Linklaters

# Class 2 investment firms remuneration rules

March 2019

## Governance: IFD, Article 31

> Member states must ensure that firms with on and off-balance sheet assets above €100m establish **remuneration committees**;
> The remuneration committee should be "gender-balanced";
> It can be a group-wide committee (31(1)).
> Member states must ensure that remuneration committees are responsible for remuneration decisions (31(2)).
> The remuneration committee to take into account the public interest and the long-term interests of shareholders, investors and other stakeholders when taking remuneration decisions (31(3)).

## Policy + bonus cap: IFD, Article 28

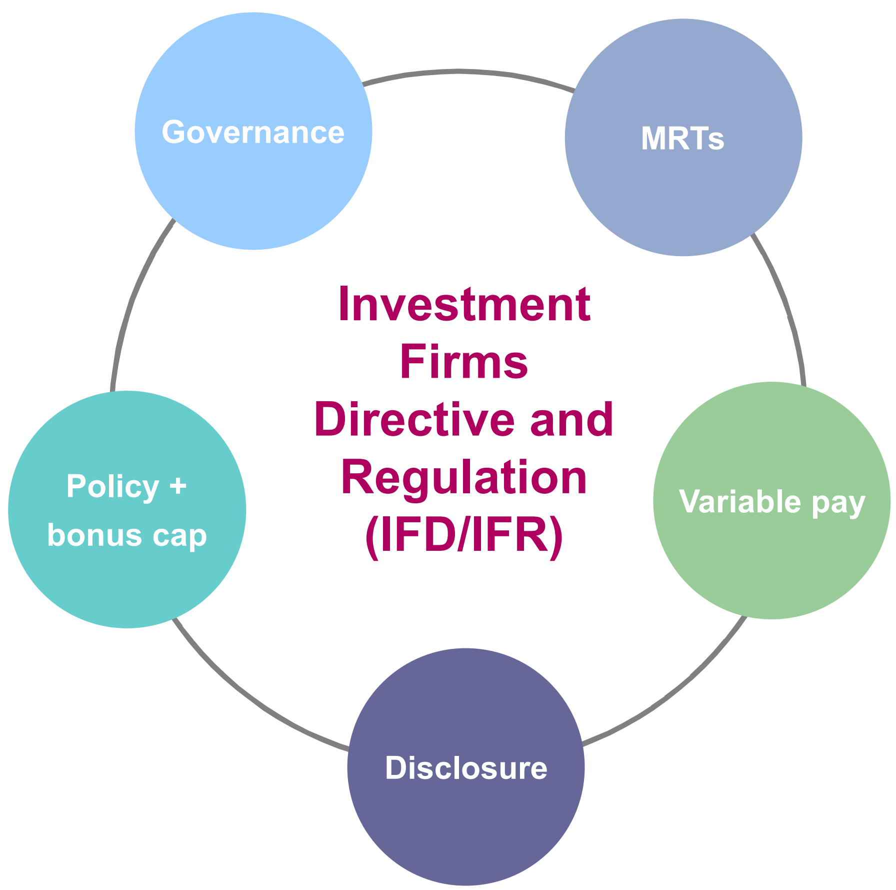
> Member states must ensure that firms have remuneration policies for MRTs (28(1) preamble).
> Remuneration policies must promote sound risk management and have measures to avoid conflicts of interest. Remuneration policies and practices to be gender neutral (24(1)(d) + 28(1)(aa)+(b)).
> Control functions to review, centrally, independently and at least annually, the implementation of the policy (28(1)(e)).
> **The fixed element of pay** must be a sufficiently high proportion of total pay to enable a flexible policy on variable pay, including paying none (28(1)(i)).
> **Fixed/variable pay ratio: No hard bonus cap.** Member states must ensure that firms set appropriate internal fixed/variable pay ratios. Firms should consider the firm's business activities, risk profile and the impact of staff on risk profile (28(2)).
> "Soft" proportionality': Member states must ensure that: (i) the remuneration policy is proportionate to the size, internal organisation and nature, and the scope and complexity of the firm's activities (28(1)(a)), and (ii) the firms establish and apply the remuneration principles in a manner appropriate to their size, internal organisation and to the nature, scope and complexity of their activities (28(3)).
> No short-termism: Member states must ensure that policies are in line with the business strategy and objectives of the firm, and take into account the long term effects of investment decisions (28(1)(ba)).

## Disclosure: IFR Articles 45, 51, IFD Article 32

> Firms are required to publicly disclose the main design and terms of their remuneration system, fixed/variable pay ratios and aggregate quantitative information on remuneration for senior managers and material risk takers. This is to include aspects relating to gender neutrality and the gender pay gap (45, 51 IFR).
> Firms must disclose to competent authorities the number of, job and pay information on individuals paid €1m or more, in bands of €1m (32(4) IFD).
> On demand from the competent authorities, firms must disclose the total remuneration for each member of the management body or senior management (32(4) IFD).

## MRTs: IFD, Article 28

> The policy rules apply only to material risk takers, senior managers staff involved in control functions and employees with salaries equal to at least the lowest paid senior manager's/risk taker's (28(1) preamble).
> MRTs/risk takers include anyone whose professional activities have a material impact on the assets managed by the firm (28(1) preamble).
> EBA in consultation with ESMA to produce RTS criteria to identify MRT. They should take account of Commission Recommendation on remuneration policies in the financial services sector (2009/384) and of the existing remuneration guidelines under UCITS, AIFMD and MiFID II and aim to minimise divergence from existing provisions (28(4)).
> EBA to submit the draft RTS by December 2020 (if rules are published in June 2019).




Click for the agreed texts of the IFD and IFR, March 2019.

## Variable pay: IFD, Article 30

> The rules apply only to MRTs and other staff within the remuneration policy rules (30(1) preamble).
> Non-cash proportion: 50% of upfront and deferred variable pay (30(1)(j)), to be subject to an appropriate retention policy (30(3)).
> Non-cash instruments: shares, or share-linked (or additional Tier 1 and so on), and instruments reflecting the instruments of the managed portfolios. Where the firm does not issue any of the permitted instruments, national authorities can approve alternative arrangements which meet the same objectives. EBA in consultation with ESMA to issue RTS to specify such arrangements, by December 2020 (30(1)(j)+(ja)).

> **Deferral percentage and period**: 40% over three to five years, 60% for high variable pay (30(1)(k)).
> **Deferral and non-cash rules only apply to:**
> > Firms with **on- and off- balance sheet** assets above €100m over four years, and
> > Staff with variable pay exceeding €50,000 which is more than one fourth of their total pay. (30(4))

Asset threshold increase: Member states may increase the firm asset threshold, up to €300m on- and off- balance sheet assets, if *all* the following conditions are met:

(1) The investment firm is not one of the three largest in firms in that member state in terms of total value of assets;
(2) the firm is not subject to any obligations or only to simplified obligations in relation to recovery and resolution planning under Article 4 of Directive 2014/59/EU;
(3) the size of the firm's on- and off- balance sheet trading-book business is equal to or less than €150m;
(4) the size of the firm's on- and off-balance sheet derivative business is equal to or less than €100m; and
(5) It is appropriate to increase the threshold taking into account the nature and scope of the firm's activities, internal organisation, or (if it's part of a group), the group characteristics. (30(4a))

Asset threshold decrease: Member states may lower the firm asset threshold if appropriate due to the nature, scope, business of the firm's activities, internal organisation or, (if it's part of a group), the group characteristics (30(4b)).

Individual pay threshold decrease: Member states may lower the €50,000/one fourth thresholds due to the nature of an individual's responsibilities, job profile, or national pay practices (30(4c)).

EBA, in consultation with ESMA, to adopt guidelines on implementing and applying consistently the deferral and non-cash rules exemptions and thresholds (30(7)). No date given for this.

> Malus and clawback to apply to entire variable pay where firm's performance is "subdued or negative". Criteria to be set by firms, to include personal misconduct resulting in loss or a person is no longer fit and proper (30(1)(l)).
> Guaranteed variable pay: To be limited to new staff, only for their first year of employment and when the firm has a strong capital base (30(1)(e)).