

## The Remuneration Committee: A Comparative Legal Study

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## لجنة المكافآت: دراسة قانونية مقارنة

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### ملخص البحث:

من المبادئ المعترف بها في مجال حوكمة الشركات أن يتم العمل على إنشاء لجان مختلفة تساعد في الإدارة السليمة للشركات المدرجة في أسواق المال. وإحدى هذه اللجان هي لجنة المكافآت، ويطلق عليها مسمى لجنة التعويضات أيضاً، والتي تهدف إلى وضع سياسة المكافآت المالية في الشركة المدرجة، وتحدد التعويضات التي ستحصل عليها الإدارة التنفيذية كل عام سواء أكانت رواتب أم مميزات مالية أخرى.

وتتناول هذه المقالة قوانين حوكمة الشركات في كل من المملكة المتحدة والكويت، والأحكام المتعلقة بلجنة المكافآت في هاتين الدولتين، وذلك بهدف التوصل عن طريق الدراسة القانونية المقارنة إلى توصيات تساهم في سد النقص الموجود في التشريع الكويتي والخاص بحوكمة الشركات.

**الكلمات المفتاحية:** لجنة المكافآت، هيئة أسواق المال، قانون حوكمة الشركات.

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The Remuneration Committee: A Comparative Legal Study

## The Remuneration Committee: A Comparative Legal Study

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### **Abstract:**

It is a recognized principle of corporate governance that the establishment of various committees assists in the proper management of a listed company. One such committee is the remuneration committee, which establishes the remuneration policy for the company and sets out what compensation executive management will receive each year.

This article will consider the corporate governance codes of the UK and Kuwait and the provisions relating to the remuneration committee in each Code. It is hoped that the comparative legal study will identify areas in which the Kuwaiti Code is lacking and make recommendations for its improvement.

**Keywords:** Remuneration Committee, Capital Markets Authority, Corporate Governance Code.

## Introduction

It is a recognized principle of corporate governance that the establishment of various committees of the board of directors assists in the proper management of a listed company. Examples of such committees including the audit committee, risk management committee, and remuneration committee. The board of directors is responsible for monitoring, controlling, and protecting the interests of shareholders. One way of doing this is by ensuring that the remuneration of senior company officers is associated with company performance and in the company's interests.<sup>(1)</sup> Unfair earnings management and a poor compensation policy can lead to the financial instability of a company and corporate scandals.<sup>(2)</sup> Unfair compensation includes different actions such as extravagant remuneration, remuneration unconnected with the firm's performance, and remuneration that is, in general, not liable to sufficient scrutiny and discipline of the board of directors.<sup>(3)</sup>

Whilst the remuneration committee is primarily concerned with the financial compensation of directors and executive management, they also deal with other issues related to the appointment of

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(1) Iman Harymawan, Dian Agustia, Mohammad Nasih, Azmi Inayati and John Nowland, 'Remuneration Committees, Executive Remuneration, and Firm Performance in Indonesia' (2020) 6 Heliyon e03452, 10.

(2) Mujeeb Al-Absy, Ku Nor Ismail and Sitraselvi Chandren, 'Board Chairmen's Involvement in the Nomination and Remuneration Committees and Earnings Management' (2019) 12(4) Australasian Accounting, Business and Finance Journal 62.

(3) Chii-Shyan Kuo and Shih-Ti Yu, 'Remuneration Committee, Board Independence and Top Executive Compensation' (2014) 7 Journal of Risk Financial Management 28, 29.

(١٣٥٨) **The Remuneration Committee: A Comparative Legal Study** directors and other human resources matters.<sup>(1)</sup> For this reason, the committee needs to collaborate with other committees to understand the various business functions and how these affect the financial stability of the company. Without precise information, the efficiency of the remuneration committee will be hampered. Furthermore, the committee may set the remuneration policy of the company, but problems will arise when the actual financial position of the company is unable to maintain or apply the policy.

This article will discuss the vital role played by the remuneration committee in effective business management and will attempt to set out the legal position in the UK and Kuwait regarding remuneration committees. Thereafter, specific recommendations will be made to improve the corporate governance code in relation to remuneration committees in Kuwait.

### **The Concept of Remuneration Committee**

A remuneration committee is a committee set up by the board of directors to consider the framework for the remuneration and terms of employment of the chairman and the board of directors. It is aimed at monitoring the performance of the directors and ensuring that they are adequately compensated for their efforts. Remuneration committees can play a significant role in corporate governance mechanisms.<sup>(2)</sup> Whilst most corporate governance codes contain provisions regarding establishing remuneration

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(1) Antonio Dell'Atti, Mariantonietta Intonti and Antonia Iannuzzi, 'The Effectiveness of Remuneration Committees in European Banks Regulation and Best Practices' (2013) 21(4) *Journal of Financial Regulation and Compliance* 373, 389.

(2) Sutharson Kanapathippillai, Shireenjit K Johl and Graeme Wines, 'Remuneration Committee Effectiveness and Narrative Remuneration Disclosure' (2016) 40 *Pacific-Basin Finance Journal* 384, 399.

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committees, their membership, and meetings, most such codes tend to offer little meaningful advice regarding the substantive question of what is appropriate in determining executive reward.<sup>(1)</sup>

### **A. Membership of the Remuneration Committee**

Typically, a remuneration committee is made up of three directors, one of whom should be independent. Remuneration committees may be larger or smaller, depending on the size of the company. However, the committee should always have more than two members. In order to prevent any conflict of interest, the remuneration committee should have independent members.<sup>(2)</sup> No committee member should preside over the adjudication of their own compensation package. Furthermore, companies are entitled to employ outside consultants to assist with determining the remuneration policy and compensation for executive management, although this is not very common.

### **B. What are the Objectives, Functions, and Powers of the Committee?**

The role of the remuneration committee is to establish an appropriate remuneration policy that attracts and motivates the best qualified executives to manage the company. The committee needs to determine the company's general policy towards remuneration and set out the specific compensation structure for key personnel such as the board of directors. To ensure that the executives are

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(1) Stuart Ogden and Robert Watson, 'Executive Pay and the Search for Legitimacy: An Investigation into How UK Remuneration Committees Use Corporate Performance Comparisons in Long-Term Incentive Pay Decisions' (2008) 61(5) Human Relations 711, 712.

(2) Ian Gregory-Smith, 'Chief Executive Pay and Remuneration Committee Independence' (2012) 74(4) Oxford Bulletin of Economics and Statistics 511.

adequately compensated, the remuneration committee will determine what fixed salary the directors should receive, what bonuses they should be paid, and what stock options they should be given, as well as any other incentives that may be pertinent. The committee should carry out their work without any conflict of interest in determining the remuneration packages, and they should always act in the best interest of the shareholders of the company. In this regard, the remuneration committee will ensure transparency by reporting to the shareholders regarding their decisions pertaining to executive remuneration.

Members of the remuneration committee do not need to have expert knowledge in matters of finance and accounting, but they do need information to make good decisions on levels of remuneration.<sup>(1)</sup> For instance, they need to take the size of the business into consideration, the complexity of its operations and global competitors, the business' performance and prospects, the sector in which it operates, and any specific challenges faced by that sector. Furthermore, they need to take the key performance indicators (KPIs) of the business into account, cash flow and debt levels, as well as the myriad of stakeholders' interests .

Remuneration committees can strengthen the link between company performance and growth in chief executive officer's (CEO) remuneration.<sup>(2)</sup> By establishing proper policies, remuneration committees can link the company policy to executive

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(1) Institute of Directors, 'What is the Role of the Remuneration Committee?' (IOD, 22 August 2019) <<https://www.iod.com/news/news/articles/What-is-the-role-of-the-remuneration-committee>>.

(2) Pamela Kent, Kim Kercher and James Routledge, 'Remuneration Committees, Shareholder Dissent on CEO Pay and the CEO Pay–Performance Link' (2018) 58 *Accounting and Finance* 445, 470.

remuneration, thus ensuring that the board of directors, and the CEO in particular, work to improve the company's financial position. However, in practice, some companies pay their CEOs and other directors large sums while the company suffers financially.<sup>(1)</sup>

### **C. Meetings of the Committee**

A remuneration committee needs to meet at least once a year but can meet at any time it deems necessary. The quorum for any such meeting is two members and only members of the committee are entitled to attend its meetings. An appropriate agenda for the meeting should be drafted and circulated in advance of the meeting so as to provide members with sufficient time to adequately prepare.

Minutes of each meeting are kept by the company secretary, and any decisions taken by the committee should be detailed therein. Where appropriate, decisions taken by the committee should be submitted to the board of directors for approval.

### **D. Reporting Functions of the Committee**

The chairman of the committee will report to the board of directors about the policies determined and decisions made by the committee. The committee will prepare an annual report on its meetings and decisions, which is submitted to the board of directors for approval. This report is included in the board of

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(1) Sutharson Kanapathippillai, Dessalegn Mihret and Shireenjit Johl, 'Remuneration Committees and Attribution Disclosures on Remuneration Decisions: Australian Evidence' (2019) 158 Journal of Business Ethics (2019) 1063.

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directors' report to the shareholders, which is presented at the annual meeting of the company .

### **The Legal Framework of the Remuneration Committee**

Corporate governance in the UK is regulated by the UK Corporate Governance Code 2018. In addition, several laws in the fields of business and securities apply to larger companies and those listed on the stock exchange. In terms of the Code, it is expected that companies will create various committees such as an audit committee, a risk management committee, and a remuneration committee.<sup>(1)</sup> The provisions relating to the remuneration committee are set out in Section 5 of the Code.

### **The three main corporate governance principles pertaining to executive remuneration and remuneration committees are:**

- Principle P, which states that remuneration policies and practices should be designed to support the company strategy and promote long-term sustainable success. Executive remuneration should be aligned to the company's purpose and values and be clearly linked to the successful delivery of the company's long-term strategy.
- Principle Q, which states that a formal and transparent procedure for developing a policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome.
- Principle R requires that directors should exercise independent judgement and discretion when authorising

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(1) Provision 32.

remuneration outcomes, taking account of company and individual performance, and wider circumstances.

From these principles, it is clear that the remuneration policy should be aligned to the company's purpose and values and be clearly linked to the successful delivery of the company's long-term strategy.<sup>(1)</sup> Only companies that are financially stable and performing according to their long-term strategy and business plan will be in a position to offer their directors and management salaries and bonuses that are competitive in the market. Furthermore, attracting highly qualified directors and managers depends on companies being able to afford larger salaries and remuneration packages. In order to accomplish these goals and strategies, listed companies should establish a remuneration committee separate from the board to ensure compliance with this main principle .

The work of the remuneration committee involves setting a formal and transparent procedure for developing a remuneration policy for executive directors and senior management compensation. Once this policy has been decided, the remuneration committee should not deviate from it. Obviously, no director should be involved in deciding their own compensation package as this will override the principle of independence.<sup>(2)</sup> The remuneration policy will facilitate the determination of remuneration for all executives, senior management, and directors. It should be the goal of the remuneration committee to draft a policy that takes into consideration the company's performance as

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(1) Principle P of UK Code 2018.

(2) Principle Q of UK Code 2018.

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well as the individual's performance and wider circumstances.<sup>(1)</sup>  
Poor performance or management by a director should not be rewarded by a large remuneration package.

The remuneration committee is also responsible for recruiting directors to serve on the board. To this end, the Corporate Governance Code makes provision for contract periods, stating that if it is necessary to offer longer periods to new directors recruited from outside the company, such periods should reduce to one year or less after the initial period. The remuneration committee should ensure compensation commitments in directors' terms of appointment do not reward poor performance. They should be robust in reducing compensation to reflect departing directors' obligations to mitigate loss<sup>(۲)</sup>.

The Corporate Governance Code also deals with remuneration schemes.<sup>(3)</sup> These include long-term shareholdings by executive directors. This is aimed at awarding shares in the company subject to a total vesting and holding period of five years or more. These shares are a way of compensating directors post-employment by means of shareholding for both unvested and vested shares. However, remuneration schemes are beyond the scope of this article and can be a subject of future research.

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(1) Principle R of UK Code 2018.

(2) Provision 35.

(3) Provision 36.

## **A. Membership of the Remuneration Committee in the UK Law**

The establishment of a remuneration committee is dealt with in Provision 32 of the Corporate Governance Code. According to this provision, the board should establish a remuneration committee of independent non-executive directors, with a membership of three, or in the case of smaller companies, two. In addition, the chair of the board of directors can only be a member of the committee if they previously served as an independent director, in which case they cannot chair the committee. Before appointment as chair of the remuneration committee, the appointee should have served on a remuneration committee for at least twelve months <sup>(1)</sup>.

As can be seen from the Code in the UK, the remuneration committee should be constituted entirely of non-executive directors with a majority being independent directors. The committee should have at least three members, whose appointment to the committee will cease when they resign as a director. The reason for the appointment of mostly independent non-executive directors to the committee is to avoid any conflict of interest around the issue of compensation for senior management. The remuneration committee should have a high level of understanding of both internal and external factors that may affect their decisions, including factors relating to the business culture. The committee should understand the company's existing approach to remuneration and the current policies in terms of notice and severance agreements. They should be aware of any exceptions or

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(1) Provision 32 of the UK Corporate Governance Code 2018.

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special arrangements in the past and how management has been paid to date.

The chair of the committee should attend the company's annual general meeting to answer any shareholder questions that fall within the committee's terms of reference. They should also prepare a statement for the annual remuneration report summarising the major decisions on directors' remuneration, any substantial changes made during the year, and the context in which those changes occurred and decisions have been taken.

## **B. Objectives, Functions, and Powers of the Committee in the UK Law**

The primary function of the remuneration committee in the UK is to assist the board in recommending the remuneration packages of executive directors, non-executive directors, and senior management of the group. Its main goal is developing a policy relating to remuneration packages that will attract, retain, and motivate directors and senior management, which in turn will drive long-term objectives. In carrying out its functions, the committee will aim to ensure that the level of remuneration is aligned with the business strategy and long-term objectives of the company. It will take the complexity of the company's activities into account and ensure that the remuneration is adequate given the experience and level of responsibilities undertaken by the executive directors and senior management .

The Code requires the remuneration committee to have delegated responsibility for determining the policy for executive director remuneration and setting remuneration for the chair, executive

directors, and senior management.<sup>(1)</sup> As stated above, the setting of an appropriate remuneration policy will assist in attracting high-quality candidates to serve on the board of directors. This is especially true when recruiting candidates for the office of CEO, chairman of the board, and other high-ranking positions in the company .

In addition to setting the policy regarding executive management remuneration, the committee should also review workforce remuneration and related policies and the alignment of incentives and rewards, taking these into account when setting the policy for executive director remuneration. In this regard, Provision 34 of the Code states that remuneration of non-executive directors should be determined in accordance with the articles of association or by the board. Their remuneration should reflect the time commitment and responsibilities of the role but should not include share options or other performance-related elements .

How should remuneration be decided? Ideally, executives and directors should be rewarded in a way that attracts, retains, and motivates them while at the same time striving to satisfy shareholders' interests. The following is a list of typical components of an executive director's compensation package.

- Fixed compensation. Based on the terms of the executive director's employment contract, this will usually consist of their basic salary, superannuation, and fringe benefits. Performance is not linked to this aspect of compensation. Fixed remuneration is generally based on market practices for peers working for companies with similar business models. However, if the executive

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(1) Provision 33.

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director comes from a different country, the level of remuneration in their home country may need to be considered by the committee.

- Cash bonuses may be paid to executive directors who perform extremely well and may be accompanied by deferred shares.

- Share options are rights to purchase shares during a specified time in the future at a specific price. An increase in the share price gives directors an incentive to increase the company's value. Since the directors become owners, share options are believed to align executive director goals with shareholders, eliminating agency problems.

- Many remuneration guidelines also specify that options should not be exercisable in less than three years and that the shares should not be offered at a discount.

- If it is a defined benefit plan, superannuation is often included in the fixed compensation package. If the committee considers a basic salary increase, it should also consider any bonus payments, which in many organisations also provide superannuation benefits.

**According to the Corporate Governance Code in the UK(1) when determining executive director remuneration policy and practices, the remuneration committee should address the following :**

- Clarity – remuneration arrangements should be transparent and promote effective engagement with shareholders and the workforce.

- Simplicity – remuneration structures should avoid complexity and their rationale and operation should be easy to understand.

- Risk – remuneration arrangements should ensure reputational and other risks are protected from excessive rewards, and

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(1) Provision 36.

behavioural risks that can arise from target-based incentive plans are identified and mitigated.

- Predictability – the range of possible values of rewards to individual directors and any other limits or discretions should be identified and explained at the time of approving the policy.
- Proportionality – the link between individual awards, the delivery of strategy, and the long-term performance of the company should be clear. Outcomes should not reward poor performance.
- Alignment to culture – incentive schemes should drive behaviours consistent with company purpose, values, and strategy.

As mentioned above, the main components to consider in respect of executive remuneration include a fixed basic salary, which could be related to the market practices of similar companies, and also performance-related bonuses and what share options will be provided to executive directors. Factors that may affect remuneration include company size, performance record, industry sector, geographic location, cash flow, and KPIs.

Since remuneration for directors may be monitored by several others outside the business, the role of the remuneration committee in ensuring fairness and transparency is vital. For this reason, it is helpful for the committee to have a thorough understanding of all interest groups and stakeholders in the market. Data on the market and the compensation for others in the same industry sector will be of use to the committee for deciding on and justifying appropriate compensation levels.

Recently, increasing attention is being paid to the remuneration of directors by shareholders and investors. As a result, there is increasing pressure on the remuneration committee to strike a balance between compensation that is fair and, at the same time, competitive. There is some variance across industries regarding

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remuneration packages, so it is preferable that committee members have some experience in developing remuneration policies and packages.<sup>(1)</sup> This is especially important as the committee will need to navigate all the necessary factors including relevant legal and regulatory requirements .

One of the factors that the committee will need to take into consideration is the risk appetite of the company and its alignment with the company's long-term strategic goals. A significant proportion of remuneration should be structured so as to link rewards to corporate and individual performance and be designed to promote the long-term success of the company. The process of developing and administering a fair procedure for setting policy on the remuneration of directors and key senior management should be transparent and included in the annual directors' report to the shareholders.

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(1) Provision 35 of the Code allows for the appointment of a remuneration consultant. In such a case, the consultant should be identified in the annual report alongside a statement about any other connection they have with the company or individual directors. Independent judgement should be exercised when evaluating the advice of external third parties and when receiving views from executive directors and senior management.

**Additional responsibilities of the remuneration committee include:**

- Reviewing the terms and conditions of employment along with the compensation of senior directors and managers.
- Deciding on termination payments for executive directors and the chairperson.
- Reassuring shareholders that remuneration is decided fairly and transparently with no conflicts of interest.
- Maintaining a record of the remuneration structure and level of senior managers.

Whilst the committee aims to ensure that the remuneration packages are commensurate with the directors' and senior management's merits, qualifications, and competence, it will need to ensure that the company's operating results, individual performance, and comparable market statistics are considered. To do this, at least once a year, the committee will review the performance of the executive directors, CEO, chief financial officer, and other senior executive officers and recommend to the board specific adjustments in remuneration and/or reward payments if any to reflect their contributions for the year. The committee should be entitled to review the level of remuneration of the directors and any benefits payable to the directors including any compensation for loss of employment of a director or former director.<sup>(1)</sup> The chairman of the committee should attend the annual

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(1) Pursuant to Section 230 of the Companies Act 2016, the fees of the directors and any benefits payable to the directors including any compensation for loss of employment of a director or former director of the company shall be approved at a general meeting.

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general meeting to answer any shareholder questions on the committee's activities.

Furthermore, Provision 37 of the Code gives the committee the discretion to override formulaic outcomes. This enables the company to recover and/or withhold sums or share awards in certain circumstances. Contracts awarded to directors should be for a minimum of one year. Notice of cancellation or termination should be stipulated but should not be long enough to reward poor performance.<sup>(1)</sup> When determining the remuneration payable to an executive director, the committee should aim to develop a policy that is based on clarity, simplicity, risk, predictability, proportionality, and alignment to culture.<sup>(2)</sup>

### **C. Committee Meetings**

Meetings of the remuneration committee should be held at least once a year, although more meetings may be convened should the need arise. The quorum for a such meeting is two members. Only members of the remuneration committee have the right to attend committee meetings. However, other individuals such as the CEO, the head of human resources or senior management may be invited to attend all or part of any meeting, as and when appropriate and necessary. The company secretary or their representative should act as secretary of the committee and be responsible for drawing up the agenda and circulating it to members, supported by explanatory documentation, prior to each meeting. Furthermore, the company secretary should attend each remuneration committee meeting and is responsible for keeping the minutes of meetings.

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(1) Provision 39.

(2) Article 40.

Where necessary other professionals or advisers may be consulted by the members of the committee and the company secretary.

#### **D. Reporting Responsibilities of the Committee**

The committee has a duty to report to the board of directors after each meeting. The chairman of the committee will report to the board and submit any recommendations the committee deems necessary for implementation by the board .

The board of directors, in turn, will present an annual report to the company's shareholders. The report needs to give a description of the work of the remuneration committee including an explanation of the strategic rationale for executive directors' remuneration policies, structures, and any performance metrics. The report should give reasons why the remuneration is appropriate using internal and external measures, including pay ratios and pay gaps. It will give a description, with examples, of how the remuneration committee has addressed the factors in Provision 40 of the Corporate Governance Code and will state whether the remuneration policy operated as intended in terms of company performance and quantum. If the policy did not operate as intended, the report should detail what changes are necessary. Lastly, the report should set out what engagement has taken place with shareholders and the workforce and what impact this has had on the remuneration policy and outcomes. The report will need to explain how executive remuneration aligns with wider company pay policy and to what extent discretion has been applied to remuneration outcomes and the reasons why.<sup>(1)</sup>

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(1) Article 41.

## **E. Revision of the Terms of Reference**

The terms of reference of the committee may be amended by the committee but need to be submitted to the board for approval. Once the board has approved the revision or amendment, the terms of reference for the committee are so amended.

## **The Remuneration Committee in Kuwaiti Law**

Corporate governance is a new concept in Kuwait with the first corporate governance code being enacted in 2013. However, much has been learned from the way corporate governance is applied in other countries such as the UK.

Several of the rules mentioned in the 2015 Corporate Governance Code have enabled companies to improve the way the board of directors operates. For example, Rule III states that companies should recruit highly qualified candidates to be board members and the executive management. This has had a positive effect on the way companies are managed and corporate governance applied in these companies. As a result, companies perform better and are able to offer better remuneration packages to these managers .

Rule VI promotes a code of conduct and ethical standards required of those who sit on boards of directors. Whilst these standards are not always consistently applied, it has raised the level of conduct of directors and executive management, especially in relation to the way they interact with shareholders and their appetite for risk.

Rule VII relates to the issue of transparency in reporting, particularly disclosing the details of executive remuneration. When read in conjunction with Rule VIII, which balances the interests of the company and the shareholders, this provision has had a positive

effect on the way directors interact with shareholders. Company management do not have freedom to operate the company as they wish. They need to report to their shareholders on the way the business has been managed and how their actions have affected the shareholders.

Lastly, Rule X sets out ways to encourage enhanced performance whilst monitoring the performance of the board and executive management. This is of particular interest to the remuneration committee in determining the appropriate compensation packages.

The 2015 Corporate Governance Code in Kuwait includes provisions relating to the formation of various committees in order to assist the board of directors in managing the company. Examples include the audit committee, the risk management committee, the nomination committee, and the remunerations committee.<sup>(1)</sup> This is similar to the approach in the UK, although the objectives and the functions of these committees in Kuwait still need to be clarified.

## **A. Membership and Composition of the Committee in Kuwaiti Law**

The 2015 Code states that the remuneration committee should consist of at least three members, one of whom should be an independent director. The chairman of the committee should be a non-executive member of the board of directors. This is similar to the provisions in the UK Code, although it would be preferable for all the members of the remuneration committee to be independent directors. Furthermore, no director should be involved in

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(1) Kuwaiti Code 2015 Article 3:12 part 2.

(١٣٧٦) **The Remuneration Committee: A Comparative Legal Study** determining their own remuneration package, similar to the position in the UK.

Unlike the UK, the Kuwait Code combines the nomination committee and the remuneration committee. This has the effect that the roles and responsibilities of these committees tend to overlap and negatively affect decisions of the committees. The Kuwaiti legislature should therefore give clear direction as to the establishment and membership of the various committees, as well as to their roles and responsibilities.

## **B. The Objectives, Function, and Powers of the Committee in Kuwaiti Law**

The objective of the remuneration committee is to determine the form of remuneration paid to the board directors.<sup>(1)</sup> The Corporate Governance Code states that the remuneration committee should set the policy for the calculation of remuneration paid to the board of directors as well as executive management. Furthermore, the committee should conduct an annual review of the skills needed by the board members and invite applications for executive positions as required. The committee will also determine the various remuneration categories to be provided for employees such as fixed, performance-based, shares, and end of service remuneration categories.<sup>(2)</sup>

The Companies Law states that the company contract should set out the method of determining the remuneration of the board of directors.<sup>(3)</sup> It further limits this to ten percent of the company's net profits after distributing profit dividends of at least five percent of

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(1) Kuwaiti Code 2015 Article 4:2.

(2) Kuwaiti Code 2015 Article 4:3 part 2.

(3) Article 198 of Law No 1 of 2016.

the company's capital to shareholders. In the event of the company not making any profits, an annual remuneration of 6,000 KD (Kuwaiti Dinars) may be distributed to the chairman and each member of the board of directors. In this regard, the Kuwaiti Code is more balanced than the UK Code. By limiting the remuneration of directors to percentages of the profits of the company, directors are motivated to improve the company's financial position. Only if this happens will their own compensation packages improve. In the UK, this is done by setting a remuneration policy. However, in order to attract qualified candidates, companies in the UK have to offer higher remuneration packages that are not always linked to the performance of the company.

### **C. Committee Meetings in Kuwaiti Law**

According to the Kuwaiti Corporate Governance Code, the committee should meet at least once a year but may schedule meetings more regularly if needed.<sup>(1)</sup> The committee should record the minutes of its meetings and distribute them to the members of the committee and the board of directors. In this regard, the position in Kuwait is similar to that of the UK.

### **D. Reporting Function of the Committee in Kuwaiti Law**

As mentioned above, the committee needs to report to the board of directors on its meetings and decisions. The board of directors, in turn, prepares an annual report that is submitted to the ordinary general meeting of shareholders. This report needs to be approved by the shareholders of the company.

The annual report needs to give details of all remuneration paid to the board of directors and executive management, whether cash or

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(1) Kuwaiti Code 2015 Article 4:5.

(١٣٧٨) **The Remuneration Committee: A Comparative Legal Study**  
benefits or privileges, of whatever nature and title.<sup>(1)</sup> The report  
needs to be referred to the general assembly for approval and to be  
read by the board chairman. The report must avoid any attempt to  
hide any material information related to the remuneration paid to  
the board and not provide misleading information. In this regard,  
the principle of transparency is similar to that in the UK.

The remuneration report must include certain minimum  
information to be disclosed, which includes any incentive system  
in the company.<sup>(2)</sup> Furthermore, any other remuneration given  
directly or indirectly by the company or its subsidiary companies,  
as well as any substantial deviations from the remuneration policy  
approved by board of directors, also need to be disclosed. Whilst  
this is similar to the process in the UK, by requiring that the report  
discloses any remuneration paid to directors from outside the  
company, the Kuwait Corporate Governance Code goes further  
than the UK Code. Together with the limitation on the amounts  
payable to directors, this is seen as a way of limiting disparity  
between the remuneration paid to executives and the interests of  
shareholders and ordinary employees.

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(1) Kuwaiti Code 2015 Article 4:3 part 5.

(2) Kuwaiti Code 2015 Article 4:4.

## Conclusion

This article has discussed the role of the remuneration committee and its essential functions in establishing the policies to be followed when determining executive remuneration. It has considered how the Corporate Governance Codes of the UK and Kuwait deal with the membership of the remuneration committee, the objectives, functions, and powers of the committee, its meetings, and the reporting requirements of the two different Codes.

### A. Findings

The remuneration committee is a vital part of the effective management of listed and/or large companies. The objectives and functions of these committees differ from country to country as is to be expected. However, this leaves the topic of executive remuneration open for abuse.

The UK Corporate Governance Code is a well-established and widely followed Code. Its application has allowed many companies to thrive under effective management. The remuneration committees and the guidelines set out in the Code have ensured that executives have been properly compensated for their work, but have also safeguarded the interests of shareholders. Whilst no system is beyond reproach, the UK policies relating to the remuneration committee have seen many companies thrive and ensure their long-term survival. There is a direct correlation between the establishment of various committees, such as the audit committee, the risk management committee, and the remuneration committee, and the financial success of businesses in the UK. However, the Code does leave the process open for abuse,

particularly given the need to attract highly qualified and suitable candidates to the board of directors. By offering high salaries and bonus schemes, companies can sometimes put their own remuneration policies under pressure, which in turn can lead to greater risk taking by executive management .

The Kuwait Corporate Governance Code is still in its infancy. As can be seen from the discussion above, in many respects the provisions of the Code relating to remuneration committees are similar to those in the UK. However, the Kuwaiti Code is more conservative as it links executive remuneration to overall company financial performance. Furthermore, the way in which certain aspects of remuneration from outside the company are limited is different to the UK Code. This can have a positive effect on the transparency of the remuneration policy and ensure that directors apply themselves to the financial performance of the company. However, it can also lead to qualified candidates leaving Kuwait for greater opportunities in other countries.

Whilst an attempt was made to deal with the remuneration committee in the Kuwaiti Code, there is still much work to be done in regard to the implementation of the ideals of the Code. For example, the Code deals with the term 'sol'. More rules do not necessarily lead to greater company success. More rules can also lead to the destruction of the company. As a result, scholars and executives alike should consider the example of the UK Corporate Governance Code and how it has been implemented over many years in that country. By looking to good examples of remuneration committees and the application of the Code in the UK, Kuwaiti companies can strike a balance between fair and proper compensation of their executives and the interests of the

company and shareholders alike. The long-term sustainability of the company should always be paramount, but remuneration committees should not be overly conservative in awarding fixed salaries and bonus payments that reward directors and managers for their hard work .

## **B. Recommendations for Improving the Remuneration Committee in Kuwaiti Law**

Recently, executive remuneration has become the topic of much debate due to its disproportionate nature when compared with average workers' salaries. Whilst the remuneration committee should attract and reward high quality candidates for the board of directors and ensure that they are highly motivated in carrying out their financial responsibilities for the company, this should form part of a greater remuneration policy that rewards all workers and not just executive management .

### **The recommendations for improving the Code are therefore as follows:**

- Further research should be conducted into specific case studies of companies that have successfully applied corporate governance policies related to remuneration, as well as to companies that have faced challenges due to unfair remuneration policies.
- A pro-forma remuneration policy should be developed that balances the competing interests of the business, shareholders, workers, and executives, to ensure that the business maintains its longevity.
- Companies should ensure that a balanced approach towards remuneration of both workers and directors should form a priority or main objective of the company.

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