

## UK Corporate Governance Code Clawback



September 2014

**Following the publication of the updated Governance Code we can clarify that the intention of the FRC in relation to the provision on clawback is that companies should have both the ability to be able to recover sums paid and to withhold the payment of any sum.**

While it is true that many companies now have provisions to either recover sums paid or to withhold payments, fewer companies have the ability to do both. And in many companies these provisions will not apply to all incentive plans. This is particularly true of cash bonuses, where clawback provisions are less common.

This does mean that in many, if not most, companies the remuneration committee will want to review existing provisions and assess what additional provisions should be included and the situations in which it is anticipated these may be operated or to determine whether to “explain” why this element of the code has not been complied with.

The new Code applies to financial periods starting on, or after, 1 October 2014. Therefore, it is worth noting that the first remuneration reports where compliance with the new Code will need to be reported will be in 2015. So for a company with a financial year ending 31 December 2014, the first requirement to report compliance with the new Code, or to explain any areas of non-compliance, will be in the remuneration report for the financial year ending in 2015.

However, although there is technically no requirement to “explain” non-compliance on this point in the 2014 report it is important to bear in mind that:

- Institutional investor bodies may expect companies to comply with some or all of the new Code provisions sooner rather than later and may adapt their voting guidelines for the next AGM season on this basis. Accordingly, there is scope for negative comment or criticism this year from some shareholders and/or voting bodies.

- A significant number of companies are likely to elect to comply “early” with the new Code (particularly if they already have malus and clawback in place). If this is seen as best practice, non-compliance may attract attention.

Companies may therefore want to consider including, in the next remuneration report, what steps they are taking to address the new guidance.

Given there are a number of things to consider around the introduction of clawback and malus for all variable remuneration, some of which are quite complex, we suggest that even though companies do not need to have all of these provisions in place in the next few months, it is important to start planning for this as soon as possible.

*We are holding a webinar to discuss some of the practical implications of introducing clawback and malus provisions on Thursday 25 September at 11.00am. You can register for this session at [www.deloitte.co.uk/events](http://www.deloitte.co.uk/events) using the password ‘update’.*

## Contacts

Stephen Cahill

020 7303 8801

**[scahill@deloitte.co.uk](mailto:scahill@deloitte.co.uk)**

William Cohen

020 7007 2952

**[wacohen@deloitte.co.uk](mailto:wacohen@deloitte.co.uk)**

Nicki Demby

020 7303 0083

**[ndemby@deloitte.co.uk](mailto:ndemby@deloitte.co.uk)**

Juliet Halfhead

0121 695 5684

**[jhalfhead@deloitte.co.uk](mailto:jhalfhead@deloitte.co.uk)**

Mitul Shah

020 7007 2368

**[mitulshah@deloitte.co.uk](mailto:mitulshah@deloitte.co.uk)**

Helen Beck

020 7007 8055

**[hebeck@deloitte.co.uk](mailto:hebeck@deloitte.co.uk)**

Sally Cooper

020 7007 2809

**[sgcooper@deloitte.co.uk](mailto:sgcooper@deloitte.co.uk)**

Anita Grant

0118 322 2861

**[anigrant@deloitte.co.uk](mailto:anigrant@deloitte.co.uk)**

Nick Hipwell

020 7007 8647

**[nhipwell@deloitte.co.uk](mailto:nhipwell@deloitte.co.uk)**

© 2014 Deloitte LLP. All rights reserved.

This communication is from Deloitte LLP, a limited liability partnership registered in England and Wales with registered number OC303675. Its registered office is 2, New Street Square, London EC4A 3BZ, United Kingdom. Deloitte LLP is the United Kingdom member firm of Deloitte Touche Tohmatsu Limited ("DTTL"), a UK private company limited by guarantee, whose member firms are legally separate and independent entities. Please see [www.deloitte.co.uk/about](http://www.deloitte.co.uk/about) for a detailed description of the legal structure of DTTL and its member firms.

This communication contains information which is confidential and may also be privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please (1) notify [it.security.uk@deloitte.co.uk](mailto:it.security.uk@deloitte.co.uk) by forwarding this email and delete all copies from your system and (2) note that disclosure, distribution, copying or use of this communication is strictly prohibited. Email communications cannot be guaranteed to be secure or free from error or viruses.

To the extent permitted by law, Deloitte LLP does not accept any liability for use of or reliance on the contents of this email by any person save by the intended recipient(s) to the extent agreed in a Deloitte LLP engagement contract.

Opinions, conclusions and other information in this email which have not been delivered by way of the business of Deloitte LLP are neither given nor endorsed by it.