



New Belgian legislation on corporate governance

BELGIUM has recently adopted a new legislation that aims primarily at reinforcing the corporate governance in listed companies. Listed companies will now be required to publish in their annual report a corporate governance declaration, including a remuneration report, and to set up a remuneration committee (subject to certain exceptions). The new law also provides for an approval process of severance payment and remuneration agreement of directors under certain circumstances. This briefing outlines the key features of the new legislation.

The law of 6 April 2010 on the reinforcement of corporate governance in listed companies and autonomous public undertakings and on the modification of the professional prohibitions in the banking and finance sector (the Law) has recently been published.

The Law partially implements 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.

The key features of the Law are:

- the requirement for listed companies to publish in their annual report a corporate governance declaration, which must include a remuneration report;
- specific rules on the composition and operation of the remuneration committee that become mandatory in listed companies (subject to certain exceptions); and
- severance payment and remuneration agreement of directors must under certain circumstances be approved by the shareholders' meeting.

Corporate governance declaration

Under the Law, listed companies are required to publish in their annual report a corporate governance declaration (new article 96, §2 of the Belgian Companies Code (BCC)).

Such corporate governance declaration must contain at least the following information:

- indication of the applicable corporate governance code and possible corporate governance practices applied in addition to such code;
- indication of the sections of the above-mentioned corporate governance code from which the company derogates, giving well-founded reasons for such derogation ('comply or explain' principle);
- a description of the main characteristics of the company's internal audit and risk management systems in the scope of the financial reporting process;
- information on the company's shareholder structure, on holders of securities to which special controlling rights are attached, on restrictions to exercise voting rights provided by law or in the articles of association, on the rules to appoint or replace members of the management bodies and to amend the company's articles of association, and on the powers of the management body notably concerning a possible issue or buy-back of shares; and
- the composition and operation of the management bodies and their committees.

The provisions of the Law relating to the corporate governance declaration apply with immediate effect to the then current accounting year.

Remuneration report

The corporate governance declaration must also include a remuneration report (new article 96, §3 BCC), which must contain at least the following information:

- a description of the procedure applied to develop a remuneration policy and fix the remuneration of individual directors, members of the management committee, members of other committees discussing the general management of the company (*andere leiders/autres dirigeants*) and persons in charge of the daily management;
- a declaration on the applied remuneration policy containing at least the following information:
 - the basic principles of the remuneration, indicating the relationship between remuneration and performance;
 - the relative weight of the different components of the remuneration;
 - the characteristics of performance premiums in shares, options or other rights to acquire shares; and
 - information on the remuneration policy for the coming two accounting years.
- on an individual basis, the amount of the remuneration and other benefits granted to non-executive directors;
- if the persons mentioned in the remuneration report are also members of the board of directors, information on the amount of the remuneration they receive in that capacity;
- if executive directors, members of the management committee, members of other committees discussing the general management of the company and persons in charge of the daily management (hereinafter together referred to as ‘executive directors’) are eligible to receive remunerations based on the performance of the company, information on the criteria to assess such performance;
- for the chairman and the other executive directors, the amount of their remuneration and other benefits; such amount must be broken down in:

- basic salary;
 - variable remuneration;
 - pension; and
 - other components.
- for each of the executive directors, the number and main characteristics of all granted, exercised and matured shares, share options or all other rights to acquire shares;
 - for each of the executive directors, the provisions on their severance payments;
 - in case of departure of the executive directors, the justification and decision of the board of directors whether they are eligible to receive severance payments and the calculation base for such payments; and
 - for executive directors, the extent to which a recovery right is granted to the company concerning variable remuneration granted on the basis of incorrect financial information.

The remuneration report is prepared by the remuneration committee and must be approved by the general meeting by separate vote.

The provisions of the Law relating to the remuneration report shall apply for the first time to the next accounting year starting after publication of the Law (meaning, for most listed companies, the accounting year starting on 1 January 2011).

Remuneration committee in listed companies

Listed companies (within the meaning of article 4 BCC) must constitute a remuneration committee within their board of directors (new article 526 *quater* BCC). Following the recommendations of the Belgian Corporate Governance Code, the vast majority of Belgian listed companies have already in place such a remuneration committee.

The Law provides, however, for an exception for companies that, on a consolidated basis, meet at least two of the following three criteria:

- average number of employees during the accounting year equal to or exceeding 250;
- a total balance sheet exceeding €43m; and
- an annual net turnover exceeding €50m.

The Law also provides specific rules on the composition and functioning of the remuneration committee.

The provisions of the Law relating to the remuneration committee shall apply for the first time to the next accounting year starting after the publication of the Law (meaning, for most listed companies, the accounting year starting on 1 January 2011).

Directors' remuneration

If the amount of an executive director's severance payment exceeds a certain threshold (12 months of remuneration or 18 months on motivated advice of the remuneration committee), the Law provides that such provision in the agreement with the concerned person must be approved in advance by the next general meeting. The same applies if an agreement with an independent director provides for a variable remuneration (new sections added to existing article 554 BCC).

Furthermore, the Law amends the BCC concerning the mention of the criteria to grant a remuneration and the obligation to spread the variable remuneration over time (new article 520 *bis* and 520 *ter* BCC).

The provisions of the Law relating to the directors' remuneration shall apply for the first time to agreements entered into or renewed 10 days after the publication of the Law.

[View the Law in French and in Dutch.](#)

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