



## Governance in brief

### FRC consultation on directors' remuneration

#### Headlines

- The FRC has been asked to gather views on three issues relating to directors' remuneration.
- Changes to the Remuneration section of the UK Corporate Governance Code may arise as a result.
- Areas of overlap between the Code and the remuneration regulations will be identified.

#### Consultation on potential amendments to the UK Corporate Governance Code

As anticipated, the FRC is consulting on three specific issues requested by the Government:

- Clawback arrangements.
- Whether non-executive directors holding executive positions in other companies should sit on the remuneration committee.
- Any actions that should be taken if a company fails to obtain a substantial majority in support of a resolution on remuneration.

Responses to the consultation are requested by 6 December 2013. If any changes are subsequently proposed, they will be subject to consultation in the first quarter of 2014. The new Code would apply to accounting periods beginning on or after 1 October 2014.

#### Summary of the questions raised in the consultation

##### Extending the provisions on clawback arrangements

Views are sought on:

- Whether there should be a 'comply or explain' provision relating to the ability of the company to recover and/or withhold variable pay?
- Whether the Code should adopt the terminology of the regulations, referring to the 'recovery of sums paid' and the 'withholding of sums to be paid'?
- Whether the Code should specify the circumstances under which payments should be recovered/withheld and if so, what should they be?
- Whether there are practical/legal considerations that could restrict application of these arrangements in some circumstances?

### **Remuneration committee membership**

At the time the proposed legislation was announced the Secretary of State talked about the ‘perceived conflict’ where a member of a remuneration committee holds an executive position in another listed company. The consultation document includes some statistics relating to the proportion of FTSE 350 companies where the remuneration committee currently includes individuals who hold executive positions in other FTSE AllShare listed companies. These illustrate that this situation is far less common now than ten years ago, particularly in FTSE 250 companies, although this is still the case in c.30% of FTSE 100 companies.

Views are sought on whether changes to the Code are required in order to deter this practice.

### **Votes against the remuneration report**

The Code currently includes provisions relating to ensuring effective communication with shareholders and to the disclosure of the steps taken to ensure that the members of the board have an understanding of the views of shareholders. However, the Code does not explicitly state how boards should respond if the company fails to obtain at least a substantial majority in support of a resolution on remuneration.

The regulations require, in the annual remuneration report, disclosure of the details of the votes on the previous year’s report and where there was a significant vote against either resolution, to give a summary of the reasons, where known, and any actions taken in response. However, this would not be disclosed until the year after the event. As an indication, guidance on the remuneration regulations issued by the GC 100 suggests that votes against in excess of 20% might be considered ‘significant’.

Views are sought on:

- Whether there should be an explicit requirement in the Code to report to the market where the company fails to obtain a substantial majority in support of a resolution on remuneration?

If yes, should the Code:

- Set the criteria for determining what constitutes a significant vote against?
- Specify the time period within which companies should report on discussions with shareholders?
- Specify the means by which the company should report to the market, and if so what should this method be?

The consultation paper also asks whether there any practical considerations in identifying and/or engaging with shareholders who voted against the resolutions.

### **Other issues**

The consultation paper asks if there are any provisions in the Code which overlap with the new regulations and could therefore be removed.

In relation to Section D.1 of the Code – the level and components of remuneration, D.2 – procedure and Schedule A – the design of performance based remuneration for executive directors, views are sought on whether the Code should continue to address these areas and if so whether any of the provisions should be revised in light of current market practice.

The full consultation paper can be found at:

<http://frc.org.uk/Our-Work/Publications/Corporate-Governance/Directors'-Remuneration-Consultation-Document.aspx>

#### **Applicability to AIM companies**

These changes would not impact AIM companies as they are not required to report compliance against the UK Corporate Governance Code. However, some AIM companies do comply with the UK Corporate Governance Code voluntarily.

#### **Deloitte view**

- We welcome the FRC's consultation on these issues, particularly the fact that they are open to discussion about removing some of the provisions where there may be overlap with the new remuneration regulations.

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#### **UK Centre for Corporate Governance**

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