

Incentives Bulletin

July 2018

Welcome to the July edition of our Incentives Bulletin, updating you on the latest developments in remuneration and shares schemes. This month, we summarise the [FRC's revised UK Corporate Governance Code](#), provide an update on [thresholds for exemption from the requirement to publish a prospectus](#) and consider the recently published [draft Finance Bill 2019](#). We take a look at the key provisions of the [Fifth Anti-Money Laundering Directive](#) and conclude with a timeline of [key dates in employee incentives](#) coming up in the near future.

FRC publishes revised UK Corporate Governance Code

Summary and key practice point: On 16th July 2018, the Financial Reporting Council (FRC) published the [2018 UK Corporate Governance Code](#), which it describes as “*the new shorter, sharper Code*”. The FRC has also published revised [Guidance on Board Effectiveness](#), as well as a [feedback statement](#) (and [annex](#)) on the consultation on the revised Code.

The revised Code will apply to accounting periods beginning on or after 1st January 2019. This means that companies will not be required to observe the new reporting regime until 2020. The FRC notes, however that it would be appropriate to report on Provision 4, relating to reporting on significant votes at shareholder meetings, during 2019 (and companies may also choose early adoption of other aspects of the revised Code).

For an overview of the revised Code, see the attached [briefing](#). We have summarised the key incentives aspects in the box below.

Contents

- [FRC publishes revised UK Corporate Governance Code](#)
- [Prospectus Directive: New thresholds for exemption from prospectus requirement](#)
- [Finance Bill 2018 draft legislation](#)
- [Fifth Anti-Money Laundering Directive: Access to beneficial ownership information](#)
- [Horizon scanning](#)

More detailed analysis/commentary: From an incentives perspective, the following key points are of note:

- The annual report should include an explanation of the company's approach to investing in and rewarding its workforce.
- Remuneration committees should take into account workforce remuneration and related policies when setting director remuneration. Formulaic calculations of performance-related pay should be rejected. Remuneration committees should apply discretion when the resulting outcome is not justified.

- Share awards should normally be released for sale on a phased basis and be subject to a total vesting and holding period of at least five years.
- Remuneration committees should develop a formal policy for post-employment shareholding requirements, encompassing both vested and unvested shares.
- The criteria for remuneration policies and practices have become more demanding, and now include risk as a factor to be addressed in scheme design.
- The remuneration committee chair should have served on a remuneration committee for at least 12 months.

Prospectus Directive: New thresholds for exemption from prospectus requirement

Summary and key practice point: With effect from 21 July 2018, the Financial Services and Markets Act 2000 will be amended so that: (i) the section 86 threshold for offers to the public within the EU exempt from the requirement to publish a prospectus will increase from €100,000 to €8 million; and (ii) the Schedule 11A threshold for securities qualifying for an exemption from the scope of the prospectus regime will be reduced from the current value of €5 million in total during a 12-month period to €1 million.

More detailed analysis/commentary: On 29 June 2018, the government published the Financial Services and Markets Act 2000 (Prospectus and Markets in Financial Instruments) Regulations 2018, which implement Articles 1(3) and 3(2) of the new EU Prospectus Regulation (2017/1129) and will apply with effect from 21 July 2018 (although the majority of the Regulation is set to become effective from 21 July 2019).

The current €5 million exemption has been regularly used in secondary fundraisings to allow minority shareholders to participate without triggering a prospectus obligation. Following the changes, section 86 will provide an absolute exemption from prospectus requirements for offers up to €8 million, without requiring a company to include offers made in the previous 12 months - meaning that corporates unable to use the employee share exemption will likely rely on section 86 in preference to the reduced Schedule 11A limit of €1 million.

The increased threshold is most likely to affect companies in the early stages of development, which are currently funded by loans or grants, and is likely to continue to be most useful when used in conjunction with other means of financing.

Companies will be able to rely on the amended exemptions automatically without the need to satisfy any additional disclosure or filing obligations.

Finance Bill 2019 draft legislation

Summary and key practice point: On 6 July 2018, the government published the draft Finance (No3) Bill 2017-19, with many of its key provisions having already been the subject of previous announcements and consultations. The draft legislation has been released for public consultation until 31 August 2018, after which it will be introduced to Parliament and (following the Autumn Budget 2018) enacted as the Finance Act 2019.

More detailed analysis/commentary: As expected, there were no announcements directly relevant to share schemes.

However, it is worth noting that the draft Bill extends entrepreneurs' relief for individuals whose shareholdings are diluted below the 5% threshold due to equity finance raised on or after 6 April 2019, by allowing them to crystallise latent gains immediately prior to such a dilution. Entrepreneurs will be able to elect to be treated as if they had disposed of and reacquired their shares just before the financing (i.e. the issue of shares for cash) and defer payment of tax on that gain until the eventual disposal of the shares.

Fifth Anti-Money Laundering Directive: Access to beneficial ownership information

Summary: On 19 June 2018, the Fifth EU Money Laundering Directive (2018/843) was published in the Official Journal, aiming to further combat the financing of terrorism by establishing wider access to information on beneficial ownership of companies and trusts, as well as strengthening controls on certain transactions, especially in the financial services sector. The Directive came into force on 9 July 2018 and must be transposed by Member States into national law by 10 January 2020.

More detailed analysis/commentary: The Directive extends access to beneficial ownership information relating to trusts and similar arrangements beyond the competent authorities, financial intelligence units and regulated entities conducting due diligence, to any natural or legal person who demonstrates a legitimate interest to the information in question. Registers of beneficial information relating to companies and corporate entities, on the other hand, must be accessible to any member of the general public without the specific need to demonstrate a legitimate interest.

In both cases, public information includes the name, month and year of birth, country of residence and nationality of the beneficial owner, along with the nature and extent of the beneficial interest held. This information will be accessible throughout the EU on a cross-border basis using interconnected central national registers.

Member States are able to provide for broader access to information, as well as establish an exemption if public access would expose the beneficial owners to disproportionate risks or risks of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or if the beneficial owner is a minor or otherwise legally incapable.

Other key changes introduced by the Directive extend the AML regime to additional service providers (including virtual currency providers), lower the threshold for identifying holders of prepaid cards, improve safeguards for transactions involving high-risk third countries and strengthen the powers of financial intelligence units.

Horizon scanning

What key dates and developments in employee incentives should be on your radar?

1 st August 2018 12pm	HMRC webinar on calculating disguised remuneration settlement amounts, with an opportunity to ask questions
10 th August 2018	Deadline for submitting views on HM Treasury and HMRC consultation on off-payroll working in the private sector
1 st September 2018	SAYE option holders will be able to take a one-year savings holiday, without the need for companies to amend plan rules
28 th September 2018	AIM listed companies to specify which corporate governance code they comply with, and provide 'comply or explain' information
30 th September 2018	Deadline for submitting information to HM Revenue & Customs under disguised remuneration settlement opportunity
31 st December 2018	Applications for postponing the disguised remuneration loan charge to be made by this date
1 st January 2019	Revised UK Corporate Governance Code due to take effect Associated legislation due to come into force - including to require listed companies to report annually the ratio of CEO pay to the average pay of their UK workforce
29 th March 2019	European Union (Withdrawal) Bill due to take effect
4 th April 2019	Gender pay gap reporting deadline



Jonathan Fenn
T +44 (0)20 7090 5025
E Jonathan.Fenn@slaughterandmay.com



Padraig Cronin
T +44 (0)20 7090 3415
E Padraig.Cronin@slaughterandmay.com



Phil Linnard
T +44 (0)20 7090 3961
E Phil.Linnard@slaughterandmay.com

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