



European **corporate governance** institute

Directors' Remuneration in Listed Companies

Greece*

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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.

Rules concerning directors' remuneration are to be found in Codified Law 2190/1920 on limited companies by shares (listed or not), as now in force, and in some other financial laws and decisions of the Capital Market Commission. These rules apply in principle to companies having their seat in Greece.

There are basically only a few provisions concerning directors' remuneration in the main company law: Article 24 of Law 2190/1920 essentially provides that (a) payments to board members made out of net profits must be limited to the amount remaining after all reserves have been retained and the "first" (compulsory) dividend (35% of the net profits) has been paid; (b) that any other remuneration, the amount of which is not provided by the articles, has to be approved by special resolution of the general meeting (but, if excessive, is subject to reduction by a court decision at the request of a minority of 1/10 of the capital); and (c) that the previous rule does not apply to payments made to directors on the basis of some special contractual relationship, such employment or mandate. For these contracts, article 23a of Law 2190/1920 applies.

Article 23a, as amended by recent law 3604/2007, contains provisions on the contracts that the company may enter into with directors. Such contracts have to be approved by the general meeting with a simple majority. However, credit agreements, loans or guarantees granted to or in favor of directors are prohibited. Only exceptionally, and under very strict conditions, can certain guarantees be approved by the general meeting.

Article 39 para. 4 of Law 2190/1920, as amended by recent law 3604/2007, gives to a 5% minority the right to ask information on any amounts, which have been allocated for any reason and during the last two years, to directors. Such information can be given only to the annual general meeting.

On the other hand, Greek securities legislation contains some provisions relating to the issue:

Article 4 of Decision Nr. 5/204/14.11.2000 of the Greek Capital Market Commission (code of conduct of companies with listed shares) provides for the obligation of the Internal Control Department to control the legality of the directors' remuneration of any kind as regulated by resolutions of the relevant corporate bodies. Furthermore article 5 of Law 3016/2002 on corporate governance provides that the remuneration of non-executive directors is governed by Law 2190/1920 and has to correspond to the time they spend for the meetings of the board of directors and the performance of their duties.

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 are included in the above mentioned Decision Nr. 5/204/14.11.2000 of the Greek Capital Market Commission and in the Law 3016/2002 which are (both) legally binding for companies with listed shares. Therefore a choice "comply or explain" is not available.

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.

Executive remuneration rules or best practice codes may be adopted in many different ways (i.e. by law, decision of the Board of Directors of the Athens Stock Exchange, decision of the Capital Market Commission). There is not any major proposal on the agenda for the introduction of an institutional framework regarding the adoption of remuneration rules.

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 publication of a special remuneration report is not provided in Greek law. However, Article 43a para. 1(m) of Law 2190/1920 provides that the notes on the accounts must provide information on the total amounts paid to directors (see below 2.3). The notes are filed with the Registry of Limited Companies by shares and posted on the company's website. Also, the annual report of the board of directors must contain information on any contracts with directors, which entitle the latter to remuneration or an indemnity in cases of resignation, dismissal without cause or takeover (Article 4 of Law 3556/2007, harmonizing Greek law with Directive 2004/109/EC). This annual report is submitted to the Capital Market Commission.

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?

See 2.1.

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 43a para. 1 of Law 2190/1920, Limited companies by shares (listed or not) have to include in the notes on the accounts details of the total compensation paid to the members of the board of directors and the management during the last financial year. No distinction is made as to the nature of the compensation. This information may be omitted if through it a member of the board of directors and his income may be identified (Section 43a of the Law 2190/1920).

Also, information about the compensation of non executive directors must be separately indicated in the notes on the annual accounts (Article 5 of Law 3016/2002).

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

No.

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

Members of the board of directors and high ranking employees, as well as persons closely associated with them, are required to notify the company and the Capital Market Commission of any transaction made on their own account relating to shares or other financial instruments issued

by the company or any derivatives thereof (article 13 of Law 3340/2005 on market abuse = article 6 para. 4 of Dir. 2003/6/EC). Decision no 3/347/12.7.2005 of the Capital Market Commission provided details for the application of article 13, including a detailed list of the persons obliged to make the notification. According to this decision, the notification provided in article 13 must be made in writing within two days from the date of the transaction. An exemption is given for transactions not exceeding an amount of 5.000 euros annually.

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

As per Commission Regulation (EC) 809/2004 of 29 April 2004, mainly Annex I, section 15.

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.)

Such remuneration may be fixed either by the articles of association or by resolutions of the general meeting. On the other hand it may consist in fixed payments or payments taken out of profits. As mentioned above (1.1), any compensation paid out of the company's profits is to be taken out of the balance of the net profits after the deduction of the amounts contributed to ordinary reserves and the distribution of the so-called first dividend. Any other remuneration not defined in the statutes of the company is chargeable to the company if approved by specific resolution of the ordinary general meeting of the shareholders. Any excessive remuneration may be reduced by the court (article 24 of the Law 2190/1920).

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?

See 3.1. Other rules (such as a rule of proportionality) are not provided.

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

No, such contracts are null and void (Section 23a of the Law 2190/1920). New law 3604/2007 introduced some exceptions to guarantees (not loans) given by the company in favor of directors, but these are possible only under strict conditions.

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.)

There are no specific provisions about the executive directors' remuneration. Regarding the approval by the general meeting see above, 1.1 and 3.1.

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

A legal obligation to create such a committee does not exist.

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

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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

See 3.1. All the above types of remuneration are generally permitted. Regarding the stock option program: such a program for the members of the board of directors and the employees of the company and its subsidiaries may be adopted by a resolution of the statutory general meeting in the form of an option to purchase shares. This resolution must contain provisions about the maximum number of shares to be allotted to persons exercising the option, which may not exceed the 1/10 of all existing shares, the purchase price and other conditions, while details may be determined by a resolution of the board of directors (article 13 para. 13 of the Law 2190/1920). The shares to be allotted can either be issued following an increase of capital or acquired by the company. Article 16 of the Law 2190/1920 provides that, as an exception to the prohibition of acquiring its own shares, the company may acquire shares with the purpose of distributing them to its personnel or to the personnel of its subsidiaries. Such distributions must be effected within 12 months from the date of the acquisition; otherwise the shares must be sold within 3 years.

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

See 3.1 and 4.3.

4.5 Are there any restrictions on how payments are made?

See 3.1.

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

See 2.1.

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

No.

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?

See 3.1. and 1.1.

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

Yes, but the contract is subject to a specific authorization of the shareholders' general meeting and referring to the contract and to its specific terms unless the contract entered into is within the limits of current transactions of the company (Section 23a of the Law 2190/1920).