

Employment in Financial Services

Contributing Editor

Louise Skinner at Morgan Lewis & Bockius

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

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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

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

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

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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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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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

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

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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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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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

SFC

The "Guidelines on Competence" published by the SFC lists the necessary qualifications for employees carrying on regulated activities. For academic qualifications, employees should attain at least Level 2 in either English or Chinese as well as in Mathematics in the Hong Kong Diploma of Secondary Education or equivalent. In addition, employees are expected to obtain recognised industry qualifications and pass the local regulatory framework paper. For responsible officers (ROs), the SFC requires higher levels of educational qualifications and experience.

IA

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

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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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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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

Under the SFO, ROs have enhanced responsibilities. They assume primary responsibility for compliance at a licensed corporation and are involved in supervising the regulated activities. A licensed corporation is required to appoint no less than two ROs to directly supervise the conduct of each regulated activity.

Similarly, under the BO, registered institutions are required to appoint no less than two executive officers to be responsible for directly supervising the conduct of each regulated activity under the SFO. For each regulated activity, at least one RO must be available at all times to supervise the business and must be an executive director.

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

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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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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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

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

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

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

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

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

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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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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.

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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

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

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

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

Governance

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

- Risk control personnel should have appropriate authority and involvement in the process of design and implementation of the authorised institution's remuneration policy.

Structure of remuneration

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

Measurement of performance for variable remuneration

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

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

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

Remuneration disclosure

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

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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.

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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.

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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

SFC

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

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

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

HKMA

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

IA

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

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

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

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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.

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09. Is there a particular code of conduct and/or are there other regulations regarding standards of behaviour that financial services employees are expected to adhere to?



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.

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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

SFC

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

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

HKMA

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

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

IA

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

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

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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.

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.

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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

SFC - Self-reporting obligation

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

obligation.

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

SFC - Internal investigation disclosure obligation

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

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

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

HKMA - Reporting incidents to HKMA

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

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

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

HKMA - Guidance Note on Cooperation with HKMA Investigations

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

IA - Self-reporting obligation

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

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

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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.

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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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

Anti-money laundering and counter-financing of terrorism

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

Whistleblowing

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

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

Workplace harassment

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

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

from happening in the workplace and to provide complaint or reporting procedures to handle such incidents.

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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.

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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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Hong Kong

Author: *Charles Mo, Joanne Mok*

at Morgan Lewis & Bockius

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

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

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

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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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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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Hong Kong

Author: *Charles Mo, Joanne Mok*
at Morgan Lewis & Bockius

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

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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.

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Contributors



Germany

Till Heimann

Anne-Kathrin Bertke
Marina Christine Csizmadia
Kliemt.HR Lawyers



Hong Kong

Charles Mo
Joanne Mok
Morgan Lewis & Bockius



Singapore

Ian Lim
Mark Jacobsen
Nicholas Ngo
Elizabeth Tan
TSMP Law Corporation

www.internationalemploymentlawyer.com