

Time for the United Kingdom to Implement Statutory Clawback Provision on Directors' Remunerations: Lessons and Experiences from the United States and the Netherlands

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Abstract : Senior executives' remunerations of public companies have aroused much debate and attention in the media. In the aftermath of the Global Financial Crisis (GFC), excessive executive pay arrangements were blamed for contributing to excessive risk-taking, which caused the financial meltdown. Since then, regulators and lawmakers around the world have introduced regulations to strengthen the corporate governance of listed companies. A key aspect of such reform is by strengthening regulatory intervention over executives' remunerations and increasing the transparency of such information. This article is written against such background and examines the recent proposal by the UK BEIS to ask the FRC to amend the UK Corporate Governance Code (UKCGC) to strengthen clawback provisions for directors' remuneration in listed companies as part of its audit reform. The article examines the background and debates regarding the possible implementation of such a measure in the UK. Contrary to the BEIS' proposal, it argues that implementing it through the UKCGC is unlikely to enhance overall corporate governance and audit quality. It argues that the UK should follow the footsteps of its US and Dutch counterparts by enacting legislation to claw back directors' remunerations. It will also provide some recommendations as to the key factors that need to be considered in drafting such a statutory provision.

Keywords : company law, corporate governance, agency problem, directors' remunerations, clawbacks

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