THE BUSINESS TIMES BTINVEST

Published on Monday, 12 March 2018

Remuneration Disclosures – Is "Comply-or-Explain" Enough?
By Chua Wei Hwa

Director and executive pay is usually the subject of intense scrutiny by regulators, investors and the general public.

It is thus not surprising that remuneration is one of the focus areas of the recent review of the Code of Corporate Governance. What is surprising though, is that despite the poor showing of current remuneration disclosures, little change is being proposed by the Corporate Governance Council.

State of remuneration disclosures

Currently, Guideline 9.2 of the Code recommends detailed disclosure, on a named basis, of the amounts and structure of individual director and CEO remuneration. In addition, Guideline 9.3 of the Code recommends similar disclosure of at least the remuneration of the top five key management personnel, in bands of S$250,000, as well as the aggregated total remuneration paid to these five key management personnel.

Several studies have shown that these two guidelines are usually among the most poorly complied provisions of the Code, which are only on a "comply-or-explain" basis.

In July 2016, the Singapore Exchange (SGX) released the results of its inaugural review of 545 mainboard companies' disclosures in their annual reports. Disclosures related to remuneration matters were flagged as the area where compliance to the Code is lowest.

Similarly, the Singapore Directorship Report 2016 by the Singapore Institute of Directors (SID) and Institute of Singapore Chartered Accountants found that of 758 listed entities on SGX, only 34 per cent and 27 per cent of these companies fully disclose the remuneration of their directors on a named basis, and their CEOs' remuneration, respectively.

The Board of Directors Survey 2017 by SID and SGX found that less than half of the respondent companies complied with Guideline 9.2. Of note, 95 per cent of those that did not comply indicated that they have no intention of doing so within the next two years. Justifications by respondents for non-disclosures were "confidentiality of remuneration", to "prevent poaching", and to "prevent internal comparison and maintain morale".

These reasons are consistent with the comply-or-explain explanations by boards in their annual reports for their deviations from Guidelines 9.2 and 9.3 of the Code.

Other jurisdictions

A review of what is happening in other countries on remuneration disclosures may be instructive.

In the US, since 2006, federal securities law requires public companies to make detailed disclosures of remuneration policy and the remuneration paid to individual directors, CEO, CFO and the three other most highly-paid executives.

In 2011, the US Securities and Exchange Commission (SEC) implemented "say-on-pay" where shareholders of public companies indicate their agreement with executive compensation, on an advisory basis, at least once every three years.

Starting in 2018, public companies in the US will also now be required to disclose the ratio of CEO compensation to the median compensation of other employees. While yet to be adopted, the SEC had in April 2015 proposed legislated disclosures on how actual executive compensation is tied to total shareholder return.

In the UK, quoted companies are required to prepare and disclose the total remuneration paid to each individual director, as well as specific details of CEO compensation and other employees. There is also a requirement to disclose the link between pay and performance of directors.

The UK has implemented "say-on-pay" on a binding basis, along with 10 other major jurisdictions including Australia, Japan and several European countries.

Closer to home, the Hong Kong Exchange mandates disclosures pertaining to directors and the five highest-paid individuals in its listing rules, rather than relegating this to its code of corporate governance which is also on a "comply-or-explain" basis.

Going forward in Singapore

In Singapore, instead, the Corporate Governance Council issued a specific proclamation in the negative – no "say-on-pay". Granted that pay can be an emotive issue, it might be understandable that the Council deems it a matter best left to rational discussion in the boardroom.

However, the Council's approach to remuneration disclosures is to leave the current Code, including Guidelines 9.2 and 9.3, largely intact but with two tweaks. The first is to include a disclosure between remuneration and value creation (in addition to performance). The second is to extend disclosure of details of remuneration of employees who are substantial shareholders or their immediate family members (in addition to those who are directors or the CEO).

It is hard to see how these two tweaks can be sufficient in the light of the poor state of current remuneration disclosures, and the stricter practices elsewhere. While the Council may expect the enhancements to the implementation and enforcement of the comply-or-explain regime could improve disclosures, it is a stretch to expect remuneration disclosure to improve given the intractable response by companies to date.

The case for remuneration transparency is to counter perceived excessive executive compensation and pay disparity, although these are often cited as a problem of the West.

The Willis Towers Watson's 2016/2017 Global 50 Remuneration Planning Report, however, shows that Singapore and Hong Kong have the highest top and senior management pay levels in the Asia Pacific. In addition, the HR firm's 2016 Global Workforce Study shows that only half of employees surveyed in Asia Pacific consider their pay to be fair. These findings indicate that transparency on executive compensation should not be taken lightly in Singapore.

In that regard, the Council should have considered moving the disclosures of remuneration into the Listing Rules as it did for director independence and other important areas. That would, no doubt, significantly improve the transparency of remuneration disclosures.

Dr Chua Wei Hwa is a member of the Singapore Board of Directors Survey Committee of the Singapore Institute of Directors.