporate governance chapter, which is included in the annual report, should include (Appendix C: Transparency requirements), with regard to the full board:

- a list of the board members, indicating which of them are independent directors ;

- a presentation of each new director, including a justification if the director is deemed to be independent, even if the director fails to meet one or more of the criteria appearing in appendix D ;

- information about directors who no longer meet the conditions for independence ;

The corporate governance chapter should also include (Appendix C: Transparency requirements), with regard to each committee:

- a list of members of board committees ;

- an activity report about committee meetings, including the number of meetings and the average attendance by the directors ;

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 9, 2006, which implemented directive 2003/6/CE of January 28, 2003, directive 2003/124/CE of December 22, 2003 and directive 2004/72/CE of April 29, 2004, on the matter. It used to be governed by the law of May 3, 1991, which implemented Directive 89/592 CE on the matter.

The Code provides that the corporate governance chapter should include details of the measures taken by the company to comply with the Directive on market abuse (Appendix C: Transparency requirements).

The Code also provides that the board of directors "should formulate a set of rules regulating the behaviour and notification obligations in relation to transactions in the company's shares or other financial instruments carried out for their own account by directors and other individuals bound by these obligations. The Rules should specify which information regarding those transactions should be disclosed to the market. » (Recommendation 2.8).

The corporate governance charter should include the policy implemented by the board for transactions in the company's securities and other contractual relations (Appendix B: Transparency requirements).

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

Luxembourg law applies directly the EU Regulation. Therefore, Annex I of Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements is directly applicable.

Item 15. Remuneration and benefits

In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1:

> 15.1. The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.
>
> That information must be provided on an individual basis unless individual disclosure is not required in the issuer's home country and is not otherwise publicly disclosed by the issuer.
>
> 15.2. The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.

17. Employees

> 17.2. Shareholdings and stock options
>
> With respect to each person referred to in points (a) and (d) of the first subparagraph of item

14.1. provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.

17.3. Description of any arrangements for involving the employees 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.)

One-Tier system

The remuneration of directors of a Luxembourg joint-stock company (société anonyme) is resolved by the annual shareholders' meeting (Art. 50, LSC 1915).

Directors can also have a work contract with the company in case their work as employee is different from their work as director. See below 4.1.

Two-Tier System

Concerning the two-tier system, which was introduced in Luxembourg in 2006 (Law of August 25, 2006), the method of determination and the amount of the remuneration of the members of the supervisory board are decided by the articles of incorporation or, if they are silent, by the shareholders' meeting (Art. 60bis-19, LSC 1915).

Members of the executive board can also have a work contract with the company in case their work as employee is different from their work as directors. For members of the supervisory board, the answer is not certain. See below 4.1.

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?

(a) provision and/or practices as to the amount of the remuneration and its distribution

There are no provisions in the 1915 LSC 1915 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.

> In the case of banks whose shares are listed, the banking supervisory authority, which is the 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.

Concerning the precise amount of the remuneration of the members of the board of directors, the Code includes several principles and recommendations:

> The Code states that "the company will secure the services of good quality directors and executive managers by means of a suitable remuneration policy that is compatible with the

long-term interests of the company. » (Principle 8). The language implies that excessive remuneration is disfavoured.

The Code further states that the « remuneration of non-executive directors should be proportional to their responsibilities and the time devoted to their functions. » (Recommendation 8.8).

(b) types of remuneration

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.

Directors can receive stock options, but the Code is restrictive concerning grants of stock-options and similar incentive based remuneration to non-executive directors. See below 5.1.

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 this 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 specially to the next following shareholders' meeting (Art. 57 LSC 1915). The same rule applies to members of the supervisory board and members of the management board (Art. 60bis-19, LSC 1915).

The Code provides that " each director should take care to avoid any direct or indirect conflict of interest with the company or any subsidiary controlled by the company. He should inform the board of conflicts of interest as they arise and refrain from deliberating or voting on the relevant issue in accordance with the relevant legal provisions. Any abstention from a vote as a result of a conflict of interest should be noted in the minutes of the meeting and disclosed in accordance with the relevant legal provisions in force. » (Recommendation 5.1.).

The annual accounts submitted for approval to the shareholders must contain an item (generally a note to the financial statements) which specifies the amount of loans granted to the directors, including the interest, the principal provisions and the amounts which were paid back. These information have to be provided globally (for consolidated accounts, Art. 337 13°, LSC 1915; for annual accounts, Art. 65 (1) 13° of the Law of December 19, 2002 on the Commercial registrar and the accounting and annual accounts of businesses).

Regulation (CE) No 809/2004 of the Commission of April 29, 2004 on the prospectus also provides for the disclosure of loans through Item 19.

Item 19. Related party transactions

Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.

If such standards do not apply to the issuer the following information must be disclosed:

a) The nature and extent of any transactions which are - as a single transaction or in their entirety - material to the issuer. Where such related party transactions are not concluded at arm's length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.

b) The amount or the percentage to which related party transactions form part of the turnover of the issuer.

In addition, the Code provides that the corporate governance chapter, which is to be included in the annual report, should disclose the total amount of loans granted by the company to its directors or executive managers (Appendix C: Transparency requirements).

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.)

(a) procedures for fixing the executive directors' remuneration

One-Tier system

The executive directors' remuneration, including the one of the CEO when he is also a director (*administrateur délégué*), is fixed, unless the articles of incorporation provide otherwise, by the board of directors (Art. 60, LSC 1915).

The Code states that the "The board should establish formal and transparent procedures with regard to the remuneration of managers. Individuals should not be involved in decisions regarding their own remuneration ». (Recommendation 8.9.). This includes the CEO if he is also a director. The Code also provides that the board « should establish procedures for evaluating and examining the performance of the executive management as a whole and of the individual executives » (Recommendation 7.4.). This includes the CEO. The Guideline to this recommendation provides that the « remuneration committee should assist the board with this task. »

The board must annually report to the general shareholders' meeting, which is to approve the annual accounts, about the remuneration and perks granted to the executive director (Art. 60, LSC 1915).

Directors can also have a work contract with the company in case their work as employee is different from their work as directors. That agreement is governed by the provisions of labour law. If the contract is signed when they are already directors, it is subject to authorization by the board of directors and disclosure to the shareholders, like for loans (Art. 57 LSC 1915).

Two-Tier System

The method of determination and the amount of the remuneration of the members of the executive board are decided by the supervisory board (Art. 60bis-19, LSC 1915). Absent any contrary provision in the 1915 law, a specific remuneration can be granted to the president of the executive board.

No provision of the 1915 law prevents members of the executive board to sign an employment agreement with the company. Like for the board of directors, if the contract is signed when they are already members of the executive board, it is subject to authorization by the supervisory board and disclosure to the shareholders (Art. 60bis-19, LSC 1915).

Concerning members of the supervisory board, there is also no provision which prevents their members from signing an employment contract. However, this practice is in contradiction with the controlling function of the supervisory board. Therefore, although there is no case law yet on this issue, the validity of this practice seems uncertain (See P.-H. Conac, *Les organes de la société anonyme (SA) en droit luxembourgeois*, in *Le nouveau droit luxembourgeois des sociétés*, ed. Larcier, 2007, p. 64).

(b) role of the shareholders

Shareholders vote on the remuneration of the board of directors as a whole.

Concerning stock options, stock grants, and other types of incentives see below 4.4.

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

The Code recommends that "the board should establish a **remuneration committee** from among its members to assist in formulating a remuneration policy for directors and managers. It should define the committee's internal regulations" (Recommendation 8.1 a. 1). However, the Code states that "If the company does not have a remuneration committee, the need to create one should be assessed annually. Until a remuneration committee has been set up, the board should deal with these tasks and responsibilities at least once a year » (Recommendation 8.1 al. 2).

There was no such requirement to create a remuneration committee before the 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 guideline to Recommendation 3.9 provides that the « Special committees should ideally be composed of four members ».

The "remuneration committee" should be composed "exclusively of non-executive directors" and it "should contain a sufficient number of independent directors" (Recommendation 8.2 al. 1). The precise number of independent directors is not indicated by the Code. The Code is therefore flexible and also not too burdensome on listed companies.

The Code also indicates that : « The chairman of the board or another non-executive director should chair the remuneration committee. » (Recommendation 8.2 al. 2)

The board of directors should choose the remuneration « committee's chairman and members with due regard to the need to ensure that the committee membership is refreshed and that undue reliance is not placed on particular individuals » (Recommendation 3.9).

The Code provides a definition of what is an independent director: "To be considered independent, a director must not have any significant business relationship with the company, close family relationship with any executive, or any other relationship with the company, its controlling shareholders or executives that is liable to create a conflict of interest which could impair the independence of the director's judgment » (Recommendation 3.5.).

The company should draw up a detailed list of the criteria for assessing independence on the basis of the above. The list of criteria should be disclosed in the Corporate Governance Chapter. To this end, the company may make use of the independence criteria appearing in Annex II of the European Commission Recommendation of _5 February 2005 on the role of non-executive directors (and members of the supervisory board) of listed companies and on the committees of the board (or supervisory board). These criteria appear in Appendix D of the Luxembourg Code.

There is no special procedures for the appointment of independent non-executive directors to the remuneration committee or to the board. The Code only provides that the "nomination committee should recommend suitable candidates to the board » (Recommendation 4.7) and the Guideline to Recommendation 4.7 provides that the nomination committee should « ensure that there is a sufficient number of independent directors ».

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

According to the 1915 law, a committee could only make proposals to the board of directors which keeps its power to decide.

The Code provides that the function of the remuneration committee, like the other committees, is to « examine specific topics chosen by the board and to advise the board about them » (Recommendation 3.9). However the Code provides that « decision-making will remain a collective responsibility of the board, which remains fully answerable for decisions taken within its field of competence » (Recommendation 3.9).

The 1915 law provides explicitly that the supervisory board can create committees, whose composition and powers are decided by the board (Art. 60bis-15, LSC 1915). The activities of the committee are exercised under the supervision of supervisory board (Art. 60bis-15, LSC 1915). Besides, the supervisory board cannot delegate to a committee the powers it is vested by law or the articles of incorporation (Art. 60bis-15, LSC 1915).

(iii) how the committee operates

The Code includes several precise provisions about how the remuneration committee should operate.

The Code provides that each committee should regularly carry out an evaluation of its performance (Recommendation 6.1). It should likewise examine its composition, organisation and effectiveness as a collective body. It should draw the necessary conclusions from this evaluation and, where necessary, take appropriate steps to improve its performance.

The Code also provides that the « board should ensure that the remuneration committee has access to the necessary skills to effectively fulfil its role » (Recommendation 8.2 al. 3), that the « chairman of the remuneration committee should prepare minutes of its meetings. (Recommendation 8.2 al. 3), and that the « remuneration committee may seek assistance from external experts for the fulfilment of its duties » (Recommendation 8.2 al. 3).

At least once a year, the remuneration committee should discuss with the chief executive officer the performance of executive management and of the individual executives. The chief executive officer should not be present at the discussion of his own evaluation. The evaluation criteria should be clearly defined (Recommendation 8.4).

4.3 Which types of remuneration are permitted? In answering, please consider each of the following:

(a) bonuses

Obviously this type of remuneration will be in form of cash. Executive directors will normally be entitled to cash bonuses.

(b) stock options, including discounted stock options

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

(c) stock grants

Stock grants are more exceptional.

(d) profit sharing

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.

(e) benefits in kind

Benefits in kind are not common, though executives may be entitled to the use of a company car, etc.

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

See also under 4.1 above.

(a) bonuses

Concerning bonuses, the Code provides that " In the event that managers are eligible for a bonus, this should be determined on the basis of significant, rigorous and objective performance criteria designed to increase the value of the company, taking into account both the company's performance and the individual and collective performance of the managers. » (Recommendation 8.10.). Members of the management include the CEO which can also be an executive director (*administrateur délégué*).

(b) stock options, including discounted stock options and (c) stock grants

The 1915 law is silent on stock options and other management long term incentives. If there is an increase in capital, shareholders must vote on the stock option plan. If the company has authorized capital, the shareholders will not vote on the grants of stock options itself but on the decision to have a certain level of authorized capital (unless it was already in the original articles of incorporation). However, generally, companies will grant stocks that have already been issued. Shareholders should then be informed since the decision to buy back stocks must be taken by them. In addition, according to the 1915 law, shareholders should also vote on stock grants and stock options to directors and to the CEO if he is also a director (even if there is no issuance of stock) because it can be considered that it is a form of remuneration.

The Code provides some precision on stock options. The Code states that "Schemes providing for the remuneration of directors and managers by new share issues, share options or any other new share acquisition right should be approved in advance by a resolution of the shareholders at an Annual General Meeting, prior to being adopted. » (Recommendation 8.11).

The Code also states that "All discounts on share option plans, giving the right to subscribe to shares at a price lower than the quoted price on the date the exercise price is set, or an average of the quoted prices over a certain number of days just prior to the date on which the exercise price is set, should be disclosed to the shareholders ». (Recommendation 8.12.) The Guideline adds that "A remuneration scheme cannot normally allow for any revision of its conditions. Shares cannot normally be permanently granted any earlier than three years after their initial allotment".

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 1915 law, a director (or member of the executive board) 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 of the work contract 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.

If a director enters into a contract with the company, he is subject to the same provisions as mentioned above for loans in terms of vote of the board of directors and disclosure to the shareholders. See above 3.3

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 the 1915 law, there are no rules commonly applicable in the case non-executive directors participate in committees of the board of directors. A specific payment for participation in one of the committees is certainly possible. Besides, the Code includes certain recommendations.

(a) non-executive directors remuneration for participation in committees

The Code allows a separate payment to non-executive directors for their participation in the committees. The Code states that the « remuneration of non-executive directors should be proportional to their responsibilities and the time devoted to their functions. ». The Code implies that non-executive directors could and should be paid an extra amount for their participation to a committee of the board of directors (Recommendation 8.8).

(b) restrictions to the payment to non-executive directors via stock options

There is a restriction in the Code to the grant of stock options to non executive directors. The Guideline to Recommendation 8.8 provides that "Non-executive directors should neither receive remuneration linked to their individual performance, nor bonuses, long-term incentive plans, benefits in kind or benefits linked to pension plans ». This implies that non executive directors should normally not receive stock options and similar benefits. This Guideline tends to protect non executive directors from being influenced by management through the grant of stock options and other types of benefits. The Guidelines are non binding. However, even before the adoption of the Code, the payment of non-executive directors via stock options was 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.
Such contracts are subject to approval by the board of directors and disclosure to the shareholders. See above 3.3.