

Ordinance No. 4 of 21 December 2010

on the Requirements for Remunerations in Banks

(Issued by the Bulgarian National Bank; published in the Darjaven Vestnik, issue 102 of 30 December 2010; effective as of 1 January 2011; amended; Darjaven Vestnik, issue 40 of 2014)

Subject

Article 1. (1) This Ordinance shall define the principles and requirements for the policies and practices on remunerations in banks licensed by the Bulgarian National Bank, and in banks of third countries operating in the Republic of Bulgaria via a branch.

(2) The provisions of this Ordinance shall also apply to companies falling within the scope of supervision on a consolidated basis.

Scope

Article 2. Banks shall establish and apply remuneration policies which cover all forms of remuneration, including salaries and other financial and material benefits, also discretionary pension benefits for the following categories of staff:

1. senior management;
2. risk takers;
3. staff engaged in control functions; and
4. all employees receiving total remuneration that takes them into the same remuneration bracket as staff referred to in items 1 and 2, whose professional activities have a material impact on the risk profile of the bank.

Remuneration Policy

Article 3. (1) Each bank shall apply a remuneration policy which:

1. promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the bank;
2. is in line with the business strategy, objectives, values and long-term interests of the bank;
3. incorporates measures to avoid conflict of interest.

(2) (new; Darjaven Vestnik, issue 40 of 2014) The remuneration policy shall establish different criteria for setting:

1. fixed remuneration depending on the relevant professional experience and organisational responsibilities as set out in an employee's job description or management and employment contract;

2. variable remuneration depending on sustainable, effective and risk adjusted performance, as well as performance beyond the job description.

(3) (former paragraph 2; Darjaven Vestnik issue 40 of 2014) Banks shall set in their remuneration policies the appropriate ratios between the fixed and the variable component of the total remuneration depending on the categories of staff.

(4) (former paragraph 3; Darjaven Vestnik issue 40 of 2014) The fixed component shall represent a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on the variable remuneration component, including the possibility to pay no variable remuneration component.

(5) (new; Darjaven Vestnik, issue 40 of 2014) Remuneration related to compensations from contracts in previous employment shall align with the long-term interests of the bank including retention, deferment, performance and clawback.

Ratio Between Variable and Fixed Remuneration

Article 3a. (new; Darjaven Vestnik, issue 40 of 2014) (1) The amount of the variable component shall not exceed the amount of the fixed component of the total remuneration.

(2) The shareholders assembly of the bank may approve a higher amount of the variable remuneration components of not more than the double amount of the fixed components.

(3) The decision under paragraph 2 shall be taken:

1. upon a reasoned proposal by the management board (board of directors) specifying the staff affected, their functions and the expected impact on the level of the capital base and its stability;

2. after informing the BNB of the proposal under item 1 including the proposed higher maximum ratio and the reasons thereof and where there is evidence that the proposed higher ratio does not conflict with the own funds requirements to the bank under the Law on Credit Institutions and Regulation (EU) N 575/ 2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and investment firms and amending Regulation (EU)) 648/2012, hereinafter 'Regulation (EU) N 575/ 2013'.

(4) The decision under paragraph 2 shall be taken by a majority of at least two-thirds provided that at least half of the shares are represented, and where this requirement is not met - by a majority of at least three-fourths of the shares represented; shareholders who would benefit from the higher ratios, as well as entities through which they have indirect participation in the bank's shareholder capital, shall not be allowed to exercise any voting rights.

(5) The Bulgarian National Bank shall use the information received on the decisions taken under paragraph 3 to benchmark the practices of banks with regard to setting higher maximum ratios and shall make this information available to the EBA.

General Requirements to Variable Remunerations

Article 4. (1) The total variable remuneration shall not limit the ability of the bank to maintain and strengthen its capital base.

(2) Variable remuneration shall not be paid through instruments or methods which facilitate the avoidance of the requirements under this Ordinance.

(3) (new; Darjaven Vestnik, issue 40 of 2014) Sound risk management and the pay-for-performance principle shall not permit awarding guaranteed variable remuneration and its inclusion in the prospective remuneration plans.

(4) (former paragraph 3; amended, Darjaven Vestnik, issue 40 of 2014) Guaranteed variable remuneration shall be exceptional and occur only when hiring new staff, specified in Article 2, and shall be limited to the first year of employment meeting the condition of stable and risk-adjusted bank capital base.

(5) (former paragraph 4; Darjaven Vestnik, issue 40 of 2014) Payments related to the early termination of a contract shall reflect performance achieved over time and shall be designed in a way that does not reward failure.

(6) (former paragraph 5; Darjaven Vestnik, issue 40 of 2014) Staff members referred to in Article 2 shall not use personal hedging strategies or insurances to undermine the risk alignment effects embedded in their remuneration arrangements.

Periodic Review and Control

Article 5. (1) (amended; Darjaven Vestnik, issue 40 of 2014) The supervisory board or the board of directors of the bank shall adopt the remuneration policy and oversee its implementation and periodic review.

(2) The implementation of the remuneration policies and practices shall be, at least annually, subject to periodic and independent internal review by or with the participation of the internal audit unit.

Remuneration Committee

Article 6. (1) In terms of its nature, size, complexity of its activities and internal organisation, the bank shall establish a remuneration committee. A bank with a unitary governance system must establish a remuneration committee.

(2) The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices, and the incentives created for managing risk, capital and liquidity.

(3) The Chair and the members of the remuneration committee shall be only members of the supervisory board or persons who are not executive members of the board of directors.

(4) The remuneration committee shall be responsible for the preparation of decisions regarding remunerations, taking into account the implications for the risk and risk management of the bank, the long-term interests of shareholders, investors and other stakeholders in the bank.

(5) The supervisory board or board of directors shall discuss and adopt the decisions referred to in paragraph 4.

Requirements to Remunerations of the Staff Engaged in Control Functions and/or Risk Management Functions

Article 7. (1) Staff engaged in control functions shall:

1. have appropriate authority and be independent from the business units they oversee;
2. be remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

(2) The remunerations of the senior officers in the risk management and compliance functions shall be directly overseen by the remuneration committee or, if such a committee has not been established, by the supervisory board.

Relation of the Variable Remuneration with the Performance and Risk Alignment

Article 8. (1) The variable remuneration shall be related to the performance through a combination of the assessments of the performance of the individual and of the business unit concerned and of the overall results of the bank.

(2) When assessing individual performance, financial and non-financial criteria shall be taken into account.

(3) The assessments under paragraph 1 shall set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the business cycle and risks taken by the bank.

(4) The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components shall include an adjustment for all types of current and future risks and take into account the cost of capital and the liquidity required.

Variable Remuneration Limits

Article 9. (1) The variable remuneration, including the deferred portion, shall be paid or vest depending on:

1. the financial situation of the bank; and
2. the performance of the bank, the business unit and the individual concerned.

(2) (amended; Darjaven Vestnik, issue 40 of 2014) Where subdued or negative financial performance of the bank occurs, the variable remuneration shall be reduced partially or completely through malus or clawback arrangements.

(3) (new; Darjaven Vestnik, issue 40 of 2014) Malus or clawback arrangements shall be obligatory applicable, where the staff member:

1. participated in or was responsible for action or inaction resulting in significant losses to the institution;
2. failed to meet the standards of fitness and propriety.

Variable Remuneration Structure

Article 10. (1) At least 50 per cent of the variable remuneration shall comprise of the following elements:

1. shares, other share-linked instruments and in case of a non-listed bank – equivalent non-cash instruments too;

2. (amended; Darjaven Vestnik, issue 40 of 2014) instruments within the meaning of Articles 52 and 63 of Regulation (EU) No 575/2013 or other instruments, which can be fully converted to Common Equity Tier 1 instruments or written down, adequately reflecting the credit quality of the bank in a going concern and appropriate to be used for the purpose of variable remuneration.

(2) The instruments under paragraph 1 shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the bank, including where such instruments exceed 50 per cent of the variable remuneration.

(3) (new; Darjaven Vestnik, issue 40 of 2014) The application of a discount rate of a maximum of 25% of the part of the variable remuneration paid in instruments that are differed for a period of not less than five years shall be allowed based on guidelines of the European Banking Authority (EBA).

Variable Remuneration Deferral

Article 11. (1) At least 40 per cent of the variable remuneration component shall be deferred over a period which is not less than three to five years in accordance with the business cycle, the nature of the bank's activities and the resulting risks thereof, as well as with the position of the staff member in question.

(2) For persons under Article 10 of the Law on Credit Institutions and employees receiving a salary that is commensurate to their remuneration, the ratio under paragraph 1 shall be at least 60 per cent.

(3) Variable remuneration under deferral arrangements shall be paid on a pro-rata basis or by a gradual increase during the deferral period.

Discretionary Pension Benefits

Article 12. (1) Where a bank envisages discretionary pension benefits, its pension policy shall be in line with the business strategy, objectives, values and long-term interests of the bank.

(2) Upon retirement, the benefits under paragraph 1 shall be paid in the form of instruments referred to in Article 10 and shall be subject to a five-year retention period.

(3) Where the employee leaves the bank before retirement, the benefits shall be held by the bank for a period of five years in the form of instruments referred to in paragraph 2.

Requirements to Banks Benefiting from Exceptional Government Intervention

Article 13. Where a bank has benefited from exceptional government intervention, it shall meet the following requirements:

1. variable remuneration shall be strictly limited as a percentage of the net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

2. (amended; Darjaven Vestnik, issue 40 of 2014) variable remuneration shall be restructured in a manner aligned with long-term growth and sound risk management plans and, where appropriate, limits shall be set to the remuneration of the persons under Article 10 of the Law on Credit Institutions;

3. the persons under Article 10 of the Law on Credit Institutions shall be paid variable remuneration only when the latter is well justified.

Disclosures

Article 14. (1) (amended; Darjaven Vestnik, issue 40 of 2014) Disclosures of the policies and practices on remunerations shall be made pursuant to Article 450 of Regulation (EU) No 575/2013.

(2) Based on the information disclosed under Article 450, paragraph 1, points (g), (h) and (i) of Regulation (EU) No 575/2013, the BNB shall analyze remuneration trends and practices and shall present the results of this review to the EBA.

Reporting and Control

Article 15. (1) (amended; Darjaven Vestnik, issue 40 of 2014) Banks shall submit to the Bulgarian National Bank information about the number of individuals receiving annual remunerations exceeding the limit set out in Article 75, paragraph 3 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, including their functional activities and the main elements of overall remuneration, bonuses, long-term award and pension contributions, together with the annual supervisory reports.

(2) (amended; Darjaven Vestnik, issue 40 of 2014) The Bulgarian National Bank shall provide the information under paragraph 1 to the EBA.

(3) The Bulgarian National Bank shall carry out checks of compliance with the requirements of this Ordinance.

Additional Provisions

§ 1. Within the meaning of this Ordinance:

1. (repealed; Darjaven Vestnik, issue 40 of 2014)
2. (amended; Darjaven Vestnik, issue 40 of 2014) ‘Discretionary Pension Benefits’ shall be discretionary pension benefits as defined in Article 4, paragraph 1, point 73 of Regulation (EU) No 575/2013.
3. ‘Retention Period’ shall mean the period of time during which the instruments under Article 10, paragraph 1 received in the form of variable remuneration cannot be sold.
4. ‘Malus Arrangement’ shall mean the arrangement that permits the bank to prevent vesting of all or part of the amount of a deferred remuneration award in relation to the risks assumed.
5. ‘Clawback Arrangement’ shall mean the contractual agreements under which the staff member shall under certain circumstances be obliged to return to the bank remuneration that has been paid out or to waive the rights conferred on him/her.
6. ‘Variable Remuneration’ shall mean a component of the total remuneration in the form of premium, bonus, discretionary pension benefits and other non-monetary payments or benefits based on the criteria for assessment of the performance.

§ 2. (amended; Darjaven Vestnik, issue 40 of 2014) This Ordinance shall introduce the requirements of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Transitional and Final Provisions

§ 3. The provisions herein shall also apply to remuneration due on the basis of contracts concluded before 1 January 2011 and awarded or paid after that date, as well as to remuneration awarded but not yet paid for services provided in 2010.

§ 4. Banks shall bring the contracts with the persons under Article 2, as well as their internal rules in line with this Ordinance by 31 March 2011.

§ 5. This Ordinance is issued on the grounds of Article 16, item 5 of the Law on the Bulgarian National Bank and Article 73b in relation to § 13 of the Transitional and Final Provisions of the Law of Credit Institutions and is adopted by Resolution No. 118 of 21 December 2010 of the Governing Council of the Bulgarian National Bank, and shall enter into force as of 1 January 2011.

§ 6. The Deputy Governor of the Bulgarian National Bank heading the Banking Supervision Department shall issue instructions on the enactment of this Ordinance.

Ordinance
on Amendment of Ordinance No 4 of 2010
on the Requirements for Remunerations in Banks

(Published in the Darjaven Vestnik, issue 40 of 13 May 2014)

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Final Provision

§ 10. This Ordinance is issued on the grounds of Article 73b, paragraph 3 in connection with § 13 of the Transitional and Final Provisions of the Law on Credit Institutions and is adopted by Resolution No 48 of 24 April 2014 of the Governing Council of the Bulgarian National Bank.