

# 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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#### Netherlands

Author: *Sjoerd Remers*  
at Lexence

The Dutch Financial Supervision Act (Wft) and the Dutch Remuneration Policies for Financial Institutions Act.

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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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## Netherlands

Author: *Sjoerd Remers*  
at Lexence

Under Dutch law, all financial services sector companies must make substantiated assessments on the reliability and integrity of candidates to be appointed in integrity-sensitive positions. However, in practice, almost all financial services sector companies have made a pre-employment screening mandatory for all candidates (for any position).

The exact pre-screening process differs per financial service industry and company. In general, the following components are part of the pre-screening process: proof of identity; insolvency check; highest level of education; work experience (reference check); certificate of conduct (VOG, see question 3); and an integrity questionnaire.

Reference checks that go back five years are common in the financial services sector.

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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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## Netherlands

Author: *Sjoerd Remers*  
at Lexence

All employees must provide identity documentation and required diplomas to the financial services sector employer (including relevant Wft diploma(s), see question 4).

Before entering into an employment agreement, almost all financial services sector companies require a certificate of conduct (VOG). A VOG is a document by which the Dutch minister of legal protection declares that a candidate's (judicial) past does not constitute an obstacle to fulfilling a specific task or position. When assessing a VOG application, the Dutch minister of legal protection checks whether a candidate has criminal offences to his name that pose a risk to the position or purpose for which he is applying for the VOG.

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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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### **Netherlands**

Author: *Sjoerd Remers*  
at Lexence

According to Dutch law, financial services sector companies must guarantee the quality of their services. This means, among other things, that they must have skilled employees for the subjects on which they advise. After all, the consumer must be able to trust that an employee has the right knowledge and skills to provide appropriate advice.

Therefore, all financial services sector employees with substantive customer contact must have up-to-date professional competence at all times. This means that employees must be skilled, aware of current developments in their field, and can apply these in their work. The obligation to maintain up-to-date professional competence at all times is an open standard. Financial services companies may, therefore, decide for themselves how to implement this standard.

There is, however, a mandatory Wft diploma requirement for employees who provide financial advice. Which products and services an employee may provide advice on depends on the specific Wft diplomas he or she has obtained (after passing an exam). A Wft diploma is valid for a definite period (with a maximum of three years). To renew a Wft diploma, an employee must pass a new exam.

Furthermore, all candidates who will (co-)determine the policy of a financial services company must also be assessed by local authorities and will be tested for reliability and suitability.

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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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## **Netherlands**

Author: *Sjoerd Remers*  
at Lexence

The reliability, propriety and fitness of (supervisory) directors and executives in the financial services sector, as well as employees in an integrity-sensitive position, must be “beyond doubt”. This is also assessed by local authorities.

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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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## **Netherlands**

Author: *Sjoerd Remers*

at Lexence

There is no mandatory register for Dutch financial services employees.

Companies in the financial sector, however, must have a licence to provide financial services. Local regulators are responsible for the issuance of such licences. Companies in the financial sector with a license are published by the local regulator on a public register.

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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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### **Netherlands**

Author: *Sjoerd Remers*  
at Lexence

## Remuneration policy

Under Dutch law, financial services companies must implement an internal remuneration policy. Financial services companies must explain in the management report the relationship between the remuneration policy and the social function of the company.

## Variable remuneration

The variable remuneration that a financial services company awards to an employee amounts to a maximum of 20% of that person's fixed annual remuneration. There are a (very) limited number of exceptions to this maximum.

## Five-year statutory retention period for shares and other financial instruments

Financial services employees whose fixed remuneration consists of shares or related instruments may only sell them after five years.

## Adjustment or recovery of bonuses (claw-back)

Adjustment or recovery of bonuses is mandatory if a financial services employee has failed to meet appropriate standards of competence and proper conduct or has been responsible for conduct that led to a significant deterioration in the company's position.

## Severance payments

Paying out severance payments by financial services companies is not allowed if the employee leaves voluntarily or if there are seriously culpable acts or omissions in the performance of the function. Severance payments for directors (or other policymakers) may not exceed more than 100 per cent of their fixed annual salary.

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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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## Netherlands

Author: *Sjoerd Remers*  
at Lexence

Please see question 4.

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# 09. Is there a particular code of conduct and/or are

## 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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### Netherlands

Author: *Sjoerd Remers*  
at Lexence

Under Dutch law, financial services companies must maintain integrity and ensure safety, stability and integrity within their company. This also means that financial services companies must prevent their employees from committing criminal offences, other violations of the law or socially inappropriate behaviour that undermines confidence in the financial services sector or financial markets. For these reasons, it is common to implement company-specific codes of conduct.

There are many statutory general regulations and standards of behaviour that financial services employees are expected to adhere to. Moreover, all industries have their own specific industry-wide guidelines and codes of conduct.

An important statutory obligation for directors, (other) policymakers and employees with customer contact is to take an oath or promise before entering into employment. The oath or promise contains a declaration that – among other things – the employee will perform his or her duties with care and integrity, will put customer interests first and will make every effort to maintain and promote confidence in the financial services sector.



In addition to the oath or promise as mentioned above, there is also the “banker's oath”. This oath goes further than the oath or promise mentioned above and is mandatory for all employees who work for banks.

Breaching guidelines, codes of conduct or the statutory oath could lead to disciplinary sanctions being taken by the company itself (such as termination of the employment contract) or by disciplinary supervisors (such as a reprimand or a fine).

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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.

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### **Netherlands**

Author: *Sjoerd Remers*  
at Lexence

Financial services companies must report to local regulators any behaviour or event that poses a serious threat to the ethical conduct of the business of the company or may affect the reliability of policymakers, sound and controlled business operations and continuity.

Furthermore, there are several local disciplinary authorities where reports can be made about financial services employees who fail to comply with Dutch law, guidelines and rules of conduct.

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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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### **Netherlands**

Author: *Sjoerd Remers*  
at Lexence

Financial services companies must create a safe and healthy work environment. Furthermore, financial services sector companies have a statutory responsibility to protect consumers from unethical, unprofessional and negligent behaviour and services. In this regard, it is advisable (and common) to implement an internal code of conduct.

Under Dutch law, financial services companies must set up an internal reporting procedure (with specific requirements) where suspected misconduct can be reported.

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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

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



## Netherlands

Author: *Sjoerd Remers*  
at Lexence

There are no particular rules or protocols that apply when terminating the employment of financial services employees.

Please see question 7 for more information on severance payments.

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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.

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## Netherlands

Author: *Sjoerd Remers*  
at Lexence

There are no particular rules that apply concerning the use of post-termination restrictive covenants for financial services employees.

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## Contributors



### Brazil

Caio Medici Madureira

Rodrigo Souza Macedo

Ângelo Antonio Cabral

Rebeca Bispo Bastos

*Tortoro Madureira & Ragazzi Advogados*



### Netherlands

Sjoerd Remers

*Lexence*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)