

Finalised Guidance

FG20/6 IFPRU investment firms Remuneration Code (SYSC 19A) – Frequently asked questions on remuneration

December 2020

1 Introduction

Overview

- 1.1 This statement is general guidance given under section 139A(1) of the Financial Services and Markets Act 2000 (FSMA).
- 1.2 This guidance uses expressions that are defined in the Handbook Glossary. Where an expression is not defined in the Glossary, it has the meaning (including the plural) given in the following table:

Defined expression	Definition
EBA Guidelines	The European Banking Authority’s published <u>Guidelines on sound remuneration policies</u> under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013, 21 December 2015
FCA’s IFPRU Remuneration Code	The Financial Conduct Authority IFPRU Remuneration Code under SYSC 19A

Defined expression	Definition
Group	Has the meaning given in the Glossary in paragraph (3A)
Material risk takers	Has the meaning of staff identified in the Glossary as Remuneration Code staff in SYSC 19A.3.4R
Proportionality Guidance	Has the meaning given in paragraph 1.4, bullet points 2, 3 and 4
Proportionality level	Has the meaning given in paragraph 2.2 of the General Guidance on Proportionality: The IFPRU Remuneration Code (SYSC 19A)

- 1.3 This guidance applies to all firms that fall within the scope of the FCA's IFPRU Remuneration Code in SYSC 19A, namely IFPRU investment firms and some overseas firms as defined in SYSC 19A.1.1R(1)(d). Questions 6 and 7 are relevant for BIPRU firms, and other firms may also find this document useful to understand our expectations about firms' remuneration policies and practices.
- 1.4 You should read our guidance on remuneration in conjunction with our other general guidance documents:
- [General guidance on the application of ex-post risk adjustment to variable remuneration](#)
 - [General Guidance on Proportionality: the IFPRU Remuneration Code \(SYSC 19A\)](#)
 - [General Guidance on Proportionality: the BIPRU Remuneration Code \(SYSC 19C\) and Pillar 3 disclosure on remuneration \(BIPRU 11\)](#)
 - [General Guidance on Proportionality: the Dual-regulated firms Remuneration Code \(SYSC 19D\)](#)
- 1.5 This guidance supersedes any previous frequently asked questions (FAQs) we – or our predecessor the Financial Services Authority – have issued about the IFPRU Remuneration Code in SYSC 19A.
- 1.6 This guidance statement has effect from 29 December 2020.

Background

- 1.7 The EBA Guidelines set out requirements regarding remuneration policies that apply to firms in scope of the UK legislation that implemented the CRD. Competent authorities and firms must apply the EBA Guidelines from 1 January 2017. Firms should review the EBA Guidelines to understand the requirements that apply to them and make every effort to comply with them. After the end of the implementation period, firms should continue to comply with these Guidelines to the extent and in the manner set out in our guidance '[Brexit: our approach to EU non-legislative materials](#)'.
- 1.8 This guidance gives firms some practical information to understand how the EBA Guidelines apply to them, and gives additional clarification on our IFPRU Remuneration Code.

- 1.9 While these frequently asked questions may refer to our existing remuneration rules and guidance or to the EBA Guidelines, they do not provide a complete summary of them. Firms should use this guidance as a supplement to the IFPRU Remuneration Code, Proportionality Guidance and the EBA Guidelines to help firms understand how the requirements apply to them.

2 FAQs: Material risk takers

Q1 Who needs to be identified as material risk takers?

- 2.1 Under SYSC 19A.3.4R, firms must identify employees 'whose professional activities have a material impact on the firm's risk profile'. This includes – but is not limited to – employees identified under the qualitative and quantitative criteria set out in articles 3 and 4(1) of the Material Risk Takers Regulation.
- 2.2 The types of professional activity and the risks inherent in these are not limited under the UK legislation that implemented the CRD. All types of risk are relevant to this assessment, including those of a prudential, operational, conduct and reputational nature.
- 2.3 Under paragraph 79 of the EBA Guidelines, all firms should first identify their material risk takers, before the FCA's IFPRU Remuneration Code requirements are applied in a proportionate way. Once material risk takers have been identified, the remuneration principles proportionality rule can then be applied to determine the extent to which certain FCA IFPRU Remuneration Code requirements apply on an individual or firm-wide basis (see 2.4(4) below).

Q2 What is the process for identifying (and excluding) material risk takers?

- 2.4 Firms should follow the steps below (in the order presented) when identifying their material risk takers. These steps reflect the requirements under the Material Risk Takers Regulation for firms to identify their material risk takers using both qualitative and quantitative criteria, and explain how the identification interacts with the Proportionality Guidance:

1. **Identify material risk takers using qualitative criteria.**

Firms must identify all staff who meet the qualitative criteria under Article 3 of the Material Risk Takers Regulation and any other additional criteria set by the firm to identify all material risk takers. The Material Risk Takers Regulation covers a common set of the most relevant risks across the EU; however, the UK legislation that implemented the CRD does not provide an exhaustive categorisation of risks and so firms must consider all types of risk when performing their internal analysis. This includes, but is not limited to, prudential, operational, market, credit, conduct and reputational risks. When identifying material risk takers, firms will need to be able to demonstrate to us how they have conducted this analysis and considered the relevant categories of risk.

2. **Identify material risk takers using quantitative criteria.**

Firms need to identify any individuals who have not been captured as material risk takers under the qualitative criteria above (including any additional criteria set by the firms), but who meet the quantitative criteria under Article 4(1) of the Material Risk Takers Regulation. Firms must be able to show us how they have conducted this analysis.

3. **Consider whether any exclusions are appropriate.**

After steps 1 and 2, firms may consider excluding an individual from being identified as a material risk taker if they have only been captured based on step 2 above, subject to prior FCA notification or our approval under Article 4(4) of the Material Risk Takers Regulation (see Question 3 below).

4. **Apply the proportionality framework.**

After steps 1, 2 and 3 above, firms may then consider whether/how to apply the proportionality framework to their material risk takers in line with the FCA's Proportionality Guidance.

Q3 Who can be excluded as a material risk taker?

- 2.5 Where an individual is caught only by the quantitative criteria, they may be eligible for exclusion from identification as a material risk taker. They can apply via the application and notification template on our website. Applications can only be approved by the FCA where sufficient evidence is provided on the responsibilities of the individual role, supported by clear justification for why these do not amount to material risk. This evidence should include details of the qualitative analysis risk outlined in 2.4(1) above.
- 2.6 While a firm can request to exclude an individual because they only undertake professional activities in relation to a non-material business unit (a material business unit is defined in Article 3(5) of the Material Risk Takers Regulation), we still require an individual assessment of each role to be carried out in the context of the firm. This is so the firm can demonstrate it has given sufficient consideration to why the individual does not meet any of the qualitative criteria under 2.4(1) above.
- 2.7 For those earning more than €1 million, Article 4(5) of the Material Risk Takers Regulation states that an individual can only be excluded from identification in 'exceptional circumstances'. To meet this test, we expect firms to be able to justify why the roles and responsibilities that support this level of remuneration do not correspond to a material impact on the firm's risk profile. The firm also needs to demonstrate how and why the circumstances on which the exclusion is based are 'exceptional'.

3 FAQs: Governance

Q4 Does a firm that is part of a group that has a Remuneration Committee at the UK consolidation group level also need to establish a local Remuneration Committee?

- 3.1 Under SYSC 19A.3.1R and SYSC 19A.3.12R, any firm (whether at the individual, parent undertaking or group level) that is 'significant' in terms of its size, internal organisation, and the nature, scope and complexity of its activities, must establish a Remuneration Committee.
- 3.2 'Significant' for these purposes means:
- institutions referred to in the UK legislation that implemented article 131 of the CRD (globally systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs))
 - significant IFPRU firms as defined in IFPRU 1.2 (the condition of significance for this requirement can be waived, as explained in IFPRU 1.2.9G)
- 3.3 The EBA Guidelines clarify that the test of 'significant' must be assessed on a standalone entity basis (paragraph 46). This means that if a subsidiary meets one of the tests of 'significant' set out above, it should establish a Remuneration Committee. It is not enough to rely on the Remuneration Committee at the UK consolidation group level.
- 3.4 If a subsidiary does not meet the 'significant' test, the firm can rely on the Remuneration Committee at the UK consolidation group level.

4 FAQs: Groups

Q5 Do the pay-out process rules and the bonus cap apply to entities within the UK consolidation group that are not in scope of the FCA's IFPRU Remuneration Code?

- 4.1 Firms that are in the same UK consolidation group as a firm in scope of the FCA's IFPRU Remuneration Code, but are not themselves subject to that code, will need to apply the FCA's IFPRU Remuneration Code to those staff who:
- have a material impact on the risk profile of the UK consolidation group; or
 - have a material impact on the risk profile of a firm that is in scope of the FCA's IFPRU Remuneration Code within the UK consolidation group
- 4.2 Where an individual is employed by a firm that is subject to different sectoral rules (for example, an AIFMD firm subject to SYSC 19B) but their role has a material impact on the group's risk profile, then the consolidating institution must make sure that the FCA's IFPRU Remuneration Code is complied with for that individual.
- 4.3 Where there is a conflict between the FCA's IFPRU Remuneration Code and the sectoral requirements, then the sectoral requirements apply. Using the example of an AIFMD firm, this would mean that variable remuneration is paid in the form of instruments in the alternative investment fund concerned.
- 4.4 However, even where the specific sectoral rules are applied, the EBA Guidelines mean firms must still apply the specific ratio between fixed and variable components of total remuneration (bonus cap) unless they rely on the FCA's Proportionality Guidance to disapply the bonus cap.

Q6 Are BIPRU firms in the same group as an IFPRU investment firm required to apply SYSC 19A?

- 4.5 Where a BIPRU firm is part of a UK consolidation group containing a firm that SYSC 19A applies to, then the BIPRU firm will need to apply:
- SYSC 19C and associated guidance to staff who are material risk takers of the BIPRU firm; and
 - SYSC 19A and associated guidance to staff who are material risk takers of the UK consolidation group
- 4.6 Our General Guidance on Proportionality: the BIPRU Remuneration Code contains more detail on group application for BIPRU firms in groups with a firm in scope of the IFPRU Remuneration Code.

Q7 Can a Level 3 BIPRU firm that is part of a UK consolidation group with a Level 1 IFPRU investment firm apply the BIPRU remuneration principles proportionality rule?

- 4.7 No – if a BIPRU firm is part of a UK consolidation group with an entity in scope of the FCA’s IFPRU Remuneration Code, it must apply SYSC 19A (and the associated guidance).
- 4.8 If the consolidating entity is a proportionality level 1 firm under our General Guidance on Proportionality: the IFPRU Remuneration Code, this means that neither the firm in scope of the FCA’s IFPRU Remuneration Code nor any of the BIPRU entities within the group are permitted to disapply the FCA’s IFPRU Remuneration Code. The firm must apply the FCA’s IFPRU Remuneration Code in full to those staff identified as material risk takers as in question 6.
- 4.9 If a BIPRU firm is part of a UK consolidation group with a SYSC 19A firm and believes it should fall into a lower proportionality level, the firm can apply for individual guidance from us to vary its proportionality level. Our policy on individual guidance is set out in SUP 9.
- 4.10 The firm’s application must provide sound reasoning, justified with reference to the proportionality principles in SYSC 19A.3.3 R (2) or SYSC 19C.3.3 R (2). Find more information on how to vary the assigned proportionality level, as well as the necessary documentation that must be provided, on our website.
- 4.11 We do not automatically approve applications – we review them on a case-by-case basis.
- 4.12 A BIPRU firm that falls outside a UK consolidation group should consider paragraph 2.2(3) of our General Guidance on Proportionality: the BIPRU Remuneration Code.

5 FAQs: Proportionality

Q8 Can we apply the FCA's IFPRU Remuneration Code in a proportionate manner?

- 5.1 Our General Guidance on Proportionality: the IFPRU Remuneration Code sets out the circumstances where firms may be able to disapply certain aspects of the FCA's IFPRU Remuneration Code, such as the pay-out process rules, where this is appropriate and proportionate.
- 5.2 The FCA has decided to explain non-compliance only in relation to paragraph 79 of the EBA Guidelines. This is the requirement that the bonus cap must be applied to all firms in scope of the FCA's IFPRU Remuneration Code. This means that firms (other than those falling into proportionality level 1 or 2 – see 5.4 below) may choose to continue to rely on our domestic General Guidance on Proportionality: the IFPRU Remuneration Code to disapply the bonus cap where relevant.
- 5.3 However, in line with our General Guidance on Proportionality: the IFPRU Remuneration Code, firms will need to ensure that where proportionality has been applied, they can justify that this is appropriate and be able to demonstrate this to us on request.
- 5.4 Larger firms (ie those falling into proportionality level 1 or 2) have no discretion to disapply the bonus cap.

6 FAQs: Variable remuneration

Q9 How can we measure individual performance in a Long-Term Incentive Plan (LTIP) award?

- 6.1 As an LTIP is a form of variable remuneration, it must be based on an assessment of the financial and non-financial performance of the individual, business unit and the firm as a whole (see SYSC 19A.3.36R).
- 6.2 We do not prescribe the non-financial factors that firms should use to measure an individual's performance. Examples of good practice that we have observed include measures relating to building and maintaining positive customer relationships, reputation, achievement in line with firm strategy or values, and effectiveness and operation of the risk and control environment.

Q10 Do the upfront and deferred components of variable remuneration need to have the same split of cash and instruments?

- 6.3 No. This used to be the case under the previous CEBS Guidelines on remuneration policies and practices (Committee of European Banking Supervisors Guidelines on Remuneration Policies and Practices (published 10 December 2010)), however the EBA Guidelines now states that firms should consider deferring a higher proportion of instruments (paragraph 240), provided that the minimum of 50% in instruments is still met (SYSC 19A.3.47R). We consider it good practice for the deferred portion of variable remuneration to contain a higher proportion of instruments.