

## The Regulation of Administrators' Remuneration: An Overview of Albanian Legislation

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### Abstract

The analysis of the legal representatives' remuneration system in joint stock companies constitutes one of the main elements of discussion on the internal governance of these commercial companies. Since the beginning of the global financial crisis in 2008, the determination of the remuneration of Board of Directors members and especially of the administrator turned into a matter of heated debate, starting with the astronomical remuneration of the CEOs and the lack of a fair relationship between these remunerations and the financial situation of the commercial company. Remuneration is the product of several influencing factors such as the level of concentration of ownership, the governance model of the commercial company, political culture and the cultural level of the societies of different countries in the perception of the remuneration concept. An appropriate remuneration system is an important mechanism for the good administration of any commercial company. The legal regulation of the administrator's remuneration in Albania dates back to the beginnings of the market economy, about 30 years ago. Being, relatively, a new concept, there is a lack of doctrinal treatments and debates at the academic level regarding the remuneration of administrators in Albanian commercial companies. Also, there is no information on trends and factors that have influenced the level of remuneration of administrators in these commercial companies. In the present research paper, through a legal assessment, special attention has been paid to the rules for the administrators' compensation in the Albanian commercial legislation, aiming to analyze the legal provisions, which regulate it in this regard.

**Keywords:** remuneration, administrator, joint stock company, Albania

**JEL Codes:** K22, L26, 052

### 1. Introduction

In recent times, the trend towards accountability and transparency in respect of corporate governance and the increase in shareholder activism means that the commercial companies not only have a statutory duty to comply with rules in relation to the remuneration of a company's directors but that they also have to be responsive to the cultural demand from stakeholders to be seen to be acting openly and fairly (Core, Guay and Randall, 2005). Moreover, linking the remuneration of administrators to the profits of the company helps to align the interests of the administrators with the interests of the shareholders and, therefore, reduces the conflict represented - representative (principal - agent) as a result of the separation that exists between ownership and control of the company (Bebchuk and Fried, 2004). In Albania, due to lack of doctrinal treatments but also information on the factors that may influence the level of remuneration, becomes difficult or impossible to identify and relate the performance of the administrator and the amount of remuneration, as well as the size of the economic activity, the performance of the company and the amount of remuneration. One of the reasons for the lack of academic debate is related to the fact that the level of remuneration of administrators in Albania is not significant compared to the level of administrators' remuneration in other European countries. Moreover, there is also a lack of interpretations and judicial practice regarding this aspect. The only references on the remuneration of administrators remain the provisions of Albanian Company Law and the Internal Management Code (IMC), which does not constitute a binding regulation but mainly aims to build a framework of best practices.<sup>1</sup> In the present research paper, through a legal assessment, are analyzed the legal provisions in the Albanian commercial legislation, which regulate the administrators' compensation.

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<sup>1</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>. > [ Accessed on August 15, 2022]

## 2. The legal regulation of the administrators' remuneration in Albania

Law no. 7638, dated 19. 11. 1992 "On commercial companies" contained only three provisions regarding administrators' remuneration. This law did not determine the method and amount of remuneration of each Board member,<sup>2</sup> which remained upon discretion of the anonymous company.<sup>3</sup> The method and amount of remuneration of the Board members would be reflected in the appointment act of the board member.<sup>4</sup> Whereas, in relation to the Supervisory Council members, regardless of the statutory provisions or previous decisions, the General Assembly would determine a fixed annual amount, which would be borne from the company's account, as a remuneration for participating in the Supervisory Council. In addition to this amount, the Supervisory Council determined extraordinary remunerations for the services or tasks assigned to the Supervisory Council members.<sup>5</sup> The latter, except for those elected by the employees, could not receive any other permanent remuneration from the company.<sup>6</sup>

Law No. 9901, dated 14.04.2008, "On entrepreneurs and commercial companies", which repealed the above-mentioned law, gives to the Board of Directors of the joint-stock company competences to draft policies and the remuneration scheme.<sup>7</sup> Also, as a prerequisite for signing the contract by other administrators, the Board of Administration only requires the internal approval of the General Assembly (Bachner, Schuster and Winner, 2009). Moreover, the IMC recommends that the Board of Directors should prepare the remuneration policy accompanied by a transparent procedure for its implementation, clearly specifying the comparative indicators and the criteria for measuring work results, which are linked to the process of remuneration and the level of providing information on the remuneration.<sup>8</sup> In order to put pressure on the Board of Administration, the Albanian legislator has foreseen the approval of policies and the scheme of remuneration by the General Assembly, without specifying the relevant documentation that had to be presented by the Board of Administration (Malltezi, 2011). Persons, who have a conflict of interest, such as Council members or their relatives, who are shareholders, cannot participate in this voting process.<sup>9</sup>

The legislator has made a distinction between the remuneration of the members of the administration council and the remuneration of the administrator, without defining the concrete structure or levels. The remuneration of administrators is usually greater than the remuneration of Council members, but there should be a fair relationship with it (Malltezi, 2011). IMC recommends that the Board of Directors in determining their remuneration structure should reflect the difference between these roles. Administrators are employed full-time by the company and are responsible for its operational activity. While, unlike the administrators, the non-administrator members of the Council are "officers" and are not employees of the company as they devote part-time to the company.<sup>10</sup> Precisely, the salary level for the non-administrator members of the Council should reflect the dedicated time and responsibility of the role.<sup>11</sup> The elements of the monetary remuneration consist of fixed and variable elements. In accordance with the recommendation of the European Commission of 2004,<sup>12</sup> IMC determines that these elements must be based on a multi-year assessment by the Board of Administration of the positive developments, as well as the negative ones of the joint-stock company.<sup>13</sup> Also, in determining the elements of remuneration, the Board of Administration must compare the level of remuneration in the respective company with that of other commercial

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<sup>2</sup> The member of the directorate corresponds to the role of the member of the administration board in joint stock companies.

<sup>3</sup> The anonymous company complies with the joint stock company according to law no. 9901, dt.14.04.2008 "On entrepreneurs and commercial companies, amended.

<sup>4</sup> Article 100 of Law no. 7638, dt. 19. 11. 1992 "On commercial companies".

<sup>5</sup> Ibid, article 119.

<sup>6</sup> Ibid, article 121.

<sup>7</sup> Article 160 of Law no. 9901, dt.14.04.2008 "On entrepreneurs and commercial companies", amended.

<sup>8</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [Accessed on August 15, 2022]

<sup>9</sup> Article 13 of Law no. 9901, dt.14.04.2008 "On entrepreneurs and commercial companies", amended.

<sup>10</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [Accessed on August 15, 2022]

<sup>11</sup> Ibid.

<sup>12</sup> European Commission Recommendation (2004/913/EC), dt. 14.12. 2004, Fostering an appropriate regime for the remuneration of directors of listed companies, 2004 OJ L 385/55. Available at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:385:0055:0059:EN:PDF>,> [Accessed on August 15, 2022]

<sup>13</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [Accessed on August 15, 2022]

companies.<sup>14</sup> These comparisons must be used carefully, taking into account the risk of salary increase without being accompanied by improvement in work results.<sup>15</sup> Based on the above, a tendency of good corporate governance practices to maintain a balance between fixed and variable remuneration elements is observed. These good practices recommend determining the level of variable elements not based on immediate work results but on results after a certain period of work in the company.<sup>16</sup> Moreover, these practices recommend the Board of Directors to oblige the administrators to return the additional bonuses, only if it is proven that the information used to determine the bonus was wrong.<sup>17</sup> In the Albanian Company Law is determined that the members of the Board of Administration can receive a basic salary and additional bonuses, including part of the company's profit or option rights on the company's shares.<sup>18</sup> In this case, the basic salary is related to the fixed part of the bonus and bonuses constitute a part of the remuneration that depends on the result of the administrator's work, including part of the company's profit or option rights on the company's shares. Reimbursements for various expenses that the administrator may have occurred during the exercise of his function and other benefits, such as the use of the company's vehicle, the use of the company's telephone, etc., can be added to the basic salary. (Malltezi, Rystemaj and Kromçi, 2015).

The methods of remuneration of the administrator must be defined in the company's Statute or, in the absence of a regulation in the Statute, according to the determination made by the board of administration decision. The criteria and calculation of the basic salary of the administrator was regulated by DCM no. 285, dated 04.05.2007, which oriented the business how the salary of the administrator should be calculated.<sup>19</sup> The DCM established several criteria that had to be applied when determining the salary of the administrator, such as the economic sector where the company carries out its economic activity, the place where the activity is carried out, the company's annual turnover, etc.

If from the audits exercised by the tax authorities, it was observed that the declared salary did not correspond to the market value for employment services, the tax authorities had the right to re-evaluate the salary of the company administrator, according to the criteria defined in the DCM. The latter determined a minimum salary that had to be paid to the company's administrator, regardless of whether the company was engaged in commercial activity. This DCM was revoked with DCM no. 393, dated 20.06.2012<sup>20</sup>, removing the reference salary. In this way, commercial companies are no longer obliged to pay predetermined levels of obligations for the salaries of their management employees. With the aforementioned change, the company is obliged to respect only the minimum wage determined by DCM no. 457, dated 07.09.2014.<sup>21</sup>

All compensation components must be appropriate, both separately and as a whole, and especially should not be encouraged to take unreasonable risks.<sup>22</sup> Defining options on shares as a remuneration mechanism is a trend that aligns with European countries trends of reforming the remuneration of the administrator (Malltezi, Rystemaj and Pelinku, 2013).<sup>23</sup> Depending on the right that is benefited from the option contract, the latter can be a purchase or sell option respectively.<sup>24</sup>

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<sup>14</sup> Ibid. This way of comparison is used in Germany in order to determine the amount of "ordinary remuneration".

<sup>15</sup> Ibid.

<sup>16</sup> Ibid. Page 13.

<sup>17</sup> Ibid.

<sup>18</sup> Article 160 of law no. 9901, dt.14.04.2008 "On entrepreneurs and commercial companies", amended.

<sup>19</sup> Especially in its article 3 was determined that: "administrator/general director is considered a qualified worker. The reference salary must correspond to the market value for employment services according to the economic activity carried out..."

<sup>20</sup> Decision No. 393, dt. 20.06.2012 of the Council of Ministers "On the revocation of decision no. 285, dated 4.5.2007 of the Council of Ministers "On determining the monthly reference salary, for the effect of calculating social and health insurance contributions and personal income tax, according to the nomenclature of economic activity, for employees in the non-public sector, who perform unqualified and qualified jobs, as well as for their managerial and technical-economic personnel", published in the Official Gazette no. 82, dt. 17.07.2012. Available at: < <https://qbz.gov.al> >. [ Accessed on August 15, 2022].

<sup>21</sup> This decision determines that: "starting from August 1, 2014 onwards, the minimum monthly salary, for the purpose of calculating the social and health insurance contribution, will be no less than 19,406 (nineteen thousand four hundred and six) ALL.

<sup>22</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [ Accessed on August 15, 2022]

<sup>23</sup> Article 8 of Law No. 9879 dt.21.2.2008 "On Securities" defines that: "An option is a contract for the future sale of securities, according to which one of the parties to the contract benefits from the right, but not the obligation, to buy or to sell the title defined in the contract at a price agreed upon (first on each working day, until the end of this period, while the other party assumes the obligation to deliver or pay the title, which is the object of contract, according to option holder's request".

<sup>24</sup> Ibid.

In the case of employee relations, the option is a well-known form of remuneration given to managers or even certain employees of the company. The Albanian company law lacks a time limit for the use of options. The IMC only recommends that this share option right can be partially acquired, leaving a percentage of the shares until the end of the employment relationship and after a certain period of work has passed.<sup>25</sup> In case of acquiring the shares or the right of options over the shares, the General Assembly must approve the method of remuneration of the Administration Council members.<sup>26</sup> Also, in the Albanian Company law is determined that the salary of the company's administrators can be increased with additional bonuses.<sup>27</sup> In accordance with the bonus scheme and the company's financial situation, individual bonuses are determined by the Board of Administration and must reflect, appropriately, the division of duties between members holding the duty of administrators and independent members, who are not administrators.<sup>28</sup> This provision does not aim to establish unified standards for appropriate salaries for administrators, as this would be difficult to achieve given the diversity of commercial activities involving the joint stock company (Bachner, Schuster and Winner, 2009). IMC recommends that the Administration Council in determining the level of remuneration should take into consideration the financial consequences of premature termination of employment relations for administrators in order to avoid remuneration for poor results at work and setting the ceiling level of remuneration.<sup>29</sup>

Another important issue addressed by the legislator is the right of the General Assembly to reduce the remuneration assigned to the administrators, in case the financial situation of the company deteriorates severely.<sup>30</sup> This unilateral right to reduce the benefits granted according to a legal contract, is very problematic. In general, the exercise of the right of the General Assembly should be limited to situations where the deterioration of the company's financial situation makes it clearly inappropriate to provide the previously determined benefits. This would normally be the case if the degradation of the company's financial condition was a consequence of rare (or even unpredictable) events (Bachner, Schuster and Winner, 2009).

The remuneration scheme, the individual remuneration given to administrators and independent members, who are not administrators, together with the report on the annual effect of these schemes on the assets of the company are published together with the annual financial statements.<sup>31</sup> Considering the mandatory approval of scheme of remuneration of directors by shareholders, the value of the publication provision will effectively be limited only to informing shareholders of the real effect of the additional benefits decided by them (Bachner, Schuster and Winner, 2009). Based on the IMC, the levels of remuneration must be sufficient to attract, retain and motivate administrative and non-administrative members of the Council, with the necessary quality to successfully run the company.<sup>32</sup> As per above, it remains for the company to find the necessary financial mechanisms to employ capable administrators, but nothing can justify a disproportion of the remuneration of the administrators from the benefits that the shareholders receive. The latter are the reason for company's existence and therefore the protection of their property and interests should be one of the main goals of company's structures (Malltezi, 2011).

Until 2013, there was sufficient space for increasing the level of remuneration of administrators and Board of Directors members in joint stock companies. From January 1, 2014 until nowadays, with the application of the progressive income tax, this space has been greatly reduced.<sup>33</sup>

In dealing with the remuneration issue, Albania is still in the phase of defining the basic standards for the legal regulation of remuneration. The approach is based on the appropriateness and maintaining the balance of remuneration elements, rather than on determining the criteria of appropriateness, of the structure, the relationship between the elements of this structure, the maximum level of remuneration or the responsibility for high remuneration.

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<sup>25</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [Accessed on August 15, 2022]

<sup>26</sup> Ibid, article 5.

<sup>27</sup> Article 160 of law no. 9901, dt.14.04.2008 "On entrepreneurs and commercial companies", amended.

<sup>28</sup> Ibid, article 160 point 2.

<sup>29</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [Accessed on August 15, 2022]

<sup>30</sup> Article 160 point 3 of law no. 9901, dt.14.04.2008 "On entrepreneurs and commercial companies", amended.

<sup>31</sup> Ibid, article 160 point 4.

<sup>32</sup> Decision No. 1, dt.02.12.2011 of Business Consultative Council "On the approval of Internal Management Code for the commercial companies in Albania". Available at: < <http://cgi-albania.org/corporate-governance-code/>, > [Accessed on August 15, 2022]

<sup>33</sup> See fiscal package 2014, Available at:< [www.financa.gov.al](http://www.financa.gov.al), > [Accessed on August 15, 2022].

### 3. Conclusion

This paper, following a functional approach, has analyzed and critically evaluated the legal regulation of administrator's remuneration in joint stock companies in Albania. The Albanian approach is mainly based on the formal suitability and maintaining the balance of the remuneration elements, rather than on the definition of the suitability criteria, the structure, the relationship between the elements of this structure, the maximum level of the remuneration or the responsibility for high remunerations, which are missing in commercial legislation. The legislation also lacks a clear specification of the indicators and criteria for evaluating the work of administrators, the time limit and the way how to use the options. Given that the institution of the administrator's remuneration was very little addressed in the commercial legislation, the Albanian legislators, based on the best practices of other jurisdictions, should determine the relationship between the elements of the remuneration structure, the maximum level of remuneration, the declaration of remuneration, indicators and criteria for evaluating the work of administrators as well as the responsibility for high remuneration.

In the framework of determining the manner and term of using options on shares, as remuneration mechanisms, the legislator must determine their partial acquisition, leaving a percentage of shares until the end of the 3-year term of appointment. Also, the level of other additional remunerations will not be determined based on immediate work results but only after the end of a working year. In determining the appropriate amount of remuneration, the legislator should foresee that the company should be based on the competencies, the individual performance of the administrator, the long-term economic developments of the company, as well as the level of remuneration in companies that exercise the same economic activity. In practice, the right of the General Assembly to reduce the remuneration assigned to the administrators, in case of economic decline of the company, has resulted problematic. In these conditions, the legislator should determine that the exercise of this right by the Assembly should be limited to situations, where the deterioration of the company's financial situation makes the benefits previously determined to be granted clearly as inappropriate. As indicators of the economic decline can be: reduction of wages, reduction of jobs, impossibility to distribute dividends, etc..

Improving the legal rule and finding a regulatory, comprehensive mechanism for the remuneration of administrators, in addition to the above, can be achieved through the determination of the binding vote of shareholders in the determination of remuneration and the application of strict fiscal policies on the income of administrators. Also, it is necessary to redefine the concept of the director's performance, not to focus only on the economic dimensions of the performance, but also on the social and environmental ones.

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