International Employment Lawyer

Employment in Financial Services

Contributing Editor

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

Brazil

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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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Hong Kong

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The primary regulatory regime applicable to financial services employees in Hong Kong are as follows:

- Under the Banking Ordinance (BO), the Hong Kong Monetary Authority (HKMA) is responsible for regulating all authorised institutions (banks, restricted-licence banks and deposit-taking companies). In particular, the HKMA needs to ensure that the chief executive, directors, controllers and executive officers of the authorised institutions are “fit and proper”.
- Under the Securities and Futures Ordinance (SFO), the Securities and Futures Commission (SFC) is responsible for regulating the securities and futures markets. Employees performing any regulated functions under the SFO must obtain the requisite licence from the SFC. Relevant individuals engaged by the authorised institutions who perform regulated functions (eg, bank staff working in the securities dealing department) are not required to be licensed or registered with the SFC but their names have to be entered in the register maintained by the HKMA.
- Under the Insurance Ordinance (IO), the Insurance Authority (IA) is responsible for regulating the insurance industry. Employees carrying on a regulated activity under the IO must obtain the requisite licence from the IA.

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Isle of Man

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The Employment Act 2006 and the Equality Act 2017 prescribe general employment rights and obligations for both employers and employees, including those in the financial services industry.
The Isle of Man Financial Services Authority (IoM FSA) is responsible for the regulation and supervision of financial services providers in the Isle of Man. Among other things, regulated financial institutions must comply with the rules set down by the IoM FSA in its Financial Services Rule Book 2016 (as amended) (the Rule Book). The IoM FSA applies "fitness and propriety" criteria to holders of certain key roles within a licence holder. This entails the IoM FSA assessing an individual's integrity, financial standing, competency and capacity to undertake the role.

The requirement for an individual to be "fit and proper" depends on the nature of the role rather than their job title, but generally applies to key person or senior managerial roles (also known as Controlled Functions), where the individual has significant influence or control over the regulatory matters of the financial institution or to roles that have a bearing on the regulatory objectives of the IoM FSA and its ability to meet them.

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Switzerland

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Employment law in Switzerland is based mainly on the following sources, set out in order of priority:

- the Federal Constitution;
- Cantonal Constitutions;
- public law, particularly the Federal Act on Work in Industry, Crafts and Commerce (the Labour Act) and five ordinances issued under this Act regulating work, and health and safety conditions;
- civil law, particularly the Swiss Code of Obligations (CO);
- collective bargaining agreements, if applicable;
- individual employment agreements; and
- usage, custom, doctrine, and case law.

Depending on the regulatory status of the employer and the specific activities of financial services employees, respectively, Swiss financial market laws may also apply. They are, in particular, the Federal banking, financial institutions and insurance supervision regulations.

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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

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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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Hong Kong

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There are no particular pre-screening measures specified by the financial regulators in Hong Kong. Nevertheless, financial institutions would generally conduct background checks on prospective employees (especially those taking on senior positions) to ensure they comply with the “fit and proper” requirements of the financial regulators.

There is no particular form of regulator-specified reference to be provided by previous employers in the financial services industry. Nevertheless, the SFC has specified disclosure obligations for licensed corporations in respect of outgoing employees who were subject to internal investigations (see question 10).

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Isle of Man

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There is a general obligation on employers in the Isle of Man to undertake legal working checks to ensure that the prospective employee has the right to work lawfully in the Isle of Man.
In addition, financial institutions must take reasonable steps to ensure that individuals who perform any regulated activity in the course of their employment, or under any contract with the financial institution, are fit and proper for the tasks they perform, by providing adequate training and supervision and (where necessary) undertaking additional checks. Where the financial institution wishes to employ an individual in a Controlled Function, the financial institution must carry out sufficient due diligence to satisfy itself that the candidate is fit and proper to perform the proposed functions.

There are two types of Controlled Functions, those that require notification to, and acceptance by, the IoM FSA and those that require notification only. In either case, the financial institution is required to notify the IoM FSA of the appointment or intended appointment of certain key roles at least 20 business days before the appointment takes effect. Where the Controlled Function also requires acceptance, the financial institution will require the IoM FSA’s consent to the appointment of a prospective candidate to a particular role. It is recommended that job offers in such circumstances are made subject to the written acceptance of the IoM FSA.

While the IoM FSA does not specify any particular pre-screening measures, it provides guidance on the nature of the expected due diligence that it would expect a financial institution to carry out, particularly where the individual will be undertaking a key role. Such due diligence includes carrying out a professional

body check (ie, any memberships held and if disciplinary action has been taken), capacity check[1], criminal record check, credit check and website checks. The financial institution should also consider the individual's qualifications, training and competency.

The IoM FSA may ask for evidence of the due diligence carried out by the financial institution at any time, either remotely or during a supervisory visit.

The IoM FSA recommends financial institutions request a reference from the prospective candidate's current employer and previous employers covering, as a minimum, the past ten years of employment.

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[1] For instance, does the individual have enough time to devote to the role when considering other roles held with the regulated entity and other roles held elsewhere?

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Switzerland

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Under Swiss civil law, there is no requirement to apply pre-screening measures. However, while not a statutory requirement under Swiss financial market laws per se, companies subject to these laws apply pre-screening measures to ensure that a prospective financial services employee meets the requirements set forth by these laws. In particular, regulated companies such as banks, securities firms, insurance companies, fund management companies, managers of collective investment schemes and asset managers are required to obtain authorisation from the Swiss Financial Market Supervisory Authority (FINMA) relating to strategic and executive management and each change thereto.

As a general rule, the higher the responsibility or position of a person, the more requirements financial services employees may need to fulfil. Persons holding executive or overall management functions (eg, a member of the board or members of the senior management) are required to fulfil certain requirements set forth by the applicable Swiss financial market regulations. Such requirements may include providing current CVs showing relevant work experience and education as well as excerpts from the debt and criminal register. It may also include providing various declarations (eg, concerning pending and concluded proceedings, qualified participations and other mandates). Furthermore, financial services employees holding certain control functions (eg, compliance officer, risk officer and their deputies) may also be required to prove that they are suitable for the position by providing, for example, a current CV showing relevant work experience and education.

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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?

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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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Hong Kong

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In addition to an employment contract, there are additional documentation requirements in connection with the application or transfer of the employee's licence with the financial regulators.

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As a matter of general Isle of Man employment law, employers must give employees written particulars of their terms and conditions of employment within four weeks of them starting work, pursuant to section 8 of the Employment Act 2006. This mandatory information includes (but is not limited to) the names of the employer and employee; the date of commencement of employment and the date when continuous service began for statutory employment rights purposes; scale or rate of remuneration; hours of work; and holiday entitlement. Typically, a written employment contract will contain the relevant information and satisfy these requirements.

Financial institutions should also ensure that contracts of employment reinforce the requirements of meeting and maintaining the employee's "fit and proper" status.

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Switzerland

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No special contractual documents are required when engaging employees within the financial services industry.

However, it is generally recommended to conclude a written employment contract with each employee. FINMA, for instance, requires a copy of employment contracts concluded with senior management of regulated entities.
In particular, the employment contract should reference the employer's (regulatory) set of directions and the employee's obligation to comply with said instructions. In addition, because regulated companies such as banks, securities firms, fund management companies, managers of collective assets or asset managers are required to obtain authorisation from FINMA before the engagement of key personnel, it may be sensible to include a condition precedent relating to FINMA's acceptance of the relevant employee in the employment contract.

The mandatory, partially mandatory, and optional elements of an individual employment contract are outlined in article 319 et seq of the CO (in particular regarding remuneration, working time, vacation, and incapacity for work). Further regulations may apply based on collective bargaining agreements.

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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?

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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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Hong Kong

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SFC

The “Guidelines on Competence” published by the SFC lists the necessary qualifications for employees carrying on regulated activities. For academic qualifications, employees should attain at least Level 2 in either English or Chinese as well as in Mathematics in the Hong Kong Diploma of Secondary Education or

equivalent. In addition, employees are expected to obtain recognised industry qualifications and pass the local regulatory framework paper. For responsible officers (ROs), the SFC requires higher levels of educational qualifications and experience.

IA

The “Guideline on ‘Fit and Proper’ Criteria for Licensed Insurance Intermediaries Under the Insurance Ordinance” published by the IA sets out the education requirements for licenced employees under the IO. Higher levels of educational qualifications are required for responsible officers.

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Isle of Man

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Yes, please see question 2.

Any individual performing a prescribed key role must be pre-approved by the IoM FSA and be certified as “fit and proper”. The IoM FSA has issued detailed guidance for financial institutions that set out the criteria that they normally apply in considering the fitness and propriety of individuals who wish to undertake Controlled Functions. Appendix 2 of the guidance contains a table setting out which Controlled Functions require consent and which functions are notification only.

Guidance can be found here:
https://www.iomfsa.im/media/2464/regulatoryguidancefitnessandpropriety.pdf

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Switzerland

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Depending on the status of the employing entity and the position of the financial services employee, a special certification or, more generally, proof of relevant work experience and sufficient education is required.

As a general rule, persons holding executive, overall management, oversight or control functions (eg, a member of the board, CEO, compliance officer, risk officer or their deputies) in regulated companies such as banks, insurance companies, securities firms, fund management companies, managers of collective assets or asset managers are required to demonstrate to FINMA that they have sufficient relevant work experience and education. As proof, FINMA requests current CVs, diplomas, certifications and contact details of references. The scope and nature of the future business activity and the size and complexity of the company in question also need to be considered.

Furthermore, client advisers of so-called financial service providers (eg, investment advisers) must have sufficient expertise on the code of conduct and the necessary expertise required to perform their work. Client advisors often prove that these requirements have been met by successfully attending special courses. In addition, insurance intermediaries registered with FINMA’s insurance intermediary register have to prove that they have undergone sufficient education and have sufficient qualifications. For this purpose, FINMA has published a list of different Swiss and foreign educational qualifications deemed to be sufficient on its website.

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

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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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Hong Kong

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Under the SFO, ROs have enhanced responsibilities. They assume primary responsibility for compliance at a licensed corporation and are involved in supervising the regulated activities. A licensed corporation is required to appoint no less than two ROs to directly supervise the conduct of each regulated activity. Similarly, under the BO, registered institutions are required to appoint no less than two executive officers to be responsible for directly supervising the conduct of each regulated activity under the SFO. For each regulated activity, at least one RO must be available at all times to supervise the business and must be an executive director.

Under the IO, an RO of a licensed insurance agency or licensed insurance broker company has enhanced responsibilities. Responsible officers must use their best endeavours to ensure the agency or broker has established and maintains proper controls and procedures for securing compliance with the conduct requirements under the IO.

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Isle of Man

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Employees who carry out a Controlled Function will have a duty of responsibility to ensure compliance with the financial institution's ongoing regulatory requirements.

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Specifically, employees holding executive, overall management, oversight or control functions in regulated companies are responsible for ensuring that the companies' organization ensures the continued compliance with applicable financial market laws. Swiss financial market laws do not have enhanced responsibilities for different employee categories. Instead, a person's fitness and propriety are assessed within the context of the specific requirements and functions of a given company, the scope of activities at that company, and the complexity of that company.

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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?

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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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Hong Kong

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The HKMA, SFC and IA each have a register for licensed employees to be listed on to undertake regulated activities:

- HKMA – the register of securities staff of authorised institutions is available on the HKMA's website[1]. For registration, the names and particulars of the relevant individuals are required to be submitted to the HKMA for inclusion on the HKMA Register.
- SFC – the register of licensed persons is available on the SFC's website[2]. For registration, individual applicants would need to submit an electronic application to the SFC through its online platform. When there is a change of employment, the licensed representative may apply for a transfer of accreditation through SFC's online platform within 180 days after the cessation of the previous employment. It takes approximately seven business days to process an application for transfer of accreditation to carry on the same types of regulated activity for which the licensed representative was licensed immediately before the cessation.
- IA – the register of licensed insurance intermediaries is available on the IA's website[3]. For registration, applicants can submit their licence applications to the IA by paper submission or electronic submission via an online portal.

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[1] https://apps.hkma.gov.hk/eng/index.php

[2] https://apps.sfc.hk/publicregWeb/searchByName?locale=en

[3] https://iir.ia.org.hk/#/index

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The IoM FSA maintains a public register of entities that are regulated by them. The register lists the classes of regulated activity that the licence holder is authorised to carry out. However, there is no prescribed list or public register for financial services employees that individuals need to be included in to undertake regulated activities.

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Switzerland

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There is no universal register of all financial services employees. Rather, different Swiss financial market laws provide for a registration requirement that may apply to individual financial service employees. Whether a particular financial market law, and, consequently, a registration requirement, applies to a financial services employee depends specifically on the regulatory status of the employing entity and the particular activity of that employee.

- Also, client advisers of Swiss or foreign financial service providers (eg, investment advisers) may be required to register with the adviser register, unless an exemption applies. Client advisers are the natural persons who perform financial services on behalf of a financial service provider or in their own capacity as financial service providers. Client advisers are entered in the register of advisers if they prove that i) they have sufficient knowledge of the code of conduct set out in the financial services regulations and the necessary expertise required to perform their activities, ii) their employee has taken out professional indemnity insurance or that equivalent collateral exists, and iii) their employee is affiliated with a recognized Swiss ombudsman in their capacity as a financial service provider (if such affiliation duty exists).

Furthermore, “non-tied” insurance intermediaries (ie, persons who offer or conclude insurance contracts on behalf of insurance companies) are required to register with FINMA’s register of insurance companies. To register, persons must inter alia prove that they have sufficient qualifications and hold professional indemnity insurance or provide an equivalent financial surety. “Tied” intermediaries will no longer be able to register voluntarily in the FINMA register (unless this is required by the respective country of operation for activities abroad).

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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

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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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Hong Kong

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There are no specific mandatory rules relating to compensation payable to financial services employees in Hong Kong.

The HKMA has issued a Supervisory Policy Manual CG-5 “Guideline on a Sound Remuneration System”. This focuses on providing a broad idea and introducing basic principles of how remuneration policies should be designed and implemented in the authorised institution, to encourage employee behaviour that supports the risk management framework, corporate values and long-term financial soundness of the authorised institution.

Under the Guideline, the elements of a sound remuneration system are as follows:

Governance

- Remuneration policy should be in line with objectives, business strategies and the long-term goals of the authorised institution.
- The remuneration arrangement for employees whose activities could have a material impact on the authorised institution’s risk profile and financial soundness should support, but not undermine, the overall risk management approach.
- The Board of an authorised institution is ultimately responsible for overseeing the formulation and implementation of the remuneration policy.
- The establishment of a Board remuneration committee would assist the Board in discharging its responsibility for the design and operation of the authorised institution’s remuneration system.
- Risk control personnel should have appropriate authority and involvement in the process of design and implementation of the authorised institution’s remuneration policy.

Structure of remuneration

- Balance of fixed and variable remuneration should be determined with regard to the seniority, role, responsibilities and activities of their employees and the need to promote behaviour among employees that support the authorised institution’s risk-management framework and long-term financial soundness.
- Variable remuneration should be paid in such a manner as to align an employee’s incentive awards with long-term value creation and the time horizons of risk.
- Guaranteed minimum bonus to senior management or key personnel should be subject to the approval of the Board (or the Board’s remuneration committee with the necessary delegated authority).

Measurement of performance for variable remuneration

- The award of variable remuneration should depend on the fulfilment of certain pre-determined and assessable performance criteria, which include both financial and non-financial factors.
- Size and allocation of variable remuneration should take into account the current and potential risks associated with the activities of employees, as well as the performance (overall performance of the relevant business units and the authorised institution as a whole as well as the contribution of individual employees to such performance).
- Judgement and common sense may be required during the process to arrive at a fair and appropriate remuneration decision. The rationale for the exercise of judgment and the outcomes should be recorded in writing.

Alignment of remuneration pay-outs to the time horizon of risks

- Deferment of variable remuneration is appropriate when the risks taken by the employee in question are harder to measure or will be realised over a longer timeframe.
- The award of deferred remuneration should be subject to a minimum vesting period and pre-defined vesting conditions in respect of future performance.
- Authorised institutions should seek undertakings from employees not to engage in personal hedging strategies or remuneration and liability-related insurance to hedge their exposures in respect of the unvested portion of their deferred remuneration.

Remuneration disclosure

- Authorised institutions should make remuneration disclosures at least annually. The disclosure should include the qualitative and quantitative information that the HKMA has set out in its annual remuneration disclosure.

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Isle of Man

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There are no prescribed rules relating to compensation payable to financial services employees and any remuneration, bonuses or clawback will be a matter of contract between the financial services employee and the financial institution. Inevitably, this will reflect what is typical in the market for experienced, qualified, financial services personnel performing the role for which they are applying or are currently carrying out.

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Switzerland

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Swiss civil law provides for special rules that govern the compensation of current and former members of inter alia the board and executive committee (Ordinance against Excessive Compensation) of Swiss companies limited by shares that are listed on a Swiss or foreign stock exchange. In addition, there are disclosure provisions listed companies need to follow concerning remuneration under stock exchange regulations.

In addition to the above, FINMA has formulated ten principles regarding remuneration that banks, securities firms, financial groups and conglomerates, insurance companies, insurance groups and conglomerates are required to implement. The principles serve as minimum standards for the design, implementation and disclosure of remuneration schemes.

These schemes should not incentivise to take inappropriate risks and thereby potentially damage the stability of financial institutions.

One of the focal points of the principles is variable remuneration that depends on business performance and risk. In particular, all variable remuneration must have been earned by the company over the long term. Consequently, remuneration is dependent on performance, taking into account the sustainability of such performance as well as the risks. That said, FINMA's principles do not limit the amount of variable remuneration. However, FINMA aims to prevent the granting of high remuneration based on large risks and the generation of short-term, unsustainable earnings. Furthermore, persons who have significant responsibility relating to the risk or receive a high total remuneration, must receive a significant part of the variable remuneration on a deferred basis and consequently, in a way that is linked to the current risk. Under the FINMA principles, "clawback" and "malus" arrangements are permitted.

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

Brazil

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

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Hong Kong

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SFC

Persons engaging in regulated activities are required to continuously update their knowledge and skills through continuous professional training (CPT). The "Guidelines on Continuous Professional Training" published by the SFC provides for the following CPT requirements:

- a minimum of 10 CPT hours a year for licensed representatives and relevant individuals; and
- a minimum of 12 CPT hours a year for responsible officers and executive officers (including 2 CPT hours on topics relating to regulatory compliance).

In addition, an individual should attend at least five CPT hours a year (out of the 10 hours for licensed representatives and relevant individuals and 12 hours for responsible officers and executive officers) on topics directly relevant to the regulated activities for which he or she is licensed at the time the CPT hours are undertaken.

HKMA

The HKMA has implemented the "Enhanced Competency Framework"(ECF) for banking practitioners. While the ECF is not a mandatory regime, banks are strongly encouraged to adopt it as the benchmark for enhancing the level of core competence and ongoing professional development of banking practitioners.

IA

Under the “Guideline on Continuing Professional Development for Licensed Insurance Intermediaries”, licensed insurance intermediaries who are individuals are required to receive training through CPD to preserve their professional competence and standards in providing service to policyholders and potential policyholders.

The minimum number of CPD hours for individual licensees is 15 CPD hours for each assessment period, including a minimum of three compulsory CPD hours on “Ethics or Regulations” courses.

Financial services employees are also required to receive training on anti-money laundering and counter-financing of terrorism. New staff should be required to attend initial training as soon as possible after being hired or appointed. Apart from the initial training, refresher training should be provided regularly to ensure that staff are reminded of their responsibilities and are kept informed of new developments.

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The IoM FSA’s “Training and Competence Framework” sets the minimum standards that must be achieved by individuals working in the financial services industry. The framework sets out the IoM FSA’s expectations regarding competency, not only for employees who carry out a Controlled Function (and who are subject to fitness and propriety criteria) but for all staff.

The framework is split into two segments: general training and competence requirements for all staff; and training and competence expectations for Controlled Functions and Other Functions – essentially additional expectations for individuals undertaking or aspiring to undertake certain Controlled Functions or other designated functions.

The IoM FSA also sets requirements concerning continuing professional development (CPD) for different types of regulated entities and staff at different levels. For example, Rule 8.5 of the Rule Book specifies that directors and key persons within a licence holder must undertake a minimum of 25 hours of relevant CPD per year or meet the level prescribed by their professional body (where higher). There are further CPD requirements on individuals who provide investment advice to retail investors.

Even absent a prescribed minimum level of CPD, the IoM FSA believes that ongoing training and CPD for all financial services staff and officers is good practice. Such training and CPD should be relevant to the role of the individual and take account of new developments (ie, changes to tax legislation, new regulatory requirements and new products).

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Switzerland

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In general, regulated companies (eg, banks, insurance companies or asset managers) are required to set up and maintain an organisation that ensures compliance with applicable financial market laws. Given the organisational measures and depending on the regulatory status of the employing entity and the position and activities of the financial services employee, there are training requirements.

While Swiss financial market regulations do not have an exhaustive list of exact training requirements, FINMA requires, among others, that the highest bodies of supervised companies (eg, executives of board members of banks, securities firms, insurance and reinsurance companies, fund management companies,

managers of collective assets or asset managers) can fulfil the requirements of the so-called fit and proper test. These requirements extend to all character-related and professional elements that enable an officeholder to manage a supervised company in compliance with applicable laws. Part of the professional elements are relevant work experience and education. In addition, persons holding key positions (eg, compliance and risk officers and their deputies) are required to demonstrate sufficient know-how because of their work experience and education.

That said, the Swiss financial services and insurance supervisory regulations provide for more concrete training requirements. In particular, client advisers of Swiss and foreign financial service providers (eg, investment advisers) may need to demonstrate that they have sufficient knowledge of the code of conduct rules of the Swiss financial services regulation and the necessary expertise required to perform their activities. In addition, insurance intermediaries registered with FINMA's insurance intermediary register have to prove that they have undergone sufficient education and have sufficient qualifications. On its website, FINMA has published a list of different educational Swiss and foreign qualifications that it deems to be sufficient.

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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

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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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Hong Kong

Hong Kong

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SFC

Under the SFO, licensed representatives and ROs are required to be "a fit and proper person" to carry on the regulated activities and must adhere to the standards of behaviour set out in the "Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission". Other relevant guidelines regarding standards of behaviour include:

- "Fit and Proper Guidelines", which set out the general expectations of the SFC of what is necessary to satisfy the licensing or registration requirements that a person is fit and proper.
- "Guidelines on Competence", which set out the competence requirements and its objective to ensure a person is equipped with the necessary technical skills and professional expertise to be "fit", and is aware of the relevant ethical standards and regulatory knowledge to be "proper" in carrying on any regulated activities.

HKMA

Under the BO, employees of an authorised institution that carry on regulated activities under the SFO are required to be fit and proper. In addition, the HKMA needs to be satisfied that the chief executive, directors, controllers and executive officers of the authorised institutions are fit and proper. Other relevant guidelines regarding standards of behaviour include:

- "Code of Banking Practice", which is to be observed by authorised institutions in dealing with and providing services to their customers.
- Supervisory Policy Manual CG – 2 "Systems of Control for Appointment of Managers", which sets out the system of control that authorised institutions should have for ensuring the fitness and propriety of individuals appointed as managers.

IA

The conduct requirements for licensed insurance agents and brokers are set out in Division 4 of the IO. Other relevant codes and guidelines include:

- "Code of Conduct for Licensed Insurance Agents", which sets out the fundamental principles of professional conduct that buyers of insurance are entitled to expect in their dealings with licensed insurance agents.
- "Code of Conduct for Licensed Insurance Brokers", which sets out the fundamental principles of professional conduct that buyers of insurance are entitled to expect in their dealings with licensed insurance brokers.
- "Guideline on 'Fit and Proper' Criteria under the Insurance Ordinance"

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Isle of Man

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Yes, financial institutions are required to comply with the rules and standards of conduct as set out in the Rule Book (as a minimum).

Financial institutions must notify the IoM FSA of any departure or intended departure of an employee who undertakes a Controlled Function within ten business days. Furthermore, where a financial institution discovers an event which may lead to a final warning being given to, or other serious disciplinary action being taken against, any of its employees, the financial institution must inform the IoM FSA within ten

business days. The notice must specify the event, and the name of the employee where the employee holds a Controlled Function or is a “key person”. Where the employee is not a “key person” and does not hold a Controlled Function role, the financial institution is not required to inform the IoM FSA of the name of the employee unless – following an investigation – the employee is given a final warning or other serious disciplinary action is taken (in which case, the financial institution will have to inform the IoM FSA of the employee’s name at that point).

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Switzerland

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Depending on the regulatory status of the employing entity and, as the case may be, on the exact activities of a financial service employee, a financial service employee needs to adhere to certain code of conduct rules (eg, regarding transparency and care, documentation and accountability).

Supervised companies in Switzerland are, in principle, required to set up an organisation that ensures the compliance with Swiss financial market laws and its statutory code of conduct rules. For this purpose, among others, companies are required to issue regulations that their employees must follow.

Under Swiss financial market laws, code of conduct rules are generally based on abstract statutory rules and concretized by recognised privately organised associations.

In particular, several professional organisations (eg, the Swiss Bankers Association or the Asset Management Association) and self-regulated organisations issue their own set of code of conduct rules that members are required to follow.

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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

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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

Hong Kong

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SFC – Self-reporting obligation

An SFC-licensed intermediary is subject to the self-reporting obligation under paragraph 12.5 of the "Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission". A licensed or registered person should report to the SFC immediately upon the occurrence of any material breach, infringement or non-compliance with any laws, rules regulations, and codes administered or issued by the SFC, exchange or clearing house of which it is a member or participant of, and the requirement of any regulatory authority applicable to that intermediary. This encompasses both actual and suspected breaches, infringements or non-compliance. In the report, the particulars of the actual or suspected breach, infringement or non-compliance, and relevant information and documents must be included to fulfil the obligation.

The same is to be reported by the registered institutions to the HKMA. The HKMA also requires authorised institutions to submit an incident report on the same day of discovering the incident.

SFC - Internal investigation disclosure obligation

In addition, a licensed corporation is required to provide the SFC with information about whether a licensed individual who ceases to be accredited to it (outgoing employee) was under any investigation commenced by the licensed corporation within six months preceding his or her cessation of accreditation. If the internal investigation commences after the notification of cessation of accreditation, the licensed corporation should also notify the SFC as soon as practicable. In addition, even if a firm has completed its investigation and made no negative findings against an outgoing employee, the firm will still be required to notify the SFC of the investigation.

The SFC expects licensed corporations to proactively disclose information about all investigative actions and the following is a non-exhaustive list of examples of investigations involving an outgoing employee that a licensed corporation should disclose to the SFC:

- investigations about a suspected breach or breach of applicable laws, rules and regulations;
- investigations about a suspected breach or breach of the licensed corporation's internal policies or procedures;
- investigations about misconduct that are likely to give rise to concerns about the fitness and properness of the outgoing employee;
- investigations about any matter that may have an adverse market or client impact; and

- investigations about any matter potentially involving fraud, dishonesty and misfeasance.

HKMA – Reporting incidents to HKMA

According to the "Incident Response and Management Procedures" published by the HKMA, once an authorised institution has become aware that a significant incident has occurred, the authorised institution concerned should notify the HKMA immediately and provide it with whatever information is available at the time. An authorised institution should not wait until it has rectified the problem before reporting the incident to the HKMA.

According to the Supervisory Policy Manual SB-1 "Supervision of Regulated Activities of SFC-Registered Authorized Institutions", to be in line with the reporting requirements imposed by the SFC on licensed representatives, authorised institutions will be required to notify the HKMA in writing within seven business days upon knowledge of the occurrence of certain information (including any subsequent changes) of the relevant individuals. The required information is on whether or not the person is or has been:

- convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
- subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
- subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
- engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that is material or relevant to the fitness and propriety of the individual; or
- bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance.

HKMA – Guidance Note on Cooperation with HKMA Investigations

Under the "Guidance Note on Cooperation with the HKMA in Investigations and Enforcement Proceedings", the HKMA encourages and recognises the cooperation of authorised institutions, banks and their staff in investigations and enforcement proceedings. Under this Guidance Note, cooperation includes early and voluntary reporting of any suspected breach or misconduct, taking a proactive approach to assist the HKMA's investigation, and making timely arrangements to provide evidence and information.

IA – Self-reporting obligation

Under "the Code of Conduct for Licensed Insurance Agents/Brokers", there is a self-reporting obligation by licensed insurance agencies or brokerages to the IA. A licensed insurance agency or brokerage is required to have proper controls and procedures to ensure the following incidents are reported to the IA as soon as is reasonably practicable:

- a disciplinary action taken by the HKMA, the SFC or the Mandatory Provident Fund Schemes Authority;
- a criminal conviction (other than a minor offence) by any court in Hong Kong or elsewhere;
- any material breaches of requirements under the IO or any rules, regulations, codes or guidelines administered or issued by the IA; and
- any material incidents which happen to the agency or brokerage.

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Isle of Man

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Yes, please see question 9.

Financial institutions in the Isle of Man are required to comply with various statutory requirements.

Breaches of those statutory requirements impose an obligation on the relevant entity to self-report to the IoM FSA. While ordinarily, businesses will endeavour not to supply information about individuals within the business to the regulator as part of this reporting, from time to time this may be necessary to comply with their regulatory obligations. Where this is the case, usually the regulator will be asked to use their powers of compulsion to seek the information rather than such information being given voluntarily. This is particularly the case where the regulator may have formed concerns about an individual's fitness and propriety and wishes to investigate this further.

Regulators from other jurisdictions may use certain reciprocal agreements and reciprocal enforcement legislation to seek information from the IoM FSA or more directly from a financial services business. Where such requests are made, this may include information about individual employees (ordinarily those exercising Controlled Functions). However, any mechanism for reciprocal enforcement or exchange of information is subject to scrutiny and such information would normally only be offered by an employer under compulsion.

Last updated on 17/04/2024

Switzerland

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As a general principle, supervised companies are required to ensure that persons holding, in particular, executive, overall management, oversight or control functions fulfil the requirements of the "fit and proper" test. Consequently, such persons must be of good repute and can guarantee compliance with applicable laws and regulations.

If a person cannot guarantee that the regulatory requirements are fulfilled at all times (eg, because of a material breach of its duties) the employing entity and its audit companies may be required to immediately report to FINMA, respectively, any incident that is of significance.

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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

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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.

Last updated on 16/04/2024

Hong Kong

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Anti-money laundering and counter-financing of terrorism

Financial services employees are required to receive training on anti-money laundering and counter-financing of terrorism. New staff should be required to attend initial training as soon as possible after being hired or appointed. Apart from the initial training, refresher training should be provided regularly to ensure that staff are reminded of their responsibilities and are kept informed of new developments (see question 8).

Whistleblowing

There is no single comprehensive whistleblowing legislation to protect whistleblowers in Hong Kong. However, piecemeal provisions in various ordinances may protect specific whistleblowers for the reporting of specific offences. For example, the Employment Ordinance provides that an employer shall not terminate (or threaten to terminate) the employment of, or in any way discriminate against, an employee because the employee has given evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.

While it is not legally required, as good practice, employers should consider implementing a whistleblowing policy to set out, among others, the type of incidents that should be reported and the procedures for filing the report.

Workplace harassment

Under the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance, any harassment in the workplace based on sex, pregnancy, disability and race (which includes colour, descent, ethnic or national origins) is unlawful.

As employers are vicariously liable for the wrongful acts of their employees (whether or not the act was done with the employer's knowledge or approval), one of the statutory defences is for employers to establish that they took "reasonably practicable steps" to prevent the wrongful act in the workplace. Employers should therefore put in place anti-harassment policies and procedures to prevent harassment from happening in the workplace and to provide complaint or reporting procedures to handle such incidents.

Last updated on 22/01/2023

Isle of Man

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Yes, from 1 January 2017 financial institutions must have an internal whistleblowing policy in place. Financial services employees are encouraged to first raise issues with their employer. However, employees may also raise serious concerns with the IoM FSA if they remain unsatisfied at the end of the employer's process.

Under employment legislation, if an employee is dismissed because they have made a "protected disclosure" (ie, blown the whistle), that dismissal is automatically unfair. Compensatory damages for whistleblowing are uncapped in the Isle of Man Employment and Equality Tribunal.

While there is no sector-specific guidance on harassment in the workplace, all employers have a legal duty to ensure that employees are not harassed at work (this would extend to bullying and being subjected to discrimination). Failure to have and enforce appropriate policies on bullying and harassment is likely to impair any defence that the employer may raise to a legal claim because it will not be able to show that it took "all reasonable steps" to prevent such acts.

Last updated on 17/04/2024

Switzerland

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There are no specific whistleblowing laws in Switzerland, but employees have a right to report grievances and misconduct to their employer, provided that they do not commit a breach of a fiduciary duty or cause damage (eg, malicious false reports).

However, employees must also report material facts or incidents of misconduct and the misconduct of other employees discovered in the course of their work to their employer under the employee's duty of loyalty.

On the other hand, an employee’s duty of loyalty and, in particular, an employee’s statutory duty of confidentiality flowing from it may also give rise to a duty to not report.

Based on the current legal situation, there may be a conflict between an employee’s need to report grievances (internally or externally) and a possible duty to not report with regard to an external report. An attempt to resolve this conflict through legislation has failed, and a new attempt to introduce whistleblowing legislation in Switzerland is not expected anytime soon.

Concerning whistleblowing by employees to a public authority or even to the public, employees are regularly prevented from doing so by confidentiality obligations under criminal law. Any justification for such a disclosure will usually only be examined in the context of a criminal investigation against the employee.

However, larger companies have taken measures and set up certain processes to uncover and prevent wrongdoing without having to do so under mandatory laws. For instance, companies have implemented internal or external reporting offices.

When it comes to harassment, an employer is explicitly required to protect employees from sexual harassment (prevention) and to protect any victims from further disadvantages (active protection). According to the Gender Equality Act, victims of sexual harassment may be awarded compensation of up to six months' wages by the courts, in addition to damages and restitution, unless the employer can prove that they have "taken all measures that are necessary and appropriate according to experience to prevent sexual harassment and that they can reasonably be expected to take”. Employers are therefore advised to actively address the issue of sexual harassment (as well as general discrimination and bullying) in the workplace and include it in their regulations or directives.

Last updated on 16/04/2024

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

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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.

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Hong Kong

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There are no particular rules or protocols that apply when terminating the employment of an employee in the financial services sector. The termination procedures will follow the requirements under the Employment Ordinance and the contractual terms of the employment contract. In certain cases (eg, termination of senior executives), the parties may enter into a mutual release and settlement agreement.

The licensed corporations should notify the regulators of any changes, including cessation of appointment of the licensed representative and responsible officer or managers-in-charge of core functions, within seven business days. In the case of registered institutions, the notification should be made to both the SFC and the HKMA.

Under section 64R of the IO, within 14 days after the day on which an authorised insurer, a licensed insurance agency or a licensed insurance broker company (collectively, “Appointing Principal”) terminates the appointment of a licensed insurance agency, a licensed individual insurance agent, a licensed technical representative (agent), a licensed technical representative (broker) or a responsible officer (as the case may be), then the Appointing Principal should notify the IA in writing of the termination.

Last updated on 22/01/2023

Isle of Man

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Terminating an employee’s employment must occur in accordance with the terms of their contract, otherwise the employer risks a claim for wrongful dismissal.

Additionally, financial institutions have certain notification obligations to the IoM FSA as outlined in question 10. Where a settlement agreement is entered into in respect of the exit of an employee and a factor in their departure is a disciplinary issue, the IoM FSA will usually wish to know the terms of, and circumstances leading to, the settlement agreement. In particular, the IoM FSA will want to understand whether the reason for the termination was a systemic failure on the part of the financial institution or an issue with the individual and their capability or conduct. The settlement agreement cannot prevent an employee from making a protected disclosure and must not require the employee to warrant that they have not made a protected disclosure.

Last updated on 17/04/2024

Switzerland

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There are no specific rules or protocols that apply when terminating the employment of an employee in the financial services sector. However, because changes in the strategic and executive management of, in particular, regulated companies such as banks, insurance companies, securities firms, fund management companies, managers of collective assets or asset managers are subject to a prior authorization by FINMA, the timing of termination and re-hiring of particular persons should be considered.

The general rules on the termination of an employment relationship apply under Swiss law: any employment contract concluded for an indefinite period may be unilaterally terminated by both employer and employee, subject to the contractual or (if no contractual notice period was agreed) statutory notice periods for any reason (ordinary termination).

The termination notice needs to be physically received before the notice period can start, meaning the notice needs to be received by the employee before the end of a month so that the notice period can start on the first day of the next month. If notice is not received before the end of the month, the notice period would start the month following the receipt of the notice. A termination notice might be either delivered by mail or personally.

Swiss law does not provide for payment in lieu of a notice period. The only option in this regard is to either send the employee on garden leave or to agree within the termination agreement to terminate the employment relationship per an earlier termination date than the one provided for in the termination notice.

As a general rule, an employment contract may be terminated by either party for any reason. However, Swiss statutory law provides for protection from termination by notice for both employers and employees, distinguishing between abusive and untimely notices of termination.

Based on social policy concerns, the employer must observe certain waiting periods, during which a notice cannot validly be served (so-called untimely notice). Such waiting periods apply (art. 336c CO), for example, during compulsory military or civil defence service, full- or part-time absence from work due to illness or an accident, or during an employee’s pregnancy and 16 weeks following the birth of the child. Any notice given by the employer during these waiting periods is void. Any notice given before the respective period is effective, but once the special situation has occurred and for the period it lasts, the running of the applicable notice period is suspended and only continues after the end of the period in question.

In addition, Swiss civil law defines certain grounds based on which terminations are considered abusive (article 336 CO). Termination by the employer might be considered abusive (eg, if it is based on a personal characteristic of the other party (eg, gender, race, age), or if the other party exercises a right guaranteed by the Swiss Federal Constitution (eg, religion or membership in a political party) unless the exercise of this right violates an obligation of the contract of employment or is seriously prejudicial to the work climate). If the employer abusively terminates the employment contract, the employer has to pay damages to the employee and a penalty of up to six months' remuneration (article 336a CO). Nevertheless, an abusive termination remains valid.

Regarding settlement agreements, Swiss employment law allows the conclusion of such agreements, but there are strict limits on the parties’ freedom of contract. Termination agreements may not be concluded that circumvent statutory provisions on employee protection. According to Swiss case law, termination agreements are usually valid and enforceable if both parties make real concessions, and if the agreement is also favourable for the employee. To conclude a termination agreement initiated by the employer, the employee must also be granted a sufficient reflection period. No further formalities need to be observed when concluding termination agreements, although it is generally advisable to have them in writing.

Last updated on 16/04/2024

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

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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

Hong Kong

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There are no particular rules that apply concerning the use of post-termination restrictive covenants for employees in the financial services sector. The rules concerning post-termination restrictive covenants are governed by common law principles in which they will only be enforced if the restriction is necessary for the protection of the employer's legitimate business interest and is reasonable in scope and duration.

Last updated on 22/01/2023

Isle of Man

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The IoM FSA does not regulate the use of post-termination restrictive covenants for employees in the financial services sector. Post-termination restrictive covenants will be a matter of contract and will typically include non-compete, non-solicitation and non-dealing restrictions. These are subject to the same common law rules on interpretation and enforceability as in any other sector. Restraint of trade provisions are, in principle, contrary to public policy as a result of which it is for the employer to justify the length and scope of the restrictive covenant and show that it goes no further than necessary to protect its legitimate business interests. If a restraint is considered to be excessive, the courts will not generally rewrite or modify it to make it enforceable and, therefore, the whole of a defective covenant could fall away or be of no effect.

Last updated on 17/04/2024

Switzerland

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There are no particular rules that apply concerning the use of post-termination restrictive covenants for employees in the financial services sector in Switzerland. Rather, general post-contractual non-compete regulations come into play: the parties of an employment contract may agree on a non-compete clause,

which must be included in the employment contract in writing to be valid. For the non-compete clause to be relevant, it must be sufficiently limited in terms of time, place and subject matter. Normally, the duration of a post-termination non-compete clause is no more than one year; however, the statutorily permissible duration is three years.

As a prerequisite for a contractual non-compete clause to be binding, access to sensitive data is required. The employee must either have access to customer data or manufacturing or business secrets. However, access alone is not enough. There must also be the possibility of harming the employer using this knowledge.

If a relationship between the customer and the employee or employer is personal (which is, for example, the case for lawyers or doctors), a post-termination non-compete clause is not applicable according to the Federal Supreme Court.

If there is an excessive non-compete clause, this can be restricted by a judge. In practice, most of the time, no restriction of the post-termination non-compete clause is imposed if the employer offers consideration in return for the agreement. The prohibition of competition may become invalid for two reasons. Firstly, the clause can become irrelevant if the employer has no more interest in maintaining the non-compete clause. Secondly, the clause is not effective if the employer has terminated the employment relationship. However, this does not apply if the employee has given the employer a reason to terminate the employment relationship.

Swiss employment law does not provide for any compensation for a post-termination non-compete clause.

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

Brazil

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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

Hong Kong

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Non-disclosure agreements are legally enforceable in Hong Kong. They follow the contract law rules and

there is no other particular form or rules. To be enforceable, a non-disclosure agreement must protect information that is both confidential and valuable. There are common exceptions where confidentiality will not apply to certain information, including information available in the public domain, information lawfully received from a third party without proprietary or confidentiality limitations, information known to the employee before first receipt of same from the employer, and information disclosed in circumstances required by law or regulatory requirement.

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Isle of Man

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at Cains

Yes, non-disclosure agreements are potentially lawful in the Isle of Man. A contract of employment may also contain confidentiality provisions for financial services employees. However, a non-disclosure agreement or confidentiality clause would not (and could not) prevent a financial services employee (or any employee) from making a protected disclosure, (ie, a disclosure made by an employee where they reasonably believe there is serious wrongdoing within the workplace (whistleblowing)).

A financial services employee may, furthermore, be subject to a legal requirement to disclose information in certain circumstances that might override an NDA. For example, an individual can be compelled to provide information by the IoM FSA during an interview, and such compulsion will generally override an employee's duties of confidentiality. Alternatively, an individual can be subject to a requirement to disclose information in the context of legal proceedings (eg, by court order).

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Switzerland

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Non-disclosure agreements (NDAs) are generally lawful in Switzerland. However, NDAs are not regulated by statutory law and therefore do not have to follow any particular statutory form or rule. Nevertheless, most NDAs often contain a similar basic structure.

The core clauses of an NDA concern:

- manufacturing and business secrets or the scope of further confidentiality;
- the purpose of use;
- the return and destruction of devices containing confidential information; and
- post-contractual confidentiality obligations.

As a general rule, it is recommended to use the written form.

To ensure possible enforcement of an NDA in the employment context, the requirements of a post-contractual non-compete obligation (see below) must be met.

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