

## Remuneration trends in the Netherlands – are you ready?

With the increasing public scrutiny on executive compensation, shareholders having a say on pay and growing governmental interference, boardrooms will be closely monitored and will need to exercise great care when determining executive pay. AMA Partners in conjunction with Georgeson have looked at trends and topics relevant for the Netherlands and have created a simple checklist which will help in preparation of your remuneration report and/or agenda.

**This briefing highlights the current state of play on executive compensation and helps board of companies and their remuneration committee members to prepare themselves for the upcoming proxy season.**

### Trends

- **Say on Pay** – legislative measures for binding shareholder vote on executive pay policy and advisory vote on realized pay.
- **Transparency** – new corporate governance codes are being introduced to improve remuneration practices and disclosures.
- **Fair Pay** - growing acceptance of capping executive pay.
- **Pay for performance** – push for CEO pay on sustainable performance, long term value creation and greater social responsibility.
- **Sound risk management** - deferral periods of long term incentive awards to be extended beyond 3 to 5 years, standards for claw back and holding periods of bonuses and only pay bonuses when certain risk, performance and capital hurdles are met.
- **Golden parachutes** – sign on, buy outs and severance payments are being scrutinized and banned in certain countries.
- **Boardrooms** – stewardship for responsible pay, increasing accountability and personal liability for remuneration decisions.
- **Governmental influence** - growing government intervention to curb excessive and executive pay

## Pay for Performance

Recent scrutiny in how executives are paid highlights that shareholders will not accept pay for failure. They want to see close alignment of executive pay with corporate performance, relative to the performance of its peers and shareholder return. Executives will be measured against financial and non-financial metrics which drive shareholder value and sustainable businesses.

## Remuneration Committees

Now more than ever, it is imperative that remuneration committees are responsive and show strong stewardship for sound and responsible remuneration practices. Remuneration committees are tasked with establishing and overseeing responsible remuneration practices which support long-term business performance, growth in shareholder value and attract, retain and motivate executives while also complying with the requirements of regulation. Current environment raises the importance for boards and its remuneration committees to enhance their intelligence and encourage stakeholder engagement to avoid negative results. A growing practice is that remuneration committees seek for independent expert advice from external remuneration consultants. In the US and UK, publicly traded companies are required to take into account a set of principles to ensure independence when appointing an external consultant to prevent conflicts of interest. Furthermore, a statement should be included in the annual disclosure whether the external consultant has any other connection with the company.

## Claw Back in the Netherlands

The Dutch senate adopted a new law on Wednesday, December 11, 2013, to adjust outstanding bonus awards and claw back previously paid awards under certain circumstances. It will become effective as of January 1, 2014 and applies to all directors of limited companies (N.V.) and financial companies, including banks, insurers and investment firms. Within the financial services sector, the new law will also be applied to identified staff (e.g. Policymakers and material risk takers). Furthermore, directors of listed public limited companies, must in the event of a public bid, a resolution that the nature of the company substantially modifies, a legal merger or demerger, settle capital gain's realized on shares granted with awards outstanding.

**The remuneration report should now be included as a discussion item at the shareholders meeting ahead of the approval of the annual accounts.**

## Checklist for remuneration committees

Below overview provides a checklist for remuneration committees for well-conceived corporate governance practice at publicly traded companies in the Netherlands and to engage effectively with shareholders and proxy advisors during proxy season.

<b>Terms &amp; Conditions</b>	The “Wet Bestuur en Toezicht” became effective as of January 1, 2013. As of this date, to be appointed, executive board members of publicly traded companies in the Netherlands can no longer have an employment contract but a ‘commission contract’ for a fixed period, subject to approval at the AGM. Employment contracts prior to January 1, 2013 will be honored. A material component of employment arrangement needs to be disclosed on companies’ website prior to the AGM.	<b>Pay for performance</b>	Variable pay to be awarded based on absolute performance of company and individual member, in accordance with the company’s risk appetite of, relative to market and selected group of peers. No reward for failure.
<b>Executive Pay policy</b>	Shareholders have a binding vote on executive pay policy. Materials changes to the pay policy will need to be presented as a voting item at the AGM. Pay policy to be line with risk profile of the company and aligned with its strategic goals.	<b>Variable Pay</b>	Mix of short term and long term incentives, consisting of upfront and deferred cash, shares and options.
<b>Executive Pay level</b>	To be proposed at AGM to shareholders. Vote is non-binding.	<b>Long term incentives</b>	Long term incentives should be deferred for a period of at least 5 years (includes holding period). Shares should be granted on the basis of targets specified beforehand and subject to absolute and relative performance targets (e.g. total shareholder return).
<b>Performance metrics</b>	Clear set of financial and non-financial performance metrics focused on specific year and long term value creation. Metrics will need to include qualitative and quantitative measures.	<b>Severance</b>	Under de Code severance pay has to be capped at a maximum of 1 year salary.

<b>Pay for performance</b>	Variable pay to be awarded based on absolute performance of company and individual member, in accordance with the company's risk appetite of, relative to market and selected group of peers. No reward for failure.	<b>Claw back</b>	A policy to recover under certain circumstances already paid awards along with the ability to hold back awards (in partial or fully) which are outstanding.
<b>Variable Pay</b>	Mix of short term and long term incentives, consisting of upfront and deferred cash, shares and options	<b>Malus</b>	A policy for adjusting, in certain circumstances, upwards or downwards variable pay awards, granted in previously years, which are conditional.
<b>Long term incentives</b>	Long term incentives should be deferred for a period of at least 5 years (includes holding period). Shares should be granted on the basis of targets specified beforehand and subject to absolute and relative performance targets (e.g. total shareholder return).	<b>Financial Account Statement</b>	Include in the explanatory notes the amount, broken down by component, of remuneration for each existing and departed executive board members to the extent charged to the company in the relevant fiscal year. Breakdown should show fixed salary, annual cash bonus, shares, options and pension rights that have been awarded and other emoluments received.
<b>Remuneration report</b>	<p>The disclosure should outline the executive pay policy of the respective financial year and following years and how the policy contributes to the achievement of the long term strategy of the firm in accordance with its risk profile.</p> <p>Disclosure items:</p> <ul style="list-style-type: none"> <li>■ Summary of decision-making process (governance framework)</li> <li>■ Overview of all costs incurred by the company in the financial year in relation to the remuneration (incl. emoluments) of the executive board members. In addition, if applicable, the one off crisis levy for taxable income will need to be reported.</li> <li>■ A statement that the scenario analyzes are made.</li> <li>■ The performance objectives of the board (qualitative and quantitative, explanation of the mechanics to determine performance and achievements of the board.</li> <li>■ A statement of the companies executive pay policy.</li> </ul>	<b>Scenario Analyses</b>	Conduct analysis of the expected payout for a set of executive pay plans under various performance scenarios, ranging from very good results to results that would lead to termination.

- A short description of the relationship between the performance objectives set and the long term strategic goals, and the relationship between pay and performance, both ex ante and ex post.
- The range of minimum and maximum variable awards incl. shares that could be granted in the financial year to the executive board.
- Table outlining for each member: 1) the value and number of shares granted, the status of outstanding deferrals from previous years and depositary receipts for company shares held by each member (incl. interests received), vesting and / or retention period.
- If applicable , the composition of the peer group the company uses to bench performance and pay and how the boards remuneration is positioned against its peers;
- Current pension schemes and the related financing, loans, advances and agreed arrangements for early retirement.
- The remuneration of the supervisory board incl. loans and meeting attendance fees should be disclosed.

**Shareholder engagement** Prevent any surprises by engaging in early stage with key shareholders and proxy advisors.

**Sale of Shares**

Hedging is prohibited and sales of shares in company should be disclosed to the AFM.

This article is created by AMA Partners and Georgeson.

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