



european corporate governance institute

Directors' Remuneration in Listed Companies

PORTUGAL*

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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.

The Portuguese framework concerning directors' remuneration is given by the following pieces of legislation:

- Companies Code – articles 288/1/c); 399; 429 and 440. The rules foreseen in this code apply to both listed and non-listed domestic companies. Generally, one should say that these rules determine who fixes directors' remuneration and the conditions under which shareholders can control the remuneration issues of the company.
- CMVM's Regulation n. 7/2001 – article 1/1/d) and article 2. These provisions apply only to companies issuers of shares admitted to trading on a regulated market and subject to Portuguese "lex societatis" and refer to the disclosure obligations concerning remuneration that this specific companies are subject to;
- CMVM Recommendations on Corporate Governance – recommendations n. 12 and 13. The present recommendations are destined to all listed companies independently of its "lex societatis". According to recommendation n. 12 part of the remuneration of the members of the board, in particular of members involved in current management, shall depend on the results of the company. In n. 13, it is recommended that the proposal presented at the Annual General Meeting of a given company related to the approval of plans to allot shares and/or options for the purchase of shares to members of the board and workers shall include all the elements required for the correct evaluation of the proposal in question. If a regulation regarding the proposal is already available, it should also accompany the proposal.

Let us take the opportunity to enlighten that CMVM Recommendations on Corporate Governance, CMVM's Regulation n. 7/2001 as well as the Portuguese Securities Code are available in English at CMVM's website (www.cmvm.pt).

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 aforementioned "CMVM Recommendations on Corporate Governance" constitutes a 17-point best practice code based on OCDE Principles on Corporate Governance. It was released in 1999 by the Portuguese Securities Commission (CMVM). Since that date, CMVM also monitors the compliance of listed companies through publication of an annual report.

Listed companies must annually report the extent of compliance with the recommendations and, if they do not, to explain why that is so. Notwithstanding, the nature of the “code” remains voluntary.

The degree of compliance with the CMVM’s Recommendations on Corporate Governance Practices reached its highest level ever during 2002 (56.8% in 2002, compared to 52.5% in 2001 and 42% in 1999). However, if we take into consideration only those recommendations which are common to the last four years, we observe that in 2002 there was a levelling off of compliance with the same, when compared with 2001.

Also according to the conclusions of the 2002 CMVM’s survey of the corporate governance practices of companies listed on the market with official quotations of the stock exchanges of Euronext Lisbon, “an examination of companies according to their sector of activity has revealed that, as in 2001, financial intermediaries obtained the highest level of observance in 10 of the 13 recommendations, while holding companies were the highest observers of only 2 out of the thirteen recommendations. Companies not listed on the PSI-30 Index showed the lowest level of observance, obtaining the highest level in only 5 of the thirteen recommendations in question. From an individual perspective, it has been noted that none of the companies surveyed were found to be in observance of all the recommendations issued by the CMVM, and only two companies showed a level of compliance greater than 90%.”

In what concerns the two specific recommendations on directors’ remuneration the degree of compliance is the following: recommendation n. 12 was observed by 52,2% of the inquired companies, a figure slightly below the average degree of compliance in 2002. Regarding recommendation n. 13, among the 14 companies that feature plans and/or options for the purchase of shares by members of the board and workers the level of compliance was significative, as 78,6% of the companies followed, in 2002, CMVM’s proposals.

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.

Any modification to the rules on executive remuneration foreseen in the Portuguese Companies Code depends of a legislative impulse of the Government, as it would imply the elaboration and publication of a Decree-Law.

On the other hand, CMVM’s Recommendations on Corporate Governance in order to be altered would not require a formal legislative procedure. This best practice code represent an independent initiative of CMVM under it legal attributions.

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?

As said before, the listed companies subject to Portuguese “*lex societatis*” are required to publish a report on corporate governance, to be presented either as a chapter of the annual management report of the company in question, drawn up specifically for that purpose, or in the form of an appendix to the said annual management report. One of the chapters of this report shall include details of the remuneration of the members of the board of directors as a whole for the financial year in question, distinguishing between executive and non-executive members, and between the fixed and variable parts of the said remuneration.

Additionally, under article 288/1/c) of Companies Code, any shareholder holding, at least, 1% of the company's share capital is entitled to consult the global amount of the remunerations that were paid to the members of the board of directors during the last three exercises.

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?

Yes, according to article 245 of the Portuguese Securities Code, the annual report and, as a consequence, the report on corporate governance (including the remuneration details) shall be relayed to CMVM and to the managing entity of the stock exchange as soon as they are placed at the disposal of the shareholders.

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.

According to article 1/1/d) of CMVM's Regulation n. 7/2001, the report on corporate governance shall include details of the remuneration of the members of the board of directors as a whole for the financial year in question, distinguishing between executive and non-executive members, and between the fixed and variable parts of the said remuneration.

In addition, article 2 of the same Regulation requires Companies issuing shares admitted to trading on a regulated market to submit information to the CMVM related to plans for the allotment of shares and/or stock options among employees and/or members of the Board of Directors in the 15 days which precede the respective approval. The latter should include justification of the adoption of the plan, the category and number of persons included in the plan, conditions attached to allotment, criteria related to the price of shares and the exercise price for options, the term for exercise of options, the number of shares to be issued and characteristics of the same, the existence of incentives to purchase shares and/or stock options and the competence of the board of directors with respect to the carrying out or alteration of the plan.

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. Article 3 of CMVM's Regulation n. 7/2001 states that CMVM must be informed of the acquisition and disposal of listed shares by members of the board of directors of the company issuing the shares in question; by members of the board of directors of the parent company of the issuer of the shares in question; by companies controlled by one of the above-referred persons; and persons acting on behalf of the above-mentioned persons.

The announcement on the matter shall be made by the respective its respective author within five working days of the date of verification of the legal fact relating to the same. Such announcement shall indicate the following elements:

- The legal nature of the event leading to the acquisition or disposal and the date on which the said event was verified;
- The number of shares acquired or disposed and the number of shares owned by the declarer subsequent to the acquisition or disposal in question;
- The price for purchase or disposal of the shares in question.

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

See above 2.4.

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

None of the rules that define the minimum content of public offer prospectus requires specific information on director's remuneration.

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 procedure for adopting executive remuneration depends on whether the company adopts unitary or two-tier board structure. According to the Companies Code (article 278), the management of the company can be structured in one of the two following ways: a unitary structure consisting only in the board of directors, or a dual structure consisting of a supervisory and a management board.

When the company adopts the unitary system, article 399 of the Companies Code foresees that the remuneration of all the members of the board (including executive directors) shall be approved by the shareholders, in a general meeting, or by a special shareholder's committee constituted to the effect.

In case the company adopts the two-tier structure, article 429 of the Companies Code states that the supervisory board determines the remuneration of the members of the management board. In what concerns the remuneration of the members of the supervisory board, article 440 foresees that members the supervisory board are not necessarily paid. Whenever such retribution is established in the articles of association, the rules of article 399 apply.

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?

No.

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

No. Article 397 of the Companies Code prohibits companies from extend loans or any kind of credit facility to members of the board of directors.

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.)

See above 3.1.

In addition, please note that according to article 376 of the companies Code the annual report (hence, the report on corporate governance) elaborated by the management is subject to shareholders approval.

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

No. As mentioned before, the Companies Code determines that shareholders shall always, even if indirectly in case the company adopts a two-tier structure, set director's remuneration.

Regarding the distribution of the remuneration among directors, to the moment there are no specific rules or recommendations applicable.

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**

4.3 Which types of remuneration are permitted?

Under Portuguese company law all the infra mentioned types of remuneration are allowed. CMVM, in its best practice code, recommends that part of the remuneration of the members of the board, in particular of members involved in current management, depend on the results of the company.

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?

No.

4.5 Are there any restrictions on how payments are made?

Yes. Articles 399 and 429 of Companies Code while determining that director's remuneration can consist partially in a percentage of the company's profit, also establish that in such event the

global percentage destined to director's remuneration shall be authorised by a specific clause of the articles of association. Paragraph 3 of both articles contain an additional restriction: from the calculation of the global percentage of the profit destined to the variable remuneration of directors are excluded the amounts allocated to company reserves as well as any part of the profit that, under the law, cannot be distributed among shareholders.

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

Yes. In case companies adopt the two-tier structure, article 430/3 of the Companies Code establishes that dismissal without cause entitles the director to an indemnity which is determined in the articles of association or according to the general principles of law, considering that in any event it exceeds the amount of the remuneration he would presumably earn until the end of the term of office.

The legal provisions applicable to the unitary management structure do not contain a similar rule. However, we are of the opinion that the above-referred limitation on the amount of the indemnity would apply also, by means of analogy, to the dismissal without cause of a member of the board of directors.

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

The Companies Code establishes rules concerning directors' performance of other activities during their mandates. Notably, article 398 determines that members of the board of directors cannot engage in any competing business without prior authorization of the shareholders. Members of the management board (two-tier structure) cannot engage in any business – even if not competing with the company – without consent of the supervisory board (article 428 of the Companies Code).

In order to prevent situations of conflict of interest, the Companies Code also establishes the situations where the members of the board may deal with the company: article 397 of Portuguese Companies Code declares null and void all the agreements entered into between the company and members of the board, directly or indirectly, without previous deliberation of the board of directors, in which the interested director is unable to vote, and a previous favourable opinion of the board of auditors.

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?

There are no specific rules applicable to these topics.

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?

Please see above 4.7.