

## LOSSEC: SUBSEQUENT AMENDMENTS TO VERSION DATED AS OF APRIL 28, 2021

### Article 24. Suitability requirements.

1. Credit institutions, [financial holding companies and mixed financial holding companies](#) shall have a board of directors made up of individuals meeting the necessary suitability requirements to hold such office. In particular, they shall have good commercial and professional repute, suitable knowledge and experience to perform their duties, and a readiness to ensure sound governance of the institution.

The general composition of the board of directors as a whole should bring together sufficient knowledge, competences and experience in the governance of credit institutions as to properly understand the activities of the institution, including its main risks, and to ensure the effective capacity of the board of directors to take decisions independently and autonomously to the benefit of the institution. In any event, there should be assurances that board member selection procedures promote a diversity of experience and knowledge, facilitate the selection of female board members and, generally, are free from implicit bias that may entail any degree of discrimination.

2. The foregoing requirements of good repute, knowledge and experience shall likewise apply for managing directors or similar officers, and for those in charge of internal control functions and other key posts in the day-to-day running of the credit institution's financial activity. These requirements shall also be demanded of natural persons representing directors on the board who are legal persons. They shall likewise apply to persons who effectively determine the business approach of branches of credit institutions not authorised in a European Union Member State.

3. For the purposes of the provisions of the foregoing paragraphs:

a) Good repute is attributed to those who have shown a personal, commercial and professional conduct that casts no doubt on their ability to pursue sound and prudent management of the institution. To assess good repute, all information available should be considered, in keeping with the parameters set in the regulations laid down. – [In order to assess the good repute all the available information shall be taken into account, including the sentences for crimes or offences and penalties for administrative offences, taking into account:](#)

[1.- The degree of intent or recklessness in the crime, offence, or administrative infringement.](#)

[2.- Whether the penalty or sanction is confirmed.](#)

[3.- The seriousness of the penalty or sanction imposed.](#)

[4.- The classification of the facts resulting in the penalty or sanction, particularly in the case of financial crimes, money laundering, crimes against the socio-economic order and against the tax and social security authorities, or if they entail an infringement against the regulatory rules governing the exercise of banking, insurance, or the securities market, or the protection of consumers.](#)

5.- If the facts giving rise to the penalty or sanction were carried out for the party's own benefit or harmed the interests of third parties who had entrusted the administration or management of business to them, and in this case, the significance of the facts giving rise to the penalty or sanction in relation to the functions assigned or due to be assigned to the officer in question in the credit institution.

6.- The time barring of the criminal acts or administrative offence or the possible time barring of criminal responsibility.

7.- The existence of attenuating circumstances and subsequent conduct since the committing of the crime or offence.

8.- Repeated penalties or sanctions for crimes, offences or infringements.

For the purposes of the evaluation provided for in this sub-paragraph, the entity shall send the Banco de España an extract from police records on the person being assessed. The Banco de España shall also consult the databases of the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority on administrative sanctions and may set up a committee of independent experts in order to report on assessment dossiers in which there are sentences for crimes and offences.

b) Suitable knowledge and experience to perform their duties in credit institutions are attributed to those who have the appropriate skills level and profile, in particular in the banking and financial services areas, and practical experience from their previous positions over sufficient periods of time.

c) To assess the ability of the members of the board of directors to exercise good governance of the institution, the existence of potential conflicts of interest and the ability to dedicate sufficient time to perform the attendant functions shall be taken into account.

## **Article 25. Supervision of suitability requirements.**

1. Credit institutions and the branches of credit institutions not authorised in a European Union Member State should have, commensurate with the nature, scale and complexity of their activities, suitable internal units and procedures to carry out the ongoing selection and assessment of officers subject to the suitability regime provided for in the previous Article.

Credit institutions shall likewise identify the key posts for the day-to-day running of their financial activity and those in charge of internal control functions, maintaining for the Banco de España an updated list of the individuals performing such functions, the assessment of suitability made by the institution and the attendant substantiating documentation.

2. The assessment of suitability requirements shall be both by the credit institution itself and, where appropriate, by its promoters, or by the acquirer of a qualifying holding, if this were the case, and, when appropriate, by the Banco de España.

3. Credit institutions, financial holding companies and mixed financial holding companies should seek at all times to ensure compliance with the suitability requirements envisaged in this chapter. To this end, the Banco de España shall call for the temporary suspension or definitive removal from office of the

post-holders envisaged in the previous Article or for rectification of the deficiencies identified in the event of a lack of suitable good repute, knowledge or experience or of the ability to exercise good governance.

If the institution does not fulfil these requirements within the period stipulated by the Banco de España, the latter may resolve to temporarily suspend or definitively remove from office the related officer, in conformity with the procedure laid down in Chapter V of Title III. And this without prejudice to imposing the related penalties provided for in Title IV.

#### **Article 29. Corporate governance system.**

1. Credit institutions and consolidated groups of credit institutions shall have robust corporate governance arrangements, including:

- a) A clear organisational structure with well-defined, transparent and consistent lines of responsibility.
- b) Effective procedures to identify, manage, monitor and report the risks to which they are or might be exposed.
- c) Adequate internal control mechanisms, including sound administration and accounting procedures.
- d) Remuneration policies and practices:

1° non-discriminatory with regard to gender, and

2° consistent with and conducive to sound and effective risk management.

The arrangements, procedures and mechanisms envisaged in this paragraph shall be exhaustive and proportionate to the nature, scale and complexity of the risks inherent in the institution's business model and activities. Further, they shall observe the technical criteria relating to the organisation and treatment of risks laid down in the regulations.

2. The board of directors of credit institutions shall define a corporate governance system that ensures sound and prudent management of the institution, and that includes an appropriate distribution of functions in the organisation and the prevention of conflicts of interest. The board of directors shall monitor the application of this system and be accountable for it. In this connection it should control and periodically evaluate its effectiveness and adopt the appropriate measures to remedy its shortcomings.

3. The following functions may not be delegated by the board of directors:

- a) The monitoring, control and periodic evaluation of the effectiveness of the corporate governance system and the adoption of the appropriate measures to remedy, where necessary, its shortcomings.
- b) To assume responsibility for the administration and management of the institution, and the approval and monitoring of the application of its strategic objectives, its risk strategy and its internal governance.
- c) To ensure the integrity of the accounting and financial reporting systems, including financial and operational control and compliance with applicable legislation.

d) To oversee the disclosure of information and communications relating to the credit institution.

e) To ensure the effective supervision of senior management.

4. The chair of the board of directors may not simultaneously hold the post of chief executive officer, unless the institution justifies this and the Banco de España authorises it.

5. Credit institutions shall have a website on which they shall disseminate the public information envisaged in this chapter and communicate how they are complying with corporate governance obligations, in keeping with the attendant regulations laid down.

6. Likewise, as part of governance and organisational structure procedures, credit institutions and consolidated groups of credit institutions that provide investment services shall observe the internal organisation requirements set out in Article 70 ter.2 of Securities Market Law 24/1988 of 28 July 1988, with the specifications, if any, that are laid down in regulations.

The adoption of such measures is understood without prejudice to the need to define and apply those other organisational policies and procedures which, in specific relation to the provision of investment services, are required of those institutions in application of the specific securities market regulations.

7. Likewise, as part of governance and organisational structure procedures, credit institutions and consolidated groups of credit institutions properly document and make available and, where appropriate, refer to the Banco de España the information on the loans granted to members of the Board of Directors and their related parties as established by a Circular. For this purpose, the following will be considered as related parties of a member of the board of directors:

a) Her spouse, unmarried partners and descendant and descendant relatives to the first degree of consanguinity or adoption.

b) Any corporate entity in which the member of the board of directors or any person indicated in a) above, has a significant shareholding equal or higher of 10% of its sharecapital or voting rights or may have a significant influence or they have a senior management position or are members of the board of directors.

## **Article 32. Remuneration policy.**

1. Credit institutions, on setting and applying their overall remuneration policy, including wages and discretionary pension benefits, for staff categories whose professional activities significantly impact on the risk profile of the institution, its group, parent or subsidiaries, shall conform to the principles established in Article 33 in a manner commensurate with their size, their internal organisation and the nature, scope and complexity of their activities.

In particular At least the following persons will be considered as having a significant impact on the risk profile of the institution:

(a) all members of the management body and senior management;

(b) staff members with managerial responsibility over the institution's control functions or material business units;

(c) staff members entitled to significant remuneration in the preceding financial year, provided that the following conditions are met:

(i) the staff member's remuneration is equal to or greater than EUR 500 000 and equal to or greater than the average remuneration awarded to the members of the institution's management body and senior management referred to in point (a);

(ii) the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile. A material business unit will be determined in accordance with the European Banking Authority regulatory technical standards approved in accordance with article 94.2 of Directive 2013/36 of 26 June.

~~, these principles shall be applied to senior executives, employees who assume risks, those who perform control functions and any staff receiving overall remuneration which is included in the same remuneration bracket as that of senior management and employees who assume risks, whose professional activities bear significantly on the institution's risk profile.~~

2. Credit institutions shall submit to the Banco de España whatsoever information the latter requires of them to verify compliance with this obligation and, in particular, they shall submit a list indicating the staff categories whose professional activities bear significantly on their risk profile. This list shall be submitted annually and, in any event, whenever there have been significant changes. The Banco de España shall determine how this list is to be presented.

3. Without prejudice to the obligations contained in Article 450 of Regulation (EU) No 575/2013 of 26 June 2013, credit institutions shall make public the total remuneration earned in each business year by each board member.

4. The provisions laid down in this Article, and in Articles 33, 34, 35 and 36, shall not be applicable on a consolidated basis to the following affiliates:

(a) subsidiary undertakings established in the Union where they are subject to specific remuneration requirements in accordance with other Union legal acts;

(b) subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other Union legal acts if they were established in the Union.

5. Without prejudice to the previous paragraph~~The provisions laid down in this Article, and in Articles 33, 34, 35 and 36, shall be applicable to institutions at the level of the group, parent and subsidiary, including those established in offshore financial centres.~~to members of staff of subsidiaries that are not subject to this Directive on an individual basis where:

(a) the subsidiary is either an asset management company in accordance with article 4.1.19 of Regulation (EU) 575/2013 of 26 of June, or an investment firm that provides the investment services and activities listed in article 140.1.b), c), d) e) and f) of the recast text of the Securities Market Law.

(b) those members of staff have been mandated to perform professional activities that have a direct material impact on the risk profile or the business of the institutions within the group.

### **Article 33. General remuneration policy principles.**

1. Remuneration policy for the staff categories referred to in Article 32(1) shall be determined in keeping with the following general principles:

a) It shall promote and be consistent with sound and effective risk management, and it shall not encourage risk-taking that exceeds the level of tolerated risk of the institution.

b) It shall be consistent with the corporate strategy, objectives, values and long-term interests of the institution and shall include measures to avoid conflicts of interests.

c) Staff performing control functions within the credit institution shall be independent from the business units they oversee, have the necessary authority to perform their functions and be remunerated in accordance with the attainment of targets related to their functions, irrespective of the performance of the business areas they control.

d) The remuneration of senior executives entrusted with risk management and with compliance functions shall be overseen directly by the remunerations committee.

e) A clear distinction shall be drawn between the criteria for setting:

1.- fixed remuneration, which should chiefly reflect relevant professional experience and the level of responsibility in the organisation, as set out in the corresponding job description as part of the terms of employment; and

2.- variable remuneration, which should reflect not only a sustainable and risk-adjusted performance but also a performance in excess of that required to meet the job description as part of the terms of employment.

f) The remuneration policy shall be a gender neutral remuneration policy; being understood as based in equal pay between men and women employees for a same job or for a job of equal value.

2. The institution's board of directors shall adopt and periodically review the general remuneration policy principles, and shall be responsible for overseeing their application.

In addition, remuneration policy shall be subject, at least once a year, to a central and independent internal evaluation, for the purposes of verifying whether the remuneration guidelines and procedures adopted by the board of directors in its oversight role are being fulfilled.

3. Remuneration policy for the credit institution's board members shall be submitted for approval to the annual general meeting, general assembly or equivalent body, under the same terms as set for listed companies under mercantile legislation.