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Directors' remuneration report

Update to the GC100 and Investor Group Guidance

December 2014

The GC100 and Investor Group have released an update to the guidance (the IGC Guidance) on directors' remuneration reporting.

The IGC Guidance, released last Autumn, was developed by representatives of the Corporate Governance Forum (an informal network of leading UK Institutional Investors) and the association for the general counsels and company secretaries of companies in the FTSE 100 (GC100).

The Group has reviewed the Guidance in light of the 2014 AGM season and, although it is not intended to produce an update of the Guidance in full, areas where further clarification is helpful and aspects that merit further emphasis have been identified. These are summarised in a paper which should be regarded as part of the IGC Guidance.

Key points raised

Linking remuneration to strategy

Investors believe this should be an area of greater focus. Information in the policy table demonstrating how each remuneration element supports the business strategy should be supplemented by information in the policy implementation section and should be highlighted in the statement from the Remuneration Committee Chairman. There should be a clear read across between the strategic report and the remuneration report.

Discretion

Investors will be more likely to approve any discretionary aspects of the remuneration policy where the scope is tightly defined. Where broad discretion is considered necessary to deal with unexpected developments over the life of the policy it should be explained in a way that provides assurance that this would only be used in genuinely exceptional circumstances and within an acceptable maximum.

Supplementary assurances

A number of companies provided additional statements of clarification relating to the way in which aspects of proposed policies would be implemented. These were provided on the basis that once the policy was approved, they would be binding. The IGC Guidance suggests that these statements should be available on the Company's website in the reports and accounts section. They should also be set out, in the implementation of the policy section, in future remuneration reports during the term of the policy.

Malus and clawback

The 2014 UK Corporate Governance Code includes stronger provisions on malus and clawback with companies expected to be able to both recover sums paid and withhold payment of any sum in relation to all incentive awards, or explain where this is not the case. The new Code applies to accounting periods beginning on or after 1 October 2014. Most remuneration policies have been recently approved and are therefore not due for renewal for another two to three years. This has caused some discussion about whether companies can amend the policy to extend the provisions in order to comply with the new Code without seeking shareholder approval for the changed policy. The IGC Guidance states that companies planning to extend withholding and recovery provisions may wish to consider (in consultation with investors):

- deferring this to the next scheduled policy renewal
- presenting for approval a new policy amended accordingly
- devising some other solution, for which they may wish to seek appropriate advice (eg, as regards any risk of making awards and payments "inconsistent" with approved policy)

Inclusion of the approved policy in subsequent reports

There is no requirement to publish the approved policy in subsequent reports as long as the report sets out the date of the approval and indicates where it can be viewed. The IGC Guidance does not recommend including the full policy report in every report but does recommend that sufficient information should be included to help investors assess the reported remuneration in the context of the policy and that this should include at least the policy table.

Performance targets

It is recognised that prospective performance measures and targets may be considered commercially sensitive but retrospective disclosure, once the information is no longer commercially sensitive, is expected.

This update to the Guidance re-emphasises this point and notes that the need to align executive remuneration and long-term success and to demonstrate this clearly to shareholders is given extra emphasis in the revised UK Corporate Governance Code.

Remuneration policy – maxima for each component

The update to the Guidance clarifies that investors expect to see the maximum level of remuneration for each individual director, as well as the maximum possible level. The update specifies that this is required for each remuneration component although the focus is on bonus disclosure.

Shareholding requirements

If there are requirements for vested shares to be retained at least until a specified level of shareholding is attained, these should be disclosed in the explanation of how the incentive plan operates in the policy table and either cross-referenced, or disclosed again, in the shareholder requirements section of the report.

Clarity of reporting

The update notes that the quality of reporting has generally improved but that companies should continue to focus on clarity and conciseness. Remuneration committees are encouraged to consider:

- Feedback from shareholders on the last remuneration report
- What would make it easier to assess and understand each section of the report
- Whether the thinking and purpose behind the decisions is clear

Deloitte view

The update to the Guidance provides some clarification ahead of the 2015 AGM season which will assist companies in drafting their second remuneration report under the new reporting regulations. The update is particularly helpful in providing guidance on how companies should deal with additional statements of clarification on issues of policy, released after the publication of the last report, and what is expected in terms of reproducing the policy report. The guidance also supports the updated guidelines from the IMA and the NAPF in terms of the focus on the link between remuneration and strategy and the retrospective disclosure of performance measures and targets. We agree with the overall conclusion of the update in relation to the improvement in the quality of reporting.

The guidance on clawback and malus provides a number of options for companies where there is a need to either introduce, or extend current provisions. We believe many companies will want to ensure they are compliant with the updated Code when it comes into force and consider that it should be possible to update the policy to reflect this without this constituting a change in policy which would require shareholder approval. Of course companies will want to seek appropriate advice to ensure that this is possible within the current approved policy.

The guidance on the disclosure of remuneration maxima suggests that the policy should include the maximum for each individual director, presumably to the extent that these differ between directors, as well as the overall maximum. This appears to apply to all elements of remuneration. However, we believe investors were generally comfortable with the way in which most companies dealt with the disclosure of maxima in relation to salary and benefits and in our view this is most relevant to the annual bonus and long-term incentive plans.

We encourage companies particularly to focus on ensuring the disclosures set the remuneration strategy firmly within the context of the business strategy and performance and consider that the statement from the Remuneration Committee Chairman provides an opportunity to tell the story of the year and set the scene for the rest of the report. This helps avoid surprises and should help build understanding and trust between the committee and investor.

The update to the guidance can be found at:

http://uk.practicallaw.com/groups/uk-gc100-investor-group

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