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GC100 and Investor Group publish Directors' Remuneration Reporting Guidance

Representatives of the GC100 and Corporate Governance Forum have published guidance aimed at assisting quoted UK companies to understand the practical aspects of implementing the new executive remuneration reporting requirements which take effect on 1 October 2013.

Key points to note from the Guidance are as follows:

- The Guidance stresses that remuneration policies should stand the test of time. As such, the GC100 and Corporate Governance Forum (referred to as the "Group" in the Guidance) strongly believes that remuneration policies should in the normal course be put to a vote once every three years rather than on an annual basis. A triennial policy vote is the approach envisaged by the new legislation and the Guidance notes that investors would "generally not find it helpful" to be asked to vote annually as a matter of standard practice;
- The Guidance is held out as "best practice" in the view of both investors and companies. It is neither exhaustive or definitive and should not prevent companies from being innovative in remuneration reporting. The Guidance stresses that boilerplate language should be avoided and that companies should strive to provide meaningful and (preferably) concise disclosures;
- In some instances the Guidance recommends disclosures that go beyond the requirements of the new regulations. The Guidance distinguishes between mandatory disclosures required by the regulations and those which are seen as desirable, and which the Group feels will promote effective engagement between investors and companies and will enable investors to make informed voting decisions;

Key issues

- The remuneration policy should normally be put to a shareholder vote every three years rather than annually
- The Guidance recommends some disclosures that go beyond legislative requirements in order to assist investors to make informed voting decisions
- Companies may wish to consider including an "emergency" discretion in their remuneration policy for genuinely unforeseen or exceptional circumstances
- On ceasing to be commercially sensitive, information on targets/performance measures should be disclosed
- Remuneration policies should take effect on approval at the AGM

- The Guidance recognises that flexibility, discretion and judgement are crucial for the successful design and implementation of the remuneration policy. There is a useful discussion in the introduction to the Guidance looking at how these three elements inter-relate:
  - The policy will need to reflect the operational discretions required (e.g. the ability to set the level of each component of remuneration within a range

over the life of the policy) but there will also be a need to exercise discretion to ensure the outcome of the implementation of the policy is fair to both directors and the shareholders, taking into account the overall performance of the company;

  - The Guidance recognises that discretion may be used upwards or downwards;
  - The Guidance acknowledges that there is an argument for including an "emergency" discretion in the policy for use in genuinely unforeseen and exceptional circumstances;
  - Where the exercise of a discretion is disclosed in the annual remuneration report, investors will expect that companies will report the circumstances leading to the exercise of that discretion, why it was required and the consequences of such;
  - A distinction is drawn between "discretion" and "judgement". The Guidance recognises that the use of judgement (e.g. assessment of annual bonus objectives) which does not involve any discretion need not be disclosed;
- The Guidance makes clear that under the new remuneration reporting regime, it is the remuneration committee which should take responsibility for the preparation of the remuneration policy;
- Whilst acknowledging that there are good reasons why a company may not wish to disclose performance measures or targets on the basis that they are, for a period of time, likely to be commercially sensitive, the Guidance states that investors would expect such information be to disclosed in the annual remuneration report once such information ceases to be commercially sensitive. This sentiment is echoed in the letter sent by Legal & General to all FTSE 350 companies in early September. Neither the new reporting regulations nor the Guidance define "commercially sensitive" (although the Guidance suggests that a possible interpretation is that disclosure is likely to damage a company's commercial interests);
- The Guidance notes that, whilst there is some flexibility as to when the first remuneration policy should take effect, investors are generally in favour of the remuneration policy starting immediately following its approval at the annual general meeting. In light of this, companies that wish to defer the start of their policy until the beginning of their next financial year (the long stop date by which the statutory restrictions on making a remuneration payment or payment for loss of office will apply) should discuss this with their key investors. There may be good reasons for postponing the start of the policy, for example, the desire to ensure that the policy aligns with the company's financial year; and
- The Group intends to review and refresh the Guidance as market practice develops.

There is less than a month now before the legislative reforms relating to executive remuneration reporting take effect and their impact on companies' preparations for the forthcoming AGM season cannot be understated.

The Guidance will undoubtedly be useful in assisting companies as they turn their attention to the preparation of a new-style remuneration report. It fleshes out areas where the regulations themselves are not prescriptive about the extent of a particular disclosure and gives an insight as to what investors will expect to see in both the remuneration policy and the annual remuneration report. The Guidance will inform and shape discussions between companies and their investors.

Can we help?

The new executive remuneration reporting regime involves significant legal and regulatory change. As such, Clifford Chance is ideally placed to help guide you and your company through the detail of the regulations and to assist you with the preparation of your remuneration report. Please speak to any of the authors of this note or your usual Clifford Chance contact to discuss how best we can assist you.

Useful materials

For detailed information about the new executive remuneration reporting regime, see our June 2013 briefing entitled Executive Remuneration: final regulations published

For a copy of the GC100 and Investor Guidance, see https://cliffordchance.vuturevx.com/edit/email_handler.aspx?id=184364&redirect=http%3a%2f%2fuk.practicallaw.com%2f6-540-9731http://uk.practicallaw.com/6-540-9731

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