ADDLESHAW GODDARD

EXECUTIVE REMUNERATION

Complying with the new UK Corporate Governance Code

The 2018 UKCG Code, which applies to all companies with a premium listing on the London Stock Exchange in respect of accounting periods beginning on or after 1 January 2019, makes a number of fundamental changes to the way in which executive remuneration is determined and disclosed.

This note sets out the key changes and what action companies need to take in order to comply.

CHANGE	DETAILS	ACTION
Appointments to the Remuneration Committee (Rem Co)	▶ Before appointment as the chair of the Rem Co, the appointee must have served on a Rem Co for a period of at least 12 months	▶ Amend Terms of Reference (**ToR**) for the Rem Co to reflect change
Remit of the Rem Co	▶ Setting remuneration for senior management ▶ Reviewing workforce remuneration and related policies ▶ Reviewing alignment of workforce incentives and rewards with culture	▶ Amend ToR for the Rem Co to reflect expanded remit ▶ Rem Co to take workforce remuneration and related policies into account when setting executive remuneration policy
Rem Co discretion	▶ Rem Co should be mindful of (i) possible monetary outcomes; and (ii) external perceptions arising from its decisions ▶ Rem Co should consider the use of discretion to override formulaic outcomes in respect of variable pay ▶ An active decision whether or not to exercise such discretion should be part of annual remuneration process	▶ Amend ToR for the Rem Co to reflect change and requirement for active decision to be taken ▶ Review and revise LTIP/bonus rules and ancillary documents to ensure use of discretion is compatible ▶ Review service contracts and consider whether use of discretion is compatible with contractual obligations
Variable remuneration	▶ Share awards should be released on a phased basis and have a combined vesting/holding period of at least 5 years ▶ Malus and clawback provisions should apply to all variable pay. Guidance suggests that such provisions might include (i) where payments are based on erroneous or misleading data; (ii) misconduct; (iii) misstatement of accounts; (iv) serious reputational damage; and (v) corporate failure	▶ Amend LTIP rules as necessary to provide for a 5 year vesting/holding period for future awards ▶ Review existing malus/clawback provisions in LTIP and bonus rules. Most rules will not currently include corporate failure as being a circumstance in which malus/clawback can be operated

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Pension contributions	▶ Executive pension contribution rates should be aligned with workforce	▶ Amend ToR for the Rem Co to reflect change ▶ Review existing contractual arrangements – guidance recognises that it may not be practical to amend existing contractual commitments ▶ Consider future contractual arrangements and recruitment policy ▶ Pension consequences of basic salary increases (particularly for those close to retirement) should be carefully considered and compared to workforce arrangements
Post-employment shareholding policy	▶ Formal policy for post-employment shareholding requirements for vested and unvested shares ▶ Guidance suggest that this should apply for two to three years after leaving the company	▶ Amend ToR for the Rem Co to reflect new obligation ▶ Review and revise existing shareholding policy ▶ Consider policy in conjunction with leaver provisions in LTIP rules
Engagement with workforce	▶ The Directors' Remuneration Report must set out what engagement has taken place with the workforce to explain how executive remuneration aligns with the wider company pay policy. ▶ This ties in with the new obligation to review workforce remuneration and related policies	▶ Amend ToR for the Rem Co to reflect additional reporting obligation ▶ Determine how this will be done. This could be a standalone process or as part of the wider workforce engagement obligations under the Large and Medium-sized Companies and Groups (Accounts and Reports) Regs 2008
Termination payments	▶ Rem Co should be robust in reducing compensation to reflect departing directors' obligations to mitigate loss	▶ Amend ToR for the Rem Co to reflect new obligation ▶ Ensure that new service agreements provide for phased payment of termination awards, particularly notice pay ▶ Consider whether terms of Directors' Remuneration Policy need to be amended

The Employee Incentives team at Addleshaw Goddard LLP can work with you and your Remuneration Committee to help implement the actions needed to comply with the remuneration aspect of the 2018 UKGC Code.

Please contact us if you think we may be able to assist you in this area:

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