



Governance in brief

Directors' remuneration report – new regulations laid

Headlines

New requirements for directors' remuneration reports for quoted companies have now been laid before Parliament and are expected to come into effect on 1 October 2013 for periods ending on or after 30 September 2013

Under the regulations:

- the remuneration report will be split into three components: a statement from the chairman of the remuneration committee, a policy report and an annual report on remuneration;
- the policy report will be subject to a binding shareholder vote which must take place in the first financial year beginning on or after 1 October 2013; and
- the content of the annual report on remuneration (which remains subject to an annual advisory vote) is substantially different from the existing requirements - it includes the 'single figure' for each director and a number of new requirements.

Key impact – the binding vote on remuneration policy

A resolution to approve the policy report must be put to shareholders at least every three years or sooner if a company wants to make any changes to the policy. Once the policy is approved all remuneration payments must be within the policy or directors will be personally liable to the company.

The first vote will take place at the AGM in the financial year beginning on or after 1 October 2013. The policy does not need to apply until the following financial year (i.e. the financial year starting in 2014/2015) unless a company chooses otherwise.

Before this date, payments for remuneration and loss of office payments which are not consistent with the policy will not be unlawful. However, if a company chooses to apply the policy earlier, the restrictions on payments will also apply earlier. It is important to note that a company must disclose the date from which the policy applies in the remuneration report. Once the binding policy is in force, all future remuneration and loss of office payments must be consistent with it and all directors will be liable if the company breaches this policy. The disclosures and restrictions on payments apply only to directors, both executive and non-executive directors.

Who the regulations apply to

The new legal framework and disclosure requirements apply to UK incorporated companies listed on the main market in the UK or other EEA country, on the New York Stock Exchange or NASDAQ. It does not include AIM or the ISDX Growth Market.

Timing

The first companies to report under the new regulations and to put the policy report to a binding shareholder vote will be those with financial years ending on 30 September 2013.

The key dates are set out in the table below:

Year end	First AGM at which company must report in the new format and put the remuneration policy to a binding shareholder resolution*	Date from which all remuneration and loss of office payments must be consistent with the approved policy or approved by a separate shareholder resolution	Latest date by which the company must put the remuneration policy back to shareholders
30 September	Late 2013/early 2014	1 October 2014	30 September 2017
31 December	Spring 2014	1 January 2015	31 December 2017
31 March	Summer 2014	1 April 2015	31 March 2018
30 June	Autumn 2014	1 July 2015	30 June 2018

* This means that the remuneration policy will need to be included within the Annual Report being presented at that AGM for approval

The content of the remuneration report

The remuneration report will include:

- An annual statement from the chairman of the remuneration committee.
- A policy report which includes details of the remuneration policy (this section may be posted on the company's website in any year where the policy is not being put to a shareholder vote).
- An annual report on remuneration which includes details of what directors have been paid in the reporting period and some details of how policy will be implemented in the next financial period.

In a number of areas the regulations do not prescribe the detail to be included and we expect further guidance and clarification to be provided by the Association of General Counsel and Company Secretaries in the FTSE 100 (known as the GC100) and also from investors and investor bodies in due course.

Some key points to note on the policy report

Flexibility – the policy report should strike a reasonable balance between providing sufficient detail for shareholders to be comfortable, while allowing for some degree of flexibility to react to changing circumstances.

Policy table – consider the level of detail to include here which might range from a statement on how salary increases are determined to providing an indication of the limit on the salary increase which would apply in normal circumstances, which might be expressed in terms of the wider employee population, or in relation to inflation.

Performance targets – there is no requirement to include the actual performance targets in the policy report, which is welcome due to commercial sensitivity. However a description of the measures and an indication of the weighting of the measures, or the group of measures, is required. Companies also have to include some degree of information on the payout/vesting schedule.

Service contracts and policy on loss of office – the policy report must include details of the principles on which the determination of payments for loss of office will be made. Companies will need to ensure that all obligations are disclosed to ensure that these can be met once the policy is binding.

Significant new elements of the annual remuneration report

The single figure – many companies have already started to disclose a single figure of total remuneration for each director although in many cases the single figure currently published is not compliant with the methodology laid out in the regulations. It is worth noting the following points:

- Additional columns can be added to the minimum requirements of the regulations in order to aid understanding of the single figure and companies may want to consider whether this will be useful.
- The value of the annual bonus should include any amount deferred where any further conditions relate to service and not performance of either the company or the individual and therefore the value of deferred shares should not be included at the time of vesting.
- The value of long term awards should be based on awards vesting in respect of the financial period under review. The value of long term awards should also include the value of any additional cash or shares receivable in respect of dividends accrued.

- The pension number should include the aggregate pension contribution across all pension plans in which the director accrues benefits.

The link between pay and performance – information explaining the link between pay and performance is required. The supplemental information required includes, for variable components, the disclosure of the performance measures, weightings, targets set at the beginning of the performance period, the value achievable if targets are met, the actual performance achieved and the resulting level of award.

Payments for loss of office – companies now need to disclose the total amount of any payment for loss of office, broken down into each component, and an explanation of how each component was calculated and any other payments, including how outstanding incentive awards are to be treated. In addition, there is a requirement that when a director leaves, the company must publish a statement on its website, as soon as reasonably practicable, including the particulars of the loss of office payments and remuneration payments which have been made and may be made in the future.

Performance graph and table – the requirements to publish a TSR chart remain but alongside this a table should be included which provides, for the CEO, the single total figure of remuneration, the amount of bonus earned as a percentage of the maximum opportunity and the vesting of long term awards as a percentage of the maximum number of shares that could have vested. Both the chart and the table should, in the first year of reporting under the new regulations, cover five years. Over the next five years the chart and table should build up to cover ten years.

Percentage change in remuneration of the CEO – the increase in the remuneration of the CEO compared with the increase in the remuneration of the other employees of the company as a whole must be disclosed.

Relative importance of spend on pay – companies must include the actual expenditure for the current and previous year, and the percentage change, in relation to remuneration paid to all employees, dividends and any other significant distribution deemed helpful in assisting shareholders to understand the relative importance of spend on pay.

Statement of implementation of remuneration policy in the following year – the degree of detail to be included is not prescriptive other than it should include the performance measures and weighting, the targets determined for the performance measures and how awards will be calculated.

A provision has been added in the introduction to the regulations, covering all parts of the report, stating that no requirement of the regulations requires the disclosure of information in respect of performance conditions which the directors consider is commercially sensitive.

Deloitte View

These are significant changes and there is limited time to bring all the elements together – boards need to ensure that an action plan is in place to meet the new requirements as the directors will be held liable for payments made outside of the approved policy. A well drafted policy statement is likely to be the best protection against the possibility of breaching it.

Remembering the underlying reason for these changes, companies will need to think carefully about the need to provide some indication that the measures and targets set were relevant and stretching and that payouts clearly relate to the level of performance achieved.

More information

A copy of the final regulations can be obtained from www.gov.uk/government/publications/draft-regulations-the-large-and-medium-sized-companies-and-group-accounts-and-reports-amendment-regulations-2013

To discuss any aspect of the new remuneration regulations please contact Nicki Demby (020 7303 0083 or ndemby@deloitte.co.uk)

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Tracy Gordon – 020 7007 3812 or trgordon@deloitte.co.uk

William Touche – 020 7007 3352 or wtouche@deloitte.co.uk

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