

The ABI has published its annually updated *Principles of Remuneration*, with the 2013 version being released on 5 November 2013. One feature of the ABI's *Principles* is the expectation that companies set their remuneration policies so that shareholder approval is needed only every three years. The following may be a little uncharitable, but quite how companies can set three-year remuneration policies that will meet shareholder expectations which themselves seem to change on an annual basis... well, it appears to be a rather challenging objective. An updated version of *Principles* was probably to be expected this year given the scale of change in regulation affecting companies' disclosure of directors' remuneration – however, it will be interesting to see if the ABI has been able to take a sufficiently long-term view of its own expectations of companies' behaviour in order to avoid changing its *Principles* in twelve months' time.

Given the release date for these updated *Principles*, Remuneration Committees will want to know whether they contain any fireworks. And the short answer is... "no". At best, one could say that there were a few small sparklers.

The *Principles* go further than how a directors' remuneration report should be drafted under the UK's recently implemented directors' remuneration reporting regulations (which should be read with the GC100 and Investor Group's guidance – see our alert on the guidance [here](#)). The themes that run through the *Principles* are ones which the ABI expects Remuneration Committees to take note of when drafting the policies that will ultimately be disclosed in annual reports. As the *Principles* note, the coming year is likely to see significant changes in the way companies report, and shareholders vote, on executive remuneration. So, what's changed?

Malus and Clawback

The issue of malus and clawback arrangements is discussed in more detail. The ABI is to be commended for starting with what it means by malus (or the other phrase used, "performance adjustment") and clawback. Hopefully, this will help everyone use the same phrases when describing the provisions going forward (and, so that we are all clear, malus means reducing an unvested award and clawback means what it says on the tin, seeking repayment (or clawback) of an award already paid out). Even more helpfully, the *Principles* acknowledge that shareholders will accept a broader range of "trigger" circumstances for malus provisions than for clawback. Readers may be interested to note that, while the majority of listed companies have introduced provisions aimed at malus or clawback, most have only given themselves a right to reduce or remove unvested awards – in other words, malus provisions. Perhaps this is

because of the challenges in enforcing clawback provisions. Indeed, a new statement in this year's *Principles* is that the ABI expects a Remuneration Committee to consider the enforcement powers it holds in order to effect the malus or clawback provisions that it includes. Companies are also expected to set out the circumstances in which the provisions can be enforced – presumably this means companies should disclose the provisions at the time they are adopted as well as when they are put into practice.

Given the FRC's relatively light touch in terms of its proposals to amend the Corporate Governance Code, it appears that companies are still being left to their own devices when it comes to the practicalities of implementation, however...

Shareholding Guidelines

Shareholding guidelines for executives have taken on an increased importance over the last couple of years, so it is no surprise that clarity has been given to the ABI's view as to which shares should count towards any targets. Unvested shares should only count towards the guideline where the vesting is not subject to any further performance or other conditions (including continued employment). However, shares which are vested but which remain subject to a holding period and/or clawback provisions can count towards the holding requirements. This is probably the interpretation that most companies had applied to date, but the clarification from the ABI is nonetheless useful.

ESG Measures

The ABI has stepped back a little from the push towards requiring companies to incorporate environment, social and governance objectives into measurement conditions for variable remuneration. The concession made in the 2013 *Principles* is that ESG measures should only be used "if they are material to the business and quantifiable". Does that mean that ESG measures are:

- less important than previously thought;
- less important when the economy is under pressure and companies should have other drivers of performance; or
- still as important but less useful as performance measures than previously suggested?

Some interested groups may be disappointed to see the ABI stepping back from suggesting that ESG measures are core to a business' success.

Performance on Grant Schemes

A relatively minor change involves the guidance in respect of schemes where performance is measured prior to the grant of an award. Whilst the ABI maintains that such schemes are generally not favoured, in the event a Remuneration Committee considers that type of scheme to be appropriate, there should be clear disclosure (in advance) of the performance required, and achieved, in order to justify grants of awards. In addition, the ABI notes that shareholders would expect the level of awards granted under these schemes to be **significantly** lower than under long-term incentive schemes which are subject to on-going performance conditions. In addition, the use of a measurable financial performance underpin throughout the holding period should also be considered.

Directors' Remuneration Reporting Regulations

The most substantial amendment to the 2012 version of *Principles of Remuneration* is the rewrite of Appendix 1, which now sets out the ABI's view on the new remuneration reporting and voting regime. Notwithstanding the fact that the regulations are now in force and the guidance has been released, the ABI believes that its *Principles of Remuneration* continue to provide a useful guide to shareholder expectations and good practice. The ABI's views on various practical aspects of the new reporting arrangements are set out in the Appendix. Of note are the following:

- The ABI would expect the binding vote on remuneration policy to be held every three years and not annually. This, it is hoped, would help to ensure that a company's remuneration strategy is aligned with the long-term business strategy.
- The ABI notes that shareholders would, in normal circumstances, expect a company's remuneration policy to apply immediately after approval i.e. following the annual general meeting at which the vote is held. Policies which take effect at the start of the following financial year may "be set too far in advance for meaningful engagement or dialogue with shareholders". It will be interesting to see how many companies take this on-board given the difficulties involved with shareholder communications in the event a policy which is intended to take effect from the AGM is voted down at that meeting.

- The ABI would expect the remuneration policy table to be disclosed in the remuneration report on an annual basis. This suggestion does seem to fly in the face of the hope that remuneration reports will be shorter and more concise in years where the policy itself is not to be voted on.
- The regulations contain an exclusion to disclosure where companies believe consider performance targets to be commercially sensitive. The ABI's stance is that this is indeed an exception to a rule, and any reliance on this exception should be clearly justified to shareholders.
- In terms of the policy on recruitment of new directors, whilst shareholders recognise that companies may need flexibility, the ABI suggests that shareholders will not support excessive limits within that policy. Any significant differences between the normal policy and recruitment policy will need to be clearly justified.

Remember, remember...

All in all, the 2013 amendments to the ABI's *Principles of Remuneration* are not a huge rocket and won't overly concern Remuneration Committees. However, given the changes that have taken place to executive remuneration disclosure and reporting requirements in the UK, it was always likely that the real fireworks, if any, will start imminently, as the first companies that are required to comply with the new regulations will shortly publish their annual reports.

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