

*Accounting Bulletin 3*

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# **Guidance on Disclosure of Directors' Remuneration**



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

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**AB 3**  
**ACCOUNTING BULLETIN 3**  
**GUIDANCE ON DISCLOSURE OF DIRECTORS'**  
**REMUNERATION**

*(Issued January 2000)*

*Accounting Bulletins reflect the views of the Financial Accounting Standards Committee on subjects of topical interest. They are intended to assist members or to stimulate debate on important accounting issues. They do not have the authority as either Accounting Standards or Accounting Guidelines.*

*This Bulletin sets out the Financial Accounting Standards Committee's understanding of the statutory and other requirements with respect to the disclosure of directors' remuneration in financial statements. It is for general guidance only and does not constitute legal advice. If you are in any doubt as to your understanding of the statutory requirements and other requirements discussed in this Bulletin, you should seek legal advice.*

## **Introduction**

1. The purpose of this Accounting Bulletin ("Bulletin") is to set out the Financial Accounting Standards Committee's ("Committee") understanding of the statutory requirements with respect to disclosure of directors' emoluments, pensions and compensation for loss of office (collectively referred to in the Bulletin as directors' remuneration) in the financial statements and to provide guidance on common practical issues encountered in preparing the required information. Unless otherwise specified, all section references referred to below are to the Companies Ordinance of Hong Kong.
2. Under section 161C, a company's directors have a duty to give information about their remuneration in writing to the company so that proper disclosure of directors' remuneration could be made in the company's financial statements. This requirement applies also to a person who has been a director of the company within the preceding five years. Any person who makes default in complying with such requirement is liable to a fine.
3. Section 161 sets out the particulars of directors' remuneration that are required to be disclosed in the financial statements. Under section 161A, any director who fails to take all reasonable steps to secure such disclosures is liable to imprisonment and a fine.
4. Section 161(8) also provides that if the required information is not disclosed in the financial statements, the auditors have a duty to include the information (so far as they are reasonably able to do so) in their audit report.
5. In a separate but related area, section 161B requires disclosure in the financial statements of loans to directors and other officers. In addition, section 129D requires disclosure in the directors' report of directors' interest in contracts and of arrangements enabling directors to acquire benefits by means of acquisition of shares and debentures.
6. Given that the provisions of the Companies Ordinance are so widely drawn, most of the payments made or benefits provided to directors, one way or another, would have to be disclosed in the annual report.

7. Apportionment of directors' remuneration between holding company and subsidiaries is discussed in this Bulletin. Although there may be practical difficulties in doing so, the Committee is of the view that it is principally correct for such apportionment to be made.
8. Guidance on valuing benefits in kind is given in this Bulletin as well as the most common examples of its application. It is however not the intention of this Bulletin to cover all possible benefits in kind.
9. This Bulletin does not provide guidance on the valuation of share options granted to directors. This is a complex subject and it is intended that it will be dealt with separately by way of another bulletin. Nevertheless, the Committee is of the view that share options granted to directors would at least need to be disclosed in the note on directors' remuneration. As a minimum, information concerning the number and the principal terms of options granted would be disclosed, which may include:
  - a. the number of options granted during the year;
  - b. the exercise price;
  - c. the periods for which the options may be exercised;
  - d. the expiry dates;
  - e. the cost of the options (if any) and the market price at the date of grant; and
  - f. a concise summary of any performance criteria conditional upon which the options are exercisable.

For further guidance in this area, members are encouraged to refer to the study report "Directors' remuneration - recommendations for enhanced transparency and accountability" issued by the Directors' Remuneration Task Force of the Corporate Governance Committee of the Hong Kong Society of Accountants.

## **Statutory and other requirements**

### **All companies**

10. The principal disclosure requirements regarding directors' remuneration are set out in section 161 which broadly speaking requires a company to show, either in the accounts or in a separate statement annexed thereto, the following information distinguishing in all cases between remuneration in respect of services as directors, whether of the company or its subsidiaries, and other remuneration:-
  - a. the aggregate amount of directors' emoluments;
  - b. the aggregate amount of directors' or past directors' pensions;
  - c. the aggregate amount of compensation to directors or past directors in respect of loss of office, distinguishing further into sums paid by or receivable from:-
    - i. the company;

- ii. the company's subsidiaries; and
  - iii. any other person.
11. By virtue of section 161(5), directors' remuneration includes all relevant sums paid by or receivable from the company, its subsidiaries and any other person, with the exception of sums to be accounted for to the company or its subsidiaries. Section 3 of the Interpretation and General Clauses Ordinance defines "person" to include any body of persons, corporate or unincorporate. "Any other person" could therefore include the company's holding companies, fellow subsidiaries, associates or in fact any other company.
  12. Directors' emoluments include any emoluments paid to or receivable by any person in respect of his services as director of the company (or while director of the company, as director of the company's subsidiaries) or in connexion with the management of the affairs of the company or its subsidiaries.
  13. For statutory disclosure purposes, emoluments include fees and percentages, expense allowances (to the extent that they are not spent on the expenses for which the allowances were made - section 161(2) ), contributions to pension schemes (or other forms of retirement scheme) and the estimated money value of any other non-cash benefits.
  14. Directors' or past directors' pensions include any pension in respect of services (as director or in connexion with management) of a director or a past director, whether payable to him or his dependant or nominee.
  15. For statutory disclosure purposes, pension includes any superannuation allowance, superannuation gratuity or similar payment. However, pension does not include payments from a pension scheme when contributions to the pension scheme are substantially adequate to maintain the scheme. Hence, under most circumstances, amounts paid by or receivable from a pension scheme would be excluded from directors' or past directors' pensions, as contributions to the pension scheme would have already been included under directors' emoluments at the time the contributions were made.
  16. For statutory disclosure purposes, compensation to directors or past directors for loss of office includes sums paid as consideration for or in connexion with a director's retirement from office (as director or in connexion with management). Hence, most ex-gratia payments made on either a director's retirement or his removal would have to be included under compensation for loss of office, even though the payment may be of a gratuitous nature. A payment in lieu of notice would be included under compensation for loss of office as it is received by a director more in connexion with his retirement from office than in respect of his services.
  17. For the purposes of section 161, subsection (9)(a) expanded the definition of the term "subsidiary". In relation to a person who is or was, while a director of the company, a director of any other body corporate by virtue of the company's nomination (directly or indirectly), that body corporate is deemed to be a "subsidiary" by the subsection. Hence, if a company has nominated one of its directors to be a director of another body corporate, remuneration of the company's director in respect of his services to that other body corporate would have to be included under directors' remuneration in the company's financial statements even if the body corporate does not fulfil the definition of a subsidiary set out in section 2(4) (which is similar to that in SSAP 7 "Group accounts").

### Listed companies

18. In addition, companies whose securities are listed on the Stock Exchange of Hong Kong Limited are required to comply with the Rules Governing the Listing of Securities ("Listing Rules") which require information in respect of directors' emoluments prepared in accordance with sections 161 and 161A to further include the following particulars:-
- a. the aggregate of the directors' fees for the financial year;
  - b. the aggregate of the directors' basic salaries, housing allowances, other allowances and benefits in kind;
  - c. the aggregate of contributions to pension schemes for directors or past directors for the financial year;
  - d. the aggregate of bonuses paid or receivable by directors which are discretionary or are based on the listed company's, the group's or any member of the group's performance for the financial year (excluding amounts disclosed in (e) and (f) below);
  - e. the aggregate of amounts paid during the financial year or receivable by directors as an inducement to join or upon joining the listed company; and
  - f. the aggregate of compensation paid during the financial year or receivable by directors or past directors for the loss of office as a director of any member of the group or of any other office in connection with the management of the affairs of any member of the group distinguishing between contractual and other payments (excluding amounts disclosed in (b) to (e) above).

In accordance with Appendix 14 of the Listing Rules "Code of Best Practice", listed issuers are encouraged to disclose in full in their annual report and accounts the directors' fees and any other reimbursements or emoluments payable to independent non-executive directors.

19. The Listing Rules also require disclosure of the following additional information in respect of directors' emoluments:-
- a. an analysis showing the number of directors whose emoluments (being amounts paid under paragraph 18 above) fell within bands from HK\$nil up to HK\$1,000,000 or into higher bands (where the higher limit of the band is an exact multiple of HK\$500,000 and the range of the band is HK\$499,999); and
  - b. particulars of any arrangement under which a director has waived or agreed to waive any emoluments.
20. According to notes to the Listing Rules, where a director is contractually entitled to bonus payments which are fixed in amount such payments are more in the nature of basic salary and accordingly should be disclosed under paragraph 18(b) above. Where a director is contractually entitled to bonus payments which are determined as a percentage of turnover or profits of the listed company or any of its subsidiaries, then such payments should be disclosed under paragraph 18(d) above.
21. It is understood that the intention of the above provisions is to provide a further breakdown and analysis of the total amount of directors' remuneration disclosed under the Companies Ordinance, particularly the discretionary elements thereof, notwithstanding the fact that the Listing Rules only adopt the term "directors' emoluments".

## **Practical issues**

### **Definition of director**

22. Under section 2, the term "director" is defined as to include any person occupying the position of director by whatever name called. In addition, section 158 provides that any person in accordance with whose directions or instructions the company's directors are accustomed to act shall be deemed to be a director. Hence, the disclosure requirements of section 161 also apply to those persons commonly known as "shadow directors".

### **A person is a director for only part of a year**

23. In general, where part way through a financial year an employee has become a director, or vice versa, the amount to be disclosed as directors' remuneration is the amount earned by the person during the period when he served as a director. However, consideration would need to be given to sums paid or receivable as an inducement to become a director or as a compensation for retirement from directorship.

### **An employee acting as an alternate director**

24. In practice, an employee of the company may be appointed as an alternate director and hence has dual capacity. It is not clear from the Companies Ordinance how alternate directors should be dealt with in the disclosure of directors' emoluments. The Committee is of the view that remuneration of such a person would be included as directors' remuneration only to the extent of any specific amount received or receivable by the person in respect of services for acting as a director.

### **Timing of recognition**

25. According to section 161(6), the amounts to be shown for any financial year are, generally, the sums receivable in respect of that year, whenever paid. For sums not receivable in respect of a period, the amounts to be shown are the sums paid during the year. Hence, the accrual concept of accounting would normally be applied in the disclosure of directors' emoluments (for example, bonus payments which are determined as a percentage of turnover or profits) and of compensation for loss of office, whereas the cash basis would normally be applied in the disclosure of directors' or past directors' pensions.

### **Emoluments paid through a management service company**

26. According to section 161(2)(a), directors' emoluments should include any emoluments paid to or receivable by any person in respect of his services as director or in connexion with management.
27. As noted in paragraph 11 above, the term "person" includes any body corporate. Disclosure of directors' emoluments is not avoided by routing the payment through an intermediary, such as a management service company.

28. Therefore if the reporting company pays directors' emoluments by way of a management charge or any other fees to a management service company or any other entity (whether corporate or unincorporated), the amount included therein for the services of a director or directors would have to be included under directors' emoluments.

### **Distinction between forms of service**

29. The Companies Ordinance requires directors' emoluments to be distinguished between emoluments in respect of services as directors and other emoluments. Similar distinctions are also required for directors' and past directors' pensions and for compensation for loss of office.
30. Emoluments in respect of services as directors are normally those fees which are paid to directors in their capacity as such and not in any managerial or executive capacity. Typically these would be fees fixed either by the Articles of Association or by the company in general meeting including sums paid for special services, such as serving on committees representing the board.
31. Other emoluments are those sums which are paid in connexion with the management of the affairs of the company or its subsidiaries. Other emoluments normally include salaries, bonuses and benefits paid to directors for services in a managerial or executive capacity, for instance, as a managing director, manager or departmental head.
32. Whether a director receives emoluments for services as a director or for management is usually a question of fact. All payments made to a director, except for reimbursement of expenses, would generally fall within one of these categories, unless it can clearly be demonstrated otherwise. Payments may also be made to a director in a self employed or an independent professional capacity for the provision of technical services that are not connected with services as a director or management services. Where it can be clearly established that the payments are genuinely for technical services and separately distinguishable, then the amounts paid need not be disclosed as directors' emoluments. However, if the contract for services is significant to the company's business and the director has a material interest, the transaction would still need to be disclosed.

### **Group of companies**

33. According to paragraph 22 of the Tenth Schedule to the Companies Ordinance, directors' remuneration is not required to be disclosed in the consolidated financial statements. Nevertheless, disclosure of directors' remuneration is still required for the holding company's own financial statements, even though the holding company may have taken advantage of section 123(5) allowing it not to present its own profit and loss account.
34. For a company which has subsidiaries, unless the subsidiaries' directors are also directors of the holding company, remuneration of the subsidiaries' directors would be excluded from directors' remuneration in the holding company's financial statements. However, directors' remuneration of the holding company would include any amount in respect of services provided by the holding company's directors to the holding company as well as to its subsidiaries, irrespective of whether these persons are also directors of the subsidiaries.
35. Even if the holding company disposed of a subsidiary before the financial year end, the relevant remuneration for the period during which the entity was a subsidiary would still have to be included. Furthermore, the requirement for directors' remuneration to include remuneration in respect of services provided to the subsidiaries by the holding company's directors is not dependent on whether group accounts are presented or whether any of the subsidiaries are excluded from the group accounts.



36. Where a reporting company itself is a subsidiary of another company, directors' remuneration would not include remuneration in respect of services provided to the reporting company's holding company by the reporting company's directors, irrespective of whether these persons are also directors of the holding company.

### **Apportionment between holding company and subsidiaries**

37. In a group situation, it is not uncommon for directors to be remunerated solely by the holding company or by one of the group companies for their services to the group. Whilst this arrangement is unlikely to have any impact on disclosure of directors' remuneration in the holding company's financial statements, it may present practical difficulties in determining the amounts of directors' remuneration to be disclosed in the subsidiaries' financial statements.
38. According to section 161(7), where it is necessary for the purpose of making any distinction required by section 161 (see paragraph 10 above), the directors should consider apportioning any payments in a manner as they think appropriate. The power given to the directors to apportion is expressed as being permissive, rather than compulsory; but if it is necessary to exercise the power in order that the financial statements may give the information required by section 161 for a proper preparation of the company's financial statements in accordance with the Companies Ordinance, then the directors would need to exercise the power if a reasonable apportionment can be made.
39. It follows that where a director of a subsidiary is also a director of the holding company and the whole of his remuneration is borne by the holding company (such remuneration including remuneration paid to or receivable by him in respect of his services to both companies), the director would need to consider apportioning his remuneration between the holding company and the subsidiary.
40. In practice, apportionment may only be done on an arbitrary basis and therefore some directors may decide not to apportion their remuneration. In these circumstances, the whole of the sums received by the director from the holding company would have to be shown in the holding company's as well as the subsidiary's financial statements. For instance, if a director is paid HK\$2,000,000 by a holding company for services as a director of the holding company and four subsidiaries, and the sum is not apportioned by the director, then the holding company and each of the four subsidiaries would be bound to show this sum, i.e., HK\$2,000,000, in their respective financial statements. Additional disclosure would need to be made in the subsidiary's financial statements to explain that the amount consists of remuneration for the directors' services to the group unapportioned.
41. Despite the above, the Committee is of the view that if the director's services to the subsidiary only occupy an insignificant amount of his time, it may be concluded that the director is not remunerated for such services. Therefore the subsidiary's financial statements would reflect the director as not having received any remuneration. However, it would be necessary to review the particular facts in each individual situation.

### **Expenses allowance**

42. The Companies Ordinance requires expenses allowance less amounts actually spent on the expenses for which the allowance was made to be included under directors' emoluments. In this respect, the Committee is of the view that an expenses allowance does not form part of directors' emoluments to the extent that it is spent on expenses of a business nature. However, allowances for personal expenditures (for example, housing allowance) is in substance part of the salary package and therefore would have to be included under directors' emoluments irrespective of the amounts actually spent on the designated purpose.

### **Guidance on valuing benefits in kind**

43. According to section 161(2), directors' emoluments include the estimated money value of any other benefits received by a director otherwise than in cash. However, the term "estimated money value" is not defined in the Companies Ordinance. The spirit of the section is to disclose the value of the benefits received by the directors which does not necessarily coincide with the cost borne by the company in providing such benefits. The benefits disclosed may not represent the actual charge to the company.
44. The Committee however recognises that the value of benefits received by the directors is not always readily available. In such cases, in the absence of a relevant measure, a value with reference to the cost (or amortised cost) borne by the company could be a practical approximation to the value of the benefits received by the directors.
45. The above principles are illustrated in the examples below.
- a. Property transferred to a director
 

If a company transfers the title of a property to a director, the "estimated money value" is the property's fair appraised value less any amount paid by the director.
  - b. Property owned by the company, used by a director
 

If a company allows a director to use a flat or house owned by the company, then the "estimated money value" is the market rental of the property if it were let on arms' length terms plus any related charges (for example, rates, utilities and building management fees) borne by the company less any amount contributed by the director.
  - c. Property rented by a company, used by a director
 

A house or flat is rented by a company from an unrelated third party and occupied by a director, the "estimated money value" is the rent paid to the owner and any other related charges borne by the company less any amount contributed by the director.
  - d. Company's product transferred to a director
 

The estimated money value of a product transferred to a director would be the normal selling price of an equivalent transaction.
46. Where a director is provided with an asset (for example, a motor vehicle or pleasure vessel) for a mixture of business and private use, an apportionment between business and private usage would be required. It is not necessary to apportion the cost between business and private use in absolute accuracy but it would need to have a reasonable and consistent basis.

### **Subsidised loans**

47. The estimated money value of the benefit is the difference between the interest payable on the loan and the market interest otherwise payable by the director in obtaining the funding in the market himself, calculated in accordance with a weighted average rate for the financial year. Care would need to be exercised to ensure that any loans made to directors do not contravene the prohibitions on transactions with directors (see section 157H) and are properly disclosed in accordance with sections 161B and 161BA.

### **Presentation in financial statements**

48. The Companies Ordinance requires the amounts disclosed as directors' remuneration to be accompanied by comparative figures. Although, there is no specific requirement to disclose the situation of nil directors' remuneration, it is advisable for the sake of clarity that such fact be disclosed.
49. Since some of the amounts included in directors' remuneration may not represent actual charges borne by the company (for example, amounts paid by third parties but not charged to the company and in relation to the disclosure of estimated money value as explained in paragraph 43 above), it is advisable that the company's financial statements have a separate note dealing with directors' remuneration rather than its being included in a general note covering items which are described as having been charged in arriving at profit before taxation. This is particularly relevant in group accounts where the disclosure only relates to directors of the holding company but not to directors of the subsidiaries. Examples of possible disclosure notes are included in the Appendix for illustrative purposes. It is also desirable that the basis on which the money value of each benefit in kind has been estimated be disclosed, particularly where a value has been attributed to share options.

## Appendix

### EXAMPLES OF DISCLOSURES IN NOTES TO FINANCIAL STATEMENTS

#### 1. Basic disclosures for unlisted companies

Directors' Remuneration:

Remuneration [of the Company's directors]\* disclosed pursuant to section 161 of the Companies Ordinance is as follows:

	199X	199Y
	HK\$	HK\$
Fees	50,000	40,000
Other emoluments		
- Salaries (including benefits in kind) **	3,000,000	2,500,000
- Pensions	500,000	-
- Compensation for loss of office	750,000	-
	4,300,000	2,540,000
	=====	=====

Compensation for loss of office was paid by the following parties:-

	199X	199Y
	HK\$	HK\$
The Company	400,000	-
The Company's subsidiaries	200,000	-
Others	150,000	-
	750,000	-
	=====	=====

\* to be added in the case of group accounts

\*\* this may be simply described as "other emoluments" if there is no pension or compensation for loss of office for separate disclosure

**2. Where directors are paid both by the company and by an outside party, and no apportionment is made**

(The following would be added after the above disclosure)

"In addition to the directors' remuneration disclosed above, certain directors receive remuneration from the Company's holding company\*, which totals HK\$5,500,000 (199Y: HK\$4,000,000), part of which is in respect of their services to the Company and its subsidiaries. No apportionment has been made as the directors do not believe that it is practicable to apportion this amount between their services to the Company's holding company and each of that company's subsidiaries."

\* amend as appropriate.

**3. Where directors receive no remuneration**

Directors' remuneration disclosed pursuant to section 161 of the Companies Ordinance for the year is HK\$nil (199Y:HK\$nil).

**4. Basic disclosures for listed companies**

	199X	199Y
	HK\$	HK\$
Fees	70,000	70,000
Basic salaries, housing allowances, other allowances and benefits in kind	4,586,000	4,235,000
Discretionary bonuses	2,750,000	3,850,000
Inducement fees	-	400,000
Contributions to pension schemes for directors (and past directors)	400,000	350,000
Contractual/Non-contractual* payments for loss of office paid to directors and former directors by:		
- the Company	50,000	-
- the Company's subsidiaries	-	40,000
- others	70,000	-
	<u>7,926,000</u>	<u>8,945,000</u>
	=====	=====

\* amend as appropriate.

The amounts disclosed above include directors' fee of HK\$20,000 (199Y: HK\$20,000) and other emoluments of HK\$100,000 (199Y: HK\$95,000) payable to independent non-executive directors.

Emoluments of the directors were within the following bands:

	Number of directors	
	199X	199Y
HK\$nil to HK\$1,000,000	2	2
HK\$1,000,001 to HK\$1,500,000	4	5
HK\$1,500,001 to HK\$2,000,000	1	-
	=====	=====

In the year ended 31 December 199X, one of the directors waived emoluments of HK\$40,000 (199Y: HK\$nil).