

The Shareholder Rights Directive – new rules in Danish listed companies

– With particular focus on new rules
regarding remuneration of company
management and related party
transactions



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Preface

On 6 February 2019, the Danish Ministry of Industry, Business and Financial Affairs presented a Bill to implement the EU Shareholder Rights Directive in Denmark. The Bill has since been adopted on 4 April 2019. The purpose of the Directive's rules is to ensure better rights and transparency for the shareholders of listed companies, within the following areas, among others:

1. Requirements for the preparation and approval of a remuneration policy
2. Requirement for preparation and approval of remuneration reports
3. Approval of related party transactions, and disclosure of certain types of these transactions
4. Companies now also have the right to identify their shareholders
5. Improved transparency in relation to institutional investors, asset managers and proxy advisors

Particularly in the first three areas, new and increased requirements apply to companies' internal processes and to the publication of information for the shareholders, and for the market in general. This publication is particularly focused on these first three elements of the Bill.

Through this publication, we have sought to illustrate how companies may report on the different types of remuneration. With a view to ensuring harmonization and consistency of the remuneration reports of listed companies, the EU Commission will prepare guidelines determining a voluntary standard for the disclosure of the information to be included in the remuneration report, in accordance with Article 9 b(6) of the Shareholders' Rights Directive.

Please note that this publication has been prepared during February based on the proposed language in the Bill, before official interpretations were available regarding the understanding of the Bill's individual provisions. We can though note that no material changes have been made in connection with the passing of the Bill by the Danish parliament (Folketing). In several areas, we have indicated PwC's immediate understanding of the rules, but we reserve our position, as subsequent interpretations of the law may change this immediate understanding of the rules.

PwC expects that in its next updated Recommendations on Corporate Governance, the Committee on Corporate Governance will consider whether the recommendations on remuneration and remuneration reports should be adjusted to the new legal requirements. It is expected that such adjustments will take place before the new legal requirements become effective in June 2019, so that companies avoid an unnecessary overlapping of rules, including different policy and reporting requirements relating to the same matter.

PwC is available to discuss the new rules and the consequences for your company. PwC can also provide benchmarks, advice on implementing the new requirements, and contribute to the preparation of both the remuneration policy and the remuneration report.

Copenhagen, April 2019

PwC

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1. Summary of the proposed rules

The new rules are proposed to apply to companies that have shares listed on a regulated market (e.g. NASDAQ OMX Copenhagen). This excludes companies with shares listed on “a multilateral trading facility” (e.g. NASDAQ First North). Companies that only have bonds listed are also not covered by the new rules.

1.1. Remuneration policy

Today, listed companies follow section 139 of the Danish Companies Act on guidelines for incentive pay, and are also covered by the recommendations of the Committee on Corporate Governance on communication of management’s remuneration.

The implementation of the Shareholder Rights Directive means, among other things, that a more detailed remuneration policy must be prepared and approved at the general meeting, and the remuneration policy must be submitted for a binding vote by the general meeting at least every four years. Furthermore, a remuneration report must be presented annually at the annual general meeting for a guiding vote, which documents that the approved practice is followed. The remuneration report must be published on the company’s website, where it should remain available for at least ten years.

The remuneration policy must include the following elements:

- An explanation of how the remuneration policy contributes to the company’s business strategy, long-term interests and sustainability;
- A description of the various components of fixed and variable remuneration, including all bonuses and other benefits that can be awarded to the members of management, indicating the relative proportion of each of the components;
- An explanation of how the company’s employees’ pay and employment conditions were taken into account when establishing the remuneration policy;
- Guidelines for the duration of contracts or arrangements with members of management, the main characteristics of supplementary pension or early retirement and termination schemes, termination notice periods and termination payments;
- An explanation of the decision-making process used in determining, auditing and implementing remuneration policies, including measures to avoid or manage conflicts of interest;
- Where a company awards variable remuneration, the remuneration policy must contain clear, comprehensive

and varied criteria for the award of the variable remuneration. The remuneration policy must specify:

- information on the financial and non-financial performance criteria, including, where relevant, criteria on corporate social responsibility and an explanation of how they contribute to the company’s business strategy, as well as long-term interests and sustainability, as well as the methods to determine to which extent the performance criteria is met, and
 - information on any deferral periods and on the company’s ability to reclaim variable remuneration.
- Where the company awards share-based remuneration, the remuneration policy must also provide guidelines for vesting periods and, where applicable, retention of shares after vesting, and explain how the share-based remuneration contributes to the company’s business strategy, long-term goals and sustainability;
 - If the remuneration policy is changed, the remuneration policy must describe and explain all significant changes. The description should include information on how the shareholders’ votes and views of the remuneration policy and remuneration reports were taken into account since the most recent vote on the remuneration policy at the annual general meeting;
 - The supreme governing body of the company may, in exceptional circumstances, temporarily deviate from the remuneration policy, provided the remuneration policy outlines the procedural conditions for such deviation and specifies the elements of the remuneration policy that may be deviated from.

1.2. Remuneration report

The remuneration report must be clear and understandable and provide a comprehensive overview of the remuneration that the individual members of management, including new and former, have been awarded or are owed in relation to the most recent financial year. The remuneration includes all benefits, irrespective of type.

Moreover, the remuneration report must include:

- The total remuneration broken down by components, the relative proportion of fixed and variable remuneration, and an explanation of how the total remuneration complies with the approved remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied;
- Annual changes in remuneration, in the company’s performance, and in the average remuneration on the basis of full-time equivalents of employees of the company



other than management members, as a minimum over the past five financial years, presented in a way that enables comparison;

- Any kind of remuneration from companies belonging to the same group;
- The number of shares, share options granted or offered, and the principal terms for the exercise of the rights, including the price at the time of grant, the exercise date and any change thereof;
- Information on using the option to reclaim variable remuneration; and
- Information on any deviations from the procedure for implementing the remuneration policy and deviations from the remuneration policy itself, including a description of the exceptional circumstances and an indication of the specific elements of the remuneration policy that may be deviated from.

1.3. Related party transactions

In the future, the Board of Directors of listed companies must approve material transactions between the company and its related parties, before the transactions are carried out. According to the explanatory notes, the background for the proposal is that related parties have significant influence on the company, which implies a risk that transactions between the related party and the company will not be carried out on normal market terms.

A portion of the approved transactions must be published - according to the proposal, publication must be made if the fair value of the transaction represents 10% or more of the company's total assets or 25% or more of the operating profit/loss according to the most recently published consolidated financial statements.

If the company does not prepare consolidated financial statements, the calculation must be based on the most recently published financial statements. If the company carries out several transactions with the same related party within the same financial year, such transactions must be disclosed when the sum of transactions not disclosed exceeds at least one of the above-mentioned thresholds.

The rules do not apply to ordinary business transactions with related parties. Besides this, the Bill includes a number of other exceptions, e.g. regarding transactions with subsidiaries, just as some transactions covered by the rules of the Danish Companies Act are not covered.

1.4. Other amendments

In addition to new rules on remuneration policy, remuneration report and ongoing information on related party transactions, it is proposed that companies be entitled to identify all their shareholders, irrespective of the size of the shareholder's holdings and voting rights.

If voting is done electronically, the company must confirm receipt of the vote cast and, subsequently, confirm that the electronic vote has been validly registered.

Furthermore, it has been proposed that institutional investors and asset managers must prepare and publish a shareholder engagement policy, which describes how each investor integrates active ownership in their investment strategy. The institutional investor or asset manager must also annually publish how the policy has been implemented.

1.5. Effective date

It has been proposed that the legislative amendments come into force on 10 June 2019, which is in accordance with the Directive's latest timing of implementation in each of the individual Member States.

Consequently, the rules on approval and publication of related party transactions become effective on 10 June 2019.

Transitional provisions have been proposed for the preparation and approval of a remuneration policy, so that these requirements only apply at the first annual general meeting of the company, which is convened in the financial years beginning on or after 10 June 2019. In this way, companies with financial years following the calendar year have a certain period to prepare the remuneration policy, so that it may be presented for approval at the ordinary general meeting in the spring of 2020.

The requirement for the preparation of the remuneration report becomes effective so that the report may be presented at the ordinary general meeting following the general meeting at which the new remuneration policy was approved. It is therefore expected for companies with financial years following the calendar year, that the first remuneration report will be presented at the annual general meeting in the spring of 2021.

The rules for identifying shareholders and confirming electronically cast votes, as well as a set of rules for institutional investors and asset managers, will become effective in 2020.

1.6. Structure of this publication

This publication focuses mainly on the new rules regarding management remuneration and related party transactions, respectively. The remaining rules are briefly addressed.

The publication contains the following main sections:

- Remuneration policy for the company's management – Board of Directors and Executive Board (section 2);
- Preparation of remuneration report and approval of the report at the general meeting (section 3);
- Ongoing approval and disclosure of related party transactions (section 4);
- Other amendments (section 5);
- Effective date (section 6).

In the sections on remuneration policy and reporting, we have endeavored to incorporate illustrations showing how the rules may be applied in practice. The illustrations are often based on actual cases from abroad.

2. Rules of the Bill regarding the remuneration policy for company management - Board of Directors and Executive Board

Under the Danish Companies Act, today, listed companies must determine overall guidelines for the company's incentive pay to the Board of Directors and the Executive Board. The general meeting must approve the guidelines, and the matter must be mentioned in the company's articles of association. Actual incentive pay agreements with the members of management must comply with the guidelines, and such agreements can be concluded at the earliest the day after the approved guidelines are published on the company's website.

According to the Bill, it remains the role of the company's supreme governing body (the Board of Directors) to appoint, monitor and dismiss the individual members of the company's Executive Board. Thus, the Board of Directors is also considered best suited to assess whether the remuneration paid to the individual executive reflects their efforts and impact on the company's performance. It is not the intention of the Bill to transfer this role to the general meeting. On the contrary, even though the Board of Directors is still responsible for determining the detailed terms and conditions for the employment of the Executive Board, the Bill is intended to provide the general meeting with better opportunities of exercising shareholder engagement regarding, among others, the remuneration policy for the Executive Board.

The Committee on Corporate Governance has published guidance on the determination of the remuneration policy, including guidelines on incentive pay. This guidance can be found on the website of the Committee on Corporate Governance.

It appears from the explanatory notes to the Bill that the company's compliance with its remuneration policy will not result in the publication of potentially business-sensitive disclosures.

The rules on remuneration reporting proposed to be included in the Danish Companies Act also generally apply to listed companies covered by financial regulations. The financial regulations contain special rules on remuneration in the financial area. Companies that are covered by the remuneration rules of both the Danish Companies Act and the financial regulations must comply with both sets of rules. For listed companies in the financial sector, special rules apply to the publication of remuneration for each individual member of the supreme governing body and of the Executive Board in the annual report. These rules should be regarded as a supplement to the new proposed rules.

2.1. "The company" or "the group"

The Bill is applicable for the listed company and, thus, not for the group. Subsidiaries below the listed company are therefore not comprised by the proposed rules.

The rules on remuneration policy and remuneration reporting imply that the policy itself must relate to the listed company. Among other things, this implies that the policy must describe how the pay and employment terms of the "company's" employees have been taken into account. Furthermore, account must be taken of the "company's" sustainability and business strategy.

The remuneration report must, among other things, include information about the annual change to the remuneration of the individual members of management, compared with the "company's" results, and the average remuneration to the "company's" other employees.

With respect to the rules on related party transactions, the group's circumstances must be taken into account when, e.g. assessing materiality. Even though the rules apply exclusively to the listed company, the group's circumstances must be included in the assessment of the transactions.

It is not clear whether it is possible for a company to prepare the remuneration policy and reporting based on the group's circumstances. It is PwC's expectation that this will be clarified in connection with the Danish parliamentary debate on the Bill.

2.2. General requirements for the remuneration policy

The Board of Directors must prepare a remuneration policy covering the remuneration paid to the company's Board of Directors and the Executive Board. This relates to the registered Board of Directors and the Executive Board of the company, whereas other members of management – e.g. a leadership board or wider leadership – are not covered by the rules. If, as an exception, the company chooses to include these members of management, it will presumably be a requirement that it is at least clear which information applies separately to the registered members of management.

It is a requirement that the policy be approved at the general meeting before it becomes effective in the company. In



accordance with the implementation rules, the policy must be submitted to a vote at the general meeting. The vote must be taken no later than the next annual general meeting, which is convened in financial years beginning on or after 10 June 2019. Accordingly, changes to the remuneration policy must be presented at subsequent general meetings before they can become effective.

It is a requirement that the remuneration policy be submitted to a vote at least every four years.

The rules provide the possibility for the company to deviate from the policy in exceptional circumstances. However, it is a requirement that such deviation is described in the policy itself in order for the shareholders to have accepted the deviation. The description of the policy must include a description of the procedural conditions and specify the elements of the remuneration policy that may be deviated from.

As soon as the general meeting has approved the remuneration policy, it must be published, including information on the date and result of the general meeting's vote. The public disclosure of the information must be made on the company's website as soon as possible. The remuneration policy must remain free and publicly available, as long as it is valid.

If the general meeting does not approve the remuneration policy, the company must continue to remunerate the members of management in accordance with either:

- Existing practices and guidelines for incentive pay to members of management approved by the general meeting – if the company does not have an approved remuneration policy; or
- The existing remuneration policy approved by the general meeting – if the company has an approved remuneration policy.

If the general meeting does not approve the remuneration policy, the company's Board of Directors must submit an

amended proposal for a remuneration policy for approval no later than the following general meeting.

This may mean, for example, that a new share option scheme (or other types of share-based remuneration) that would require a change to the remuneration policy – and, thus, also an approval at the general meeting – cannot be introduced.

In cases where it is desired to change the remuneration policy (and, for example, change significantly in the composition or size of remuneration components), PwC recommends that the company enter into a dialogue with the shareholders in order to create an understanding of the reason for the changes.

It appears from the explanatory notes to the Bill, that the company is contractually engaged on those contracts which the company has entered into with members of management, prior to the implementation of the new rules on a changed or revised remuneration policy. As a result, such contracts are not affected by the new rules.

As mentioned, the policy concerns the registered Board of Directors and the Executive Board. Denmark has thus opted not to take advantage of the possibility in the Directive to allow the policy to include other members of management.

When the general meeting has approved the remuneration policy, the policy is binding for the company. It is therefore important that the policy is sufficiently comprehensive yet broad to cover the various situations that may arise, e.g. avoiding problems in connection with the unforeseen replacement of members of management during the year.

It should moreover be noted that when the general meeting has approved the remuneration policy, the guidelines for incentive pay, that the company has so far had in its articles of association, no longer apply. The guidelines are simply to be deleted from the company's articles of association, which does not require a separate resolution.

2.3. Specific requirements for the content of the remuneration policy

The remuneration policy must be clear and understandable. It must contribute to the company's business strategy and long-term interests and sustainability and comprise the following elements:

- *An explanation of how the remuneration policy contributes to the company's business strategy, long-term interests and sustainability;*
This may be done by preparing an introduction to the remuneration policy in which the company describes that the strategy is, e.g. to maintain the stable core business considered leading in the market and, therefore, the members of management are measured based on, e.g. organic growth and the success of developing new product or service solutions.
- *A description of the different components of fixed and variable remuneration, including all bonuses and other benefits that can be awarded to the members of management, indicating the relative proportion of these components.*
This may be done by, e.g. describing the percentage share (or range) which the individual variable component is expected to constitute in each year's total remuneration for the member of management. For those companies that seek to form a link between the remuneration policy and market developments (e.g. by comparison with specific peers or external pay benchmarks), that such references are directly included as part of the policy. An example may be that fixed pay levels are determined relative to the median (or the upper quartile) of a specific peer group in Denmark, Scandinavia or a third geographical area. The term "all bonuses" comprises annual bonuses, share-based remuneration and long-term cash bonuses.

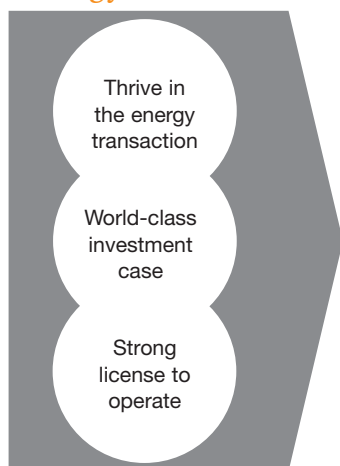
- *An explanation of how the company's employees' pay and employment conditions have been taken into account when establishing the remuneration policy.*
- *Guidelines for the duration of the contracts or arrangements with members of management, the main characteristics of supplementary pension, early retirement and/or exit agreements, notice periods and as well as any payments linked to an exit.*
This may be done by, e.g. describing that the company's notice period cannot exceed a certain number of months, and that the notice period of the company's management members is X or Y months.
- *An explanation of the decision-making process used in determining, auditing and implementing the remuneration policy, including measures to avoid or manage conflicts of interests.*

Example 1 below illustrates how the company's strategy can be linked to management's total remuneration, and how the individual pay elements must motivate management to realize the strategy. This example focuses on how to make progress in the energy sector through investments and operational optimization. The example is only a part of the total policy, and each individual company must choose the reporting level for its own KPIs.

If the remuneration policy is revised, then all significant changes should be described and explained in the revised policy. In addition, the description must include information on how the votes and views of shareholders on the remuneration policy and the remuneration report since the most recent vote at the general meeting have been taken into account. Eventual revisions are often listed at the end of the remuneration policy under a separate heading.

Example 1: Link between strategy and variable pay

Strategy



How the strategy links to the CEO's variable pay

CEO INDIVIDUAL PERFORMANCE	The vision for thriving in the energy transaction is led by the CEO and embedded in his individual performance targets.
LONG-TERM INCENTIVE PLAN	World-class investment metrics such as cash generation and capital discipline, as well as value created for shareholders, are included in the LTIP.
ANNUAL BONUS	Licence to operate measures such as operational excellence and sustainable development are included in the scorecard. These measures are key building blocks to being a world-class investment and support our journey to thrive in the energy transaction.

2.3.1. Variable remuneration, including share-based remuneration

Where a company awards variable remuneration, the remuneration policy must include clear, comprehensive and varied criteria for the award of such variable pay.

According to the Bill, the remuneration policy must include the following information on variable remuneration:

- Information on the financial and non-financial performance criteria, including, where relevant, criteria on corporate social responsibility, and an explanation of how these contribute to the company's business strategy, its long-term interests and sustainability, as well as the methods to determine to which extent the performance criteria is met; and
- Information on any deferral periods and on the company's ability to reclaim variable remuneration.

Today, companies often state the variable portion of the remuneration as a range or a maximum, e.g. that 30 - 70% of the fixed pay of the member of management is expected to be paid as a cash bonus, and that up to 100% of the fixed pay is also payable in share-based remuneration. As illustrated above in Example 1, the performance criteria relating to the award of variable remuneration may be advantageously linked to the company's strategy, so that the share-based incentive scheme of a growth company depends on the ability to grow either organically (revenue, EBITDA, etc.) or through business acquisitions. In tech companies, targets could focus on product development (innovation) or a comparison with an industrial peer group where the market is already mature - and where a part of the strategy is to win market share.

Performance criteria and how these link to the strategy must be described. However, there are no requirements to disclose the exact targets for the performance criteria, as these will often be considered as sensitive information.

For example, a growth company will explain how an EBITDA target links to the strategy, but will not explicitly state the target as a number.

Where the company awards share-based remuneration to management, the remuneration policy must also specify vesting periods and, where applicable, retention periods which apply after vesting, and also explain how the share-based remuneration contributes to the company's business strategy as well as its long-term interests and sustainability.

The vesting period covers the period from the time of award of the share-based remuneration to the time when exercise may take place. The retention period is the period from the grant of the shares up to the time when the full rights associated with the shares may be exercised, e.g. the sale of the shares.

It should be noted that the Bill does not outline rules for the calculation of the value of share-based remuneration. Therefore, it will be necessary to decide on the method of calculation if, e.g. the policy limits the proportion of variable remuneration. In PwC's opinion, a suitable model for calculating the value could be to use the rules of IFRS 2, as these must already be used to recognize the share-based remuneration in the annual accounts.

Example 2 below shows an example of how to easily and clearly visualize performance criteria and their weighing within the total variable remuneration. It should be noted that the Bill also requires disclosure of how the performance criteria support the company's business strategy and long-term interests and sustainability as well as the methods to be used to determine to which extent the performance criteria have been fulfilled. The company may also consider adding a graphic illustration in order to enhance transparency and readability for the shareholders.

Example 2: Performance criteria for variable remuneration

Measures for 2018 annual bonus



Short-term incentive (STI) plans would typically not have external financial metrics like LTI plans.

- 1-2 internal financial metrics, e.g. EBITDA or growth.
- 2-3 non-financial metrics, e.g. innovation and customer satisfaction.

Measures for 2018 performance share units (PSUs)



Long-term incentive (LTI) plans would typically have 1, or max 2 metrics.

- External financial metrics, e.g. TSR relative to similar companies.
- Internal financial metrics, e.g. revenue growth from 2019-2022.

2.3.2. Deviation from the policy

The Board of Directors may temporarily deviate from the remuneration policy in exceptional circumstances, provided that the remuneration policy includes a description of the procedures for such deviation and specifies the elements of the remuneration policy that may be deviated from. It appears from the preliminary work on the Bill that “exceptional circumstances” only relate to situations where deviation from the remuneration policy is necessary to serve the long-term interests of the company. Whether a situation can be considered exceptional circumstance should be assessed in the context of each company and will depend on company-, industry- and market-specific conditions. The temporary deviation can only take place during the relevant period in which the criteria and timeliness of the exceptional circumstance apply. This implies that a specific deviation may only take place during the period in which an exceptional circumstance applies. Remuneration based on contracts concluded during this period will then follow the specific agreement. The Bill does not include any examples of “exceptional circumstances”. In PwC’s opinion, an exceptional circumstance may for example be an unexpected need to employ a new management profile, which

could happen in connection with a turn-around, or as a result of business acquisitions.

If the company temporarily deviates from the remuneration policy, the remuneration report must subsequently state the specific elements of the remuneration policy which were deviated from. According to the explanatory notes to the Bill, information should be included on which specific component the deviation applies to. This provides the shareholders with the opportunity to assess the nature of the deviation and, thus, whether the conditions for derogating from the remuneration policy have been met.

2.4. Comparison of the Bill’s rules on remuneration policy and Recommendations on Corporate Governance

Below is an overview of the existing Recommendations on Corporate Governance relating to remuneration policy and the related rules of the Bill. However, please note that as the Recommendations on Corporate Governance do not have the same structure as the requirements of the Bill, we have had to limit ourselves to reproducing extracts of individual recommendations

Subject	The Bill	Recommendations on Corporate Governance
Who are comprised?	The Board of Directors and the Executive Board as well as any Supervisory Board if such a board substitutes the Board of Directors.	The Board of Directors and the executive board.
Long-term interests and sustainability	The remuneration policy must explain how it contributes to the company’s business strategy, long-term interests and sustainability.	<p><i>Recommendation 4.1.1</i> It is recommended that the Board of Directors prepare a remuneration policy for the Board of Directors and the Executive Board which includes the following:</p> <ul style="list-style-type: none"> • A detailed description of the components of the remuneration for members of the Board of Directors and the executive board; • The reasons for choosing the individual components of the remuneration; • A description of the criteria on which the balance between the individual components of the remuneration is based; and • An account of the link between the remuneration policy and the company’s long-term value creation and the related relevant targets. <p>As a minimum, the remuneration policy should be approved by the general meeting every four years and in connection with all material revisions and be published on the company’s website.</p>
Remuneration elements	The remuneration policy must include a description of the different components of fixed and variable remuneration, including all bonuses and other significant benefits which can be awarded to the members of management indicating the relative proportion of the components.	<p><i>Extract of recommendation 4.1.1 (see above)</i> It is recommended that the remuneration policy include the following:</p> <ul style="list-style-type: none"> • A detailed description of the components of the remuneration for members of the Board of Directors and the executive board; • The reasons for choosing the individual components of the remuneration; and • A description of the criteria on which the balance between the individual components of the remuneration is based. <p><i>Extract of recommendation 4.1.2 (see below):</i> It is recommended that limits be set for the variable components of the total remuneration package.</p>

”The remuneration policy must be clear and understandable. It must contribute to the company’s business strategy as well as long-term interests and sustainability”

Subject	The Bill	Recommendations on Corporate Governance
Due consideration of employee pay	The remuneration policy must include an explanation as to how the pay and employment conditions of employees of the company were taken into account when establishing the remuneration policy.	N/A.
Variable remuneration	<p>Where a company awards variable remuneration, the remuneration policy must include clear, comprehensive and varied criteria for the award of the variable remuneration. The remuneration policy must provide:</p> <ul style="list-style-type: none"> o information on the financial and non-financial performance criteria explaining how they contribute to the company’s business strategy as well as its long-term interests and sustainability, as well as the methods to be applied to determine to which extent the performance criteria have been fulfilled and on deferral periods, if any, as well as the possibility for the company to reclaim variable remuneration. 	<p><i>Recommendation 4.1.2</i> It is recommended that, if the remuneration policy contains variable components,</p> <ul style="list-style-type: none"> • limits are set for the variable components of the total remuneration; • a reasonable and appropriate and balanced composition is ensured between management remuneration and value creation for shareholders in the short and long term; • clarity be established about performance criteria and measurability for the award of variable components; • variable remuneration does not only consist of short-term remuneration components; and that the long-term remuneration components must have a vesting or maturity period of at least three years; and • an opportunity is ensured for the company to reclaim, in full or in part, variable remuneration paid on the basis of information subsequently found to be incorrect.
Earnings and vesting periods relating to share-based remuneration	Where the company awards share-based remuneration, the remuneration policy must also provide guidelines for vesting periods and, where applicable, retention of shares after vesting, and explain how the share-based remuneration contributes to the company’s business strategy as well as its long-term targets and sustainability.	<p><i>Recommendation 4.1.4</i> It is recommended that if share-based remuneration is used in relation to long-term incentive programs, the programs should have an earnings or vesting period of at least three years after being allocated and should be revolving, i.e. granted periodically.</p>
Duration of contracts, notice periods, etc.	The remuneration policy must include guidelines on the duration of the contracts or arrangements with members of management, the main characteristics of supplementary pension or early retirement schemes and the terms of termination, notice periods and payments linked to termination.	<p><i>Recommendation 4.1.5</i> It is recommended that the total value of remuneration for the notice period, incl. severance pay, does not exceed two years’ remuneration incl. all remuneration components.</p>

Subject	The Bill	Recommendations on Corporate Governance
Decision-making process and revision of the remuneration policy	Where the remuneration policy is revised, it must describe and explain all significant changes. It must also describe how the votes and views of shareholders on the remuneration policy and remuneration reports since the most recent vote on the remuneration policy were taken into account.	N/A.
Deviation from the remuneration policy	The supreme governing body of the company may temporarily deviate from the remuneration policy in exceptional circumstances provided that the remuneration policy includes a description of the procedures for such deviation and specifies the elements of the remuneration policy from which deviation is possible.	N/A.
Publication of the remuneration policy	The approved remuneration policy must, at the earliest possible date, be published on the company's website, including the date of and result of the vote. The remuneration policy must remain publicly available, free of charge, for as long as it is applicable.	<i>Extract of recommendation 4.1.1 (see above)</i> As a minimum, the remuneration policy should be approved by the general meeting every four years and in connection with all material revisions and be published on the company's website.
Approval frequency of the remuneration policy by the general meeting	At every material change of the policy <u>and</u> at least every four years.	<i>Extract of recommendation 4.1.1 (see above)</i> As a minimum, the remuneration policy should be approved by the general meeting every four years and in connection with all material revisions and be published on the company's website.

The Bill contains the following important additions in relation to the Recommendations on Corporate Governance (PwC's understanding):

- The remuneration policy must also mention the company's business strategy and sustainability.
- The remuneration policy must explain how the company's employees' pay and employment conditions were taken into account when establishing the remuneration policy.
- Information on variable remuneration must include information on how financial and non-financial performance criteria contribute to the business strategy, long-term interests and sustainability.
- Information on variable remuneration must include information on the methods applied to determine whether performance criteria have been met.
- Information on variable remuneration must include information on any deferral periods.
- There must be guidelines with respect to the vesting period for share-based remuneration; however, there is no requirement for a certain number of earning / vesting years – as opposed to the Recommendations, which recommend that the schemes should have an earning

or vesting period of at least three years after the shares have been granted, as well as rolling allocation.

- Share-based remuneration must include information on how the scheme contributes to the company's business strategy, long-term targets and sustainability.
- The remuneration policy must include guidelines for the duration of contracts and schemes relating to early retirement and terms of termination, etc. though not necessarily statements about a specific period of time. According to the Recommendations, remuneration during the notice period, including eventual severance pay, cannot exceed two years' remuneration.
- If the remuneration policy is revised, the most significant changes must be described and explained.
- In order to deviate from the remuneration policy, the policy must lay down the procedures for such deviations as well as specifying those elements which can be deviated from.
- The remuneration policy must remain publicly available on the company's website for as long as it is valid. The Recommendations do not indicate for how long the remuneration policy must be available on the company's website.

3. Rules of the Bill regarding preparation of the remuneration report and approval at the general meeting

3.1. General requirements for the remuneration report

Companies that have prepared a remuneration policy must prepare a clear and understandable remuneration report that provides an overall view of the remuneration awarded to the individual members of management during the year. The remuneration includes all components, regardless of form.

All remuneration components, irrespective of form, includes everything from fixed remuneration to pension contributions and company car, as well as all variable remuneration. This information must also be provided for those members of management who have resigned during the year. Thus, the Bill seems to imply that even though a member of management has resigned, their remuneration is still to be included in the year of resignation and in the five-year summary published in the year of resignation. The reporting of the individual management member's remuneration must cover a five-year period if the person has been a member of management for five years.

Please refer to section 2.1 with respect to the Bill's consequent use of the "company" and not the "group" in relation to the descriptions in the remuneration report.

There are no statutory requirements today prescribing that listed companies must prepare a remuneration report. However, the Danish Financial Statements Act and IAS 24 impose requirements for reporting on management remuneration in the annual report, and according to the Recommendations on Corporate Governance, it is also recommended that the company prepare a remuneration report which is published on the company's website.

The company's Board of Directors is responsible for preparing the remuneration report.

As a main rule, the remuneration report must contain the following information regarding the remuneration paid to *each individual member of management*:

1. The total remuneration split out by component, the relative proportion of fixed and variable remuneration and an explanation as to how the total remuneration complies with the approved remuneration policy, including how it contributes to the long-term performance and

sustainability of the company, and information on how the performance criteria are applied.

2. The annual change in remuneration, in the company's performance, and in the average remuneration of employees of the company on a full-time basis, other than members of management, and over at least the five most recent financial years, presented in a way that enables comparison.
3. Any remuneration from companies belonging to the same group.
4. The number of shares and share options granted or offered, and the main terms for the exercise of the rights, including the price at the time of grant, the date of exercise and any change thereof.
5. Information on the use of the option to reclaim variable remuneration (clawbacks).
6. Information on any deviations from the procedure for implementing the remuneration policy, and on any deviation from the remuneration policy itself, including an explanation of the nature of the exceptional circumstances and an indication of the specific elements of the remuneration policy deviated from.

The contents of the individual requirements are further explained below.

The above-mentioned disclosure requirements only apply if there is something to report on. For example, the most important terms for exercising share options should only be reported if the member of management in question has been granted share options.

It appears from the explanatory notes (and directly from the Directive) that the EU Commission will prepare a template to provide the information on remuneration paid to the individual person.

The purpose is to ensure that information is provided in a clear manner to the individual shareholder and also to ensure comparability across companies. The template is expected to be published during the spring/summer of 2019. According to the explanatory notes, the guidelines in question shall constitute a voluntary standard for the presentation of the information that must be included in the remuneration report.

Example 3: Summary of management remuneration

Salary and benefits	<p>Fixed pay policy is unchanged. Salary and benefits are set at a level which reflects the scale and complexity of the role, while recognizing competitive practice in the relevant market</p> <ul style="list-style-type: none"> The salary for the group chief executive has increased to 5,500,000 for 2018. The salary for the chief financial officer has increased to 3,500,000 for 2018.
Pension	The schemes for all executive officers remain unchanged, and there are no planned changes.
Annual bonus CEO – 75% CFO – 50% of fixed salary	<p>The bonus links variable pay to non-financial and internal financial metrics for the year.</p> <ul style="list-style-type: none"> Maximum bonus only payable for out-performance on all measures. Bonus payable for delivery of bonus scorecard of 1.0 out of 2.0 is half of maximum. Awards are subject to clawback and malus provisions.
Performance shares CEO – 100% CFO – 50% of fixed salary	<p>Directly linked to long-term performance and represents the largest part of the package.</p> <ul style="list-style-type: none"> Three-year performance period, with further three-year holding period. Measures aligned to long-term strategy and shareholders' interest. Awards are subject to clawback and malus provisions.
Share ownership	<p>Stewardship and alignment with shareholders</p> <ul style="list-style-type: none"> Continuing requirement for registered management to maintain a holding of one times salary. It is expected that John Doe and Jane Smith will maintain a holding of at least 75% of salary for two years following retirement.

The proposed Article 139b of the Danish Companies Act states that the remuneration report must provide a comprehensive overview of the remuneration that the individual members of management, including new and former, has been awarded or are owed in relation to the most recent financial year. Further, the explanatory notes state that the report must cover the same period as the financial year. Consequently, if revisions of the remuneration policy are approved at the annual general meeting at the beginning of the financial year, the reporting must in principle be prepared based on two sets of policies -just as members of management may have been replaced during the financial year.

In other countries, the introduction of the remuneration reports often includes a table or an illustration describing the main elements of the remuneration report. The example above provides a good overview of the changes to and objectives of the remuneration relating to the most recent financial year, and, at the same time, the expectations with respect to the variable remuneration are clear and understandable.

3.1.1. Re 1 – The total remuneration split out by component, the relative proportion of fixed and variable remuneration, and an explanation of how the total remuneration complies with the approved remuneration policy, including how it contributes to the long-term performance and sustainability of the company, and information on how the performance criteria were applied

According to the preliminary work, all components of remuneration, irrespective of type, must be regarded as “remuneration” in relation to the remuneration report. This also applies to types of benefits that are not directly mentioned in the company’s remuneration policy. So in order to provide a complete overview of the remuneration to members of management, the remuneration report must, if relevant, include information on the amount of remuneration paid on the basis of the family situation of individual members of management. In PwC’s opinion, this includes, e.g. rent paid by the company for members of management on international assignments and school fees paid for the schooling of children of members of management.



It is important to note that only the amounts of such payments are to be disclosed, and not information on the nature of the benefit, as it is covered by the rules of Article 9 of the General Data Protection Regulation on particularly sensitive information and requires special protection.

The explanatory notes state an exception with respect to disclosure of total remuneration: for employee representatives on the Board of Directors, only the remuneration received in their capacity as member of the company's supreme governing body is covered by the remuneration policy. Thus, their normal salary remuneration from employment in the company is not to be included. However, we presume that this exception should be narrowly understood, so that salary remuneration paid to other members of the Board of Directors than employee representatives must be included in the total remuneration.

The remuneration report must include information on the individual member of management's total remuneration split out by components, the relative proportion of fixed and variable remuneration, and an explanation of how the individual's total remuneration complies with the approved remuneration policy.

In order to comply with the future rules, the company can consider to show the remuneration to the individual members of management in a table, as shown below. Such a table showing

the most recent five financial years would also facilitate a comparison of annual changes in remuneration. See further details in section 3.1.2 below.

The Bill and the explanatory notes do not contain any detailed rules on how to report on share-based remuneration. There are no rules prescribing how these amounts are calculated, if approved policies determine that share-based remuneration may, e.g. comprise a maximum of a certain proportion of the total remuneration.

However, it seems natural to base the calculation of share-based remuneration on the rules of IFRS 2, which must be regarded as a generally accepted measure of the value of share-based remuneration. Thus, these rules imply that the amounts disclosed in the remuneration report will correspond to the amounts disclosed in the annual report under IFRS 2. For example, a share option scheme earned over a three-year vesting period will have to be recognized at cost over the three-year period.

The preliminary work does not mention whether "remuneration" also comprises, e.g. income generated by providing services or goods to the group in question. The rules seem to concentrate on remuneration earned through employment or through being a member of company management. Such other transactions are, however, covered by the rules on related party transactions, including the requirements for disclosure in the annual report.

Example 4: Table of management remuneration

2018 DKKm	Total remuneration	Fixed salary	Pension	Annual bonus	Share-based incentive
John Doe (CEO)	12.0	5.5	0.5	3.0	3.0
Jane Smith (CFO)	7.7	3.5	0.2	2.0	2.0
Marie Hansen (COO)	4.4	1.3	0.2	1.4	1.5
Jack Jones (CCO)	4.2	1.2	0.2	1.0	1.8
Oscar Tate (CHRO)	3.6	1.0	0.2	1.0	1.4

3.1.2. Re 2 - Annual changes in remuneration, in the company's performance, and in the average remuneration of employees of the company on a full-time basis, other than members of management, and over at least the five most recent financial years, presented in a way that enables comparison

The remuneration report must be designed in such a way that it is possible to compare the annual change in remuneration, in the company's performance, and in the average remuneration of employees of the company on a full-time basis, other than members of management. The comparison must be possible for a period of at least the most recent five financial years if the person concerned has been employed for five years. The information must be provided at company level.

The requirement to show the relative proportion of the fixed and variable component of the remuneration of the individual member is illustrated in the example below.

The illustration shows how companies may set out a clear comparison of annual remuneration changes. This is shown in two different ways: pay quantum and pay mix. Pay quantum shows both the realized remuneration over the past five financial years, and the individual remuneration components' proportion of the total remuneration. Pay mix, on the other hand, shows the relative proportion of individual remuneration components as a percentage of total remuneration.

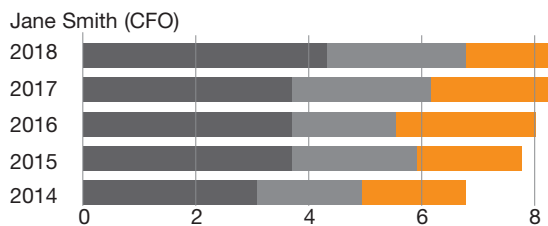
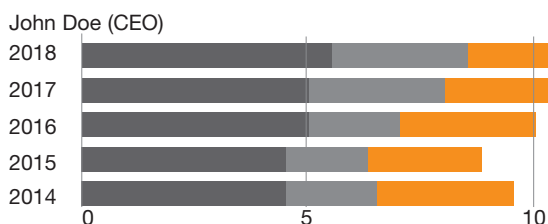
According to the explanatory notes, besides information on remuneration changes, the remuneration report must also include information on the company's performance, and on the average change in remuneration of employees of the company on a full-time basis (excluding members of management). The comparison must be made at least for the five most recent financial years, if the management member in question has been a member of management for five years.

It is PwC's assessment that "the company's performance" must be understood broadly, e.g. the current accounting profit/loss that the company announces to the market or, if different from this, a figure that may be taken directly from the income statement. It is not clear whether it may also be performance in a more qualitative sense, e.g. regulatory approval and the launch of a new product in a biotech company.

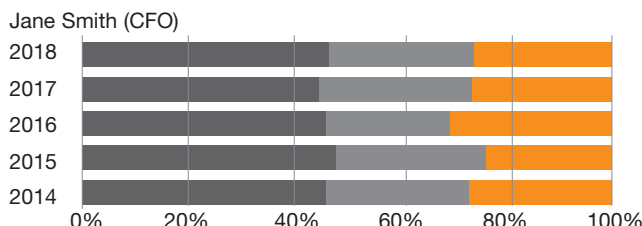
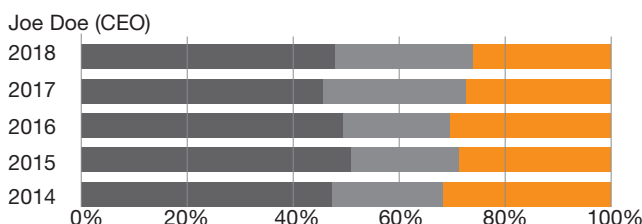
According to the explanatory notes, the statement of the average remuneration per full-time equivalent (FTE) is to be calculated by adding up the total number of working hours (full-time and part-time) and dividing the result by the number of working hours per year for a full-time employee of the company. In this manner, the FTE is used to determine the number of full-time employees irrespective of the actual number of employees and variations in the number of working hours for a period. In practice, many companies apply roughly the same method for calculating the number of FTEs, since the Danish Financial Statements Act already requires such information to be disclosed.

Example 5: Pay quantum and pay mix

Pay quantum (DKK m)



Pay mix



■ Fixed salary ■ Annual bonus ■ Share-based incentive

Example 6: Comparison of the annual change in management’s remuneration relative to the average remuneration based on FTEs in the company

	2018		2017		2016		2015		2014	
	Base	Bonus	Base	Bonus	Base	Bonus	Base	Bonus	Base	Bonus
John Doe (CEO)	6.0%	11.0%	0.0%	12.0%	4.0%	-15.0%	0.0%	8.0%	2.0%	0.0%
Jane Smith (CFO)	0.0%	15.0%	6.0%	10.0%	2.0%	-12.0%	0.0%	8.0%	0.0%	0.0%
Marie Hansen (COO)	0.0%	12.0%	0.0%	8.0%	2.0%	-10.0%	0.0%	7.0%	0.0%	0.0%
Jack Jones (CCO)	0.0%	4.0%	6.0%	7.0%	2.0%	0.0%	0.0%	7.0%	2.5%	0.0%
Oscar Tate (CHRO)	0.0%	2.0%	3.0%	3.0%	2.0%	-10.0%	0.0%	3.0%	2.5%	0.0%
FTE average	3.3%	2.0%	2.7%	5.0%	2.5%	-5.0%	3.0%	2.5%	1.8%	0.0%
Revenue growth	2.9%		4.0%		3.1%		4.2%		1.5%	
EBITDA improvement	5.0%		2.5%		-4.1%		2.6%		0.0%	

Example 6 above shows the change in percentage in the remuneration of individual members of management over the most recent five financial years, compared with the average remuneration change for the company’s other employees calculated based on FTE, which enables comparison.

3.1.3. Re 3 - Any form of remuneration from companies belonging to the same group

It is proposed to disclose any form of remuneration that the individual members of management have been awarded or are owed in relation to the financial year in question, from any company belonging to the same group.

Further details on what should be included is provided in section 3.1.1 above, where it appears among others, that the ordinary pay to an employee representative on the Board of Directors is not to be included. As another example, remuneration received by the individual members of management from their membership of the Boards of Directors or the Executive Boards of subsidiaries must be included.

The wording of the Bill states that “group” shall be understood as the company and its subsidiaries. Therefore, pay received from a higher-level parent company is not directly comprised by the disclosure requirement.

3.1.4. Re 4 - The number of shares and share options granted or offered, and the main terms of the exercise of the rights, including the price at the time of grant and date of exercise and any change thereof

The remuneration report must include information on the number of shares and share options granted or offered. In addition, the most important conditions for the exercise of the rights, including the price at the time of grant and the date of exercise, must be disclosed in the remuneration report. This may be presented in a table illustrating the number of share

options granted to the individual members of management, the share price at the time of grant, the exercise price and any valuation of the share options (typically by applying the Black-Scholes model).

Today, this is covered by IFRS 2, which requires related information to be disclosed in a note to the annual report. However, the disclosures in the annual report are not provided per person – where such disclosures are now required to be made in the remuneration report. It must be assumed, that the practice for how disclosures can be provided in the remuneration report, may follow the practice of IFRS 2, including the calculation and accrual of value.

3.1.5. Re 5 - Information on the use of the option to reclaim variable remuneration

The remuneration report must include information on the company’s ability to recover variable remuneration through “clawback” clauses, which will, in the majority of cases, apply to both bonus schemes and long-term incentive schemes. The Board of Directors is responsible for assessing how the company will reclaim variable remuneration. This will often be in the case of (1) that a bonus paid is based on obviously erroneous data, or (2) where the actions of relevant members of management are considered damaging to the company.

Generally, market practice is for companies to incorporate clawback clauses when either bonus schemes or incentive schemes are updated. This is thus the case in newer schemes. There may, however, be schemes in which such clauses have not yet been incorporated. PwC recommends incorporating such clauses at the time where the remuneration policy is submitted to a vote, following the implementation of the Shareholder Rights Directive.

3.1.6. Re 6 - Information on any deviations from the procedure of implementing the remuneration policy, and deviations from the remuneration policy itself, including a description of the nature of exceptional circumstances and an indication of the specific elements of the remuneration policy being deviated from

The remuneration report must disclose any deviations from the remuneration policy and the procedure which has been followed to approve the deviation. The remuneration report must also describe the exceptional circumstances and indicate the specific elements of the remuneration policy that have been deviated from. The disclosures are only required to be included if deviations have occurred. As mentioned above, it will only be possible to deviate from the policy in case of exceptional circumstances and only if the policy includes such a deviation option. We refer to section 2.3.2 in this respect.

3.2. The remuneration report is to be submitted for an advisory vote at the general meeting

At its annual general meeting, the company holds an advisory vote on the remuneration report for the most recent financial year. In its remuneration report for the following financial year, the company must explain how the result of the vote at the general meeting has been taken into account.

The vote at the general meeting ensures that the remuneration policy is implemented, and carried out in practice as approved, and that the actual remuneration is thus in accordance with the approved policy. At the same time, the shareholders are given the opportunity to express their opinion on the actual remuneration. The voting applies to the overall remuneration report, and not separately for the reporting regarding the individual members of management.

The fact that the vote is of an advisory nature implies that if the shareholders do not approve the remuneration report, the company must explain in the remuneration report for the following financial year how this result has subsequently been taken into account. This could for example be through information about proposals made for changes to the remuneration policy, changes to executive service agreements, changes to the presentation of information in the remuneration report, or that no changes have been made. However, a remuneration report that is voted down does not entitle the company to deviate from the approved remuneration policy, or make changes to executive service agreements, nor oblige the company to renegotiate existing executive service agreements. But it may, according to the circumstances, be an indication that work needs to be done.

In view of the fact that the remuneration report is going to be put to a vote at the general meeting going forward, it may be relevant to discuss any changes with the shareholders in good time before the changes are made.

For example, this can be done by informing the shareholders about any changes before proposals are submitted and by

having a dialogue with selected shareholders. Thus, the company is able to be at the forefront of the shareholders' expectations, questions or doubts in this respect and to send a signal to the shareholders that the company wants a relationship which is characterized by a high level of transparency and dialogue.

Small and medium-sized listed companies, corresponding in size to reporting class B and medium-sized C of the Danish Financial Statements Act, may, instead of the advisory vote, submit the remuneration report for discussion at the annual general meeting. In its remuneration report for the following financial year, the company must explain how the discussion at the general meeting has been taken into account.

3.3. Publication of the remuneration report on the company's website

At the earliest possible date after the general meeting, the company must publish the remuneration report on its website, where it must remain publicly available for a period of ten years.

For instance, this can be by uploading the information on the website in the form of a PDF file. Some companies choose to build up web-based remuneration reports under their 'Governance' page, allowing shareholders, potential investors and other stakeholders to access the information provided in the remuneration report in an easier-to-digest way.

Publication of information on the remuneration of the individual members of management in the remuneration report improves the ability of the shareholders to exercise shareholder engagement in relation to the company's remuneration policy. In particular, such information provides the shareholders with better opportunities to assess the remuneration of the management members on a more informed basis, and to express their views on both the structure and amount of remuneration. The information also provides the shareholders with a better starting point to assess the relationship between the company's performance and the remuneration for each individual management member.

It is possible to let the remuneration report remain publicly available for a period that is longer than ten years; however, in such a case all personal data must be deleted from the report. In practice, this implies as a minimum, that the names of all the relevant members of management must be deleted.

3.4. Brief comments on the auditor's work relating to the remuneration report

The Bill imposes requirements for the auditor to verify that the information that must be disclosed is included in the remuneration report. The procedures in this respect are similar to the auditor's obligation to read through the management report.

The explanatory notes state that where the auditor concludes that the requirements have not been met, the auditor must prepare a separate declaration to this effect at the general



meeting, unless the company's annual report is subject to approval at the general meeting, and the matter is mentioned in the auditor's comments to the annual report.

3.5. Brief comments on the Danish Act on Processing of Personal Data

Information about a management member's remuneration is considered personal data. However, in connection with the preparation of the EU Directive, it has been considered whether the motives underlying the Shareholder Rights Directive justify the publication of such information. The resulting rules in the Bill, which permit the publication on the company's website for ten years, are to be regarded as special rules that override the general prohibition found in personal data rules against the publication of such information. Particularly sensitive personal data as defined by the General Data Protection Regulation can though not be published.

The preliminary work however also states that the company's purpose in processing the personal data that must be included in the remuneration report must be solely to increase corporate transparency regarding management remuneration, in order to strengthen the management members' accountability and shareholder oversight of management remuneration.

In PwC's opinion, the above indicates that publishing personal data on remuneration in the company's annual report may then constitute a violation of the personal data rules. This is because the personal data in the annual report cannot be deleted after the ten-year period when the information is publicly available, because the annual reports will always be available in the Danish Business Authority's register. As such, the company and the members of management in question know in advance that it will not be possible to delete the personal data, and that the company therefore risks violating the rules on processing personal data. As a result, the Bill seems to conclude that the remuneration report cannot be incorporated in the annual report.

The comments to the consultation memorandum state that it is the Danish Business Authority's assessment that a requirement for including the remuneration report in the Danish Financial Statements Act will prove a challenge for the con-

tinued publication of annual reports, as many remuneration reports will contain personal data that must be deleted after ten years. Instead, supplementary information may be given by including a link in the annual report to the website on which the remuneration report is published. In this manner, companies are able to delete or anonymize remuneration reports that contain personal data after the end of the ten-year period.

The explanatory notes state that in order to give a complete overview of the remuneration of the management member, it may be relevant to mention remuneration paid on the basis of the person's family circumstances. Such information may be regarded as particularly sensitive and may therefore require special protection. In such cases, the remuneration report should not mention the basis for this type of remuneration but merely the amount. Therefore, it is the legislator's opinion that the individual remuneration components are not considered sensitive personal data, but that the basis that determines the amount can be a sensitive personal data element.

3.6. Comparison of the rules of the Bill on the remuneration report and Recommendations on Corporate Governance

Below is an overview of the existing Recommendations on Corporate Governance relating to the remuneration report, and the related rules of the Bill. However, please note that as the Recommendations on Corporate Governance do not have the same structure as the requirements of the Bill, we have had to confine ourselves to reproducing extracts of individual recommendations.

PwC expects that in its next updated Recommendations on Corporate Governance, the Committee on Corporate Governance will consider whether the recommendations on remuneration and remuneration reports must be adapted in relation to the new legal requirements. It is to be expected that this adaptation will take place before the new legal requirements become effective, so that companies avoid unnecessary overlap between the rules, including different policy and reporting requirements relating to the same subject matter.

Subject	The Bill	Recommendations on Corporate Governance
Reporting on the total remuneration of the individual members of management	The remuneration report must include information on the total remuneration split out by component, the relative proportion of fixed and variable remuneration and an explanation as to how the total remuneration complies with the adopted remuneration policy, including how it contributes to the long-term performance of the company, and information on how the performance criteria were applied.	<p><i>Recommendation 4.1.2</i> It is recommended that the company's remuneration policy and compliance with this policy be explained and justified annually in the chairman's report at the company's general meeting.</p> <p><i>Recommendation 4.2.3</i> It is recommended that the company prepare a remuneration report that includes information on the total remuneration awarded to each member of the Board of Directors and the Executive Board by the company and other companies in the group and associates for the most recent three years, including information on the most important contents of retention and retirement/resignation schemes and that the link between the remuneration and the company's related strategy and relevant targets be explained.</p> <p>The remuneration report should be published on the company's website.</p>
Reporting on the development in the remuneration etc of the individual members of management (five-year summary)	The remuneration report must include information on annual changes to remuneration, to the performance of the company and to average remuneration on a full-time equivalent basis of employees of the company other than members of management over at least the five most recent financial years, presented together in a manner which permits comparison.	See recommendation 4.2.3 above
Reporting on remuneration from other group enterprises to the individual members of management	The remuneration report must include information on any remuneration from enterprises belonging to the same group.	See recommendation 4.2.3 above, Please note that the recommendation also comprises remuneration to associates.
Reporting on share schemes for the individual members of management	The remuneration report must include information on the number of shares and share options granted or offered, and the main conditions for the exercise of the rights, including the price at the grant date, the exercise date and any change thereof.	N/A.
Reporting on the possibility to reclaim variable remuneration from the individual members of management	The remuneration report must include information on the use of the possibility to reclaim variable remuneration.	N/A.
Reporting on any derogations from the remuneration policy with respect to the individual members of management	The remuneration report must include information on any deviations from the procedure for the implementation of the remuneration policy and on any derogations from the remuneration policy itself, including an explanation of the nature of the exceptional circumstances and indication of the specific elements of the remuneration policy derogated from.	N/A.
Voting at general meetings	<p>At its annual general meeting, the company holds an indicative vote on the approval of the remuneration report for the most recent financial year.</p> <p>In its remuneration report for the following financial year, the company must explain how the results of the vote at the general meeting have been taken into account.</p>	<p><i>Recommendation 4.2.2</i> It is recommended that at the general meeting, the shareholders discuss the proposal for approval of the remuneration for the Board of Directors for the current financial year.</p>

Subject	The Bill	Recommendations on Corporate Governance
Exemption to the indicative vote	Small and medium-sized companies (reporting classes B and medium-sized C of the Danish Financial Statements Act), may instead of the indicative vote submit the remuneration report for discussion at the annual general meeting. In its remuneration report for the following financial year, the company must explain how the discussion at the general meeting has been taken into account.	N/A.
Publication of the remuneration policy	At the earliest possible date after the general meeting, the company must make the remuneration report public on its website, and it must remain publicly available, free of charge, for a period of ten years. The remuneration report may be kept available for a longer period provided that it no longer contains personal data.	<i>Extract of recommendation 4.2.3 (see above)</i> The remuneration report should be published on the company's website.
The role of the auditor	The auditor must verify that the information prescribed by the rules are included in the remuneration report.	N/A.
Reporting format	With a view to ensuring harmonisation and consistency of the remuneration reports of listed companies, the EU Commission will, see Article 9 b(6) of the Shareholder Rights Directive, prepare guidelines determining a voluntary standard for the presentation of the information to be included in the remuneration report.	N/A.

The Bill contains the following important additions in relation to the Recommendations on Corporate Governance (PwC's understanding):

- Information on the remuneration of the individual members of management:
 - *Remuneration split out by components and the relative proportion of fixed and variable remuneration.*
 - *How the total remuneration complies with the approved remuneration policy, including how it contributes to the long-term performance and sustainability of the company and how the performance criteria are applied – whereas the Recommendations suggest reporting on the relationship between the remuneration and the company's strategy and relevant targets.*
 - *The annual change in remuneration, in the company's performance, and in the average remuneration of employees other than the management members. This information must be provided for the five most recent financial years, presented in a way which enables comparison.*
 - *Any remuneration from enterprises belonging to the same group – according to the Recommendations, information must also be disclosed on remuneration from associated companies.*
 - *Detailed information on share-based remuneration.*
 - *The ability to reclaim variable remuneration.*
 - *Any deviations from the remuneration policy and deviations from the procedure for implementing the remuneration policy, including the exceptional circumstances and those specific elements of the remuneration policy deviated from.*
- An advisory vote is taken on the remuneration report – in contrast to the Recommendations, where the general meeting deals with proposals for approval of remuneration for the Board of Directors (i.e. not for the Executive Board) for the current financial year (i.e. not for the financial year ended).
- At the earliest possible date after the general meeting has been held, the company must publish the remuneration report on its website, and it must remain publicly available for a period of ten years. The Recommendations solely recommend that it be published on the website – but without any indication of how soon this should be done and how long it is to remain on the website.
- The auditor must verify that the information prescribed by the rules are included in the remuneration report.

PwC expects that in its next updated Recommendations on Corporate Governance, the Committee on Corporate Governance will consider whether the recommendations on remuneration and remuneration reports must be adapted to the new legal requirements. It is to be expected that this adaptation will take place before the new legal requirements become effective, so that companies avoid unnecessary overlap between the rules, including different policy and reporting requirements relating to the same subject matter.

4. The rules of the Bill regarding continuous approval and disclosure of related party transactions

In the near future, the Board of Directors of listed companies must approve material transactions between the company and its related parties before the transactions are carried out. According to the explanatory notes, the background for the proposal is that related parties have significant influence on the company, which implies a risk that transactions between the related party and the company will not be carried out on normal market terms.

A portion of the approved transactions must be disclosed – according to the proposal, disclosure must be made if the fair value of the transaction represents 10% or more of the company's total assets or 25% or more of the operating profit/loss according to the most recently published consolidated financial statements. If the company does not prepare consolidated financial statements, the calculation must be based on the most recently published financial statements of the company. If the company has carried out a number of transactions with the same related party during the same financial year, such transactions must be made public when the sum of transactions not disclosed exceeds at least one of the above-mentioned thresholds.

A portion of the approved transactions must be disclosed – according to the proposal, disclosure must be made if the fair value of the transaction represents 10% or more of the company's total assets or 25% or more of the operating profit/loss, according to the most recently published consolidated financial statements.

In the Bill, Denmark has thus decided that there is not to be full overlap between approval rules and disclosure rules. Therefore, all material transactions must be approved by the Board of Directors but only very material transactions must be disclosed immediately in line with Article 9 C(1) of the Directive.

It should be noted that the proposed disclosure rules apply to both the listed company and to the subsidiary's transactions with related parties of the parent company. According to the preliminary work, this is due to the fact that many companies carry out activities fully or partially through subsidiaries. It is often without financial significance for the parent company whether the transaction is carried out by the parent company itself or by a subsidiary, as the return from the subsidiary accrues to the parent company. The listed parent company must publish an announcement immediately, if transactions have been concluded between a related party of the parent company and a subsidiary where the thresholds have been exceeded. However, there are no requirements that the transaction must be approved by the Board of Directors of the parent company, as the transaction has not been concluded with the parent company. However, the transaction must be approved by the individual subsidiary in accordance with the general rules of the Danish Companies Act.

Both section 98c of the Danish Financial Statements Act and the International Accounting Standard IAS 24 contain requirements for the provision of information on certain related party transactions, in the annual accounts, and the consolidated financial statements, respectively. Similar reporting requirements exist in Danish tax legislation in relation to Country-by-Country reporting.

4.1. What is a related party?

According to the Bill, a related party is defined in the same manner as in IAS 24.9.

Under IAS 24.9, the following are regarded as being related parties of the company:

- Members of the Board of Directors and of the Executive Board of the company, including their close family members and companies over which these persons exercise control;
- Members of the Board of Directors and of the Executive Board



- Parent companies and fellow subsidiaries;
 - Persons or companies with control or significant influence over the company – directly or indirectly;
 - The company's subsidiaries and associated companies and companies over which the company has joint control.
- The list above only gives examples of related parties. However, it should be noted that transactions between the listed company and its subsidiaries are exempt from both approval and publication - irrespective of these companies being considered related parties. See further details below in section 4.7.

Irrespective of IAS 24 operating with the expression of "key management", it is PwC's opinion that the Bill has determined the Executive Board and the Board of Directors as being the "key management" rather than the broader concept in IAS 24. Therefore, it must be assumed that the requirement for approval and related party transaction disclosures, respectively, should be interpreted in accordance with the Bill's delimitation of the members of management. Consequently, neither approval nor publication of remuneration transactions with the broader management are required.

It appears from the explanatory notes that if, e.g. a property in a subsidiary of the listed company is purchased or sold from or to a member of the Board of Directors or a family member of a member of the Board of Directors of the listed company, the materiality of the transaction is to be considered in accordance with the new rules.

4.2 Material transactions must be approved by the Board of Directors of the company

Material transactions with related parties must be approved by the company's Board of Directors. It is of key importance that the transaction is approved before it is carried out, thus providing the Board of Directors with the possibility of stopping the transaction. According to the explanatory notes, the company cannot enter into legally binding agreements with related parties before the supreme governing body has approved the transaction.

Normal business transactions are not to be approved, irrespective of the amounts involved. See further details in section 4.5.

Therefore, procedures must be introduced in the company, which ensure that related parties' transactions with the company are approved by the supreme governing body in accordance with the general rules on competence. See further details below in section 4.6.

No specific threshold amounts have been set, as regards the assessment of when a transaction is material and, thus, must be approved by the Board of Directors. The company's management must carry out the assessment of materiality in accordance with the general rules used in connection with the preparation of the annual report.

It appears from the explanatory notes that materiality is determined based on what is considered significant, or material, for accounting purposes:

When preparing financial statements, an assessment will be made of the materiality of the transactions, as the Danish Financial Statements Act and IFRS, like the proposed provision, allow that companies omit disclosing information on transactions that are not material.

IFRS is issued by the International Accounting Standards Board (IASB). In September 2017, the IASB issued "IFRS Practice Statement 2 – Making Materiality Judgements". Whereas IAS 24 regulates which transactions are covered by the disclosure requirement for related party transactions, "IFRS Practice Statement 2 - Making Materiality Judgements" provides guidance on when a transaction is material.

Since there is already one set of criteria for materiality in the general accounting regulation, it is most appropriate to apply these criteria in relation to the materiality assessment for company law purposes. When assessing the materiality of related party transactions in relation to the provision of the proposed section 139d, the limited liability company can therefore base its assessment on the same criteria and relevant accounting rules that it applies for similar transactions when preparing the financial statements.

Materiality under IFRS cannot be calculated according to specific formulas, and fixed percentage thresholds cannot be set for when a transaction is material. Valuation of materiality is always specific and must be based on all relevant information about the current company's circumstances and all relevant information about the transaction. The assessment as to whether a transaction is considered material is made by company management.

It happens that a number of transactions are carried out that are individually immaterial but which are, on an overall basis, material. The Bill implies that in such a case materiality is to be assessed based on all transactions with the same related party in the same financial year.

When the thresholds for materiality are exceeded, it is the specific (most recent) transaction that the Board of Directors must assess before it is carried out. However, it appears from the explanatory notes that in such a situation, the Board of Directors must also simultaneously assess all other transactions with the same related party in the same financial year. The explanatory notes do not state how this is to take place, but it must apparently mean that the approval of the most recent transaction will depend on the transactions already carried out and which cannot be undone.

When the supreme governing body has assessed a number of transactions that were together considered to be essential in the first instance, a new assessment is not to be made until the next time when new transactions with the same related party are considered to be significant within the same financial year.

4.3. Only transactions exceeding a certain threshold must be published – the publication is to be made immediately

The Bill has defined thresholds for which transactions are to be published. It should be emphasized that the decision as to which transactions are to be approved by the company's Board of Directors is based on materiality, whereas transactions are not to be published until they exceed certain value thresholds.

Normal business transactions are not to be published, irrespective of the scope. See further details below in section 4.5.

The company is required to disclose a related party transaction when the fair value of the transaction represents 10% or more of the company's total assets or 25% or more of its operating profit/loss according to the most recently published consolidated financial statements. If the company does not prepare consolidated financial statements, the calculation must be based on the most recently published financial statements of the company.

If several transactions are carried out with the same related party within the same financial year, disclosure must be made when the sum of the unpublished transactions constitutes 10% or more of the company's total assets, or 25% or more of the operating profit/loss according to the most recently published annual report.

The assessment of the thresholds must be based on both the value of the asset that the company surrenders or acquires and the value of the payment which the company receives or makes. When selling a property, the agreed price cannot necessarily be used. Instead, the actual current fair value of the property must be assessed. However, based on both company law and tax rules, it must be expected that the transactions are carried out, so that the values of the payment and that of the purchased/sold asset are identical.

If, e.g. two properties are exchanged, the fair values of both properties must be calculated.

The concept of "fair value" is also defined in the Danish Financial Statements Act and IFRS and should be understood in the same manner as in the presentation of the annual report.

The transaction notification must be made public without delay after the transaction has been completed.

According to the explanatory notes, this means that publication must be made when a binding agreement on the transaction has been entered into, and not at the time when services are exchanged.

An example of a transaction could be an agreement on the company's purchase of a property. The agreement is signed

on 2 January and the takeover date of the property is 1 June. In this case, the public announcement must be made on 2 January, at the latest. Thus, it is not possible to postpone the public announcement until the property is transferred on 1 June.

The rules on publication of related party transactions does not affect rules on the publication of insider information pursuant to the stock exchange rules.

4.4. What information must be disclosed in connection with a public announcement?

The public announcement must be made no later than at the time where the transaction is concluded. As a minimum, the announcement must information on:

- the nature of the related party relationship;
- the name of the related party;
- the date of the transaction;
- the fair value of the transaction; and
- other information necessary to assess whether or not the transaction has been carried out under terms that can be considered reasonable for the company and for the shareholders who are not related parties, including minority owners.

The related party must be clearly identified, to ensure that the shareholders are able to better assess the risks associated with the transaction, and to allow the shareholders to challenge the transaction, including through the application of the minority protection rules of the Danish Companies Act.

The public announcement must not be changed subsequent to its publication. If there are errors in the public announcement, the errors should not be corrected. Instead, a new announcement with corrected information must be published.

The announcement must be made public on the company's website, and must remain publically available for five years.

4.5. Normal business transactions are not to be approved by the Board of Directors or made public

Normal business transactions are not covered by the requirements listed above for approval or publication, regardless of whether the transactions are with a related party and regardless of the size of the transaction. It should be noted that such transactions remain subject to the disclosure requirement of IAS 24 in the annual report.

According to the preliminary notes, the expression "normal business transactions" shall be interpreted in the same way as the exception in section 210 of the Danish Companies Act, under which a loan to a shareholder is not considered illegal if it derives from a transaction which is a part of a normal business transaction.



Normal business transactions are transactions that are customary for the company and the industry. For example, the sale of goods will typically be a normal transaction, whereas the sale of a subsidiary will typically not constitute a normal transaction.

The agreed terms of the transaction must also be normal. This means that the same price is paid and the same terms of payment etc. are agreed as for similar transactions with non-related parties. In this connection, the explanatory notes refer to trading based on tax law trading principles as, e.g. OECD's pricing principles as well as being "on an arm's-length basis". This might be the use of the "CUP Method" (Comparable Uncontrolled Price Method), the RPM (Resale Price Method), the Cost Plus Method, the TNMM (Transactional Net Margin Method) and the Profit Split Method, which are all used to determine trading on an arm's-length basis.

Thus, if a company can refer to similar transactions concluded with independent parties, this will presume that the transaction is not covered by the rules of the Bill requiring separate approval and publication of the transaction.

4.6. An internal policy must be prepared to identify "normal business transactions"

The Board of Directors shall establish an internal procedure for periodic assessments of whether the transactions that the company has chosen to be covered by the exception of normal business transactions are, in fact, normal business transactions. The related party(ies) that is/are part of exempted transactions cannot participate in this assessment.

4.7. Certain company law transactions are not to be approved by the Board of Directors nor made public

A number of company law transactions are entirely exempt from separate approval and publication pursuant to the new requirements. Some transactions are subject to separate requirements in the Danish Companies Act, as regards approval and publication.

Transactions that are always exempt are:

- Transactions between the company and its subsidiaries, unless the company's related parties have interests in the subsidiaries;
- clearly defined types of transactions which require approval at the general meeting;
- transactions concerning the remuneration of management members, comprised by the approval at the general meeting of the company's remuneration policy;
- transactions carried out by credit institutions on the basis of measures aimed at safeguarding their stability and adopted by the Danish Financial Supervisory Authority; and
- transactions offered to all shareholders on the same terms, where equal treatment of all shareholders and protection of the interests of the company are ensured.

Transactions between the company and a parent company are not exempted, as there is the same need to protect the company's interests in transactions with parent companies as with other related parties.

The explanatory notes mention non-cash contributions, dividends and capital reductions as examples of transactions that must be approved at the general meeting, in accordance with the Danish Companies Act.

The reason is that if the general meeting has approved the transaction, the shareholders will have been informed about the transaction and have had the opportunity to vote on this at the general meeting.

5. Brief comments on other elements of the Bill

Besides new rules on remuneration policy, remuneration reports and ongoing disclosures on related party transactions, the Bill contains the following elements:

- Companies have the right to identify their shareholders;
- Improved transparency with respect to institutional investors, asset managers and proxy advisors.

5.1. Companies have the right to identify their shareholders

It is proposed that companies will have the right to identify their shareholders. Under the Bill, the company has the right to identify all shareholders, independently from the size of their shareholding or voting rights. In other words, the company has a right but not an obligation to identify its shareholders.

The purpose of the provision is that the company can support shareholder engagement by communicating with its owners about company law events. The company may request from its shareholders to provide the following information:

- Full name and email address, if available, of the shareholder as well as address; or for companies, the registered office and CVR no., if available, or other documentation that ensures clear identification of the company concerned;
- Number of shares held;
- Share classes;
- Date of acquisition of the shares.

The company's right to request information about the shareholders is matched by the intermediaries' obligation to collect and pass on the information to the company. The company must not keep the information for more than 12 months after the company has become aware that a person is no longer a shareholder. The time limit runs from this point in time, as the company is often not aware that a person has ceased to be a shareholder, unless the person has informed the company directly, or the company has received the information through the identification of shareholders. Often, such identification takes place only once a year in connection with the annual general meeting or in connection with other important events as takeover bids or mergers.

5.2. Facilitating the exercise of shareholder rights and transparency in connection with institutional investors, asset managers and proxy advisors

The Bill sets out requirements to the effect that institutional investors and asset managers must prepare and publish a shareholder engagement policy. The shareholder engagement policy must describe how the individual institutional investor integrates shareholder engagement in its share investment strategy. The policy must also describe how the institutional investor:

- monitors companies in which investments are made within relevant areas, including strategy, financial and non-financial performance, risk, capital structure, social and environmental impacts, as well as corporate governance;
- has a dialogue with companies in which investments are made;
- exercises voting rights and other rights related to the shares;
- cooperates with other shareholders;
- communicates with relevant stakeholders in companies in which investments are made; and
- handles actual and potential conflicts of interest in connection with shareholder engagement.

Institutional investors and asset managers must furthermore publish, on an annual basis, a report describing how they have carried out their shareholder engagement policy, including a general description of votes cast, a description of the most material votes and their use of the services of proxy advisors. The institutional investors must publish how they cast their votes at the general meetings of companies in which they hold shares.

The above information must be available, free of charge, on the website of the institutional investor.

In future, a proxy advisor must publicly disclose on an annual basis a reference to a code of conduct which they apply, and must report on the application of that code of conduct.

“... the legislative amendments are to take effect on 10 June 2019”

In cases where proxy advisors deviate from one or more recommendations in the code of conduct, they must disclose which parts of the code have been deviated from, and provide explanations for doing so. Where proxy advisors do not apply a code of conduct, they must provide a clear and reasoned explanation for why this is the case. This information must be made publicly available, and free of charge, on the websites of the proxy advisors.

The Shareholder Rights Directive requires that proxy advisors publicly disclose, on an annual basis, information in relation to their preparation of research, advice and voting recommendations in listed companies. The information does not need to be disclosed separately where it is available as part of the compliance with a code of conduct.

6. Effective date

It is proposed that the legislative amendments are to take effect on 10 June 2019, which is in accordance with the Directive's latest timing of implementation in the legislation of each of the individual Member States.

Consequently, the rules on the approval and publication of related party transactions become effective on 10 June 2019.

Transitional provisions have been proposed for the preparation and approval of a remuneration policy, so that these requirements only apply at the first annual general meeting of the company convened in financial years beginning on or after 10 June 2019. This gives companies with financial years that follow the fiscal year about six months to prepare the remunera-

tion policy, so that the policy is presented for approval at the ordinary general meeting in the spring of 2020.

The requirement for preparation of the remuneration report becomes effective, so that the report is presented at the ordinary general meeting following the general meeting at which the new remuneration policy was approved. It is therefore expected that the first remuneration report will be presented at the annual general meeting in the spring of 2021 for companies with financial years that follow the fiscal year.

The rules on the identification of shareholders and confirmation of electronic voting, as well as a set of rules relating to institutional investors and asset managers, become effective in 2020.

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