

12 July 2022

Circular to Investment Firms in relation to the EBA Remuneration Guidelines

1. General Scope

This circular is issued to explain the applicability of certain aspects on sound remuneration policies governing Investment Firms. In 2015, the EBA published guidelines on remuneration policies under Directive 2013/36/EU (CRD) that were applicable to both credit institutions and investment firms. These have since been superseded under the provisions set out in the Investment Firms Directive (EU) 2019/2034 (hereinafter referred to as 'IFD'). On 22 November 2021, the EBA issued the following guidelines, namely "[Final Report on guidelines on sound remuneration policies under IFD](#)" (hereunder referred to as 'Guidelines') on the requirements of investment firms. Investment firms shall apply sound remuneration policies to all staff and some specific requirements for the variable remuneration of staff whose professional activities have a material impact on their risk profile. The Guidelines specify the applicable remuneration provisions for Class 2 investment firms as defined in the IFD taking into account the proportionality principle.

A major part of the Guidelines applies to all staff, ensuring *inter alia* that investment firms have in place sound and gender-neutral remuneration policies. Other parts of the Guidelines focus on the specific provisions applicable to the remuneration policies for identified staff, whose alignment of remuneration incentives with the investment firm's risk profile and the assets they manage is crucial. **These Guidelines became applicable as of 30 April 2022.**

It is expected that firms familiarise themselves with such Guidelines, undertake an appropriate analysis and ensure that any deficiencies are addressed.

2. Identified Staff

The management body within an investment firm has the discretion to decide whether staff have any material impact on the firm's risk profile or the assets under management in accordance with an annual identification process. The Board of Directors or the remuneration committee (as applicable) shall determine the approval criteria and approve any exemptions.

3. Remuneration Committee

As per the Guidelines, specifically section 2.3, sub-heading "*Setting up a remuneration committee*", an investment firm with on and off-balance-sheet assets valued on average at more than EUR 100 million over the four-year period immediately preceding the given financial year is required to establish a remuneration committee. In turn, the remuneration committee shall advise the board of

directors/ supervisory function on these decisions. The said remuneration committee might be established at group level, if applicable.

Where no remuneration committee is established, the provisions of these guidelines concerning remuneration committee shall apply to the board of directors or supervisory function.

4. Waiver pay-out process request

As per Section 4, namely "*Proportionality*", sub-heading "*Waivers of the variable remuneration pay-out process*", an investment firm may not apply the requirements to defer variable remuneration and to pay it out in instruments as set out in Article 32(1) and the third subparagraph of Article 32(3) of Directive (EU) 2019/20.

5. Criteria to be taken into account

In order to assess what is proportionate and in determining the required level of sophistication of the remuneration policies and risk measurement approaches, investment firms should take into account the following criteria:

- a. the on and off-balance-sheet assets of the investment firm and whether the investment firm meets the criteria and the thresholds set out in paragraphs 4 of Article 32 of Directive (EU) 2019/2034;
- b. if the investment firm is authorised to hold clients' money or assets;
- c. the type of authorised activities and services (e.g. Sections A and B of Annex I to Directive 2014/65/EU) and other services (e.g. clearing services) performed by the investment firm;
- d. the amount of assets under management;
- e. the assets safeguarded and administered;
- f. the volume of client orders handled;
- g. the volume of daily trading flow;
- h. the geographical presence of the investment firm and the size of operations in each jurisdiction, including in third countries;
- i. the legal form and the available equity and debt instruments;

- j. the methods used to determine the capital requirements;
- k. whether the investment firm is part of a group, and, if so, the proportionality assessment done for the group and the characteristics of the group to which the investment firm belongs;
- l. the underlying business strategy;
- m. the structure of the business activities and the time horizon, measurability, and predictability of the risks of the business activities;
- n. the funding structure of the investment firm;
- o. the internal organisation of the investment firm, including the level of variable remuneration that can be paid to identified staff;
- p. the main sources and structure of profits and losses of the investment firm;
- q. the type of clients (e.g. retail, corporate, small businesses, public entity);
- r. the complexity of the financial instruments or contracts;
- s. the outsourced functions and distribution channels;
- t. the existing information technology (IT) systems, including continuity systems and outsourcing functions in this area.

6. Submission Form

In view of the waivers stipulated in Section 3 and 4 above, Investment firms are required to review their position and fill in the [Online Form](#) entitled the "Applicability of Guidelines on remuneration policies" and submit electronically, by not later than **07 August 2022**. Following the response received with respect to requests on waiving the pay-out process, the Authority will revert to the investment firm individually.

7. Upload of Documentation on LH Portal

As per Question 10 of the Online Form to be filled by Investment Firms, the documentation required to be uploaded shall be uploaded via the LH Portal in the following manner:

1. Login into the [LH Portal](#) with your credentials. In the absence of a registration, request shall be sent to the Authority.

2. Once logged in, click onto the 'File Uploads' menu. If this is not visible, kindly request access from the Authority.
3. Upon clicking onto the 'File Uploads' menu, select 'Authorised Person', whereby you choose the applicable Investment Firm, and choose the 'Investment Firms Reporting' Project.
4. Upload the file using the file naming convention XXXX_DATE_RemunerationGuid and click the 'Upload File(s)' button, whereby XXXX stands for the licence holder code as per the Financial Services Register, DATE should be the date of submission in the following format: Month and Year (ex: Jul2022) and *RemunerationGuid* is the description.

8. Conclusion

Should you require any further clarification kindly send your queries to the investmentfirms@mfsa.mt email address. Moreover, as outlined above, please ensure to submit all relevant information electronically by the stipulated deadline.