

# German Investment Firm Remuneration Ordinance published

On 11 January 2024, the German Investment Firm Remuneration Ordinance (*Wertpapierinstituts-Vergütungsverordnung – WpIVergV*) was published in the Federal Gazette.

It is based on the consultation proposals published in October 2022 and deviates from these only slightly, though where it does, it is to a relevant extent.

The WpIVergV implements the requirements on remuneration for investment firms under

- Section 46 of the German Investment Firm Act (*Wertpapierinstitutsgesetz – WpIG*) and
- Articles 30, 32 and 33 of the [Directive on the prudential supervision of investment firms](#) (IFD) with regard to remuneration systems for investment firms.

As outlined in the consultation paper, the WpIVergV applies exclusively to class 2 investment firms (medium-sized investment firms), including their branches in other countries, as well as to their parent undertakings. For large investment firms, the German Remuneration Ordinance for Institutions (*Institutsvergütungsverordnung – InstitutsVergV*), which already exists under the German Banking Act (*Kreditwesengesetz – KWG*), will continue to apply. Neither the WpIVergV nor the InstitutsVergV apply to small investment firms. With regard to their internal remuneration policies, these need only comply with the less stringent provisions of MaComp, which are essentially derived from MiFID.

In this Note, we provide an overview of the main provisions of the WpIVergV:

## Personal Scope

As outlined in the proposals consulted on, the WpIVergV follows a risk-based approach.

In contrast to the InstitutsVergV (which applies to every employee and provides for additional requirements for risk takers), the provisions of the WpIVergV apply exclusively to risk takers.

Risk takers are managers and all employees of an investment firm whose professional activities have a material impact on the risk profile of the investment firm or the assets that it manages.

The first step, then, is to independently classify the employees who are to be categorised as risk takers – this is based on qualitative and quantitative criteria in accordance with the [Delegated Regulation](#) made under the IFD.

## Variable component of remuneration

The previous, rather rudimentary, stand-alone remuneration regulation from Section 46 (1) WpIG has now been formalised by the WpIVergV following the BaFin being empowered to issue an ordinance providing detail to Section 46 (3) WpIG.

As with the existing InstitutsVergV, the WpIVergV provides for a distinction between fixed and variable remuneration to create an appropriate remuneration system.

Fixed remuneration is the fixed portion that does not incentivise risk-taking, is transparent, permanent and not performance-related. Fixed remuneration should essentially be based on the risk taker's relevant professional experience and organisational responsibility.

No changes were made to the original proposals on fixed remuneration (which, in turn, differed little from the previous InstitutsVergV). However, a number of changes were made to the requirements for variable remuneration compared to the consultation version.

Variable remuneration relates to the part of the remuneration that falls outside the characteristics of fixed remuneration. Variable remuneration, in turn, should reflect the sustainable and risk adjusted performance of the risk taker, i.e. the performance in excess of the risk taker's job description.

The assessment of this performance must extend over a period of at least one year (based on individual financial and non-financial parameters of the risk taker) taking into account the business cycle of the investment firm and its business risks. The assessment must be carried out before and after the variable remuneration is determined.

The WpIVergV does not stipulate any fixed maximum thresholds for variable remuneration. The current threshold for variable remuneration is 100% and, subject to shareholder or supervisory board decision, 200% of fixed remuneration. However, medium-sized investment firms must determine "appropriate" values for the ratio of variable and fixed remuneration, taking into account the business activities of the investment firm, the associated risks and the impact on the risk profile of the investment firm. The proportion of fixed remuneration must be sufficiently high to enable the operation of a fully flexible policy on variable remuneration components.

Otherwise, the previous regulations apply: The amount of the variable remuneration cannot be guaranteed. It must be ensured that the variable remuneration does not jeopardise the investment firm's sufficient own funds. It is also important that the amount of the fixed remuneration does not jeopardise the variable remuneration. On the other hand, the variable remuneration should provide an effective behavioural incentive.

The total amount of variable remuneration must be determined transparently and comprehensibly in a formalised process with appropriate involvement of the control units.

Overall, the provisions of the regulation must be implemented in proportion to the complexity and size of the investment firm. The remuneration policies and parameters must be reviewed once a year and adjusted if necessary.

## Malus and clawback arrangements, rights of retention

According to the WpIVergV, investment firms must use suitable criteria to determine when variable remuneration is to be reduced (in part or in whole). So, investment firms must agree on appropriate malus and clawback agreements with their risk takers.

In a change from the original proposal, the WpIVergV no longer stipulates that up to 100% of variable remuneration should be forfeited in the event of a subdued or negative financial result of the investment firm. Instead, the WpIVergV requires an appropriate reduction where there has been a weak or negative financial result.

However, where the risk taker concerned is responsible for significant losses for the investment firm, has participated in activities that have led to significant losses for the investment firm or can no longer be considered fit and proper for his activities, then a full contraction of the variable remuneration is mandatory.

As before, variable remuneration for risk takers can be withheld over a period of three to five years and, again as before, the proportion of remuneration withheld can range from 40 to 60%.

It must be deferred over a period of at least three to five years. The minimum retention period must depend on the business cycle of the investment firm, the nature of its business and the activities of the risk takers.

However, the WpIVergV has undergone a significant change compared to the consultation version: a threshold must now be set for a risk taker's annual variable remuneration and when this is met, the proportion of variable remuneration to be withheld increases to 60%. In no case may the threshold value exceed the amount of EUR 500,000. This has been harmonised with what already applies to large investment firms under the InstitutsVergV.

## Exceptions to remuneration requirements

An exception has also been added for risk takers

- whose annual variable remuneration does not exceed EUR 50,000 and
- this amount does not account for more than a quarter of their total annual remuneration.

Such risk takers are exempt from the regulations relating to remuneration from certain instruments, the retention of variable remuneration and the conditions for additional pension benefits.

## Group-wide regulations

The WpIVergV stipulates a group-wide remuneration policy in order to achieve a uniform implementation of the remuneration policy. The regulation is aimed at the parent undertaking, i.e. domestic EU parent investment firms, EU parent investment holding companies or EU parent mixed financial holding companies that must consolidate in accordance with Article 7 of the [Investment Firm Regulation](#) (or IFR).

It has now been clarified that the rules on group-wide remuneration do not apply

- to parent undertakings domiciled in a contracting state insofar as they are bound by special remuneration requirements in accordance with other EU legal acts and
- to companies domiciled in a third country that would be bound by special remuneration requirements in accordance with other EU legal acts if they were domiciled in a contracting state.

This exception is intended to avoid conflicts between national law and the WpIVergV, which only applies indirectly in these countries.

## Transitional provision

One of the key points of criticism of the consultation version, the lack of a transitional provision, has also been mitigated.

Instead of "immediate" implementation, which would have been difficult under labour law, the new regulations essentially only have to be implemented by 1 January 2025.

This gives investment firms more time to adapt their contracts and internal policies. The provision relates in particular to the determination of severance payments, the review and adjustment of the criteria for determining the amount of variable remuneration as well as adjustments to employment contracts and company agreements with regard to retention bonuses, remuneration or additional pension benefits.

As a result, the WpIVergV still requires some adjustments and adaptations compared to the status quo.

However, firms will have a little more time for this and, considering that all the key parameters have been known for some time, the final implementation effort should be limited.

## Simmons & Simmons key contacts



**Jochen Kindermann**

Partner

T +49 69 907454 43

E [jochen.kindermann@simmons-simmons.com](mailto:jochen.kindermann@simmons-simmons.com)



**Lena Schäfer**

Supervising Associate

T +49 69 907454 30

E [lena.schaefer@simmons-simmons.com](mailto:lena.schaefer@simmons-simmons.com)

For additional information on our firm, please visit our website at [simmons-simmons.com](https://www.simmons-simmons.com).

© Simmons & Simmons LLP and its licensors. All rights asserted and reserved. This document is for general guidance only. It does not contain definitive advice.

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS, United Kingdom. It is authorised and regulated by the Solicitors Regulation Authority and its SRA ID number is 533587. The word "partner" refers to a member of Simmons & Simmons LLP or one of its affiliates, or an employee or consultant with equivalent standing and qualifications. A list of members and other partners together with their professional qualifications is available for inspection at the above address.