

# “Say over Pay”: A Theme for Today or Here to Stay?

## 股東決定薪酬： 只是今天的主題還是會成為慣例？

by Victor Hughes

In recent years, shareholders have expressed growing concern about the size of the remuneration packages for their company's senior management. Bankers' bonuses have been the headline issue, but there are other companies where shareholders have expressed reservations about executive pay in their company. The recession and continuing financial problems have brought this topic to the forefront. Shareholders tend to be more tolerant during times of prosperity, but are less accepting and more critical in hard times.

The foundations of the free market system include the right and the obligation of shareholders to appoint directors to run their company on their behalf. Directors are required to make their decisions in the best interests of the company, hence ultimately in the best interests of the company's shareholders.

Corporate governance guidelines advise that directors have a fiduciary duty towards their company's shareholders. A key issue for directors, particularly the board's remuneration committee, is how well they control and monitor the risk and reward balance between shareholders and company staff.

The press have frequently observed that the 2008 crisis reduced shareholder value materially, while directors and managers continued to receive sizeable and increasing remuneration packages. In 2010, the British newspaper The Daily Telegraph, reported that the results of a survey by remuneration consultancy

MMSK and Manifest, a voting proxy agency, which showed that in the span of two years the salaries of Britain's top 100 executives rose by an average of five percent, whilst earnings per share of the companies they ran fell by one percent. The survey also noted that annual bonuses accounted for an increasing proportion



of their remuneration packages and commented that if the remuneration committees want to avoid criticism at annual meetings, they have to “be more diligent and challenging”.

There are jurisdictions where shareholders have the right to approve or reject their director's remuneration package. The right is often known as “Say over Pay”. Shareholders of some companies, such as Motorola, have rejected director's remuneration proposals and other companies faced opposition from their shareholders which resulted in pay plans being amended.

It is sad that on the important issue of remuneration, shareholders and those they have appointed to run the company often cannot be united on the correct course for their company. The apparent lack of sensitivity shown by directors to shareholders' worries is likely to increase demands by shareholders for the ability to vote on director's actions and could possibly lead to sanctions on the members of the remuneration committees.

One reason why investors find it difficult to express their concern is that frequently their investment is made through managers or nominee companies. Pension schemes are significant investors on behalf of pensioners. The beneficial shareholders have to rely on investment managers to speak on their behalf. It is possible that some investment managers may focus only on future profits and dividends, overlooking other areas of the company's operation that may worry the ultimate investor.

In July 2010, Britain introduced The U.K. Stewardship Code to guide companies that invest for others and establish how they should “carry out the wishes of their clients”. It will be interesting to see how the guidance works in practice. If it improves communication between beneficial shareholders and a company's management, it will enhance corporate governance and the approach could be introduced to other markets.



Another possible reason why shareholders worry about executive pay is the lack of information about pay scales and benefits. An idea that the highest paid executive in a company should not receive more than 20 times the remuneration of the lowest paid employee was floated some years ago in the U.S. and has recently re-emerged. This idea has been discussed in the U.K. as a guide for civil servants' pay. For many years, at least one Hong Kong listed company has reported the remuneration of all of its employees, analysed into salary ranges and by staff classification. This simple report could be modified to give the information needed for a shareholder to decide whether the remuneration structure is fair and acceptable.

The activities of the board's remuneration committee are usually described in the company's annual report. Judging from the usual description, the committee's main role is to appoint external advisors to compare remuneration packages with their peers in the same industry. There is rarely any information on what the committee does with the information and whether and how it uses the performance information to form the regular appraisal of its senior staff.

Many companies state they must offer the best pay to secure and retain the best staff. This approach can often lead a company to set a target of offering pay packages that are in the top half or top quartile of the survey. If other companies adopt the same approach, there can be a rapid inflation in pay packages without any improvement in individual or company performance.

Those who are involved in encouraging good corporate governance, including stock exchange regulators, institutes of directors, investment managers and boards of directors, need to find a solution to address shareholders' worries on executive pay and the operation of their remuneration committee. If those who understand business best do not find a solution, one may be formulated and imposed by others.

The current sanctions available to unhappy shareholders are not really effective in this situation. Shareholders can remove directors from the board, but even in a medium-sized company it can be difficult and costly to organise the removal motion. In a family-controlled company with a minority of shares owned by non-family, it is probably next to impossible.

Dissenting shareholders can sell their shares and more than one company chairman has aggressively suggested this option in response to shareholder's questions. It would be unfair for this to be the only course of action if the shareholder is happy with other aspects of the company.

The right answer to addressing shareholders' concern over executive pay surely has to be for those involved in good corporate governance in business to find an appropriate way to involve shareholders in the design and agreement of their company's senior management remuneration, before a mechanism is imposed.

近年來，股東們已經對他們公司高級管理層的薪酬方案越來越關注。銀行家們的獎金一直是新聞的頭條，但也有些公司的股東們對其管理人員的薪酬待遇持保留態度。經濟衰退和持續的財務問題把這個議題推向了前台。在景氣好的年頭，股東們的容忍度會大一些，但當時世艱難，他們的容忍度便會降低，而且會變得更加挑剔。

自由市場體系的基石包括股東們享有權利和義務來任命董事來代表他們營運公司。董事需要根據公司的最佳利益作出決策，因而他們的最終決定亦會是對公司股東的利益有利。

企業管治的指導原則表明，董事們要對他

們公司的股東履行誠信責任。對於董事們，尤其是對董事會薪酬委員會來說，其一的關鍵事項就是他們如何在控制和監管風險以及對股東和公司職員作出獎勵之間取得平衡。

媒體不斷注意到，二零零八年的金融危機令股東價值大幅縮水，而董事和經理人們則繼續享有可觀的、而且在持續增長的薪酬方案。二零一零年，英國報紙《每日電訊報》報導了由薪酬諮詢公司 MMSK 和投票代理公司 Manifest 作出的調查結果：在兩年內，英國首一百名收入最高的高管的薪酬平均增長了百分之五，而他們所運營的公司的每股盈利則下降了百分之一。該調查還指出，年度獎金在他們的薪酬方案中所佔的比例有所增加。該報導還表示若果薪酬委員會想要在股東年會上避免被批評，他們只能「更加勤奮和更有進取心」。

在有些司法管轄區內，股東有權批准或拒絕董事的薪酬方案。此項權利常被稱為「股東決定薪酬」。有些公司的股東，譬如摩托羅拉，曾拒絕過董事薪酬的提案。而另外一些公司則因為來自股東的反對而導致其高管的薪酬計劃被修改。

悲哀的是，在薪酬這重要事項上，股東和那些他們所任命來運營公司的人經常無法凝聚共識來幫助公司走向正確的軌道。董事們顯然對股東們的擔憂缺乏敏感度，這可能會促使股東們要求對董事行為進行投票表決的訴求，並可能會導致對薪酬委員會成員的處罰。

投資者們發現，他們很難表達其憂慮的一個原因在於他們經常是通過經理人或者托管公司為他們作出投資決策。如養老金計劃是代表退休者所做出的重大投資。受益股東必須依賴投資經理來代表他們發言。一些投資經理也許只關注於未來的利潤和分紅，而忽略了公司其他方面的營運，導致最終的投資者憂心忡忡。

在二零一零年的七月，英國推出了《英國管理守則》，對為個別的業務進行投資的公司提供指導，並明確了它們應該如何「貫徹客戶的意願」。看看這個指導原則在實踐中將會如何被運用會是一件有意思的事情。如果它能改善受益股東和公司管理層之間的溝通，並提高了公司治理水平，這個做法可能會被引入其他的市場。

股東對管理層薪酬產生憂慮的另一個可能原因是基於缺乏關於薪酬標準和福利的資

訊。幾年前在美國有一個觀點，認為公司裡薪酬最高的管理者的報酬不應該超過最低工資雇員的二十倍，現在這個觀點又被重提了。英國已經把這個觀點作為公務員工資的指導原則進行了討論。多年來，至少有一家在香港上市的公司披露了其所有僱員的薪酬，並分析了其薪金的範圍，並按職員等級進行分類。這個簡單的報告可以在修改之後為股東提供所需的信息，以決定該公司的薪酬結構是否公平並且可以接受。

董事會薪酬委員會的活動通常會在公司的年報中得到表述。從一貫披露的描述所得出的判斷來看，該委員會的主要職責是任命外部顧問來對他們的薪酬方案和同業的同等級者進行比較。但很少有資訊顯示該委員會是如何對待這些信息以及業績表現是否被用來作為對其高級職員進行常規評估。

很多公司稱它們必須提供最佳的薪酬以確保能招來並留住最好的人才。這個做法可能經常會導致公司制定的工資方案目標是處於調查結果的前百分之五十或前百分之二十五位。若果其他公司採取了相同的舉措，則可能導致個人或公司的業績在沒有改進的情況下，其薪酬水平仍然會被迅速提高。

那些參與提高良好企業管治的人，包括股票交易監管者、董事學會、投資經理人和董事會等，需要尋找解決方案來處理股東對管理人員的薪酬和其委員會的運作的憂慮。若那些最了解業務的人都無法找到解決方案，那麼其他人便會制定和實施一個方案。目前，不滿的股東可以使用的處罰措施在這種情況下並不怎麼有效。股東們可以把董事從董事會中撤除，但即使是在一家中型規模的公司，組織一次撤除行動都會是困難而所耗不菲的。而在家族控制的公司裡，非家族成員只持有少量的股份，那就幾乎是不可能達到此目的。

已經有不止一家公司的董事長在應對股東的質疑時就肆無忌憚地表示過有異議的股東們可以出售其持有的股份。但若果股東對公司的其他方面都滿意的話，只給他們這種唯一的做法就顯得不公平了。

針對股東對管理人員薪酬的憂慮，正確的做法是在出任何台前的機制前，得讓那些參與良好的企業管治的人員來尋找一個適當的方法來讓股東來參與公司高級管理人員薪酬方案的設計。

#### About the Writer 關於作者

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Victor Hughes 歡迎各位讀者對透過香港董事學會與他聯絡，討論本文所提出的各項問題。Hughes 先生現職公司董事，曾撰寫《晉身董事行列》一書，並本着「經驗是最佳的教材」的精神，與 Jo Rice 合辦連串課程，與同學們分享他們在企業管治和董事職務方面的豐富經驗。