Employment in Financial Services

Contributing Editor

Louise Skinner at Morgan Lewis & Bockius

01. What is the primary regulatory regime applicable to financial services employees in your jurisdiction?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

The main regulatory regime applicable to financial services employees is the Brazilian Labour Code (CLT). However, several rules created from collective bargaining have been formalised in the Collective Labour Contract. That contract established additional standards with a validity period determined by the contract.

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France

Author: *Béatrice Pola*
at DS Avocats

Due to the unique activities of the financial sector, which involve confidential information, the handling of funds, possible conflicts of interest, etc, there is a special legal framework, specific to financial services employees, which is deployed at national and European levels.

Companies and employees in the sector are subject to private law. As such, they are bound by all the norms of French law, such as Law No. 2016-1691 dated 9 December 2016, on transparency, the fight against corruption and the modernisation of economic life; Ordinance No. 2017-1387 of 22 September 2017, on the predictability and securitisation of labour relations; Law No. 2022-401 of 21 March 2022, aimed at improving the protection of whistleblowers, or Law No. 2022-1598 of December 21, 2022 on emergency measures relating to the functioning of the labor market with a view to full employment. Most legal provisions specific to financial services employees are contained in the Monetary and Financial Code.

In addition, collective agreements govern the working conditions of financial services employees. The most common collective agreements in the financial services sector are:

- The national collective agreement of financial companies of 22 November 1968;
- The national collective agreement for financial market activities of 11 June 2010; and
- The national collective agreement of the bank of 10 January 2000.

Finally, two authorities supervise operators in the financial services sector: the Financial Markets Authority (FMA), which is an independent administrative authority that regulates and supervises financial services operators, through its General Regulations; and the French Prudential Supervision and Resolution Authority (ACPR), which is part of the Banque de France and is responsible for supervising banks.

At a European level, several instruments provide a framework for the financial services sector, including:

- for investment funds (Annex II of Directive 2011/61/EU for alternative investment funds (AIF) and Articles 14a, 14b of Directive 2009/65/EC for UCITS) ;
- for investment firms (Directive 2019/2034/EU, on the prudential supervision of investment firms) ; and
- for markets in financial instruments (Directive 2014/65/EU).

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

In the UK, there are two main regulators responsible for the supervision of financial institutions. These are:

- The Prudential Regulation Authority (the PRA) – The PRA supervises over 1,500 financial institutions, including banks, building societies, credit unions, insurance companies and major investment firms. It creates policies for these institutions to follow and watches over aspects of their business.
- The Financial Conduct Authority (the FCA) – The FCA regulates the conduct of approximately 50,000 firms, prudentially supervises 48,000 firms, and sets specific standards for around 18,000 firms.

Some financial institutions are regulated by both the PRA and FCA (dual-regulated). Those financial institutions must comply with rules set down by the PRA in its rulebook (the PRA Rulebook) and by the FCA in its handbook (the FCA Handbook). Other firms are regulated solely by the FCA (solo-regulated) and must comply with the FCA handbook alone. Different rules can apply depending on the nature and size of the firm. The PRA and FCA work closely on certain issues and firms, but the FCA focuses specifically on ensuring fair outcomes for consumers.

The Senior Managers and Certification Regime (SM&CR) sets out how the UK regulators oversee people in businesses supervised and regulated by them, and how those people must act. As the FCA has summarised, “The SM&CR aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence” (https://www.fca.org.uk/firms/senior-managers-certification-regime).

SM&CR consists of three elements:

- The Senior Managers Regime (SMR) – This applies to the most senior people in a firm (senior managers) who perform one or more senior management functions (SMFs). These functions are specified in the PRA Rulebook and the FCA Handbook. Senior managers must be pre-approved by the PRA or FCA before starting their roles. Each senior manager must also have a “Statement of Responsibilities” (that sets out what they are responsible and accountable for), which may include (depending on the firm) certain responsibilities prescribed by the regulator known as “Prescribed Responsibilities”. Every year, senior managers must be certified as fit and proper to carry out their role by their firm.
- The Certification Regime (CR) – This applies to employees who, because of their role, could pose a risk of significant harm to the firm or its customers, such as employees who offer investment advice (certified staff). For solo-regulated firms, these roles are generally called certification functions. Firms must certify that these employees are fit and proper for their roles both at the outset of their employment and continuously.
- The Conduct Rules – The Conduct Rules set minimum standards of individual behaviour in financial services in the UK. They apply to almost all employees of a firm. They also include particular rules applicable only to senior managers.

Certain parts of SM&CR apply to particular firms only. This is outside the scope of this note, which sets out the general position under SM&CR.

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02. Are there particular pre-screening measures that need to be taken when engaging a financial services employee? Does this vary depending on seniority or type of role? In particular, is there any form of regulator-specified reference that has to be provided by previous employers in the financial services industry?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

The law does not require specific procedures or measures before hiring. However, depending on the activities the employee performs, specific certification may be necessary.

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France

Author: *Béatrice Pola*
at DS Avocats

In the financial services sector, candidates must comply with standard recruitment practices, but also with suitability, requirements and, for certain positions, with supervision by the ACPR or the European Central Bank (ECB).

Traditionally, employees in the financial services sector are required to provide the usual documents requested when applying for a job: a cover letter and a curriculum vitae. This is especially important because, as we will see, access to certain positions is conditional. For example, investment advisors must provide proof of either a national diploma attesting to three years of study, or training, or professional experience in the field.

Also, due to the very nature of the financial services business, employees of companies in the sector are required to be honourable.

The Monetary and Financial Code provides that certain operational activities in the financial services sector, such as being a managing director, are barred in the event of a felony conviction, a prison sentence of at least six months with a suspended sentence in connection with the financial world, or a management ban (article L. 500-1 of the Monetary and Financial Code). For this reason, the criminal record of a concerned candidate is generally requested at the time of hiring.

In addition, the appointment or renewal of a senior executive of a credit institution, a finance company, an investment firm other than a portfolio management company, a payment institution or an electronic money institution must be ratified by the ACPR, and by the ECB in the case of major credit institutions. Validation

of the appointment or renewal is based on good reputation and competence, which is assessed based on five criteria: experience, reputation, absence of conflicts of interest and independence of mind, availability, and collective ability.

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

For employees subject to the SMR, anyone performing an SMF must be pre-approved by the relevant regulator before they can start their role. Generally, firms that wish to employ a senior manager must first carry out sufficient due diligence to satisfy themselves that the candidate is a fit and proper person to perform their proposed functions. In this regard, firms must consider the individual's qualifications, training, competency and personal characteristics. The firm must also carry out a criminal records check. They may then apply to the relevant regulator for that candidate's pre-approval. In the firm's application, all matters relating to the candidate's fitness and propriety must be disclosed. The firm must also enclose a statement of that individual's proposed responsibilities and (depending on the firm) the latest version of the firm's management responsibilities map.

For employees subject to the CR, before the appointment and annually thereafter, these employees must be certified by the employing SM&CR firm as being fit and proper. Certification does not involve pre-approval by the FCA or PRA.

Additionally, firms must comply with the regulatory reference rules for all candidates subject to either the SMR or CR before their employment. These rules require employing firms to request a regulatory reference from all previous employers covering the past six years of employment. Information must be shared between regulated firms using a particular template, which includes information relevant to assessing whether a candidate is fit and proper. Firms are also expected to retain records of disciplinary and fit and proper findings going back six years for their employees (or longer for findings of gross misconduct), and they must update regulatory references that they have previously given where new significant information comes to light that would impact the content of a previously given regulatory reference.

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03. What documents should be put in place when engaging employees within the financial services industry? Are any particular contractual documents required?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

There is no legal requirement for specific documents, and the CLT does not require a contract. However, contracts are a customary business practice in several sectors, including financial services.

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France

Author: *Béatrice Pola*
at DS Avocats

The hiring of employees in the financial services sector follows the common law regime. Thus, in principle, the hiring of an employee means the contractualising of the employment relationship. Although it is not in principle mandatory for the parties to sign an employment contract, but for exceptional cases (part-time employment contract, fixed-term contract, etc), it is nevertheless recommended to contractualise the relationship to avoid any future dispute.

It is also common, at the time of hiring, for the employee to commit to a non-compete and confidentiality obligation concerning his employer, either through clauses in his employment contract or through a separate agreement. These obligations must be the subject of a signed document and are therefore generally incorporated into the employment contract. In addition, most companies in the financial services sector make the hiring of an employee conditional upon that person signing a charter of good conduct or a policy to prevent and manage conflicts of interest.

The employer is also required to make a pre-employment declaration.

Finally, as stated, for certain positions, the employer must notify the ACPR or the ECB of the hire, and they must ratify the appointment.

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

As a matter of general UK employment law, employers must give employees written particulars of certain terms and conditions of employment. This is known as a “section 1 statement” after section 1 of the Employment Rights Act 1996, which sets out the mandatory information that employers must give to employees no later than the first day of their employment. This includes fundamental information such as the names of the employer and employee; the date of commencement of employment; the rates and timing of pay; and working hours. Other prescribed particulars (such as information regarding pensions, collective agreements and training) can be provided to employees in instalments within two months of commencement of employment. Typically, a written employment contract will contain the relevant information to satisfy these requirements.

Financial services employers should ensure that, in addition, their employment contracts reinforce the requirements of SM&CR. This will help the employer manage the employment relationship in a manner compliant with SM&CR and demonstrate to the relevant regulators the employer’s commitment to compliance with SM&CR. The employment contract will usually include, therefore, additional provisions regarding the completion of SM&CR-compliant background checks; confirmation of the employee’s regulated function (eg, their SMF or certification function); required regulatory standards of conduct; cooperation with fitness and propriety assessments; and tailored termination events.

In addition, all senior managers must have a statement of responsibility setting out their role and responsibilities. Certain firms must also allocate certain regulator-prescribed responsibilities (prescribed responsibilities) among senior managers. It is common to set out a senior manager’s regulatory responsibilities in their employment contract.

Dual-regulated firms must also ensure that individuals approved to carry out a PRA-designated SMF are subject to any specific contractual requirements required by the PRA. For example, depending on the type of firm, a firm may be required to ensure that the relevant individual is contractually required to comply with certain standards of conduct, such as to act with integrity and with due care and skill (among other

requirements).

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04. Do any categories of employee need to have special certification in order to undertake duties for financial services employers? If so, what are the requirements that apply?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

Yes, special certification is required for financial services employers to undertake their duties.

The CPA-10 (ANBIMA Series 10 Professional Certification) is designed for professionals who distribute investment products for retail in bank branches or service platforms.

The CPA-20 (ANBIMA Series 20 Professional Certification) is for professionals who distribute investment products to clients in the high-income retail, private, corporate, and institutional investor segments in bank branches or on service platforms.

The CEA (ANBIMA Certification of Investment Specialists) is a certification that qualifies financial market professionals to act as investment specialists. These specialists can recommend investment products to clients in different segments and advise account managers.

The CFG (ANBIMA Certification of Fundamentals in Management) is for certified professionals who know the sector's technical basis, which is an advantage for occupying various positions in asset-management companies.

The CGA (ANBIMA Manager Certification) qualifies professionals to work with the management of third-party resources in fixed-income investment funds, shares, foreign exchange, multimarket, managed portfolios, and index funds.

The CGE (ANBIMA Manager Certification for Structured Funds) qualifies professionals to work with third-party resource management in the structured products industry.

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France

Author: *Béatrice Pola*
at DS Avocats

Since 1 July 2010, the FMA General Regulation requires investment services providers to pass an examination to ensure that certain employees have a minimum knowledge base in the field.

This applies to salespersons, managers, financial instrument clearing managers, post-trade managers, financial analysts, financial instruments traders, compliance and internal control officers, and investment services compliance officers.

Since 1 January 2020, the following must also obtain certification: natural persons acting as a financial

investment advisor; natural persons with the power to manage the legal person authorised as a financial investment advisor; and persons employed to provide investment advice by the legal person authorised as a financial investment advisor.

FMA certification must be obtained within a maximum of six months of the beginning of that person's employment with an investment services provider. Certification is issued by FMA-certified organisations.

People already in practice before 1 July 2010 are exempt from this certification. This is known as a grandfather clause.

In addition to this minimum knowledge requirement, certain professionals are subject to an assessment of their knowledge and skills. This applies to natural persons who provide not only information but also financial advice, and generally takes the form of an annual evaluation interview.

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

See question 2.

All individuals performing an SMF, as classified by the FCA or PRA, will be subject to the SMR. SMFs are described in the Financial Services and Markets Act 2000 (FSMA) as functions that require the person performing them to be responsible for managing one or more aspects of a firm's affairs authorised by the FSMA, and those aspects involve, or might involve, a risk of serious consequences for the firm or business or other interests in the UK. As noted, any individual performing an SMF will need to be pre-approved by the relevant regulator before they can start their role, and thereafter they must be certified as fit and proper by their firm annually. Applications to the regulator for pre-approval must disclose all matters relating to a candidate's fitness and propriety and be accompanied by a statement of responsibilities. Firms must carry out a criminal records check as part of the application for approval.

Additionally, employees of firms who are not senior managers but who, because of their role, could still pose a risk of significant harm to the firm or any of its customers, may be subject to the CR. The certification functions that place an employee within the ambit of the CR are different under the rules of the FCA and the PRA but include persons such as those dealing with clients or those subject to qualification requirements. These employees must be certified by their firm as fit and proper for their roles both at the outset of their employment and on an annual basis thereafter (certified staff). Firms are not required to carry out criminal records checks for certified staff, but firms can choose to do so to the extent it is lawful.

The regulators have set out detailed guidance for firms to consider when assessing an individual's fitness and propriety. This includes assessing an individual's honesty, integrity and reputation; competence and capability; and financial soundness.

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05. Do any categories of employee have enhanced responsibilities under the applicable regulatory regime?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

Responsibility differs based on the complexity and responsibility of the tasks assigned to the employee and defined by the employer. However, all companies in the sector must comply with financial market institutions, which may imply that employees have a responsibility towards different entities. We summarise the institutions of the Brazilian financial market as follows:

The Securities and Exchange Commission (CVM)

This was created to monitor, regulate, discipline, and develop the Brazilian securities market. It is responsible for creating rules for the market and supervising its functioning. The CVM is part of the government and is linked to the Treasury Department, but it has administrative independence.

The Brazilian National Central Bank

This is a federal agency linked to the Treasury Department but with administrative independence, which aims to guarantee the stability of the currency's purchasing power and maintain a solid and efficient financial system. It controls monetary, exchange rate, credit, and financial relations policies abroad, in addition to regulating the National Financial System. The national central bank also supervises financial market institutions.

B3 (Stock Exchange)

This was created in 2017 from the merger of BM&FBOVESPA and Cetip, two crucial financial market players. The new company began accumulating services that serve the market and its investors for fixed and variable income transactions, among other duties.

The Credit Guarantee Fund

This is a non-profit civil association that aims to provide credit guarantees to customers of institutions participating in the fund.

The Private Insurance Superintendence

This controls and supervises the insurance, open private pension, capitalisation, and reinsurance markets.

The Brazilian Association of Financial and Capital Market Entities (ANBIMA)

This has represented the market for over four decades and is responsible for more than 300 institutions. The entity's activities are organised around four commitments: represent, self-regulate, inform and educate. Its main objective is to strengthen the sector's representation and support the evolution of a capital market capable of financing local economic and social development and influencing the global market.

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France

Author: *Béatrice Pola*
at DS Avocats

The activities of certain categories of employees in the financial services sector benefit from greater supervision, due to the risky nature of their activity. These include employees who have business dealings with individuals and employees who may have exposure to the financial markets.

Thus, Article L.533-10 of the Monetary and Financial Code provides that portfolio management companies and investment service providers must, on the one hand, put in place rules and procedures to ensure compliance with the provisions applicable to them. On the other hand, they must put in place rules and procedures defining the conditions and limits under which their employees may carry out personal

transactions on their behalf.

They must still take all reasonable steps to prevent conflicts of interest that could affect their clients. In practice, these employees may be referred to as "sensitive personnel".

In addition, Law No. 2013-672 of 26 July 2013, on the separation and regulation of banking activities introduced several provisions constraining employees who may expose their company to the financial markets. These employees must comply with strict obligations in their activity to limit risk-taking.

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

Every senior manager under the SMR has a “duty of responsibility” concerning the areas for which they are responsible. If a firm breaches a regulatory requirement, the senior manager responsible for the area relevant to the breach could be held accountable for the breach if they failed to take reasonable steps to prevent or stop the breach.

In addition, for most firms, the FCA requires that certain responsibilities – “prescribed responsibilities” – are allocated to appropriate senior managers. These responsibilities cover key conduct and prudential risks. They include, among others, responsibility for a firm’s performance of its obligations under the SMR; responsibility for a firm’s performance of its obligations under the CR; and responsibility for a firm’s obligations around conduct rules training and reporting. Firms must give careful thought to the best person to allocate each prescribed responsibility.

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06. Is there a register of financial services employees that individuals will need to be listed on to undertake particular business activities? If so, what are the steps required for registration?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

There are no specific financial agencies that require registration from employees. For activities that require certification, an assessment controlled by ANBIMA needs to be submitted. The Brazilian Association of Financial and Capital Market Entities (ANBIMA) has represented the market for over four decades. It is responsible for more than 300 institutions, whose objective is to strengthen the sector's representation and support the evolution of a capital market capable of financing local economic and social development.

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France

Author: *Béatrice Pola*

at DS Avocats

In principle, working in the financial services sector does not require registration. However, some companies, such as banks, must be licensed.

The following natural persons who are not employees of a legal person must be registered in the Single Register of Insurance, Banking and Finance Intermediaries (article L.546-1 of the Monetary and Financial Code, amended by article 18 of order no. 2021-1735 of December 22, 2021 modernizing the framework for participative financing):

- intermediaries in banking and payment services as defined in article L. 519-1 of the Monetary and Financial Code.
- financial investment advisors as defined in article L. 541-1 of the Monetary and Financial Code;
- tied agents as defined in article L. 545-1 of the Monetary and Financial Code and intermediaries in participatory financing.

To be registered, these intermediaries must meet four professional conditions: professional liability insurance, good repute, professional capacity and financial guarantees, which are verified by the unique register of insurance, banking and financial intermediaries when they are registered.

In addition, the providers of participative financing services mentioned in article L. 547-1 of the Monetary and Financial Code must be approved by the Financial Markets Authority (FMA).

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

The FCA maintains a public list of authorised firms and the activities for which each firm has permission. This list is known as the Financial Services Register. The register also includes a directory of certified and assessed persons working in financial services – this includes for each firm (as applicable) senior managers; certified staff; directors (executive and non-executive) who are not performing SMFs; and other individuals who are sole traders or appointed representatives.

Firms are responsible for keeping the directory up to date. Firms must report certain information to the FCA about persons included in the register and directory, including information on an individual's role, their workplace location, and the types of business they are qualified to undertake. The FCA provides guidance and Q&As to assist firms with navigating the register and directory.

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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?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

The Collective Labour Agreement establishes several rules for employees in the sector.

There is a determination, through collective negotiation, of:

- percentage of salary increase;
- minimum wage for employees who begin their activities in the sector;
- minimum wage for employees after 90 days' tenure;
- additional pay for length of service;
- additional overtime;
- night additional pay;
- additional pay for unhealthy or dangerous work;
- function bonus;
- cash bonus;
- gratuity for check clearing;
- meal assistance;
- food assistance;
- daycare and nanny assistance;
- funeral assistance;
- transportation vouchers; and
- assistance with night-time travel.

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France

Author: *Béatrice Pola*
at DS Avocats

Under French law, several mechanisms regulate the compensation of employees in the financial services sector to limit risk-taking.

Concerning guaranteed variable remuneration (welcome bonus, recruitment bonus, etc) for new staff, establishments are not allowed to guarantee this beyond the first year of employment; it is said to be "exceptional" and can only be granted if the financial base is sufficiently sound and solid.

In addition, European Directive 2013/36 EU, UCITS V, of 26 June 2013 introduced a "clawback" mechanism that the legislature has transposed into French law. Thus, article L.511-84 of the Monetary and Financial Code provides that "the total amount of variable remuneration may, in whole or in part, be reduced or give rise to restitution when the person concerned has failed to comply with the rules laid down by the institution with regard to risk-taking, in particular because of his responsibility for actions that have led to significant losses for the institution or in the event of failure to comply with the obligations of good repute and competence".

In addition and following the above-mentioned Directive 2013/36/EU (article 94) concerning the deferral of remuneration, the payment of variable remuneration should be made in part immediately and in part on a deferred basis.

Institutions are encouraged to implement a deferral schedule, that properly aligns staff compensation with the institution's business, economic cycle, and risk profile, so that a sufficient portion of variable compensation can be adjusted to results through ex-post risk adjustments.

This schedule consists of the portion of variable compensation deferred, the length of the deferral period and the speed ofvesting of the deferred compensation.

In the event of poor or negative performance by the institutions, leading to a reduction in the total amount

of variable compensation, the payment of variable compensation may be subject to specific arrangements implemented by the institutions, as referred to in Directive 2013/36/EU.

In addition, article L.511-84-1 of the French Monetary and Financial Code specifies that the variable portion that may be reduced or even recovered as a penalty is excluded from the calculation of several indemnities in the event of dismissal, including the legal indemnity for dismissal.

Finally, following Law No. 2013-672 of 26 July 2013 on the separation and regulation of banking activities, the variable remuneration of managers and traders is capped, and cannot exceed the fixed part. In addition, a "say on pay" mechanism has been implemented (ie, the general meeting of shareholders must be consulted on the remuneration paid to executives and traders).

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

The remuneration of financial services employees working at certain firms (such as banks, building societies, asset managers and investment firms) is heavily regulated. The relevant rules can be found in various FCA “Remuneration Codes” (each Code tailored to different firms) and also (for dual-regulated firms) in specific remuneration parts of the PRA Rulebook and directly applicable retained EU law.

The remuneration rules are complex and their application is dependent on each firm. The key principle of the rules, however, is that firms subject to them must ensure that their remuneration policies and practices are consistent with and promote sound and effective risk management.

Some elements of the rules apply to all staff, whereas others apply only to material risk-takers within a particular firm.

By way of a snapshot, the rules generally cover such matters as:

- the appropriate ratio between fixed pay and variable pay, to ensure that fixed pay is a sufficiently high proportion of total remuneration to allow for the possibility of paying no variable pay;
- the amount of any discretionary bonus pool, which should be based on profit, adjusted for current and future risks, and take into account the cost and quantity of the capital and liquidity required;
- performance-related bonuses, which should be assessed based on a variety of factors, including the performance of the individual, the relevant business unit and the overall results of the firm;
- restrictions on guaranteed variable pay and payments on termination of employment; and
- malus and clawback requirements.

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08. Are there particular training requirements for employees in the financial services sector?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

No uniform training is required by law, except for activities that require certification.

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France

Author: *Béatrice Pola*
at DS Avocats

In general, "the employer shall ensure that employees are adapted to their workstation" and "shall ensure that their ability to hold a job is maintained, particularly with regard to changes in jobs, technologies and organizations". This general obligation is imposed on the employer if there is a change in the job description.

In addition, the FMA General Regulation requires all persons mentioned in article 325-24 of the Monetary and Financial Code, including investment service providers, salespersons, managers, and persons responsible for clearing financial instruments, to undergo annual training appropriate to their activity and experience.

Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life also provides that in companies employing at least 500 people, or belonging to a group of companies whose parent company has its registered office in France and whose workforce includes at least 500 people, and whose revenue or consolidated revenue is more than €100 million, a training system must be set up for managers and staff most exposed to the risks of corruption and influence peddling.

Decree no. 2022-894 of 15 June 2022 on the conditions governing the exercise of the profession of intermediary in banking operations and payment services introduces a new obligation in terms of continuing training. From now on, all intermediaries in banking operations and payment services carrying out intermediary activities in real estate credit and their staff must update their professional knowledge and skills, as part of their continuing education, “through professional training of sufficient duration adapted to their activities, taking particular account of changes in the applicable legislation or regulations” (article L. 519-11-3 of of the Monetary and Financial Code). Finally, as we have seen, some positions in the financial services industry may require specific training and certification.

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

The PRA and FCA training and competence regimes set the minimum standards that must be achieved by individuals working in the financial services industry. These regimes aim to ensure that authorised firms have arrangements in place to satisfy themselves that their employees are competent.

All FSMA-authorised firms are required to have adequately trained and competent senior management and employees. The training and competence requirements include:

- Threshold conditions on suitability – All firms must show that persons connected with the firm are fit and proper, taking into account all the circumstances. When assessing the suitability threshold of an employee, the FCA and the PRA will consider:
  - the nature of the regulated activity the firm carries on or is seeking to carry on;
  - the need to ensure that the firm's affairs are conducted soundly and prudently;
  - the need to ensure that the firm's affairs are conducted appropriately, considering especially the interests of consumers and the integrity of the UK financial system; and
  - whether those who manage the firm's affairs have adequate skills and experience and act with probity.

- FCA Principles for Businesses or PRA Fundamental Rules – These rules lay out the parameters of the "fit and proper" standard set for firms in the threshold condition on suitability, and require firms to undertake the following:
    - recruit staff in sufficient numbers;
    - provide employees with appropriate training, with competence assessed continuously;
    - make proper arrangements for employees involved with carrying on regulated activities to achieve, maintain and enhance competence; and
    - train employees to pay due regard to the interests of a firm's customers and treat them fairly.

- Competent employees rule in chapters 3 and 5 of the Senior Management Arrangement Systems and Controls Sourcebook – This is the main employee competence requirement in the training and competence regime under the FSMA and applies to individuals engaged in a regulated activity in UK-regulated firms. The application of this rule can be complex and dependent upon the firm and the activities it undertakes, but in general, it provides that firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

- Detailed training and competence requirements in the FCA's training and competence handbook (TC) – The TC rules are designed to supplement the competent employees rule, especially concerning retail activities carried on by firms. Among others, these rules include the following:
    - rules on assessing and maintaining competence;
    - supervision of employees who have not yet been assessed as competent;
    - appropriate qualifications; and
    - recordkeeping and reporting for firms within its scope, including how a firm assessed its employees as competent, and how it has ensured that its employees remain competent.

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09. Is there a particular code of conduct and/or are there other regulations regarding standards of behaviour that financial services employees are expected to adhere to?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos* at Tortoro Madureira & Ragazzi Advogados

There is no general code defined by law or regulation.

Each company can adopt its standard of behaviour as a rule.

Certain activities require specific protocols for the Prevention of Money Laundering and Combating the Financing of Terrorism:

- the capture, intermediation, and investment of financial resources from third parties in national or foreign currency;

- the purchase and sale of foreign currency or gold as a financial asset or exchange instrument; and

- the custody, issuance, distribution, settlement, negotiation, intermediation, or securities administration.

Within the scope of the Brazilian System for Preventing and Combating Money Laundering and the Financing of Terrorism, it is up to institutions and their employees to adequately comply with Central Bank

regulations. Also, institutions must promote the effectiveness of the apparatus to combat and prevent money laundering, carry out risk management with the implementation of effective policies, procedures, and controls, and help the Brazilian state locate suspicious financial operations so that they can be investigated.

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France

Author: *Béatrice Pola*
at DS Avocats

First of all, various obligations discussed so far have the effect of forcing, if they were not already there, employees in the financial services sector to behave in an honourable manner and respect prudential rules.

In addition, Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life states in article 17 that in certain large companies, managers must take all measures to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling.

This means setting up a code of conduct that will be integrated into the internal regulations, in compliance with the procedure for consulting employee representatives provided for in article L. 1321-4 of the French Labour Code.

This code of conduct involves the implementation of measures and procedures that will be monitored by the French Anti-Corruption Agency. In particular, the code of conduct must define and provide examples of the various types of behaviour to be prohibited as likely to constitute corruption or influence peddling. It must also establish an evaluation and control system, as well as a disciplinary system, enabling the company's employees to be sanctioned if there is a violation of the company's code of conduct.

In addition to this code of conduct, which is part of the internal regulations, almost all players in the financial services sector have put in place charters and policies to protect confidential information and regulate risky activities.

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United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

Yes. Both the FCA and PRA have established their own high-level required standards of conduct known as the Conduct Rules. The FCA’s conduct rules are set out in the FCA’s Code of Conduct sourcebook. The PRA’s conduct rules are set out in the PRA Rulebook (and different versions apply to different types of PRA-regulated firms).

The FCA’s conduct rules apply to most individuals working at an SM&CR firm. The PRA’s conduct rules apply to more limited individuals working at dual-regulated SM&CR firms: senior managers (approved by the PRA or FCA); individuals within the PRA’s certification regime; key function holders; and non-executive directors.

The Conduct Rules apply to conduct relating to the carrying out of an individual’s role. They do not extend to conduct within an individual’s private life, provided that the conduct is unrelated to the activities they carry out for their firm. Nevertheless, an individual’s behaviour outside of work can still be relevant to the separate consideration of their fitness and propriety.

There are two tiers of Conduct Rules: a first tier of rules applicable to all individuals subject to the Conduct Rules; and a second tier applicable to senior managers only.

The rules of the first tier are:

- Rule 1 – You must act with integrity.
- Rule 2 – You must act with due skill, care and diligence.
- Rule 3 – You must be open and cooperative with the FCA, PRA and other regulators.
- Rule 4 – You must pay due regard to the interests of the customer and treat them fairly.
- Rule 5 – You must observe proper standards of market conduct.

The rules of the second tier (applicable to senior managers) are:

- SC1 – You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.
- SC2 – You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with the relevant requirements and standards of the regulatory system.
- SC3 – You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.
- SC4 – You must disclose appropriately any information for which the FCA or PRA would reasonably expect notice.
- SC5 (certain dual-regulated firms only) – When exercising your responsibilities, you must pay due regard to the interests of current and potential future policyholders in ensuring the provision by the firm of an appropriate degree of protection for their insured benefits.

Firms must notify the FCA if they take disciplinary action against an individual for a breach of the Conduct Rules.

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10. Are there any circumstances in which notifications relating to the employee or their conduct will need to be made to local or international regulators?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos* at Tortoro Madureira & Ragazzi Advogados

From a labour perspective, there are no circumstances in which notifications relating to the employee or their conduct must be made to local or international regulators.

Considering that the National Financial System is extremely regulated, there may be cases in which a mistake by an employee results in a duty to report to the authorities (information security breach, prevention of money laundering, and prevention of terrorist financing, among others, which could not be exhaustively included in this questionnaire).

There is no general code defined by law or regulation.

Each company can adopt its standard of behaviour, as a rule.

Some activities require specific protocols for the prevention of money laundering and combating the financing of terrorism:

- the capture, intermediation, and investment of financial resources from third parties in national or foreign currency;

- the purchase and sale of foreign currency or gold as a financial asset or exchange instrument; and
- the custody, issuance, distribution, settlement, negotiation, intermediation, or securities administration.

Within the scope of the system for preventing and combating money laundering and the financing of terrorism, it is up to institutions and their employees to adequately comply with Central Bank regulations; promote the effectiveness of the apparatus to combat and prevent money laundering; carry out risk management with the implementation of effective policies, procedures, and controls; and help the Brazilian state to locate which financial operations are suspicious so that they can be investigated.

Last updated on 16/04/2024

France

Author: *Béatrice Pola*
at DS Avocats

In principle, the relationship between companies and employees in the financial services sector is private. As such, companies do not have to communicate confidential information about their employees to third parties, as this would constitute an infringement of their fundamental freedoms. However, in certain cases, employers must alert the competent authorities in the event of behaviour or "suspicions" of behaviour by one of their employees that is contrary to the law.

Thus, the Monetary and Financial Code provides that companies in the financial services sector, referred to in article L.561-2 of the code (the list of which was updated by Ordinance no. 2023-1139 of December 6, 2023 on credit managers and credit buyers to include "Credit managers"), must report to the national financial intelligence unit (Tracfin) all sums or transactions that they suspect to be the result of an offence punishable by a prison sentence of more than one year, or related to the financing of terrorism or tax evasion. This declaration may be made in respect of any employee of one of these companies.

In addition, when facts likely to constitute violations of the anticorruption code of conduct or to qualify as corruption or influence peddling are brought to the attention of the company and its managers, an internal investigation must be conducted (article 17 of Law No. 2016-1691 of 9 December 2016 on transparency). If the investigation confirms the suspicions, the employer must, on the one hand, sanction the employee, but also inform the prosecuting authority of the facts.

In smaller companies, the employer will also be able to report to the prosecution authorities any behaviour that could lead to criminal sanctions.

Last updated on 16/04/2024

United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

Yes. There are multiple potential reporting obligations with various timing imperatives. We include below a snapshot of some of the key obligations:

- under FCA Principle 11, firms have a general duty to inform the FCA of matters about which it would reasonably expect notice;
- a firm must notify the FCA immediately it becomes aware, or has information which reasonably suggests, that a matter which could have a significant adverse impact on the firm’s reputation has occurred, may have occurred or may occur in the foreseeable future;
- a firm must notify the FCA immediately it becomes aware, or has information which reasonably suggests, that a significant breach of a rule (including a significant breach of a Conduct Rule) has

occurred, may have occurred or may occur in the foreseeable future; and
- a firm must also notify the FCA if it takes disciplinary action against an individual for a breach of the Conduct Rules. Where the relevant individual is a senior manager, the notification must be made within seven business days. Where the relevant individual is certified staff, the notification must be made in the firm's annual reporting.

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11. Are there any particular requirements that employers should implement with respect to the prevention of wrongdoing, for example, related to whistleblowing or the prevention of harassment?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

No specific law determines what employers should implement to prevent wrongdoing. However, implementing reporting channels and policies to prevent and combat harassment is based on general corporate governance rules.

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France

Author: *Béatrice Pola*
at DS Avocats

Financial services companies, like any private employer, must implement procedures to prevent wrongdoing.

Concerning harassment, the Labour and the Penal Codes punish acts constituting moral and sexual harassment. It is the employer's responsibility, under their safety obligation, to prevent and, if necessary, deal with any behaviour constituting moral harassment. In this respect, an individual must be appointed by the social and economic committee to combat sexual harassment and sexist behaviour.

For whistleblowing, following Directive 2019/1937/EU, the system for whistleblowers that already existed in France was strengthened by Law 2022-401 of 21 March 2022 on the protection of whistleblowers. From now on, companies with more than 50 employees must internally set up a procedure for collecting and handling whistleblowers. Without an internal procedure, the whistleblower can go through an external channel, which presents a risk to the company's reputation.

In addition, following Law 2022-401, the FMA and the French Prudential Supervision and Resolution Authority have set up special procedures allowing any person to report to them, even anonymously, any infringement of European legislation, the Monetary and Financial Code or the AMF General Regulation (articles L. 634-1 to L. 634-4 of the Monetary and Financial Code).

Last updated on 16/04/2024

United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

Whistleblowing

In addition to the requirements of the SM&CR outlined above which relate to the prevention of wrongdoing (including the Conduct Rules, fitness and propriety assessments, Senior Managers' Duty of Responsibility, the certification and approvals processes and associated training requirements), the PRA and the FCA maintain rules on whistleblowing. These are intended to encourage whistleblowers to come forward to report wrongdoing and protect them from retaliation when they do.

For certain types of SM&CR firms, the rules mandate measures that employers must implement, for others they provide guidance on measures to consider.

The key measures are as follows:

- Whistleblowers' champion – a non-executive director and senior manager with responsibility for whistleblowing compliance within the firm, including oversight of internal policies and procedures and certain reporting requirements.
- Whistleblowing channel – a system which allows whistleblowers to report concerns confidentially and anonymously, and which allows such concerns to be assessed, addressed, and escalated where appropriate.
- Notification regarding external whistleblowing channels – that is, making staff aware of their right to report matters directly to the PRA and FCA and explaining how they can do so.
- Whistleblowing training – this must cover arrangements on whistleblowing within the firm and be provided (and tailored) to employees based in the UK, their managers, and employees responsible for operating the firm's whistleblowing arrangements.

Prevention of harassment

Harassment and related unacceptable workplace behaviours (such as bullying and discrimination) are not specifically addressed in the SM&CR rules on individual accountability. However, it is clear from regulators' public statements that the culture of firms (in its broadest sense) is central to their approach. Having a healthy firm culture is seen as critical to consumer protection and well-functioning markets, and firms with healthy cultures are considered to be less prone to misconduct.

Firms that are subject to the SM&CR need to be alive to the possibility that instances of harassment and other non-financial misconduct could amount to breaches of the individual accountability regime or trigger certain requirements under it, such as a requirement to investigate, reassess an individual's fitness and propriety, or notify certain matters to the regulators. The same could apply to any failure by relevant staff to investigate and deal appropriately with allegations of this kind, such as a senior manager who turns a blind eye to reports of sexual harassment or workplace bullying. While there have been relatively few instances of non-financial misconduct resulting in an enforcement action to date, this is likely to become an emerging trend.

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12. Are there any particular rules or protocols that apply when terminating the employment of an employee in the financial services sector, including where a settlement agreement is entered into?

Brazil

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

As a legal requirement, it is necessary to issue the term of termination of the employment contract. This document specifies the amounts paid at that time (there is a difference between terminations for just cause and without cause).

For workers in the sector, general rules apply, as no specific rules are created by law or a collective instrument.

Last updated on 16/04/2024

France

Author: *Béatrice Pola*
at DS Avocats

The general law regarding dismissals applies to employees in the financial services sector. Under French law, there are two grounds for dismissal: personal reasons, which are related to the employee's behaviour or state of health; and economic reasons, which are not related to the employee. In both cases, the cause must be real and serious (ie, the reason must be objective and materially verifiable, as well as proportionate to the facts put forward). Failing that, the judge may propose the reinstatement of the employee, but if one of the parties refuses, then the employee is entitled to compensation for dismissal without real and serious cause, the latter depending on the employee's seniority.

Certain grounds for dismissal are null and void, in particular dismissals that are discriminatory or contrary to a fundamental freedom. The employee may then be reinstated (in very specificcases) or compensated, but this compensation may not be less than six months' salary.

Dismissal for personal reasons cannot be declared before a preliminary interview with the employee and must be notified at least two working days after this interview, unless otherwise stipulated by collective bargaining agreement. For example, the national collective bargaining agreement for the banking industry stipulates that the preliminary interview cannot take place less than 7 calendar days, except in the case of more favourable legal provisions or specific arrangements (e.g. inaptitude), from the date of first presentation to the employee of the letter of summons (article 26).

Dismissal for economic reasons may be individual or collective. Individual dismissals for economic reasons also require a prior interview and notification of redundancy, but above all notification to the Administration. Collective dismissals for economic reasons require consultation of the Social and Economic Committee, as well as the establishment of an employment protection plan if the termination concerns at least 10 employees within 30 days.

Since 1 July 2010, the FMA's General Regulation requires investment service providers to pass an examination to obtain certification. This certification must be obtained within six months of hiring, so not securing this certification by the end of this period may justify a dismissal.

A dismissal means a redundancy payment is excluded, except in the case of employment protection plans, from assessment for social security contributions for the portion not subject to income tax within certain exemption limits. In addition, article L.511-84-1 of the French Monetary and Financial Code excludes the variable portion of compensation that may be reduced or recovered as a penalty under the "clawback" mechanism from assessment for severance pay.

Last updated on 16/04/2024

United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

Settlement agreements

The whistleblowing measures outlined above are complemented by mandatory requirements for SM&CR firms concerning settlement agreements, namely that any such agreement must include a term stating that it doesn't prevent the individual from making a protected disclosure, and must not require the individual to warrant that they have not made a protected disclosure or that they do not know of any information which could lead to them doing so (a "protected disclosure" is a type of disclosure recognised in English employment law that gives the person making it legal protection from retaliatory detrimental treatment).

SM&CR firms entering into settlement agreements must also ensure that they are not drafted in a way that is incompatible with other relevant regulatory requirements. For example, there is a specific prohibition in the FCA Handbook on firms entering into any arrangements or agreements with any person that limit their ability to disclose information required by the regulatory reference rules (see question 2). As such, terms relating to confidentiality and the provision of employment references should allow the firm sufficient flexibility to comply with regulatory reference requirements, which could include a requirement to update such a reference. In addition, any obligations of confidentiality should include a carve-out to permit relevant regulatory disclosures and reports.

Handover procedures

The SM&CR includes requirements designed to ensure that adequate handovers take place between outgoing and incoming senior managers. Firms must take all reasonable steps to ensure that senior managers (and anyone who has management or supervisory responsibilities for them) have all the information and material that they could reasonably expect to have to perform their responsibilities effectively and under the requirements of the regulatory system. This applies when someone becomes a senior manager and when an existing senior manager takes on a new job or new responsibilities (or when their responsibilities or job are being changed).

Firms must have a handover policy in place to ensure compliance with these requirements. They must also make and maintain adequate records of steps taken to comply with them.

The information and material handed over should be practical and helpful, with an assessment of what issues should be prioritised, and judgement and opinion as well as facts, figures and records. It should also include details about unresolved or possible regulatory breaches and any unresolved concerns expressed by the FCA, the PRA or any other regulatory body.

The format and arrangements of a handover should allow for an orderly transition, which should include the outgoing senior manager contributing to the handover everything that it would be reasonable to expect them to know and consider relevant, including their opinions. This could be achieved by requiring outgoing senior managers to prepare a handover certificate, but the FCA recognises that this will not always be practical.

To ensure that these requirements are satisfied, it is good practice to include in senior managers' employment contracts (and settlement agreements) specific obligations relating to handovers.

Reallocating senior managers' responsibilities

In addition to ensuring that adequate handovers take place between outgoing and incoming senior managers, firms should also ensure on the departure of a senior manager that their responsibilities are reallocated and that this is recorded in a way that is compliant with relevant regulatory requirements. This may include temporary reallocation to one or more existing senior managers where the replacement does not take over immediately on the departure of the departing senior manager, as well as updating the firm's management responsibilities map and statements of responsibilities.

Reporting requirements

When an individual ceases to perform an SMF, the firm must generally notify the relevant regulatory within seven business days.

SM&CR firms must notify the relevant regulators if certain types of disciplinary action are taken, which can include dismissal – see question 10.

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13. Are there any particular rules that apply in relation to the use of post-termination restrictive covenants for employees in the financial services sector?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

Yes, restrictive covenants are possible for financial service employees. However, restrictions on work in other companies in the sector (non-competition) must be paid for less than 24 months. These criteria are not provided for by law, but were constructed by Brazilian courts when adjudicating on this issue.

Last updated on 16/04/2024

France

Author: *Béatrice Pola*
at DS Avocats

Three specific clauses are potentially relevant to employees in the financial services sector.

Firstly, regarding the confidentiality clause, employees in the financial services sector are bound to respect professional and banking secrecy.

More specifically, article 25 of Section III of Chapter 4 of Title II of Book 1 of the national collective agreement for financial companies of 22 November 1968, provides that all staff members are bound by professional secrecy within the company and towards third parties. Employees may not knowingly pass on to another company information specific to their employer or previous employer.

Article 24 of Chapter 3 of Title III of the national collective bargaining agreement for bank employees of 10 January 2000 codifies the absolute respect of professional secrecy.

Article 44 of Chapter 2 of Title IV of the national collective bargaining agreement for the financial markets of 11 June 2010 states that the employee must comply specifically with the rules of conduct regarding professional secrecy, both within the company and concerning third parties.

Confidentiality clauses can also be concluded between the employee and his or her employer, to reinforce the obligation of confidentiality.

In principle, a confidentiality clause allows for the protection of certain information exchanged during the contract and can be enforced after the termination of the employment contract if it is not perpetual. In this case, it is quite conceivable to contractualise such an obligation for employees in the financial services sector because of their functions, which by their very nature require discretion.

The law already states that anyone who uses or discloses confidential information obtained in the course of negotiations without authorisation is liable. Case law has addressed the issue of confidentiality clauses by ruling that an employee not executing this clause after his or her departure makes him or her liable for the resulting damage, without the employer having to prove gross negligence. The clause may be accompanied by a pecuniary sanction, which may be altered by the judge if it is lenient or excessive.

This clause in no way imposes a non-compete obligation and, therefore, does not entitle the employee to financial compensation.

In practice, it is complex to ensure compliance with this clause; however, the more specific the clause, the more effective it is.

Secondly, a non-compete clause allows an employer to limit an employee's professional activity at the end of an employment contract to prevent that employee from working for a competing company.

Despite the specificity of the activities of the financial sector, it seems that the common law of noncompetition clauses applies.

Thus, such a clause may be provided for by a collective agreement, in which case it is a conventional non-compete obligation. To be enforceable, the employee must have been informed of the existence of the applicable collective agreement. In this case, article 35 of Chapter I of Title IV of the national collective bargaining agreement for financial markets of 11 June 2010 provides for a non-compete obligation.

The non-compete clause is, in the majority of cases, contractual (ie, present in the employee’s employment contract). To be valid, this clause must meet various cumulative conditions to be compatible with the principle of freedom to work.

It must be essential to the protection of the legitimate interests of the company, limited in time and space, take into account the specificities of the employee's job, and include an obligation for the employer to pay the employee meaningful financial compensation. All these conditions are cumulative, and the employer cannot unilaterally extend the scope of the clause, otherwise it is null and void. Given the specificity of the activity of companies in the financial services sector, the condition of protection of the legitimate interests of the company would be met. However, taking into account the specificities of the employee's job may undermine such a clause if it is proven that his or her training and experience would prevent him or her from finding a job. The company's interest in imposing a noncompete clause must therefore be demonstrated.

The judge may restrict the application of the non-compete clause by limiting its effect in time, space or other terms when it does not allow the employee to engage in an activity consistent with his or her training and experience. However, the scope of application of the clause cannot be reduced by the judge if only the nullity of the clause has been invoked by the employee. If the non-compete clause is not enforced, the employer may take summary proceedings against the former employee who does not respect it, and also against the employee's new employer if they were hired with full knowledge of the facts, or if they continue to be employed after learning of the clause.

The employer may waive the clause if this is explicit and results from an unequivocal will. In the specific case of contractual termination, the employer who wishes to waive the clause must do so no later than the termination date set in the agreement.

Finally, concerning the non-solicitation clause, such a clause can be concluded between two companies through a commercial contract. These companies mutually prohibit each other from hiring their respective employees. Therefore, this clause is distinct from a non-compete clause and does not meet its conditions of validity. However, it must be proportionate to the legitimate interests to be protected given the purpose of the contract.

Last updated on 16/04/2024

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

The SM&CR does not regulate the use of post-termination restrictive covenants for employees in the financial services sector. It is fairly typical for financial services firms in the UK to include non-dealing, non-solicitation, non-compete and similar restrictive covenants in their employment contracts. These are subject to the same common law rules on interpretation and enforceability as in any other sector. The only caveat to this is that firms should ensure that such terms do not include any provision that might conflict with the regulatory duties of either the firm or the employee. This will be a rare occurrence in practice for most types of restrictive covenant, but could arise in respect of post-termination contractual obligations that are closely associated with restrictive covenants, namely those relating to confidentiality. As such, firms should ensure that confidentiality clauses in employment contracts or other agreements such as NDAs include appropriate carve-outs.

Last updated on 22/01/2023

14. Are non-disclosure agreements (NDAs) potentially lawful in your jurisdiction? If so, must they follow any particular form or rules?

Brazil

Author: *Caio Medici Madureira, Rodrigo Souza Macedo, Ângelo Antonio Cabral, Rebeca Bispo Bastos*
at Tortoro Madureira & Ragazzi Advogados

Yes, non-disclosure agreements (NDAs) are potentially lawful in Brazil. The applicable rules are the same as for any legal transaction: expression of will, legality of the object, and compliance with the law.

As a rule, NDAs are a consequence of professional activity and do not require specific consideration.

Protected information is specific to the contractor (employer) and shared with the employee during the execution of the contract (strategies, customers, commercial secrets, etc).

General information belonging to the employee due to his or her academic training and previous professional experience is not included in NDAs.

Last updated on 16/04/2024

France

Author: *Béatrice Pola*
at DS Avocats

All actors in the financial services sector are bound by strict professional and banking secrecy.

But beyond the professional secrecy that is inherent to the employment contract, there may be an interest in particular circumstances to strengthen this requirement and make it an obligation of absolute professional secrecy. This is legal under French law and generally takes the form of a confidentiality clause (non-disclosure) inserted in the employee's employment contract.

In principle, a confidentiality clause, which includes an obligation of professional secrecy to which the employee is bound as well as an obligation of discretion, is not subject to any particular conditions. In particular, it does not require the payment of any financial consideration.

On the other hand, when an employee by an agreement or transaction goes further and waives his freedom of expression, the case law sets stricter conditions of validity. The agreement must be adapted, necessary and proportionate to the aim sought.

Confidentiality clauses must also comply with any obligations in terms of transparency, the fight against corruption and influence peddling provided for by Law No. 2016-1691 of 9 December 2016.

The only entities against which banking secrecy cannot be invoked are the French Prudential Supervision and Resolution Authority, the Banque de France and the judicial authority acting in the context of criminal proceedings (article L. 511-33 of the Monetary and Financial Code). On the other hand, bank secrecy is enforceable in civil court proceedings, as confirmed by abundant case law.

Last updated on 16/04/2024

United Kingdom

Author: *Louise Skinner, Thomas Twitchett, Oliver Gregory*
at Morgan Lewis & Bockius

NDAs (also known as confidentiality agreements) are potentially lawful and enforceable in the UK. It is common to include NDAs in employment contracts (to protect the confidential information of the employer during and after employment) and in settlement agreements (to reiterate existing confidentiality obligations and to keep the circumstances of the settlement confidential).

NDAs do not need to follow a particular form, but they must be reasonable in scope. Following #MeToo, there has been considerable government, parliamentary, and regulatory scrutiny of the use of NDAs and their reasonableness in different circumstances.

The following limitations on NDAs should be noted:

- By law, any NDA purporting to prevent an individual from making a “protected disclosure” as defined in the Employment Rights Act 1996 (ie, blowing the whistle about a matter) is void.
- The regulatory body for solicitors in England and Wales, the Solicitors Regulation Authority (SRA), has issued a detailed warning notice and guidance to practitioners setting out – in its view – inappropriate or improper uses of NDAs. Failure to comply with the SRA’s warning notice may lead to disciplinary action. The SRA lists the following as examples of improper use of NDAs:
    - using an NDA as a means of preventing, or seeking to impede or deter, a person from:
        - cooperating with a criminal investigation or prosecution;
        - reporting an offence to a law enforcement agency;
        - reporting misconduct, or a serious breach of the SRA’s regulatory requirements, to the SRA, or making an equivalent report to any other body responsible for supervising or regulating the matters in question; and
        - making a protected disclosure;
        - using an NDA to influence the substance of such a report, disclosure or cooperation;
        - using an NDA to prevent any disclosure required by law;
        - using an NDA to prevent proper disclosure about the agreement or circumstances surrounding the agreement to professional advisers, such as legal or tax advisors, or medical professionals and counsellors, who are bound by a duty of confidentiality;
        - including or proposing clauses known to be unenforceable; and
        - using warranties, indemnities and clawback clauses in a way that is designed to, or has the effect of, improperly preventing or inhibiting permitted reporting or disclosures being made (for example, asking a person to warrant that they are not aware of any reason why they would make a permitted disclosure, in circumstances where a breach of warranty would activate a clawback clause).
- The Law Society of England and Wales, a professional association representing solicitors in England

and Wales, has issued similar guidance (including a practice note) on the use of NDAs in the context of the termination of employment relationships.
- Other non-regulatory guidance on the use of NDAs has also been issued, including by the Advisory, Conciliation and Arbitration Service and by the UK Equality and Human Rights Commission.

Care should be taken accordingly to ensure that the wording of any NDA complies with prevailing guidance, especially from the SRA.

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Contributors

Brazil

Caio Medici Madureira
Rodrigo Souza Macedo
Ângelo Antonio Cabral
Rebeca Bispo Bastos
Tortoro Madureira & Ragazzi Advogados

France

Béatrice Pola
DS Avocats

United Kingdom

Louise Skinner
Thomas Twitchett
Oliver Gregory
Morgan Lewis & Bockius