Finansinspektionen's Regulatory Code

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Finansinspektionen's Regulations and General Guidelines governing remuneration policies in credit institutions, investment firms and fund management companies;

decided on 11 December 2009.

Finansinspektionen prescribes the following pursuant to

– Chapter 16, section 1, point 3 of the Banking and Financing Business Act (2004:297) and Chapter 5, section 2, point 4 of the Banking and Financing Business Ordinance (2004:329),
– Chapter 8, section 42, point 2 of the Securities Market Act (2007:528), Chapter 6, section 1, point 9 of the Securities Market Ordinance (2007:572) and
– Chapter 13, section 1, point 2 of the Swedish Investment Funds Act (2004:46) and section 1, point 8 of the Swedish Investment Funds Ordinance (2004:75).

The regulations are divided into sections, which are followed by Finansinspektionen's *General guidelines*.

Chapter 1 Scope and definitions

Scope

Section 1 These regulations and general guidelines contain provisions and provide guidance for how a firm as defined in section 2 shall measure, govern, report and exercise control over the risks that may arise from a remuneration system.

Section 2 The regulations and general guidelines apply to

1. banking companies,
2. savings banks,
3. members' banks,
4. credit market companies,
5. credit market associations,
6. securities companies, and
7. fund management companies.

General guidelines

Where a firm is the parent company in a group, the board of directors of the parent company should endeavour to ensure that all of the firms in the group subject to financial supervision adopt guidelines that are in agreement with these regulations and 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 tangibly deviate from the conditions in Sweden.

Definitions

Section 3 The terms used in these regulations and general guidelines shall have the following meaning:

1. *Senior executive:* A managing director, deputy managing director and a person in the senior management of the firm reporting directly to the board of directors, to the managing director or to 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 as a part of its assignment exercises or can exercise a not insignificant influence on the firm's risk exposure. These personnel categories are defined by the firm’s remuneration policy and shall normally include senior executives, control functions and primary strategic roles (e.g. business unit manager), agents/brokers on the capital market and employees responsible for granting credit (e.g. member of a credit committee).
3. Remuneration: That being paid directly or indirectly to a person within the framework for employment (cash salary, other cash remuneration, remuneration in the form of shares or share-linked instruments, pension provisions, redundancy benefits, company cars, etc.).
4. *Remuneration policy*: A document laying down the grounds and principles on which remuneration shall be based, how the policy shall be applied and followed up and how the firm defines employees whose actions can have a material impact on the risk exposure of the firm.
5. *Firm:* A firm as set out in Chapter 1, section 2.
6. *Control function:* A function for risk management, compliance, internal auditing or similar activities.
7. *Variable remuneration*: A remuneration component, normally performance-based, for which the amount or scope is not determined in advance. In this context, variable remuneration does not include commission-based salary that is not linked to future risk assumptions that may alter the firm’s income statement or balance sheet.

Section 4 The regulations and guidelines only apply to the extent they are consistent with applicable labour law. In addition, where applicable, these regulations and general guidelines do not impact the rights of the labour market parties during collective bargaining. These regulations and general guidelines also do not affect obligations set out in applicable binding contracts already in effect.

General guidelines

A firm should ensure that contracts entered into with individual employees are in line with these regulations and general guidelines.

Proportionality

Section 5 A firm’s size and the nature, scope and complexity of its operations shall be taken into account during the application of these regulations and general guidelines.

Chapter 2 Remuneration policy

Section 1 In order to identify, measure, govern, report internally and control the risks its operations are associated with, a firm shall have a remuneration policy that is in agreement with and promotes an effective risk management and does not encourage excessive risk-taking. The remuneration policy shall encompass all employees.

General guidelines

The remuneration policy should be subject to regular reviews to ensure that it develops in conjunction with changes to the firm's situation. The firm should base a decision on the design of the remuneration policy on an analysis of how the policy affects the risks the firm 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 firm's long-term interests.

The remuneration policy should monitor that the firm's total remuneration for a given period of time does not jeopardise the firm's ability to report a positive result over the life of a business cycle.

Performance measurement

When applying variable remuneration, the firm should monitor how this can affect performance in the long run. When the firm decides the basis for remuneration, it should take into account that performance can be affected at a later date by current and future risks. In its performance measurement, the firm should take account of the actual costs for maintaining capital and liquidity that are inherent to the operations being measured.

The firm should base performance-based remuneration on the employee's performance as well as the performance of the business unit and the firm 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 firm should ensure that the balance between the fixed and variable components is appropriate. What is considered an appropriate balance may vary given the personnel category as well as the area in which the firm is active.

When determining the share of the total remuneration that will be variable, the firm should 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 quantity and cost of liquidity risk, and
c) the possibility that expectations regarding future revenues will not be realised.

The firm should ensure that the total variable remuneration does not reach a scope that it limits the firm's ability to strengthen its own funds.

The variable remuneration should be able to be set at zero.

Composition of variable remuneration

When the firm determines if remuneration shall consist of cash or shares, share-linked instruments or other financial instruments, or a combination of these, the firm should endeavour to encourage long-term value creation and apply a sound 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 a material impact on the risk exposure of the firm, 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 acquisition of shares, share options and other share-linked instruments if they are included as a part of variable remuneration.

The earliest date on which the deferred component may be paid should be determined by the risks to the long-term, sustainable performance of the business unit in which the employee operated.

Loss of remuneration

The remuneration policy should be designed so that the firm can decide that the a deferred payment may be cancelled in part or in whole if at a later date it is demonstrated that the employee, department or firm did not fulfil the performance criteria. The firm should also be able to refrain from paying deferred variable remuneration if its position is significantly weakened, in particular if the firm 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 (2008:814).

The firm should endeavour to commit the employee to not use such personal risk hedging strategies or insurances that are aimed at mitigating or eliminating the effects of an adjustment or cancellation of a deferred payment as a result of a subsequent analysis showing that the performance criteria were not met or that the firm's position was 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 agree with the content set out in these general guidelines.

Chapter 3. Governance

Section 1 A firm's board of directors shall decide on a remuneration policy. The decision shall be founded on a sufficient analysis of the risks associated with the remuneration policy. The board of directors shall be responsible for the application and follow-up of the remuneration policy.

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

Section 2 A remuneration committee within the board of directors or, if one does not exist, a specially appointed board member, shall be responsible for preparing significant remuneration decisions and decisions on measures for following up the application of the firm's remuneration policy.

General guidelines

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 firm or in the management of the firm'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 firm's risks and risk management.

Conflicts of interest

A firm 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 and any other personnel that can contribute to a complete analysis, if necessary, can submit their comments regarding the content.

Members of the remuneration committee and personnel working with the application of the remuneration policy and control of the follow-up should have the relevant expertise and be organisationally independent of the departments of the firm they control.

Chapter 4 Follow-up and control

Section 1 When appropriate and at least annually, a control function shall independently review if the firm's remuneration complies with the remuneration policy. When needed, the control function shall immediately report the results of its review to the board of directors at least annually and no later than in conjunction with the adoption of the annual accounts.

General guidelines

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

Remuneration for employees of control functions

Employees auditing 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, have appropriate authorisations and resources and receive remuneration independent of the business areas they are reviewing.

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

Chapter 5 Disclosure of information on remuneration

Section 1 An account of the firm's remuneration shall be disclosed in conjunction with the adoption of the annual report.

The firm shall present its account in the annual report, in an appendix to the annual report or on its website. If the account is not included in or appended to the annual report, the firm shall disclose in its annual report where the information is published.

The account shall be available for at least one year after its publication.

General guidelines

The firm should provide relevant, clear and comprehensible information about the firm'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 mandate 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 the utilisation of entitlements,
6. the risk analysis forming the basis for the design of the remuneration policy,
7. the expensed amount of total remuneration for the financial year broken down by senior executives, other employees whose actions can have a material impact on the risk exposure of the firm 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 financial year, paid remuneration specified in the financial year’s vested remuneration, paid remuneration vested during previous financial years and adjusted but unpaid vested remuneration,
10. the financial year’s cumulative 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 justification,
12. the financial year’s cumulative total for severance pay and guaranteed variable remuneration awarded, the number of beneficiaries and the highest such award to a single person, and
13. the financial year’s paid severance pay and guaranteed variable remuneration.

The information set out in points 7–13 should be published in such a manner that the economic conditions for individuals are not revealed.

Information for employees

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

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1. These Regulations and General Guidelines shall enter into force on 1 January 2010.

2. With regard to employees whose actions can have a material impact on the risk exposure of the firm, in decisions on remuneration prior to 1 January 2010, a firm shall apply the regulations in Chapter 2, section 1 to the extent the section refers to the requirement on effective risk management. The firm shall also apply the regulations in Chapter 5 and should take into account the general guidelines in Chapters 2 and 5.

3. A firm shall inform Finansinspektionen no later than 31 August 2010 if any remuneration obligations remain that are not in agreement with these regulations and general guidelines. The firm should also describe the measures taken to terminate any such obligations.

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