

Employment in Financial Services

Contributing Editor

Louise Skinner at Morgan Lewis & Bockius

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

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

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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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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 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?

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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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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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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?



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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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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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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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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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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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