CLIFFORD CHANCE

Client briefing
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Belgian bill on executive compensation, golden parachutes and corporate governance

Introduction
The Belgian government has submitted to Parliament a bill in respect of executive compensation in listed companies. The bill mainly focuses on transparency of compensation policies and structures, by way of disclosures requirements. With regard to bonuses and variable remuneration, there will be a requirement to defer part of the payment and to apply objective performance tests. Golden parachutes are not subject to an absolute cap, but shareholder approval will be necessary if the company intends to offer more than what is recommended by the applicable corporate governance code.

The bill affects all Belgian companies whose securities are admitted to trading on a European regulated market.

Bonuses and other variable remuneration
The criteria for the variable remuneration of executive management (*ie* executive directors, members of a management committee or persons in charge of daily management) must be explicitly stated in their contract.

If the variable remuneration represents more than 25% of the total (fixed and variable) package of an executive manager, at least 25% of that variable remuneration must be linked to objective performance criteria measured over a period of two years, and another 25% must be measured over three years. In the case of entitlement to shares or stock options, there must be a vesting period of at least three years. The company's statutes or the general shareholders meeting can deviate from some of these rules.

Remuneration committee
Listed companies must establish a remuneration committee within the board of directors that must be composed of non-executive directors, of which the majority must be independent and have expertise in the field of remuneration policy. Besides the submission of a remuneration report (*see below*) to the annual shareholders meeting, the remuneration committee must make proposals to the board of directors regarding the collective remuneration policy, as well as individual remunerations and benefits (including golden parachutes) for directors and executive management.

Golden parachutes
Instead of directly limiting golden parachutes, the bill refers in this respect to the regime provided for by the corporate governance code applied by the company. The company must disclose which corporate governance code it applies and give full details on the golden parachutes of its executive management. Prior approval of the shareholders meeting is required if an agreement with an executive manager would grant more generous termination indemnities than those provided for by the chosen code. This is an exception to the "*comply or explain*" principle, which generally allows the board of directors to deviate from the code provided they explain how and why.

Key Issues

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For the companies that choose to apply the 2009 version of the Belgian Corporate Governance Code, this will limit termination indemnities to 12 months fixed and variable salary (or 18 months upon decision of the board of directors) or, in cases of termination for poor performance, to 12 months fixed salary. Exceeding these caps would thus require the prior approval of the general shareholders meeting. This prior approval is not required where a more generous payment is imposed by law, for instance if the executive manager has an "employee" (as opposed to "self employed") status and mandatory rules of employment law offer more generous termination entitlements.

Disclosure requirements

The company's annual report must include a *declaration on corporate governance* that provides information on the corporate governance code applied by the company, the internal compliance and risk-assessment mechanisms for the financial reporting, the shareholders' structure and the composition and functioning of the board of directors and management committees.

The declaration on corporate governance must also contain a *remuneration report* that describes the remuneration policies and the global amount of the remuneration and benefits collectively granted to the executive management, and also discloses the individual remuneration and benefits of the CEO and each non-executive director. Individual information concerning each member of executive management must also be disclosed in respect of golden parachutes, shares, stock options or similar entitlements and compensation tied to the performances of the company. The remuneration report must be submitted for approval to the general shareholders meeting.

Entry into force

The law's entry into force will be subject to a transition period. The rules relating to the remuneration report and the remuneration committee are expected to apply from 2011. Those in respect of variable remuneration are expected to apply from 2012.