

Termination Payments Approvals

by John Egan

The potential implications of the changes made to the requirements for approval of certain termination payments are complex. A wider range of executives are affected by the requirements, the definition of termination payments has changed considerably and the top limit of payments exempt from the requirements has been reduced to the equivalent of the last year's fixed pay.

The idea that a termination payment should be put to a shareholders' general meeting raises a variety of problems including:

- the timing of the termination in relation to the date of the next general meeting, and the implication that the payment should not be made subject to approval, thus meaning that an executive who may be leaving as a valued and respected contributor to the company's fortunes may have to wait six months for the payment to be made; and
- the effect of the use of fixed annual pay as a measure is at considerable variance from the previously accepted imperative that pay be mainly geared to performance and that fixed pay should be contained – see our research on CEO pay for the 2008 and 2009 financial years.

Companies will be looking at the design of remuneration over the full employment period of a service contract and asking what should be done in regard to the structure of pay under these new circumstances.

We will prepare a more comprehensive response to the challenges arising from this legislation in early 2010.

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