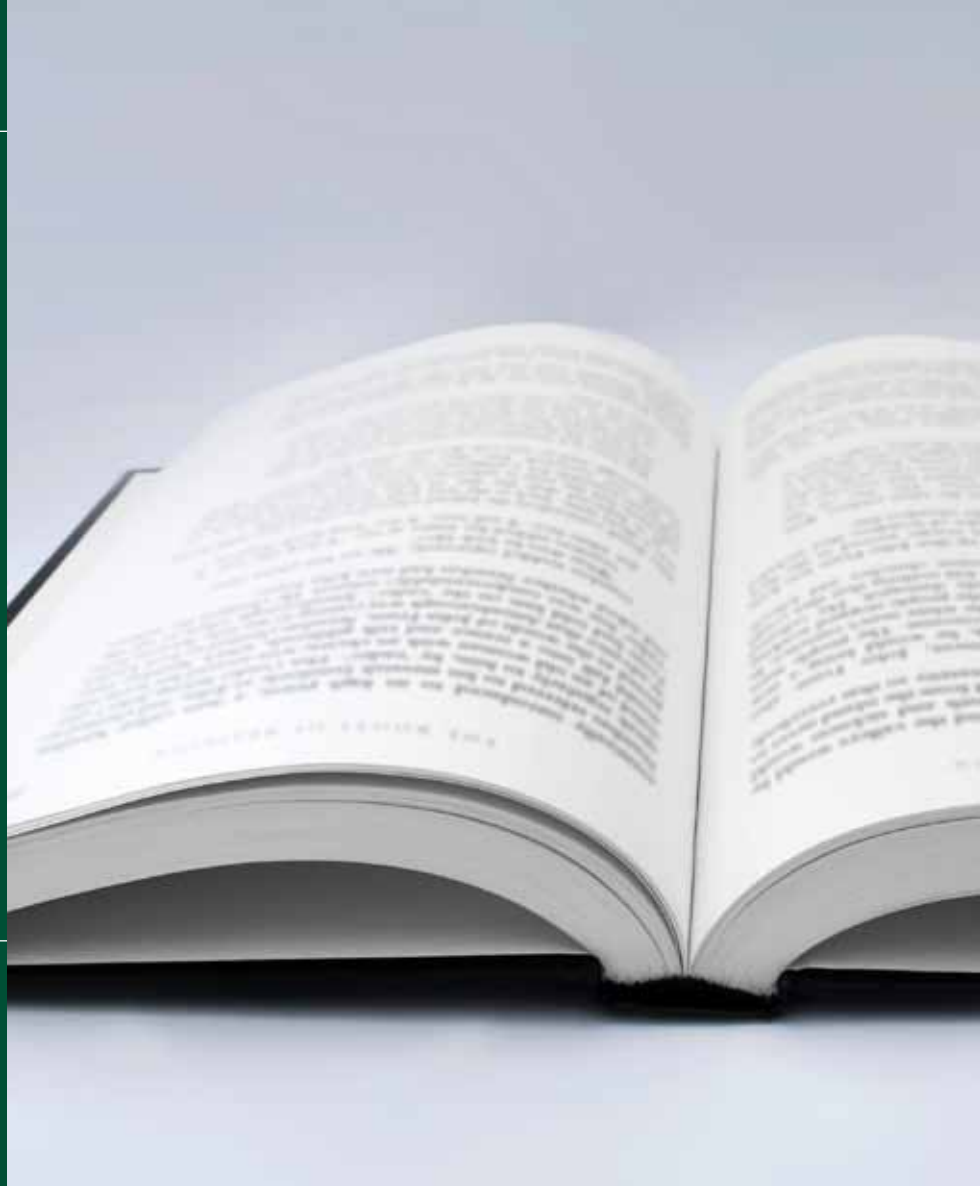


# Proposed SCCG Changes To Disclosure Of Remuneration – Will The Challenge Be Taken Up?

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## Introduction

The early years of this millennium were rocked by numerous high-profile corporate scandals and collapses in developed financial markets, many of which brought to the fore flaws in the way that senior executives were being compensated. These scandals precipitated revelations of practices which included excessive compensation unrelated to corporate performance, unreasonably high severance pay packages, the manipulation of financial accounts to maintain the value of stock options and the back-dating of stock options.

The regulatory response to this in the US, Europe and Australia was to require a more transparent disclosure regime governing executive compensation, with some jurisdictions going further and requiring companies to put executive compensation packages to a non-binding shareholder vote to give shareholders a voice on the matter. This tide of requiring more detailed disclosure of executive (and directorial) compensation has also

reached the shores of the Asian financial markets. Amendments were made to the Listing Rules of the HKEx in 2004 to mandate the full disclosure of directors' emoluments on a named basis and in 2010, Japan implemented compulsory disclosure of the details of remuneration packages of top executives where they earn more than \$100 million yen.

Not many, however, are aware that the Singapore Companies Act actually gives

the right to members of forming at least 10% of the total number of members in the company or who hold at least 5% of the total number of shares of the company to require full disclosure of directors' emoluments and benefits on an audited basis. Apart from this legislative provision, which applies only to companies registered in Singapore, there has yet to be any moves towards making full disclosure of executive

compensation mandatory, leading some commentators to suggest that our regulators can and should do more in this area. Indeed, when the Singapore Code of Corporate Governance (the “Code”) was amended in 2005, the only additional requirement relating to the principle on Disclosure and Remuneration (Principle 9 of the Code) was to require companies to disclose their remuneration policies “so as to enable investors to understand the link between remuneration paid to directors and key executives, and performance”.

The continued spotlight on irresponsible compensation practices in the corporate arena in global financial markets, however, has precipitated a stronger response in the current proposed amendments to the Code.

## Key Changes Proposed For The Revised Code On Disclosure Of Remuneration

### *CEO Remuneration*

Principle 9 of the Code presently does not make any specific reference to disclosure of CEO remuneration. The assumption appears to be that the CEO would either be a director or would be regarded as one of the “five top executives” of the company. There is a slight difference, however, in what the Code currently recommends for directors and the top five executives. It encourages full disclosure of directors’ remuneration on a named basis but remains silent on this for that of the executives.

The proposed changes will make it clear that remuneration of the CEO is to be subjected to the same disclosure requirements as those applicable to directors (which, as we shall see below, is proposed to be subject to higher standards) regardless of whether or not the CEO is a member of the board.

### *Top Five “Management Personnel”*

There is also a proposal to apply disclosure requirements to the

remuneration received by at least the top five management personnel (as opposed to executives) who are not also directors or the CEO. Queries have been raised as to how the “top five” is to be determined, an issue which also exists under the present wordings. The question is whether the top five should be with reference to the management reporting structure being held or the quantum of remuneration being paid to them as, while it is often the case that the top five in the company’s management structure will also be the most highly remunerated in the company, this may not necessarily be so.

The use of the term “management personnel” appears to suggest that the focus should be on those who bear responsibility for management of the company as the company’s performance is most attributable to this group and not necessarily the top five earners. This is because the main rationale behind remuneration disclosure is to provide accountability in the context of pay for performance and to provide transparency to guard against management unduly rewarding themselves.

In light of this, it is suggested here that the disclosure should apply to the remuneration of what is commonly referred to as the ‘C-suite’ officers (the CFO, COO, CIO etc) and anyone in a similar office who are either on par with the CEO or immediately under the CEO in the organisational hierarchy.

There should also not be too much focus on the number ‘five’ as sizes of management teams in companies differ. In companies with a large C-Suite, perhaps the remuneration of all the team members should be disclosed. In cases where the team comprises less than five members, the small size of the team may be used as an explanation as to why the disclosure is limited to less than the required number under the Code.

### *Higher Level Of Disclosure Required*

Under the existing code, disclosure of remuneration for directors is to be in

bands of \$250,000. Full disclosure of the remuneration of each individual director is, however, encouraged as best practice. The proposals seek to make full disclosure of the remuneration for individual directors on a named basis a requirement under the Code. This is also to apply to the CEO’s remuneration.

While disclosure of remuneration of the “top five” is to remain to be in bands of \$250,000, there is an additional requirement proposed for companies to disclose the aggregate total paid to the “top five”, with encouragement for full disclosure of the individual remuneration received by each.

### *Additional Components Of Compensation To Be Disclosed*

The proposals also include additional matters relating to the remuneration which should be disclosed. First, due to the increasing use of performance share award plans by many listed companies, “share-based incentives and awards” has been added to the list of items which are to comprise the breakdown of the remuneration packages of directors, the CEO and the “top five”. Companies may also disclose the breakdown in dollar terms instead of in percentage terms if they so wish.

Secondly, it is also proposed that the annual remuneration report include the aggregate amount of termination or post-employment benefits which may be granted to the directors, the CEO and the “top five”. An interesting point to note in relation to this is that such disclosure would not give investors an idea of the cost to the company should any individual concerned resign and / or retire. Instead, this would provide potential hostile acquirers (albeit a rarity in Singapore) with information on the cost of replacing the entire management team. It is highly doubtful that this is the intent behind this proposal.

### *Remuneration Of directors’ And CEO’s Immediate Family Members*

The threshold and manner of disclosure

of remuneration of the immediate family members of directors and CEO is to be altered. Instead of a S\$150,000 per annum threshold, disclosure will be required for persons whose remuneration exceeds S\$50,000. The proposal is also for this disclosure to be on a named basis with the disclosure to be made in incremental bands of S\$50,000.

***Link Between Remuneration And Performance***

The final key proposal made in this context is for disclosure of more information of the link between pay and performance. The proposal calls for the annual remuneration report should set out a description of performance conditions to which entitlement to short-term and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen, and a summary of the methods

to assess whether such performance conditions are met.

**Taking Up The Challenge**

Sceptics have opined that the “comply or explain” approach of the Code will severely diminish the efficacy of any proposal to enhance disclosure of remuneration and that assertions of potential “poaching” and “wage-inflation” will continue to be cited as reasons given by companies for not making full disclosure of the remuneration paid to executives. Some are also querying as to why no moves are as yet being made by the regulators to mandate such disclosure to bring Singapore in line with the rest of the key financial markets in the world.

Be that as it may, it is submitted that proposals are a significant step forward and provide a good opportunity for

Boards (and in particular Remuneration Committee members) of listed companies to prove their worth. While compliance with disclosure requirements under the new proposals themselves would go far in providing greater transparency and accountability to investors, another key benefit of compliance is the discipline which this will force on Remuneration Committees. Full disclosure of executive remuneration packages together with the requirement for a more comprehensive discussion of the link between remuneration policy would result in greater scrutiny of the work done by such committees by analysts and investors. While this may entail greater responsibility on the part of Remuneration Committees, those which can do this well will stand to set themselves apart. What remains to be seen is the number who will take up the challenge.

**Summary of Key Recommended Changes Relating to Disclosure of Remuneration (Principle 9 of the Code)**

- 1 Specific reference to full disclosure of CEO remuneration;
- 2 Reference to top five “management personnel” instead of “executives”. Clarification that this does not include the CEO;
- 3 Full disclosure of individual directors’ (and CEO’s) remuneration on a named basis required;
- 4 Disclosure of aggregate total paid to top five management personnel required; full disclosure of remuneration for each individual encouraged;
- 5 “Share-based incentives and awards” added to the list of remuneration components which needs to be disclosed;
- 6 Breakdown of remuneration components may be in dollar terms instead of percentage terms;
- 7 Disclosure of aggregate amount of termination or post-employment benefits which may be granted to the directors, the CEO and the top five management personnel required;
- 8 Remuneration threshold for disclosure of remuneration of immediate family members of directors, the CEO and the top five management personnel reduced to \$50,000. Disclosure to be on a named basis in incremental bands of \$50,000
- 9 More detailed disclosure of the link between pay and performance required.