

# Employment in Financial Services

## Contributing Editor

*Louise Skinner at Morgan Lewis & Bockius*

### **07. Are there any specific rules relating to compensation payable to financial services employees in your jurisdiction, including, for example, limits on variable compensation, or provisions for deferral, malus and/or clawback of monies paid to employees?**

#### Hong Kong

Author: *Charles Mo, Joanne Mok*  
at Morgan Lewis & Bockius

There are no specific mandatory rules relating to compensation payable to financial services employees in Hong Kong.

The HKMA has issued a Supervisory Policy Manual CG-5 “Guideline on a Sound Remuneration System”. This focuses on providing a broad idea and introducing basic principles of how remuneration policies should be designed and implemented in the authorised institution, to encourage employee behaviour that supports the risk management framework, corporate values and long-term financial soundness of the authorised institution.

Under the Guideline, the elements of a sound remuneration system are as follows:

#### **Governance**

- Remuneration policy should be in line with objectives, business strategies and the long-term goals of the authorised institution.
- The remuneration arrangement for employees whose activities could have a material impact on the authorised institution’s risk profile and financial soundness should support, but not undermine, the overall risk management approach.
- The Board of an authorised institution is ultimately responsible for overseeing the formulation and implementation of the remuneration policy.
- The establishment of a Board remuneration committee would assist the Board in discharging its responsibility for the design and operation of the authorised institution’s remuneration system.
- Risk control personnel should have appropriate authority and involvement in the process of design and implementation of the authorised institution’s remuneration policy.

## Structure of remuneration

- Balance of fixed and variable remuneration should be determined with regard to the seniority, role, responsibilities and activities of their employees and the need to promote behaviour among employees that support the authorised institution's risk-management framework and long-term financial soundness.
- Variable remuneration should be paid in such a manner as to align an employee's incentive awards with long-term value creation and the time horizons of risk.
- Guaranteed minimum bonus to senior management or key personnel should be subject to the approval of the Board (or the Board's remuneration committee with the necessary delegated authority).

## Measurement of performance for variable remuneration

- The award of variable remuneration should depend on the fulfilment of certain pre-determined and assessable performance criteria, which include both financial and non-financial factors.
- Size and allocation of variable remuneration should take into account the current and potential risks associated with the activities of employees, as well as the performance (overall performance of the relevant business units and the authorised institution as a whole as well as the contribution of individual employees to such performance).
- Judgement and common sense may be required during the process to arrive at a fair and appropriate remuneration decision. The rationale for the exercise of judgment and the outcomes should be recorded in writing.

## Alignment of remuneration pay-outs to the time horizon of risks

- Deferral of variable remuneration is appropriate when the risks taken by the employee in question are harder to measure or will be realised over a longer timeframe.
- The award of deferred remuneration should be subject to a minimum vesting period and pre-defined vesting conditions in respect of future performance.
- Authorised institutions should seek undertakings from employees not to engage in personal hedging strategies or remuneration and liability-related insurance to hedge their exposures in respect of the unvested portion of their deferred remuneration.

## Remuneration disclosure

- Authorised institutions should make remuneration disclosures at least annually. The disclosure should include the qualitative and quantitative information that the HKMA has set out in its annual remuneration disclosure.

Last updated on 22/01/2023



## Mexico

Author: *Héctor González Graf*

at Marván, González Graf y González Larrazolo

Brokerage houses must implement a compensation system under the general provisions set forth by the CNBV. This system must include all compensation provided and must contain the responsibilities of the boards that implement the compensation schemes, ordinary and extraordinary compensation policies, and periodic reviews of payment policies. The board of directors must incorporate a special committee for compensation.

Under article 9 of the general provisions applicable to brokerage houses, account management fees may be paid to stock proxies provided that they comply entirely with the applicable laws in the exercise of their duties. Stock operators must not execute operations with the public or receive any remuneration or account management fees, except if, with the proxy's authorisation, they execute orders of institutional investors in the brokerage house's reception and allocation system.

Brokerage houses must not pay fees, commissions, and other remuneration of third parties that act as promoters, sellers, associates, independent commissioners, investment advisors or any similar roles. This also applies to proxies of the investor client without being proxies of the brokerage house, or those who have a conflict of interest to receive fees, commissions, or any other remuneration from the investor client.

If there is a critical event, such as a control measure, the CNBV may order the brokerage house to suspend the payment of extraordinary compensation and bonuses to the general manager and senior officers. This includes preventing the granting of new compensation until the matter is properly resolved. This should be included in employment contracts, to avoid labour-related disputes should the extraordinary measure of the CNBV is enacted.

Last updated on 14/03/2023

## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

Swiss civil law provides for special rules that govern the compensation of current and former members of inter alia the board and executive committee (Ordinance against Excessive Compensation) of Swiss companies limited by shares that are listed on a Swiss or foreign stock exchange. In addition, there are disclosure provisions listed companies need to follow concerning remuneration under stock exchange regulations.

In addition to the above, FINMA has formulated ten principles regarding remuneration that banks, securities firms, financial groups and conglomerates, insurance companies, insurance groups and conglomerates are required to implement. The principles serve as minimum standards for the design, implementation and disclosure of remuneration schemes.

These schemes should not incentivise to take inappropriate risks and thereby potentially damage the stability of financial institutions.

One of the focal points of the principles is variable remuneration that depends on business performance and risk. In particular, all variable remuneration must have been earned by the company over the long term. Consequently, remuneration is dependent on performance, taking into account the sustainability of such performance as well as the risks. That said, FINMA's principles do not limit the amount of variable remuneration. However, FINMA aims to prevent the granting of high remuneration based on large risks and the generation of short-term, unsustainable earnings. Furthermore, persons who have significant responsibility relating to the risk or receive a high total remuneration, must receive a significant part of the variable remuneration on a deferred basis and consequently, in a way that is linked to the current risk. Under the FINMA principles, "clawback" and "malus" arrangements are permitted.

Last updated on 16/04/2024

### Contributors



#### Hong Kong

Charles Mo  
Joanne Mok  
*Morgan Lewis & Bockius*



#### Mexico

Héctor González Graf

*Marván, González Graf y González Larrazolo*



## Switzerland

Simone Wetzstein

Matthias Lötscher

Sarah Vettiger

*Walder Wyss*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)