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## Corporate Governance Best Practices for Global Stock Plans

**Carolyn Bellmore**, Sr. Manager, Equity Compensation, Abbott Laboratories

**Stephen Ratcliffe**, Partner, Baker McKenzie LLP

**Aimee Soodan**, Partner, Baker McKenzie LLP

**Anne Steele**, Deputy Company Secretary, DS Smith Plc

# Why Is Good Global Stock Plan Governance Important?

- Increased scrutiny into corporate governance and compensation practices
  - Shareholder actions
  - Potential tax implications
  - Media focus on executive and director compensation
- Clear expectations re: accountability and process facilitate smooth operation and decision making
- Evolving laws and regulations in the United States and abroad



# Why Is Good Global Stock Plan Governance Important?

- **But most important of all** – reward has to be rewarding
  - A well run plan is a powerful tool to incentivise the workforce
  - A badly run plan could result in very unhappy employees potentially:
    - facing unnecessarily high tax bills
    - receiving fewer shares than expected
    - inadvertently running afoul of local legislation



# Key Sources of Equity Plan Governance Requirements

- Country/state corporations law
- Company corporate documents
  - Articles/certificate of incorporation
  - Bylaws
- For public companies:
  - Stock exchange requirements & Proxy Advisor Policies
  - In the US:
    - Section 16 (US Securities Exchange Act of 1934)
    - US Internal Revenue Code Section 162(m)



# Key Sources of Equity Plan Governance Requirements

- Others:
  - Compensation Committee charter
  - Equity award granting policy
  - Tax law (e.g., US Internal Revenue Code; ISOs / Section 423 ESPPs)
  - In the UK:
    - IA, ISS, PLSA (formerly NAPF), PIRC
    - Corporate Governance Code
    - Further legislation?

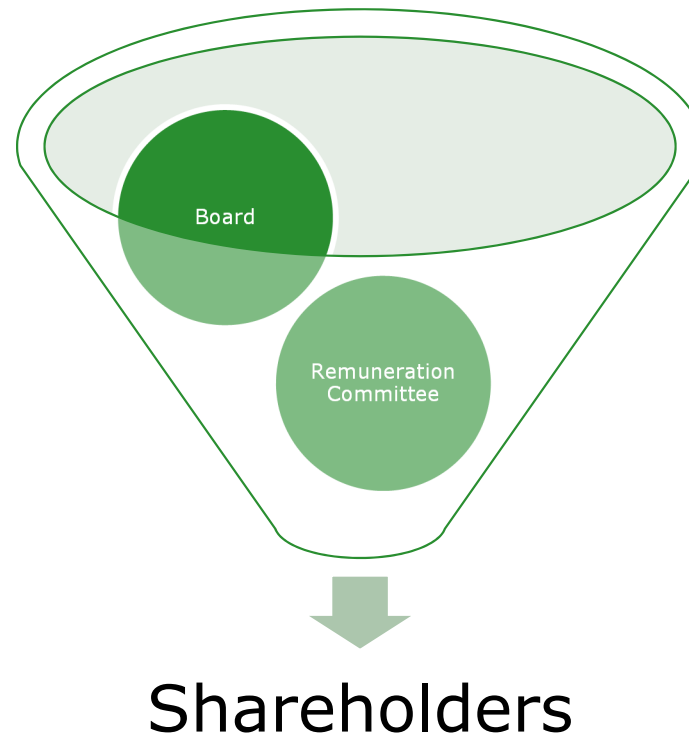


# #1: Understand Roles and Responsibilities - US

- Board of Directors
  - In all US states, Board may approve equity plan, recommend plan for shareholder approval and grant awards, and may delegate certain authority to a properly constituted committee of the Board
- Compensation Committee
  - Approves awards for executive officers
  - Reviews and recommends equity and comp plans to the Board
  - Approves US Code Section 162(m) performance goals; certifies goal attainment
  - Evaluates independence of consultants/other service providers
- Management
  - Recommends award levels and terms (other than for CEO); implements awards



# #1: Understand Roles and Responsibilities - UK



## #2: Ensure Delegation is Properly Documented (and Lawful!)

- Consider state law requirements and limitations (state of incorporation of issuer)
- To the extent needed to comply with stock exchange independence requirements, US Code Section 162(m) or Section 16 of the US Exchange Act, authority with respect to awards should not be delegated from the Compensation Committee
- Review Compensation Committee charter
- Delegation to officers should be governed by a written equity grant policy approved by the Compensation Committee and/or Board
- Review plan terms
- Actions taken by officers should be documented by an officer's resolution





## #3: Understand Whether Your Governing Law Provision Works (and When it Does Not)

- Plans and agreements should have governing law provision
  - In the US, typically respected in US courts if reasonable and no overriding public policy concern under local state law
  - May or may not be respected in courts outside the US
- Relevant to lawsuits
  - Enforcement of restrictive covenants and clawbacks
  - Statutes of limitation for filing suit
  - Acquired rights and statutory severance claims
- Also consider venue and forum selection clauses



## #4: Don't Skimp When Drafting Resolutions

- Check your plan document
  - Laundry list of items that should be getting approved
- Cross-reference or attach relevant items
  - Forms of award agreements
  - Sub-plans
- Be mindful of call-outs required to address operation of the plan and awards outside country of incorporation
- Include delegation language (see Rule #2)



## #5: Be Aware of Stock Exchange Requirements - US

- NYSE and NASDAQ have their own sets of rules for listing companies
- Independence of Compensation Committee (and annual review)
- Shareholder approval of equity compensation plans
  - Certain plan amendments
  - Assess need for approval of foreign plans/sub-plans
- Charter for Compensation Committee



# #5: Be Aware of Stock Exchange Requirements – UK

Prospectus Directive

- Impact of Brexit?

Info. for admission document

Remuneration disclosure requirements

Market Abuse Regulation

Dealings by PDMRs



## Rule #6: Tailor Your Award Provisions

- One size does NOT fit all
  - “Internationalize” award agreements
  - Include an addendum to address country-specific issues and requirements
- Termination provisions may need to vary
- Restrictive covenants may not be enforceable
- Retirement provisions may give rise to discrimination issues



# #7: Ensure Your Award Agreement is Enforceable

- Electronic delivery of grant agreements becoming the norm
- Not always necessary to get recipient to “sign” agreement – depends on terms and the country
- Electronic acceptance
  - US – E-Sign Act treats electronic signature as valid
  - Outside the US – country-specific review required



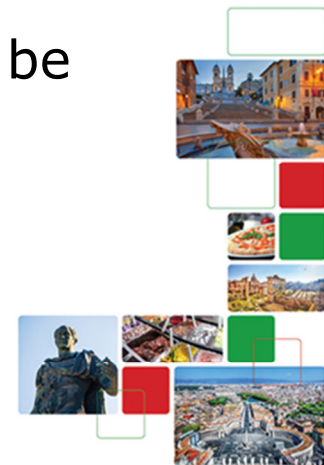
## #8: Deliver Communications the Right Way (Not Necessarily One Way)

- US SEC requires plan prospectus to be delivered before option exercise, upon offer of ESPP and (conservatively) upon offer of RSUs
- US SEC permits electronic delivery of prospectuses if certain requirements are met
- EU prospectus delivery requirements
- Other country requirements



## #9: Evaluate Enforcement of Clawback Policies

- In July 2015, US SEC issued proposed rules making written clawback policies for incentive compensation mandatory
  - SEC exempts clawback if obtain legal opinion that the clawback is not enforceable under home country law (primarily useful to non-US issuers)
  - US companies' award agreement/plan provisions tend to be written in US-centric manner
- Material restrictions on enforcement (esp. EU)





## #10: Adopt a Correction Procedure/Policy

- Mistakes happen
- Best practice - have written policy addressing correction of common mistakes
  - Award made but should not have been
  - Award not made but should have been
  - Award has wrong exercise price, share number, vesting schedule, term
  - Award should have been forfeited but wasn't



## To Recap

1. Understand Roles and Responsibilities
2. Ensure Delegation is Properly Documented (and Lawful!)
3. Understand Whether Your Governing Law Provision Works (and When it Does Not)
4. Don't Skimp When Drafting Resolutions
5. Be Aware of Stock Exchange Requirements
6. Tailor Your Award Provisions
7. Ensure Your Award Agreement is Enforceable
8. Deliver Communications the Right Way (Not Necessarily One Way)
9. Evaluate Enforcement of Clawback Policies
10. Adopt a Correction Procedure/Policy



# Questions?



# Thank You



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**Carolyn Bellmore**  
Abbott Laboratories  
[carolyn.bellmore@abbott.com](mailto:carolyn.bellmore@abbott.com)

**Aimee Soodan**  
Baker McKenzie LLP  
[aimee.soodan@bakermckenzie.com](mailto:aimee.soodan@bakermckenzie.com)

**Stephen Ratcliffe**  
Baker McKenzie LLP  
[stephen.ratcliffe@bakermckenzie.com](mailto:stephen.ratcliffe@bakermckenzie.com)

**Anne Steele**  
DS Smith plc  
[anne.steele@dssmith.com](mailto:anne.steele@dssmith.com)



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