

## COVID-19 (AUSTRALIA): ASIC PROVIDES INTERIM GUIDANCE ON BOARD OVERSIGHT OF EXECUTIVE VARIABLE PAY DECISIONS DURING COVID-19

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### Australia Corporate Alert

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On 12 June, ASIC released *Information sheet 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic* (INFO 245). INFO 245 provides high-level guidance for the boards of listed companies in navigating decisions on executive variable pay during the COVID-19 pandemic. INFO 245 is informed by ASIC's review of 21 ASX 100 companies in 2019, with a more detailed report of ASIC's findings expected later this year.

INFO 245 provides valuable guidance to listed companies in determining executive variable pay during COVID-19 and emphasizes:

- the importance of a robust remuneration governance framework, especially to ensure informed decision making; and
- specific factors to consider when exercising discretion on executive variable pay in the current environment.

It is intended that the key principles outlined in INFO 245 will assist companies better navigate the uncertainty created by the COVID-19 pandemic.

### A ROBUST REMUNERATION GOVERNANCE FRAMEWORK

Recognising variable pay as a "key influence" on executive behavior, ASIC has stressed the importance of a robust remuneration governance framework that is consistent with the long-term interests of the company, and which provides clear guidance as to exactly the type of "performance and conduct" it rewards.

In the context and volatility of COVID-19, ASIC acknowledges that a framework focusing on the long-term interests of the company may result in decisions that may appear "counterintuitive or unconventional".

### SPECIFIC FACTORS TO CONSIDER

In formulating a "robust remuneration governance framework", ASIC considers the existence of the following factors would "enhance" the effectiveness of board oversight and the exercise of its discretion on executive variable pay.

#### Active, timely and consistent exercise of discretion

ASIC notes that discretion will be a "key focus" in upcoming variable pay decisions as targets previously set are likely to be at odds with the current operating climate and the company's performance and outlook during the

pandemic. In considering an exercise of their discretion, boards should be guided by whether the variable pay outcome is (1) consistent with the objectives of their variable pay framework, and (2) sends a "timely signal" of each executive's accountability and performance.

## **Structured and contextual information from unbiased sources**

The flux of COVID-19 has resulted in remuneration committees' heightened reliance on senior management for information upon which their decisions on variable pay is based. To facilitate the "objective and informed" exercise of their discretion, INFO 245 recommends the adoption of measures designed to temper this reliance and ensure that the information provided by management is supplemented by external and independent sources, particularly where it relates to executive performance.

## **Managing conflicts of interest**

ASIC reminds remuneration committees of the importance of maintaining independence in administering remuneration decisions. The ASIC recommendations acknowledge that it is often unavoidable (especially in the current climate), to rely on internally generated information, but advises that mechanisms should be put into place to reduce influence and manage any conflict of interest.

## **Transparent recording and communication of decisions**

ASIC considers that a robust and effective framework for delivering information is critical to maintaining investor confidence and ensuring executive and workforce "buy-in".

ASIC suggests that board may determine to include additional information in their remuneration reports, including the rationale for the exercise (or non-exercise) of their discretion in respect of final pay outcomes, the governance principles and process which were adopted, and the company-specific impact of COVID-19 and its effect on the decision making process.

## **NEXT STEPS**

Whilst we await ASIC's detailed report later in the year, INFO 245 provides timely guidance. Critically, boards should be mindful of the long-term interests of the company and its shareholders and adopt operative frameworks that reflects that ultimate objective.

If you have any queries in relation to variable pay decisions, implementing an appropriate governance framework or how to manage and fulfil your obligations during the pandemic, please get in touch. K&L Gates is here to assist you in navigating the uncertainty of COVID-19.

## **KEY CONTACTS**



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