REMUNERATION POLICIES IN THE BANK SECTOR: THE NEW (STRICTER) RULES ON GOLDEN PARACHUTES ARE CONFIRMED BY THE BANK OF ITALY

After completion of the public consultation opened in March this year[1], the Bank of Italy finally issued on October 23, 2018 an updated version of Regulation No. 285/2013 ("Regulation 285") on remuneration policies in the banking sector.

Banks and investment firms (*società di intermediazione mobiliare*) are now required to align with Regulation 285 by adopting compliant remuneration policies by the time the financial statements for fiscal year 2018 are approved[2].

Among a number of significant changes, Regulation 285 introduces additional and more detailed provisions in the sensitive area of <u>golden parachutes</u>.

First of all, banks are required to identify the minimum performance requirements which must be met in order for a risk taker to receive a golden parachute. In addition, the criteria and limits (in terms of number of annual salaries) for the determination of golden parachutes must be first approved by the shareholders' meeting.

In addition, <u>golden parachutes must be considered for all purposes as variable remuneration</u> and therefore:

(a) included in the fixed/variable ratio; and

(b) subject to all the limitations and conditions applicable to variable remuneration, including in terms of deferral and partial pay out in instruments.

To more clearly reflect the above, the notion of variable remuneration as revised by Regulation 285 now expressly includes, among others, the severance amounts paid by the bank at the time of termination to settle a potential or actual labour dispute (including therefore golden parachutes).

The Bank of Italy thus confirms an approach that partially departs from the EBA Guidelines of December 2015, according to which severance payments (including golden parachutes) should not be taken into account for the purpose of both the calculation of the fixed/variable ratio and the application of deferral and pay out in instruments, when they are agreed "*on a settlement in case of a potential or actual labour dispute, to avoid a decision on a settlement by the courts*" and where "*the institution has demonstrated to the competent authority the reasons and appropriateness of the amount of the severance payment*".

---

[1] The public consultation focused on the proposed amendments to Regulation No. 285, introduced mainly with a view to aligning its contents to the EBA Guidelines of December 2015 and complying with Articles 74(3) and 75(2) of Directive 2013/36/EU (so-called CRD IV). We examined the main changes proposed by the Bank of Italy in our April newsletter that you can find at *http://www.legance.it/newsletter/remuneration-policies-in-the-bank-sector-new-rules-on-golden-parachutes*.

[2] Banks also have to align by April 1, 2019 the individual agreements for the members of strategic supervision, management and control bodies and by June 30, 2019 the individual agreements for the remaining personnel. National collective agreements should also be updated at the earliest occasion.

The Bank of Italy takes a much more prudential position and prefers to consider the amounts paid within the framework of a settlement agreement as variable remuneration for all purposes.

As a consequence, any amount given as severance at the time of termination, also when forcedly paid to avoid a lawsuit, is to be included in the fixed/variable ratio, is subject to deferral and must be partially paid out in instruments[3].

As a partial exception to the above rule, the amounts paid on the occasion of a settlement agreement are excluded from the fixed/variable ratio (but still subject to deferral and partial pay out in instruments) if calculated on the basis of a pre-defined arithmetic formula to be reflected in the bank's remuneration policy.

The same exclusion from the fixed/variable ratio applies also to the consideration paid for post-employment non-compete covenant which does not exceed, for each year of validity of the covenant, the last annual fixed remuneration[4].

***

The Financial Intermediaries Regulations and Employment Departments of Legance are available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

For further information:

Marco Penna

Partner

T. +39 02.89.63.071
mpenna@legance.it

Elena Ryolo

Senior Counsel

T. +39 02.89.63.071
eryolo@legance.it

or Your direct contact at Legance.

[3] The prudent approach adopted by the Bank of Italy may in principle produce the effect of encouraging managers to start lawsuits related to their termination rather than settling the dispute out of Court; as a matter of fact, any indemnification for unfair termination that banks may be sentenced to pay, according to the national collective agreement, after a lawsuit or an arbitration, would not be subject to any fixed/variable ratio or deferral mechanism and would be payable fully in cash.

[4] According to the new Regulation 285 the consideration paid for a post-employment non-compete covenant is not considered variable remuneration at all when its overall amount does not exceed the last annual fixed remuneration.

Newsletter NOVEMBER 2018

THE FIRM

Legance is an independent Italian law firm with expert, active and result-oriented lawyers, with a strong team spirit that has permitted a flexible and incisive organisational model that, through departments active in all practice areas of business law, offers the right balance between the specialist and the lawyer as a global consultant. Legance comprises more than 200 lawyers, working in its Milan, Rome, London and New York offices, and has a diverse and extensive practice covering the following areas: M&A and Corporate; Banking; Project Financing; Debt Capital Markets; Equity Capital Markets; Financial Intermediaries Regulation; Investment Funds; Litigation and Arbitration; Restructuring and Insolvency; EU, Antitrust and Regulation; Labour and Employment; Tax; Administrative Law; Real Estate; Energy, Gas and Natural Resources; Compliance; Shipping, Aviation and Transportation Law; Intellectual Property; TMT (Technology, Media, Telecommunications); Environmental Law; Insurance; Law & Technology; Food Law. For more information, please visit our website: www.legance.com.

DISCLAIMER

The only purpose of this Newsletter is to provide general information. It is not a legal opinion nor should it be relied upon as a substitute for legal advice.

This Newsletter is sent to persons who have provided their personal data in the course of professional relations, meetings, seminars, workshops or similar events. It's may also receive this newsletter because Legance was authorized. You may finally receive it, because you have engaged Legance. If you wish not to receive the newsletter anymore, please write an email to newsletter@legance.it and you will be removed from the list of recipients. Until you cancel yourself from the list of recipients your personal data will be processed on paper or electronically for purposes which are related to the existing professional relations, or for information and divulgation reasons, but are not communicated to third parties, unless such communication is imposed by law or strictly necessary to carry out the relation. Data controller is **Legance – Avvocati Associati**. The list of the data processors is available if you write an email to clienti.privacy@legance.it. In any event, you are entitled to your rights as set forth in the current data protection legislation. All the above requests must be forwarded by fax to **Legance – Avvocati Associati**, on nr. +39 06 93 18 27 403.

Legance - Avvocati Associati and its partners are not regulated by the Solicitors Regulation Authority ("SRA") and the SRA's compulsory insurance scheme does not apply to them (they are instead covered by equivalent Italian insurance). A list of the partners of Legance - Avvocati Associati is open to inspection at the office of its London branch at Aldermary House 10-15 Queen Street - EC4N1TX, and also on the following website www.legance.com.
Legance LLP only advises on Italian law related matters.

Legance AVVOCATI ASSOCIATI

MILAN Via Broletto, 20 – 20121 – T +39 02 89 63 071 **ROME** Via di San Nicola da Tolentino, 67 – 00187 – T +39 06 93 18 271
LONDON Aldermary House 10 – 15 Queen Street – EC4N 1TX – T +44 (0)20 70742211
NEW YORK 780 Third Avenue – New York, NY 10017 – T +1 (212)203 2255

info@legance.it - www.legance.com