Finansinspektionen's Regulatory Code

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Finansinspektionen's general guidelines regarding remuneration policies in mutual benefit societies, exchanges, and clearing organisations;

decided on 10 October 2016.

Finansinspektionen provides the following general guidelines.

Chapter 1 Scope and definitions

Scope

These general guidelines apply to:

1. mutual benefit societies that conduct business pursuant to section 7 of the Act (2010:2044) Implementing the Insurance Business Act (2010:2043) and are not under limited supervision pursuant to section 2 of the Mutual Benefit Societies Act (1972:262).

2. Exchanges, and

3. clearing organisations.

These general guidelines provide undertakings with guidance for how they should measure, govern, report and exercise control over the risks arising from remuneration systems.

Where an undertaking is the parent undertaking in a group, the board of directors of the parent undertaking should endeavour to ensure that all of the undertakings in the group subject to financial supervision adopt guidelines that are consistent with these general guidelines, unless

1. binding foreign regulation entails that the remuneration policy in part or in whole cannot be applied, or

2. the conditions for variable remuneration on a foreign labour market clearly deviate from the conditions in Sweden.

Definitions

The terms used in these general guidelines have the following meaning:

1. *Senior executive*: A managing director, deputy managing director and a person in the senior management of the undertaking reporting directly to the board of directors, the managing director or the deputy managing director.

2. *Employee whose actions can have a material impact on the risk exposure of the firm*: An employee belonging to a personnel category that exercises or can exercise a not insignificant influence on the undertaking's risk exposure. These categories of staff are defined in the undertaking's remuneration policy. They should normally include senior executives, employees in control functions and strategic management positions (e.g. business unit manager), traders and brokers on the capital market and employees responsible for issuing loans (e.g. member of a credit committee).

3. *Remuneration*: Payment, either directly or indirectly, from an undertaking to a person within the scope of their employment (cash salary, other cash remuneration, remuneration in the form of shares or share-linked instruments, pension provisions, severance payments, company cars, etc.).

4. *Remuneration policy*: A document laying down the grounds and principles for how remuneration shall be determined, how the policy shall be applied and reviewed and how the undertaking defines employees whose actions can have an impact on the risk level of the undertaking.

5. *Undertaking*: An undertaking as set out in Chapter 1 under Scope, first paragraph.

6. *Control function:* A function for risk management, compliance, internal auditing or similar activities.

7. *Variable remuneration*: A part of the remuneration, which is commonly performance-based, that is not set in advance in terms of amount and scope. In this context, variable remuneration does not include commission-based salary not linked to future risk assumptions that may alter the undertaking's profit and loss statement or balance sheet.

Other legislation

These general guidelines only apply if they are in line with applicable labour law legislation. Furthermore, these general guidelines do not impact the rights of labour market parties during collective bargaining. These general guidelines also do not affect obligations set out in applicable binding contracts already in effect.

An undertaking should ensure that the contracts it enters into with individual employees are in line with these general guidelines.

Proportionality

When applying these general guidelines, consideration should be given to the size as well as the nature, scope and complexity of the undertaking.

Chapter 2 Remuneration policy

The undertaking should have a remuneration policy to identify, measure, govern, report internally and control the risks associated with its business. The remuneration policy should be in line with and promote effective risk management and not encourage excessive risk-taking. The remuneration policy should encompass all employees.

The remuneration policy should be subject to regular reviews to ensure that it develops in line with changes to the undertaking's situation. The undertaking should base its remuneration policy on an analysis of how the policy affects the risks it is exposed to and how these risks are managed.

Long-term perspective

The remuneration policy should be designed so that remuneration to individual employees does not counteract the undertaking's long-term interests.

The remuneration policy should be designed such that the undertaking's total remuneration for a given period of time does not jeopardise the undertaking's ability to report a positive result over a business cycle.

Performance measurement

When the undertaking uses variable remuneration, it should take into consideration how such may affect earnings in the long run. When the undertaking decides the basis for remuneration, it should be attentive to the fact that performance can be affected retrospectively by current and future risks. In its performance measurement, the undertaking should take account of the actual costs for maintaining capital and liquidity that are inherent to the operations being measured.

The undertaking should base performance-based remuneration on the employee's performance as well as the performance of the relevant business unit and the undertaking as a whole. When the firm determines the remuneration for an employee, it should take into account qualitative criteria, such as that the employee complies with internal rules and procedures and respects the rules concerning conduct toward customers and investors.

Balance between fixed and variable remuneration

If remuneration contains a variable component, the undertaking should ensure that the balance between the fixed and variable components is appropriate. What is considered an appropriate balance may vary given the category of staff as well as the area in which the firm is active.

When determining the variable portion of the total remuneration, the undertaking should in particular take into account the following factors:

a) the quantity and cost of the extra capital required to cover the risks that affect the performance of the period,

b) the size and cost of the liquidity risk, and

c) the risk that expectations regarding future revenue will not be realised.

The undertaking should ensure that the total variable remuneration does not reach a level that limits the undertaking's ability to strengthen its own funds. It should be possible to set the remuneration at zero.

Composition of variable remuneration

When the undertaking determines if remuneration shall consist of cash or shares, share-linked instruments or other financial instruments, or a combination thereof, the undertaking should endeavour to encourage long-term value creation and apply a well-balanced risk horizon.

Limits to guaranteed variable remuneration

Guaranteed variable remuneration should constitute an exception and only be allowed in conjunction with new employment, and then limited to the first year.

Deferred payment

For an employee whose actions can have an impact on the risk exposure of the undertaking, at least 60 per cent of the variable remuneration should be deferred for at least three years. This should also apply to the final date of the acquisition of shares, share options and other share-linked instruments if they are included as a part of the variable remuneration.

The deciding factor determining the earliest date on which the deferred component may be paid should be the risks to the long-term, sustainable performance of the business the operations in which the employee has been active.

Loss of remuneration

The remuneration policy should be designed so that the undertaking can decide that the deferred payment may be cancelled in part or in whole if it is subsequently demonstrated that the employee, business unit or undertaking did not fulfil the performance criteria. The undertaking should also be able to refrain from paying deferred variable remuneration if its position is significantly weakened, in particular if the undertaking no longer is considered to be able to continue conducting business or if it needs to receive government funding in accordance with the Government Support to Credit Institutions Act (2015:1017).

The undertaking should endeavour to commit the employee to not use personal risk hedging strategies or insurances to mitigate or eliminate the effects of unpaid variable remuneration being adjusted or cancelled if a subsequent analysis showing that the performance criteria were not met or that the undertaking’s position has considerably weakened.

Changed conditions for remuneration

Provisions in individual employment agreements on the payment of remuneration during a period of termination or after the employment ends should be consistent with the content set out in these general guidelines.

Chapter 3 Governance

An undertaking’s board of directors should decide on a remuneration policy. The decision should be founded on a sufficient analysis of the risks associated with the remuneration policy. The board of directors should ensure the application and follow-up of the remuneration policy.

The board of directors should also decide on remuneration to senior executives. Where appropriate, the decision of the board of directors should follow the guidelines adopted by the Annual General Meeting.

A remuneration committee within the board of directors or, if one does not exist, a specially appointed board member, should be responsible for preparing significant remuneration decisions and decisions on measures for following up the application of the undertaking’s remuneration policy.

Member of the board of directors preparing remuneration decisions

A chairman of the remuneration committee or a board member responsible for preparing decisions on remuneration should not work in the management of the undertaking or in the management of the undertaking's subsidiaries. This person should have sufficient expertise and experience of risk analysis to be able to independently assess the appropriateness of the remuneration policy. This assessment should include how the remuneration policy affects the undertaking's risks and risk management.

Conflicts of interest

An undertaking should ensure that its remuneration policy includes measures for avoiding conflicts of interest. The firm should comprehensibly describe, document and openly account for how it determines remuneration.

When designing the remuneration policy, the board of directors should ensure that affected control functions can submit their comments regarding the content. Other personnel should also contribute to a complete analysis if necessary.

Members of the remuneration committee and personnel working with the application of the remuneration policy and control of monitoring remuneration should have relevant expertise and be organisationally independent of the departments of the entities they control.

Chapter 4 Follow-up and control

When appropriate and at least once a year, a control function should independently review if the undertaking's remuneration complies with the remuneration policy. The control function, as needed, should regularly report the results of the review to the board of directors. This reporting should otherwise occur as a minimum once a year and no later than in conjunction with the adoption of the annual report.

The control function can consist of an internal, existing control body, such as an internal audit, risk control or a specially appointed function. The undertaking can also engage external consultants, i.e. accountants, to carry out the tasks of the control function.

Remuneration for employees of control functions

Employees who work on the auditing of the operations, e.g. the risk control function, the compliance function and the internal audit, should be independent of the business units they are monitoring. They should also have appropriate authorisations and resources and receive remuneration independent of the business areas they are controlling.

Employees of the control functions should always receive remuneration levels that allow the undertaking to employ qualified and experienced personnel for these functions.

Chapter 5 Disclosure of information about remuneration

Information about the undertaking's remuneration should be disclosed in conjunction with the adoption of the annual report.

The firm can present the information in the annual report, in an appendix to the annual report or on its website. If the information is not included in or appended to the annual report, the firm should disclose in its annual report where the information is published. The information should be available for at least one year after its disclosure.

The undertaking should provide relevant, clear and comprehensible information about the undertaking’s remuneration.
The following information should be disclosed:

1. the decision-making process for determining the remuneration policy, including, if applicable, information about the composition and authorisations of the remuneration committee and the role of relevant stakeholders,

2. the criteria used for performance measurement and risk adjustment,

3. the linkage between performance and remuneration,

4. the performance criteria on which the entitlement to shares, share-linked instruments, financial instruments and other variable components of remuneration are based,

5. principles for deferred payment and conditions for utilising entitlements,

6. the risk analysis forming the basis for the design of the remuneration policy,

7. the expensed amount of total remuneration for the latest financial year broken down by senior executives, other employees whose actions can have a material impact on the risk exposure of the undertaking and all employees, indicating fixed and variable remuneration and stating the respective number of beneficiaries receiving each component, and, where applicable, broken down into business lines or corresponding business units,

8. percentage distribution of variable remuneration into
a) cash,
b) shares, share-linked instruments and other financial instruments, and
c) other,

9. vested remuneration during the latest financial year, disbursed remuneration specified in the vested remuneration during the latest financial year, and disbursed remuneration vested during previous financial years and adjusted vested remuneration not disbursed,

10. the latest financial year’s cumulative outstanding deferred remuneration, where appropriate split into utilised and unutilised entitlements,

11. the total amount expensed during the financial year for severance pay and guaranteed variable remuneration, the number of beneficiaries receiving such remuneration and the justifications,

12. the latest financial year’s cumulative total for severance pay and guaranteed variable remuneration awarded, the number of beneficiaries and the highest single such award, and

13. the latest financial year’s disbursed severance pay and guaranteed variable remuneration.

The information set out in points 7–13 should be published in such a manner as to prevent revealing the financial circumstances of individuals.

Information for employees

The undertaking should inform employees affected by the remuneration policy about the criteria that govern their remuneration and how their performance is assessed. The assessment process and the design of the remuneration policy should be clearly documented and made available to all employees.

These general guidelines shall enter into force on 1 November 2016 upon which Finansinspektionen's general guidelines (FFFS 2015:14) regarding remuneration policies in mutual benefit societies, Swedish management companies, exchanges, clearing organisations and institutions for the issuance of electronic money shall be repealed.

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