

# Employment in Financial Services

## Contributing Editor

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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?**

### 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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### UAE

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In the DIFC, an individual who performs a “licensed function” must be approved in advance by the DFSA. The roles which fall within the meaning of an authorised person for the DFSA includes someone appointed

as:

- the Senior Executive Officer, who has ultimate responsibility for the day-to-day management, supervision and control of one or more (or all) of an authorised firm's financial services carried on, in or from the DIFC;
- the Finance Officer;
- Compliance Officer; and
- Money Laundering Reporting Officer.

Where a firm proposes to appoint an authorised individual, an application to the DFSA must be made in advance; the DFSA will make an assessment of the individual in order to satisfy itself that they are fit and proper to be an authorised individual. The Regulator will consider the individual's integrity, competence and capability, financial soundness, their proposed role, and any other relevant matters. That individual may not be considered as fit and proper where they have been declared bankrupt, convicted for a serious criminal offence, or incapable - through mental or physical incapacity - of managing their affairs.

In the ADGM, an individual who performs a "controlled function" must be approved in advance by the ADGM. A controlled function includes someone appointed as the Senior Executive Officer, Finance Officer, Compliance Officer, and Money Laundering Reporting Officer.

Where a firm proposes to appoint someone in a controlled function, an application to the ADGM must be made in advance. The ADGM will make an assessment of that individual in order to satisfy itself that they are fit and proper to be an approved individual. The Regulator will consider the individual's integrity, competence and capability, financial soundness, their proposed role and any other relevant matters. That individual may not be considered as fit and proper where they have been declared bankrupt, convicted for a serious criminal offence, or incapable - through mental or physical incapacity - of managing their affairs.

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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?**



#### **Netherlands**

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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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Employees must be provided with an employment contract across the different jurisdictions in the UAE. This applies to all employees, regardless of whether they work in the financial services industry.

In the DIFC, the DIFC Employment Law requires employers to provide their employees with a written contract that must specify the following:

- the parties' names;
- the start date;
- the salary and any allowances to be provided to the employee;
- the applicable pay period;
- hours and days of work;
- vacation leave and pay;
- notice to be given by either party to terminate employment;
- the employee's job title;
- confirmation as to whether the contract is for an indefinite period or for a fixed term;
- the place of work;
- applicable disciplinary rules and grievances procedures;
- the probation period;
- a reference to any applicable policies and procedures (including any codes of conduct) and where these can be accessed; and
- any other matter that may be prescribed in any regulations issued under the DIFC Employment Law.

In the ADGM, the ADGM Employment Regulations requires employers to provide their employees with a written contract that must specify the following:

- the parties' names;
- the start date;
- remuneration;
- the applicable pay period;
- hours and days of work; and
- any terms and conditions relating to:
  - vacation leave and pay, national holiday entitlement and pay;
  - sick leave and sick pay;
  - the notice period that either party is required to give to the other in order to terminate employment;
  - the employee's job title;
  - whether the employment is for an indefinite or fixed term;
  - the place of work;
  - any disciplinary rules or grievance procedures applicable to the employee; and

any other matter that may be prescribed by the employer.

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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?**

## Netherlands

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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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## UAE

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As noted in question 2 -, employees undertaking certain regulated roles must obtain the pre-approval of the relevant regulatory authority. The regulators in each case will assess the fitness and propriety of the relevant individual.

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

## Netherlands

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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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UAE

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There are no provisions that lay down enhanced responsibilities for a particular category of employees in the financial services sector.

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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?**



Netherlands

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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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UAE

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There is no public register of authorised individuals.

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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?**

## Netherlands

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### **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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## UAE

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Both the DFSA General Rulebook and FSRA General Rulebook contain Best Practice Guidance for remuneration structure and strategies of authorised entities. In particular, the guidance identifies that the governing body of an authorised entity ought to consider the risk to which the firm could be exposed to as a result of the conduct or behaviour of its employees, and to consider the ratio and balance between fixed and variable remuneration components, the nature of the duties and functions performed by the relevant employees, the assessment criteria against which performance based components of remuneration are to be awarded, and the integrity and objectivity of any performance assessment against that criteria.

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## **08. Are there particular training requirements for**

# employees in the financial services sector?



## Netherlands

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Please see question 4.

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## UAE

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The DFSA General Rulebook requires authorised entities to ensure that the Senior Executive Officer, Compliance Officers, and Money Laundering Reporting Officer, must complete a minimum of 15 hours of continuing professional development in each calendar year. This continuing professional development must be relevant to the employee's role and professional skill and knowledge, and consist of structured activities, such as courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning, which require a commitment of 30 minutes or more. The employee must also ensure that they maintain adequate records to be able to demonstrate that these requirements have been met.

The FSRA General Rulebook requires an authorised entity to ensure that its directors and senior managers are fit and proper and its guidance suggests that whether any training has been undertaken or is required should be considered. In addition, an authorised entity should satisfy itself that an employee continues to be competent and capable of performing the role, has kept abreast of market, product, technology, legislative and regulatory developments that are relevant to the role, through training or other means, and is able to apply this knowledge.

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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?**



## Netherlands

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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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In the DIFC, the DFSA General Rulebook provides that authorised individuals must adhere to six principles, as follows:

- Principle 1 – Integrity
- Principle 2 – Due skill, care and diligence
- Principle 3 – Market conduct
- Principle 4 – Relations with the DFSA
- Principle 5 – Management, systems and control
- Principle 6 – Compliance

In the ADGM, the FSRA General Rulebook provides that authorized individuals must adhere to eleven principles, as follows:

- Principle 1 – Integrity
- Principle 2 – Due skill, care and diligence
- Principle 3 – Management, systems and control
- Principle 4 – Resources
- Principle 5 – Market conduct
- Principle 6 – Information and interests
- Principle 7 – Conflicts of Interest
- Principle 8 – Suitability
- Principle 9 – Customer assets and money
- Principle 10 – Relations with regulators
- Principle 11 – Compliance with high standards of corporate governance

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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?



## Netherlands

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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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## UAE

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Both the DFSA General Rulebook and FSRA General Rulebook provide that where an authorised firm requests the withdrawal of an authorised individual, they must provide to the regulator details of any circumstances in which they consider the individual is no longer fit and proper. Where the individual is to be dismissed or has requested to resign, the firm must provide to the regulator a statement of the reason, or reasons, for the dismissal or resignation.

In addition, the DFSA and FSRA General Rulebooks contain broad obligations on any authorised firm to report to the regulator if it becomes aware of a range of occurrences, including any matter which could have a significant adverse effect on the authorised firm's reputation, or a matter in relation the authorised firm which could result in serious adverse financial consequences to the financial system or to other firms, or a significant breach of a rule by the authorised firm or its employees.

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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?**



## Netherlands

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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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### **Whistleblowing**

In the DIFC, whistleblowing is addressed both by the DFSA, who introduced its regulatory regime for whistleblowing in 2022 through amendment to its Regulatory Law 2004, as well as the more general obligations contained in the Operating Law of the DIFC Authority.

Under the Regulatory Law, any person who makes a qualifying disclosure to a specified person is entitled to protection under the law. Similar provisions are contained in the Operating Law.

The disclosure may be made internally within the company, for example, to a director, officer or any person in a management position of the relevant company, or any person designated by that company to receive the disclosure of such information; or externally, for example, to the Registrar, Financial Services Regulator, Office of Data Protection, or criminal law enforcement agency in the UAE.

The qualifying disclosure must relate to the disclosure of information made in good faith, that relates to a reasonable suspicion that a regulated entity, or any of its employees or officers, has or may have, contravened a provision of legislation administered by the DFSA, or has engaged in money laundering, fraud, or other financial crime.

A person making a protected disclosure shall not be subject to any civil or contractual liability for making the disclosure, nor shall they be dismissed or otherwise suffer a detriment or disadvantage in connection with making the disclosure.

The corresponding DFSA module sets out the DFSA's expectations that companies should implement appropriate written policies in order to facilitate the reporting of any regulatory concerns by whistleblowers, and to assess, and, where appropriate, escalate regulatory concerns reported to it.

The ADGM published Guiding Principles on Whistleblowing in December 2022, which whilst non-binding, were designed to assist entities and individuals in the ADGM in establishing whistleblowing frameworks and ensure that potential whistleblowers were encouraged to speak up and were fairly treated when they did so. In March 2024, the ADGM announced a public consultation on proposals for a whistleblowing framework, which will lead to the introduction of Whistleblower Protections Regulations and amendments to the Employment Regulations.

### **Harassment**

Harassment is not dealt with in the regulatory framework outlined above, but is contained in the applicable employment legislation.

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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?



### Netherlands

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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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### UAE

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As noted in question 7, the DFSA General Rulebook and FSRA General Rulebook contain Best Practice Guidance for remuneration structure and strategies of authorised persons. In this regard, both sets of guidance provide that where an authorised entity provides discretionary payouts on termination of employment (either by way of severance payments, or other payments, such as “golden parachutes”), these should be subject to appropriate limits or shareholder approval. In addition, they should be aligned with the firm’s overall financial status and performance.

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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?



### Netherlands

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

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### UAE

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The DFSA and FSRA Rulebooks do not regulate the use of post-termination restrictive covenants. It is fairly

typical for financial services firms in both free zones to include non-dealing, non-solicitation, non-compete and similar restrictive covenants in their employment contracts. These are subject to the same common law rules on interpretation and enforceability as in any other sector. In addition, whilst the courts in both the DIFC and ADGM will award injunctive relief, there is no similar right in the federal courts. This means that the enforceability of an injunctive order outside of the geographic scope of the two free zones is uncertain.

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