

# 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?

### Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Financial services industry employers and their employees are subject to a multi-layered legal framework, which varies depending on the business activity of the respective institution. In each case, it comprises a patchwork of overarching EU law, local law, and ordinances issued by the regulatory watchdog, the Federal Financial Supervisory Authority (BaFin). Employees are particularly affected by specific remuneration principles targeted at avoiding excessive risk-taking.

#### **Banks and financial services**

These providers are subject to the German Banking Act (KWG), with a few exceptions (eg, certain provisions do not apply to some institutions due to the nature of their business (section 2 KWG)). The KWG provides, inter alia, a slightly reduced level of dismissal protection for certain banking employees and sets out rules for an appropriate ratio between variable and fixed annual remuneration for employees and managing directors. Bonuses may not exceed the fixed salary, unless the institution's shareholders approve an increase of up to twice the fixed salary by qualified majority vote. Further details are set out in the Remuneration Ordinance for Financial Institutions (IVV) issued by BaFin. In addition, banks and financial service providers are under certain prerequisites subject to the EU Capital Requirements Regulation (Regulation (EU) No. 575/2013 (CRR) as modified by Regulation (EU) No. 2019/876 of 20 May 2019).

#### **Insurance providers**

These are subject to the Commission Delegated Regulation (EU) 2015/35 (Solvency II Regulation), which applies directly and takes precedence over national law. The Insurance Regulation Act governs regulatory supervision and forms the basis for a BaFin-issued insurance compensation ordinance. Compared to banking's IVV, this is much broader in scope and only applies when not overridden by rules set out in the Solvency II Regulation.

#### **Investment funds**

These are subject to the German Capital Investment Code (KAGB), which provides specific rules on remuneration for employees, as well as Annex II of Directive 2011/61/EU for alternative investment funds and articles 14a, 14b of Directive 2009/65/EC for undertakings for collective investments in transferable securities. There is no BaFin ordinance (comparable to IVV for banks) for this sector yet, although BaFin

could be authorised to issue one. Section 37 paragraph 1 KAGB provides that investment funds should establish a remuneration system for certain employees, such as managers, that is consistent with and conducive to a sound and effective risk management system, that does not create incentives to take inappropriate risks, and does not prevent the investment fund from acting dutifully in the best interests of the investment assets.

## Investment firms

Finally, these are subject to a different regulatory regime depending on their size and impact. Larger investment firms are subject to the risk and remuneration regime for banks, while medium-sized investment firms (since June 2021) are subject to the new German Securities Act (WpIG). The Act implements the Investment Firm Directive (Directive (EU) 2019/2034) and is complemented by the Investment Firm Regulation (Regulation (EU) 2019/2033). Commission Delegated Regulations specify the standards to identify risk-takers, and Guidance by the European Securities and Markets Authority further detail the requirements for sound remuneration policies. In January, 2024, a new remuneration regime – the Investment Firm Remuneration Ordinance (WpI-VergV) – was introduced by BaFin after a multi-year consultation phase. Quite similar to the regime for banks and financial services, but with a few subtle differences, these rules must now be applied to the remuneration of medium-sized investment firms and especially their risk takers. Small investment firms are only subject to a low level of regulation. Further regulatory rules are set out, inter alia, in the German Securities Trading Act (WpHG) and the Financial Investment Mediation Ordinance, setting out behavioural standards for employees interacting with customers.

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## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

All private-sector employers and employees in Singapore are regulated by the Ministry of Manpower (MOM). Legislation such as the Employment Act 1968, the Employment of Foreign Manpower Act 1990, and the Workplace Safety and Health Act 2006 prescribe general employment rights and obligations for both employers and employees, and are supplemented by various tripartite advisories and guidelines. Anti-workplace discrimination legislation is also expected in the second half of 2024.

From the perspective of financial services, financial institutions (FIs) and FI employees are regulated by the Monetary Authority of Singapore (MAS). FIs are broadly categorised into four sectors: banking, capital markets, insurance, and payments. Statutes specific to each FI sector also apply. These include the Banking Act 1970, Securities and Futures Act 2001, Trust Companies Act 2005, Financial Advisers Act 2001, Insurance Act 1966, and Payment Services Act 2019. These are supplemented by MAS-issued directions, guidelines, codes, practice notes, circulars and policy statements.

A new Financial Services and Markets Act 2022 (FMSA) was also passed by Parliament in April 2022, consolidating and enhancing MAS' powers. The FMSA will be implemented in phases, with the first phase having been implemented on 28 April 2023. This first phase addresses the porting over of provisions under the Monetary Authority of Singapore Act 1970 which relates to the MAS' general powers over financial institutions, the anti-money laundering / countering of terrorism financing framework, and the Financial Dispute Resolution Schemes framework. The MAS has stated that the remaining phases are targeted for implementation in 2024.

2024 also saw the introduction of the Financial Institutions (Miscellaneous Amendments) Bill 2024. If passed, the bill will enhance, clarify and consolidate MAS' powers across various acts to investigate, reprimand, supervise and inspect potential breaches and offences.

Contravening legislation (primary or subsidiary) and directions would generally constitute a criminal offence. Contravening advisories, guidelines, codes and practice notes would not generally constitute a criminal offence, but may result in regulatory or administrative consequences such as reprimands,

censures or prohibition orders (in the case of MAS) or other administrative actions, such as a curtailment of work-pass privileges (in the case of MOM) – which is significant as work passes are a requirement for employing foreign nationals in Singapore.

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## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

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

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

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

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

SM&CR consists of three elements:

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

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

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



### **Germany**

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Different notification procedures exist before employees may take up their roles.

Investment firms may only entrust employees to provide investment advice if they are knowledgeable and have demonstrated the required reliability – as evidenced, inter alia, by not having a relevant and unspent prior criminal record. Furthermore, such employees’ identities must be disclosed to BaFin before they commence their activities. The active registration of employees is intended to impart upon employers the significance of employee selection and responsibility for their decisions.

Representatives of regulated entities of the financial services sector (typically, members of management) must be approved by BaFin before they can take up their role (colloquially known as BaFin’s “driver’s licence”). To obtain approval, a request must be filed with BaFin, showing the experience and suitability of the candidate for the role. Depending on the financial services delivered by the company, information that must be filed include the following:

- a CV (including information on professional training, career, and references);
- information on reliability (a form or summary to be completed by the manager, including, for example,

mandatory declarations on prior criminal or administrative offences);

- a "certificate of good conduct for submission to an authority", a "European certificate of good conduct for submission to an authority", or "corresponding documents" from abroad (depending on the countries of residence in the last 10 years);
- an extract from the central commercial register;
- an overview of other mandates as a managing director or in administrative and supervisory bodies; and
- information about the manager's ability to dedicate sufficient time to the role.

Non-management employees responsible for specific key functions at an insurance provider are subject to a similar notification process. Further, financial services employers must perform a risk analysis under the Anti-Money Laundering Act and take internal security measures, which also includes assessing the reliability of employees.

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## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Pre-screening measures are only required if the FI employee is going to be involved in the provision of financial services (or other MAS-regulated activities).

Such employees need to pass a fit-and-proper assessment, referring to the MAS Guidelines on Fit and Proper Criteria. Criteria to be considered include the employee's honesty, integrity and reputation; competence and capability; and financial soundness.

In considering the employee's honesty, integrity and reputation, relevant factors include whether the employee has been the subject of proceedings or investigations (whether criminal or disciplinary) or has been dismissed or asked to resign. MAS' Circular CMI 01/2011 also sets out MAS' expectations on due diligence checks, declarations and documentation concerning employees who are expected to be representatives of specific FIs. Among other things, this entails conducting reference checks with the previous employers of the FI's proposed employees.

In December 2023, MAS issued its response to a May 2021 consultation paper which sought to address issues arising from the recycling of "bad apples" through FIs. In doing so, the MAS noted it will proceed with its proposal to impose mandatory requirements to conduct and respond to reference checks. The anticipated reference check regime will apply to specific groups of employees, with the information to be addressed in reference checks standardised. The MAS will look to consult on the relevant draft notices in this respect in due course, and this will bear watching.

For more senior roles (eg, senior managers, material risk personnel, directors, committee members, chairpersons and key executives), FIs are expected to ensure that they are fit and proper for their roles. MAS' prior approval may also have to be obtained or notices may have to be made, depending on the licence, registration and role sought. FIs in these sectors are expected to conduct more rigorous checks before seeking MAS' approval or submitting a notice, with a greater emphasis on considering circumstances that may give rise to a conflict of interest.

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## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

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

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

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

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## **03. What documents should be put in place when engaging employees within the financial services**

# industry? Are any particular contractual documents required?



## Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

German law does not treat financial services employees differently from employees of other industries, in that an employment agreement does not necessarily have to be in writing to come into existence. It is, however, common (best) practice and highly recommended for risk mitigation and transparency reasons that parties enter into a written employment agreement. For some provisions to be valid, such as a post-contractual non-compete or a fixed-term agreement, a qualified electronic or wet-ink signature is mandatory.

Further, employers must also provide employees with a wet-ink signed certification document summarising the essential conditions of employment under the German Evidence Act. Failure to provide such a document does not render the employment contract invalid, but a breach of the documentation requirement constitutes an administrative offence that may trigger fines. The German government has proposed an Act to modify the wet-ink signature requirement and also allow for electronic signatures, but has not provided a clear timeline for it coming into force yet.

Remuneration is typically governed under the employment contract and references a firm's remuneration policy, which must be put in place for regular staff as well as identified risk-takers, with a dedicated set of rules varying per industry sub-sector.

Finally, depending on the case, certain documentation may need to be filed with BaFin before an employee can take up their tasks (see question 2).

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## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Reference checks, declarations and other documentation to ensure that the employee is a fit and proper person should be requested. In addition, notices to MAS or MAS' approval may be required for more senior roles (see question 2).

There should also be an employment contract in place, addressing matters such as individual licences (where required) and continued compliance with all applicable MAS guidelines, notices, advisories and regulations. In drafting these contracts, FIs should take into account MAS' Guidelines and Advisories, including the Guidelines on Fit and Proper Criteria, Individual Accountability and Conduct, and (where relevant) Risk Management Practices – Board and Senior Management. Robust confidentiality obligations and other restrictive covenants are also commonplace.

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## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*



at Walder Wyss

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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## United Kingdom

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

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

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

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

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

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



### Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Taking on certain tasks requires prior proof of competence, which varies depending on the financial services sector and the role. As an example, investment services must notify BaFin of investment advisors, sales representatives, and compliance officers, who in each case must be knowledgeable and reliable, and whose expertise must be reviewed at least annually (section 87, WpHG and the corresponding Employee Notification Ordinance). Institutions must deliver proof of professional suitability (ie, sufficient theoretical and practical knowledge of the relevant business and management experience) and reliability for certain key employees, managing directors, and members of the supervisory or administrative board (sections 25c paragraph 1 and 25d paragraph 1 KWG, sections 20 and 21 WpIG).

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### Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Representatives, senior management employees and other office holders may require MAS' approval prior to an appointment or assuming an office (see question 2).

In particular, MAS must be notified of the appointment of representatives providing financial advisory services under the Financial Advisers Act 2001 or carrying out regulated activities under the Securities and Futures Act 2001 (dealing in capital markets products, advising on corporate finance, fund and REIT management, product financing, providing credit ratings or custodial services). With some exceptions, they must be at least 21 years old, satisfy minimum academic qualification requirements, and complete prescribed modules of the Capital Markets and Financial Advisory Services examinations.

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### Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

See question 2.

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

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

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

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



## Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Employees who qualify as risk-takers have enhanced responsibilities due to their influence on an institution's risk profile, including documentation requirements. Investment brokers advising private clients are also subject to strict rules and extensive documentation requirements, inter alia, on the investment advice provided and how the investment was tailored to the preferences, investment objectives, and other characteristics of the investor.

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## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Employees who are managers and executives or above generally have enhanced responsibilities, particularly regarding corporate governance.

MAS' Guidelines on Individual Accountability and Conduct provide that senior managers (ie, those principally responsible for day-to-day management) should be clearly identified, fit and proper for their roles, and responsible for the actions of employees and the conduct of the business under their purview. As for material risk personnel (ie, individuals who have the authority to make decisions or conduct activities that can significantly impact the FI's safety and soundness, or cause harm to a significant segment of the FI's customers or other stakeholders), they should be fit and proper for their roles, and subject to effective risk governance, appropriate incentive structures, and standards of conduct.

Subsidiary legislation or other MAS guidelines specific to the FI's sector also contain corporate governance regulations, prescribing responsibilities to the board of directors, nominating committees, or senior management.

MAS' Guidelines on Risk Management Practices – Board and Senior Management further states that an FI's board and senior management are responsible for governing risk within an institution. This includes setting up appropriate risk management systems, stress-testing programmes and business contingency plans.

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## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

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

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

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



### **Germany**

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Yes. Investment firms must disclose the identities of employees providing investment advice, as well as sales representatives and compliance officers, to BaFin, which maintains a non-public database of registered employees (section 87 WpHG).

As a first step of the registration process, companies need to register on the MVP notification and publication platform. After successful registration, they can apply for admission to the employee and complaints register. Different notification procedures are available, depending on whether employees are notified for the first time or amendments are being made.

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### **Singapore**

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

The MAS keeps a register of appointed representatives conducting regulated activities under the Securities and Futures Act 2001 (see question 4) or providing financial advisory services under the Financial Advisers Act 2001. The register is updated based on an FI’s notifications of appointment to the MAS, with prerequisites applying to the appointment of such representatives (see question 4).

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### **Switzerland**

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

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

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

Last updated on 22/01/2023

## **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?**

## Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Yes, there are specific sets of rules on remuneration in the financial services sector, varying in detail per sub-sector. Rules are particularly strict for material risk-takers of significant institutions in light of the increased risk profile of their activities for the entire organisation.

Variable and fixed remuneration must have an appropriate ratio to each other. For financial institutions, the ratio is appropriate if the variable remuneration both complies with an upper limit of 100% of the fixed remuneration (up to 200% maximum based on a shareholders' resolution) and provides an effective behavioural incentive. Further, variable remuneration may need to be spread over deferral periods. Depending on the sector, remuneration may have to be made subject to malus, holdback or clawback provisions in case specific risks materialise or the employee is found guilty of misconduct. Further, certain remuneration elements must be granted in instruments instead of cash payments, with restrictions around this element again varying by sub-sector.

Last updated on 16/04/2024

## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Disclosure requirements may apply depending on the employee's role. For example, with some exemptions, financial advisors are required to disclose to the client the remuneration that they receive or will receive for making any recommendations in respect of a particular investment product, or executing a purchase or sale contract relating to a designated investment product on their clients' behalf.

MAS' Guidelines on Corporate Governance (applicable to designated financial holding companies, banks, and some insurers) also requires the FI's board of directors to have a formal and transparent procedure for developing policies on and fixing the remuneration of directors, executives, and key management personnel. A separate remuneration committee made up of non-executive directors must be established to make the relevant recommendations. MAS expects compliance with these guidelines in a manner commensurate with the size, nature of activities and risk profile of the FI. Diverging from the guidelines is acceptable to the extent that FIs explicitly state and explain how their practices are consistent with the policy intent of the relevant principle.

Companies listed on the Singapore stock exchange have similar requirements under MAS' Code of Corporate Governance, and these also exist in subsidiary legislation applicable to the FI. As for all other non-exempt companies, director and employee remuneration will ordinarily have to be disclosed through publicly available financial statements, under applicable accounting standards.

Apart from the above, there are no strict limits on compensation or requirements to impose deferral, malus or clawback provisions. Employers may include such provisions in their contracts, but should be aware that the enforcement of such provisions may be subject to challenge.

Last updated on 16/04/2024

## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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.

Last updated on 16/04/2024



## United Kingdom

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

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

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

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

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

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

Last updated on 22/01/2023



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



### Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Qualification requirements exist for specific roles (eg, traders), and employers must ensure they comply with them by only contracting employees with the required skills, certifications and experience. The expertise of employees providing investment advice, sales representation, and compliance advice must also be continuously maintained and regularly updated.

Last updated on 16/04/2024



### Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Examinations (see question 4) and continuing education requirements apply to certain employees in the capital markets services, financial advice and insurance sectors.

Last updated on 16/04/2024



### Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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.

Last updated on 16/04/2024

## United Kingdom

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

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

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

- Threshold conditions on suitability – All firms must show that persons connected with the firm are fit and proper, taking into account all the circumstances. When assessing the suitability threshold of an employee, the FCA and the PRA will consider:
  - the nature of the regulated activity the firm carries on or is seeking to carry on;
  - the need to ensure that the firm's affairs are conducted soundly and prudently;
  - the need to ensure that the firm's affairs are conducted appropriately, considering especially the interests of consumers and the integrity of the UK financial system; and
  - whether those who manage the firm's affairs have adequate skills and experience and act with probity.
- FCA Principles for Businesses or PRA Fundamental Rules – These rules lay out the parameters of the “fit and proper” standard set for firms in the threshold condition on suitability, and require firms to undertake the following:
  - recruit staff in sufficient numbers;
  - provide employees with appropriate training, with competence assessed continuously;
  - make proper arrangements for employees involved with carrying on regulated activities to achieve, maintain and enhance competence; and
  - train employees to pay due regard to the interests of a firm's customers and treat them fairly.
- Competent employees rule in chapters 3 and 5 of the Senior Management Arrangement Systems and Controls Sourcebook – This is the main employee competence requirement in the training and competence regime under the FSMA and applies to individuals engaged in a regulated activity in UK-regulated firms. The application of this rule can be complex and dependent upon the firm and the activities it undertakes, but in general, it provides that firms must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- Detailed training and competence requirements in the FCA's training and competence handbook (TC) – The TC rules are designed to supplement the competent employees rule, especially concerning retail activities carried on by firms. Among others, these rules include the following:
  - rules on assessing and maintaining competence;
  - supervision of employees who have not yet been assessed as competent;
  - appropriate qualifications; and
  - recordkeeping and reporting for firms within its scope, including how a firm assessed its employees as competent, and how it has ensured that its employees remain competent.

Last updated on 22/01/2023

## 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?



## Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Employees must conduct themselves in line with their respective roles and responsibilities, which in client-facing roles indirectly leads to them being subject to specific behavioural obligations (such as having to adhere to certain procedures and documentation obligations before selling a service or product to a client). In addition, company policies required by the regulator (eg, on sustainability or equal treatment) often include behavioural standards.

In addition, there are voluntary standards adopted by various professional associations, such as the Code of Conduct of the Federal Association of Financial Services, which apply to their respective members.

Last updated on 16/04/2024



## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Generally, MAS' Guidelines on Individual Accountability and Conduct emphasises the importance of reinforcing standards of proper conduct among all employees, while employees conducting regulated activities must remain fit and proper for their roles under MAS' Guidelines on Fit and Proper Criteria.

Guidelines, codes, directions, notices and legislation in relation to corporate governance and risk management (including those mentioned in questions 5 and 6) should also be considered.

Last updated on 16/04/2024



## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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.

Last updated on 16/04/2024



## United Kingdom

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

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

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

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

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

The rules of the first tier are:

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

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

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

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

Last updated on 22/01/2023

## 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?



## Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Yes. Under section 87 WpHG, investment firms must notify BaFin of any changes regarding employees providing investment advice, sales representation, and compliance advice. This includes, for example, personal data or a change of the responsible sales representative, but also the termination of the activity. Changes must be communicated to BaFin within one month.

Further, investment firms must notify BaFin as soon as a substantial customer complaint is made against one or more employees based on his or her activities in connection with investment advice. This applies, for example, to allegations of incorrect investment advice. The notification to BaFin must be submitted within six weeks of receipt of the complaint. Details on the content of the notification are governed by section 8 paragraph 4 of the Securities Trading Act Employee Notification Ordinance.

There are further notification obligations if there are doubts about an employee's reliability under the relevant statutory rules. For example, in their initial declaration of reliability under section 24 paragraph 1 No. 1 KWG and section 5b Ordinance on Notifications and Submission of Documents under the KWG, future managing directors and persons acting as sole representatives of credit institutions and financial services institutions must immediately report to BaFin in writing any subsequent changes that may be relevant to their reliability. This applies to all facts that were also relevant for the initial reliability assessment (eg, because an employee was convicted of certain financial crimes). In addition, BaFin must also receive notifications of preliminary proceedings, indictments and convictions of certain financial sector employees according to the Order on Notifications in Criminal Matters.

Last updated on 16/02/2024



## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Forms need to be submitted to the MAS when an individual ceases to act as a representative in regulated activities or financial advisory services. Depending on the FI, the MAS may also have to be informed of appointments or changes of representatives, directors, chief executive officers, and other key officeholders (see questions 2 and 4).

MAS notices are also required for the reporting of misconduct for employees who are representatives of certain capital market service providers, financial advisers, and insurance broking staff. Examples of reportable misconduct include acts involving fraud, dishonesty or other offences of a similar nature, and non-compliance with regulatory requirements. Specific declaration forms and timelines may apply depending on the FI. An FI may also be required to submit updates on cases where investigations have not concluded or disciplinary action was not taken, or submit a declaration that there was no misconduct reported in a given calendar year.

While not specific to financial services employees, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 requires any person with knowledge, or reasonable grounds to suspect, that any property is being used in connection with criminal activity to file a Suspicious Transaction Report with the Suspicious Transaction Reporting Office. MAS notices concerning the prevention of anti-money laundering and incidents of fraud emphasise this obligation.

## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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.

Last updated on 16/04/2024

## United Kingdom

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

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

- under FCA Principle 11, firms have a general duty to inform the FCA of matters about which it would reasonably expect notice;
- a firm must notify the FCA immediately it becomes aware, or has information which reasonably suggests, that a matter which could have a significant adverse impact on the firm’s reputation has occurred, may have occurred or may occur in the foreseeable future;
- a firm must notify the FCA immediately it becomes aware, or has information which reasonably suggests, that a significant breach of a rule (including a significant breach of a Conduct Rule) has occurred, may have occurred or may occur in the foreseeable future; and
- a firm must also notify the FCA if it takes disciplinary action against an individual for a breach of the Conduct Rules. Where the relevant individual is a senior manager, the notification must be made within seven business days. Where the relevant individual is certified staff, the notification must be made in the firm’s annual reporting.

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

## Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Employers are generally required under German law, regardless of their industry, to exercise a duty of protection regarding their employees. If they become aware of allegations of employee harassment, the employer must investigate and take appropriate steps to either dispel the suspicion (and protect the employee incorrectly accused of harassment) or sanction the perpetrator. As such, many employers have a process or policy in place governing this.

From July 2023, employers must observe the mandatory regulations of the Whistleblower Protection Act, implementing the EU Whistleblower Directive. This regulation applies automatically to many institutions in the financial sector, and beyond that to others based on their number of employees (starting with a headcount of over 50) or by virtue of belonging to the public sector. In corporate groups, multiple employers can set up a joint office to receive reports and conduct further investigations. Public sector employers must, in principle, establish an internal reporting office regardless of the number of employees. In addition, employees will also have the option to report breaches externally. The purpose of the new legislation is to strengthen the protection of whistleblowers and ensure that they do not face any disadvantages within the framework of the legal requirements – including, inter alia, where the whistleblowing concerns matters such as breaches of European law concerning financial services, financial products and financial markets, as well as the prevention of money laundering and terrorist financing.

An office at the Federal Ministry of Justice will be established as the governing body for the new law. In addition, the Federal Antitrust Office and BaFin will be responsible for sanctioning certain breaches under their respective remit (antitrust and financial services, respectively).

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## Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

MAS' Guidelines on Individual Accountability and Conduct provide that appropriate policies, systems and processes should be put in place to enforce expected conduct, including transparent investigation and disciplinary procedures, formal whistleblowing programmes, and a process for the reporting and escalation of issues to senior management on any issues related to employee conduct. Anti-workplace discrimination legislation is also expected in 2024.

Last updated on 16/04/2024



## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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

## United Kingdom

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

### **Whistleblowing**

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

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

The key measures are as follows:

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

### **Prevention of harassment**

Harassment and related unacceptable workplace behaviours (such as bullying and discrimination) are not specifically addressed in the SM&CR rules on individual accountability. However, it is clear from regulators' public statements that the culture of firms (in its broadest sense) is central to their approach. Having a

healthy firm culture is seen as critical to consumer protection and well-functioning markets, and firms with healthy cultures are considered to be less prone to misconduct.

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

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



### **Germany**

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Employment relationships with risk-takers of significant institutions whose annual fixed remuneration exceeds three times the contribution assessment ceiling for general pension insurance can be terminated more easily, in return for a severance payment, even if a unilateral dismissal is not socially justified. For this purpose, the institution needs to file a motion to the labour court to terminate the employment relationship during an ongoing dismissal protection dispute. The court will then terminate the employment relationship and award a severance payment of up to 12 months' salary.

Where employers wish to amicably terminate an employment relationship, they will usually offer a termination agreement that provides for a severance payment as consideration for the job loss. Severance payments offered by institutions under the German Banking Act are, in principle, treated as variable remuneration from a regulatory perspective. Unless certain exceptions and privileges apply, this means that severance payments are subject to the regulatory remuneration rules that apply to variable remuneration, meaning that, for example, the bonus cap and ex-post risk adjustment mechanisms of IVV apply (section 5 paragraph 6 sentence 1 IVV). Exceptions are permissible, inter alia, if severance payments are granted in line with the company's general policy on severance payments, payments to which there is a legal entitlement, and severance payments to be made based on a final judgment or court settlement.

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### **Singapore**

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Depending on the employee concerned, the MAS may have to be notified of an employee ceasing to hold an office or to act as a representative (see questions 2, 4 and 11). Termination-related benefits and remuneration may also require disclosure (see question 7).

Apart from this, there are no industry-specific rules or protocols applicable to terminations. Singapore's Employment Act and the Tripartite Guidelines on Wrongful Dismissal, of general application to all employers, also prescribe rules concerning notice periods, the timing of final payments, and circumstances in which a termination may be wrongful, among other things.

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## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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

## United Kingdom

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

### **Settlement agreements**

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

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

### **Handover procedures**

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

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

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

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

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

### **Reallocating senior managers' responsibilities**

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

### Reporting requirements

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

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

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



### Germany

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Post-contractual non-compete obligations will typically only be binding when a severance payment is agreed upon that amounts to at least 50% of the pro-rated annual remuneration that the employee received before the obligation comes into force). It is advisable to regularly review for which roles such arrangements are agreed upon as they can be costly, and a unilateral waiver does not automatically eliminate the obligation to pay compensation, only if sufficient advance notice is given.

In the financial services sector, the severance payment for non-competition covenants is considered variable remuneration and subject to the same regulatory compensation rules (for example, section 5 paragraph 6 sentence 1 IVV, section 6 paragraph 4 No. 2 Investment Firm Remuneration Ordinance). However, severance payments do not have to be factored into the ratio of variable to fixed remuneration according to section 25a paragraph 5 sentences 2 to 5 KWG if, subject to section 74 paragraph 2 of the German Commercial Code, the payments do not exceed the total fixed remuneration originally owed.

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### Singapore

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

Singapore law in relation to post-termination restrictive covenants is of general application and not specific to the financial services sector. Such restraints are prima facie void, but may be valid and enforceable if they are reasonable (both in the interests of the parties and the public), and if they go no further than what is necessary to protect a party's legitimate proprietary interest.

The Singapore Courts have recognised that an employer has legitimate proprietary interests in its trade

connections (commonly protected by restraints against the solicitation of clients or customers); the maintenance of a stable, trained workforce (commonly protected by restraints against the poaching of employees); and its confidential information and trade secrets (commonly protected by confidentiality restraints). This is not a closed list.

Non-competition clauses are however relatively more difficult to enforce as compared to other restrictive covenants, and they may not be enforceable at all under Singapore law as it presently stands if an employer's legitimate proprietary interests are already covered by other restraints. Even then, it may still be possible for the employer to obtain an ex parte interim injunction for non-competition though.

Guidelines on restrictive covenants are also expected to be released in the second half of 2024, which will look to shape norms and provide employers and employees with guidance regarding the inclusion and enforcement of restrictive covenants in employment contracts.

Last updated on 16/04/2024



## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

The SM&CR does not regulate the use of post-termination restrictive covenants for employees in the

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

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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?**



### **Germany**

Author: *Till Heimann, Anne-Kathrin Bertke, Marina Christine Csizmadia*  
at Kliemt.HR Lawyers

Under German law, it is permissible to enter into non-disclosure and confidentiality agreements. In practice, NDAs are usually agreed upon in written or text form, although this is not legally required. If drafted for use in multiple cases, NDAs are subject to a particularly strict test to be effective: they must be transparent and may not unduly burden the employee under General Terms and Conditions legislation. NDAs should, therefore, only relate to very limited and specific information.

In practice, NDAs are difficult to enforce as it is the employer who must prove a culpable breach of contract, as well as damages resulting from such a breach. Employers should, therefore, also use other means to ensure data protection and confidentiality, such as properly defining and protecting business secrets under the Business Secrets Act; and implementing technical and organisational measures to limit access to certain information, which may include sharing information only on a need-to-know basis.

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### **Singapore**

Author: *Ian Lim, Mark Jacobsen, Nicholas Ngo, Elizabeth Tan*  
at TSMP Law Corporation

NDAs are generally lawful in Singapore, although the extent of their enforceability depends on their contents. For example, restrictive covenants can be subject to further scrutiny (see question 13). While not subject to any particular form or rules, employers should take particular care to specify the type of information protected under the NDA, so that employees have a clear understanding of the protected information – and to enhance the enforceability of the NDA.

Under Singapore common law, in addition to breach of contract, a party may also bring an action for breach of confidence. A plaintiff will have to show on the facts that the information is confidential and was imparted in circumstances giving rise to an obligation of confidence (including if confidential information has been accessed or acquired without a plaintiff's knowledge or consent), which will then invoke the presumption of a breach of confidence. The burden will then fall on the defendant to rebut this presumption.



## Switzerland

Author: *Simone Wetzstein, Matthias Lötscher, Sarah Vettiger*  
at Walder Wyss

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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## United Kingdom

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

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

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

The following limitations on NDAs should be noted:

- By law, any NDA purporting to prevent an individual from making a “protected disclosure” as defined in the Employment Rights Act 1996 (ie, blowing the whistle about a matter) is void.
- The regulatory body for solicitors in England and Wales, the Solicitors Regulation Authority (SRA), has issued a detailed warning notice and guidance to practitioners setting out – in its view – inappropriate or improper uses of NDAs. Failure to comply with the SRA’s warning notice may lead to disciplinary action. The SRA lists the following as examples of improper use of NDAs:
  - using an NDA as a means of preventing, or seeking to impede or deter, a person from:
    - cooperating with a criminal investigation or prosecution;
    - reporting an offence to a law enforcement agency;
    - reporting misconduct, or a serious breach of the SRA’s regulatory requirements, to the SRA, or making an equivalent report to any other body responsible for supervising or regulating the matters in question; and
    - making a protected disclosure;
    - using an NDA to influence the substance of such a report, disclosure or cooperation;

- using an NDA to prevent any disclosure required by law;
- using an NDA to prevent proper disclosure about the agreement or circumstances surrounding the agreement to professional advisers, such as legal or tax advisors, or medical professionals and counsellors, who are bound by a duty of confidentiality;
- including or proposing clauses known to be unenforceable; and
- using warranties, indemnities and clawback clauses in a way that is designed to, or has the effect of, improperly preventing or inhibiting permitted reporting or disclosures being made (for example, asking a person to warrant that they are not aware of any reason why they would make a permitted disclosure, in circumstances where a breach of warranty would activate a clawback clause).

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

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

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## Contributors



### Germany

Till Heimann  
Anne-Kathrin Bertke  
Marina Christine Csizmadia  
*Kliemt.HR Lawyers*



### Singapore

Ian Lim  
Mark Jacobsen  
Nicholas Ngo  
Elizabeth Tan  
*TSMP Law Corporation*



### Switzerland

Simone Wetzstein  
Matthias Lötscher  
Sarah Vettiger  
*Walder Wyss*



### United Kingdom

Louise Skinner  
Thomas Twitchett  
Oliver Gregory  
*Morgan Lewis & Bockius*

