



european corporate governance institute

Directors' Remuneration in Listed Companies

Poland*

Name and contact details of respondent

Name	Marta Majcher
Affiliation	TLX S.p.A.
Email	martamajcher@eurotelx.com
Telephone	+39 02 3030.4020
Fax	+39 02 3032.8546

*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. Polish law, regulation and best practices are stated as they stood at October 2007.

POLAND – Two-tier system

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.

The norms controlling the remuneration of directors in listed companies can be traced down to the following sources:

- (i) *Code of Commercial Companies of 2000 (Code) – which prescribes the mandatory corporate governance scheme in all joint stock companies; it also requires that the Management Board prepare an annual report on the activities of the company in the last financial year and that such a report be approved by the GM;*
- (ii) *Law on Public Offer of 2005, art. 60 sec. 2 – which requires that issuers of listed securities file periodically certain information with the Polish SEC (PSEC) and with the company operating the regulated market;*
- (iii) *Law on Public Trading of 29.07.2005*
- (iv) *Regulation of 19.10.2005 on on-going and periodic disclosure;*
- (v) *Regulation of 18.10.2005 on financial statements to be attached to prospectus;*
- (vi) *Best Practices of 2005, drawn up by the Warsaw Stock Exchange (Gielda Papierow Wartosciowych, GPW) and Best Practices of 2007 in force from 01.01.2008*

The Code applies only to Polish issuers, i.e. to companies having a registered seat in Poland. Other laws indicated above apply to all issuers having their securities admitted to trading on a Polish regulated market, with some subject matter-related, justified by the concept of EU passport. It seems that Non EU issuers are subject to a fully-fledged application of Polish rules.

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.

Best Practices of 2005 have been released by the Warsaw Stock Exchange, drawn up by a Committee of Best Practices – Corporate Governance. It is a voluntary, “comply-or-explain” code. Companies' corporate governance statements are available on the site of the Warsaw Stock Exchange:

http://www.gpwinfostrefa.pl/palio/html.run? Instance=cms_gpw.pap.pl& PageID=2& OID=36& Lang=pl& Type=S A-RS& SOID=48& Site=ESPI& CheckSum=2093495702

A non statistical survey shows that the companies do comply with Best Practices 2005. One must however take account of the rather loose content thereof. See the answer below.

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.

As regards the corporate governance aspect (e.g. the manner of setting up directors' remuneration), it is not clear which governmental authority has been vested with responsibility

thereof: whether it is the Ministry of Justice or the PSEC, the latter reporting to the Ministry of Finance. PSEC enjoys neither the right of legislative initiative (however pointless in the era of European Union) nor direct rule making powers. It does draft the laws and regulations in the field of financial markets but does not decide the ultimate content thereof.

The Best Practices of 2005 have been adopted by Supervisory Board of the Warsaw Stock Exchange and on July 4th, 2007, the latter adopted a new set of Best Practices in force from 01.01.2008. The Warsaw Stock Exchange is a joint stock company with shares held almost exclusively by the State.

Thus in either case it is practically the government that decides the rules on directors' remuneration.

The two Commission Recommendations: of 14.12.2004 on fostering an appropriate regime for the remuneration of directors of listed companies and of 15.02.2005 on the role of non executive directors [...], they have been duly translated and uploaded on the website of the Polish SEC. They have not been incorporated/transposed, etc. by either set of Best Practices.

As regards the transparency aspect, the competent supervisory authority remains PSEC. As with the corporate governance, the latter authority has no right of legislative initiative nor direct rules making powers.

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?

The Code requires that joint stock companies prepare an annual report on the activities of the company. Such a report makes part of the annual financial statement.

Regulation 19.10.2005 in § 95 sec. 6 point 17) requires that information on directors' remuneration (i.e. for members of both the management and the supervisory boards) be disclosed.

They are published yearly, together with the annual financial statements. They are retrievable on the site of the Warsaw Stock Exchange

http://www.gpwinfostrefa.pl/palio/html.run? Instance=cms_gpw.pap.pl& PageID=2& OID=36& Lang=pl& Type=S A-RS& SOID=48& Site=ESPI& CheckSum=2093495702

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?

Art. 56 of the Law on Public Offer requires that such reports be filed with the PSEC and the company operating a regulated market where the company securities are admitted to trading (or subject to a request for such admission).

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.

Regulation 19.10.2005 requires the following to be disclosed:

(i) the value of remuneration, bonuses and of other benefits, whether in cash or or in-kind;

- (ii) share-based compensation, such as convertible bonds, bonds with pre-emption rights, warrants, granted or due to each member of the management and the supervisory boards, regardless of whether such benefits have been expensed or paid out of profits;*
- (iii) in case of holding company – information on such remuneration, bonuses, benefits and share-based compensation granted or due by reason of serving on management or supervisory boards of subsidiaries;*
- (iv) the number and nominal value of shares in the issuer and/or in its subsidiaries held by each member of the supervisory or management boards.*

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

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

The law does not explicitly require the disclosure of the above share-based compensation programmes.

The grant of such share-based compensation is disclosed under art. 54 of the Law on Public Offer as “inside information” under the Market Abuse regime. The disclosure of exercise and/or of sale of such rights or of shares by insiders is required under art 160 sec. 1 of the Law on Public Trading.

Such disclosures ought to be directed to the PSEC, the company operating the regulated market and the public.

Best Practices of 2007 recommend that the company set up an internet site where it renders public i.a. its annual report on the activities of the company in the last financial year and the expenses of the share-based compensation programmes if introduced.

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

Regulation 18.10.2005 requires that the notes to the financial statement or to a consolidated financial statement to be attached to a prospectus contain same information on remuneration and share-based compensation as one described above under 2.3.

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 relevant procedures are envisaged in the Code of Commercial Companies and Best Practices. The members of the Supervisory Board may be remunerated. The amount of such remuneration is established either by the General Meeting or set up in the Articles of Association of the company.

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?

Best Practices of 2005 provide that such remuneration be proportionate to the remuneration of Management Board members. It should otherwise be “decent” but not material for the financial standing of the company. There are no such provisions in Best Practices of 2007.

There are no restrictions on the type of remuneration allowed. Thus it seems that all types of compensation/consideration permitted generally by law are accepted.

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

Yes. Such loans might deprive a member of the "independence" feature, as defined in the Commission Recommendation of 15.02.2005 on the role of non executive directors [...], to which Best Practices of 2005 refer. As a general rule, the company may not grant loans to finance the acquisition of its own shares.

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 Code provides that it is the Supervisory Board that determines the remuneration of the Management Board members, unless the Articles of Association provide otherwise. Thus a company may choose that it be the General Meeting to decide or approve such remuneration. In particular, the General Meeting may authorise the Supervisory Board to decide that the Management Board members are entitled to a share in the yearly profits, destined for distribution.

There are no specific procedures for the determination of the Management Board members remuneration laid down by the Code.

4.2 Is the board required, or recommended as best practice, to create a remuneration committee?
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)
- (ii) the committee's competences and which company body it reports to
- (iii) how the committee operates

Best Practices of 2005 provide for a Remuneration Committee to be established within the Supervisory Board. It does not require however any particular composition of such a committee nor does it lay down its tasks or procedures.

Best Practices of 2007 provide that at least an Audit Committee be established within the Supervisory Board, referring further to the Commission Recommendation 15.02.2005 on the role of non executive directors [...]. Thus it seems that it does recommend the establishment of a Remuneration Committee.

4.3 Which types of remuneration are permitted? 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.

There are no restrictions on the type of remuneration allowed. Thus it seems that all types of compensation/consideration permitted generally by law are accepted.

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

Remuneration paid out of net profits ought to be preceded by the General Meeting approval of such distributions of profits (general rule of approval of all distributions).

4.5 Are there any restrictions on how payments are made?

There are no specific restrictions on payments to the Management Board members. Thus general rules apply, such as the requirement of electronic transfers of all remuneration-type payments.

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

No. The Code provides that termination of a mandate does not prejudice the claims of the Management Board member based on his/her service contract, including to the right to remuneration.

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

The Code provides a member of the Management Board may serve for a maximum period of 5 years. There are no specific rules on disclosure of the contract.

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?

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?

Since the Polish legal system envisages only a two-tier system of governance, the members of Supervisory Board may not be executives or officers of the company on whose Board it they serve. Thus there are no separate provisions on remuneration of non-executive directors.