

# 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?

### France

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Due to the unique activities of the financial sector, which involve confidential information, the handling of funds, possible conflicts of interest, etc, there is a special legal framework, specific to financial services employees, which is deployed at national and European levels.

Companies and employees in the sector are subject to private law. As such, they are bound by all the norms of French law, such as Law No. 2016-1691 dated 9 December 2016, on transparency, the fight against corruption and the modernisation of economic life; Ordinance No. 2017-1387 of 22 September 2017, on the predictability and securitisation of labour relations; Law No. 2022-401 of 21 March 2022, aimed at improving the protection of whistleblowers, or Law No. 2022-1598 of December 21, 2022 on emergency measures relating to the functioning of the labor market with a view to full employment. Most legal provisions specific to financial services employees are contained in the Monetary and Financial Code.

In addition, collective agreements govern the working conditions of financial services employees. The most common collective agreements in the financial services sector are:

- The national collective agreement of financial companies of 22 November 1968;
- The national collective agreement for financial market activities of 11 June 2010; and
- The national collective agreement of the bank of 10 January 2000.

Finally, two authorities supervise operators in the financial services sector: the Financial Markets Authority (FMA), which is an independent administrative authority that regulates and supervises financial services operators, through its General Regulations; and the French Prudential Supervision and Resolution Authority (ACPR), which is part of the Banque de France and is responsible for supervising banks.

At a European level, several instruments provide a framework for the financial services sector, including:

- for investment funds (Annex II of Directive 2011/61/EU for alternative investment funds (AIF) and Articles 14a, 14b of Directive 2009/65/EC for UCITS) ;
- for investment firms (Directive 2019/2034/EU, on the prudential supervision of investment firms) ; and
- for markets in financial instruments (Directive 2014/65/EU).

## India

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The important labour laws that may apply to financial services employees are:

- Industrial Disputes Act, 1947 (IDA)
- Contract Labour (Regulation & Abolition) Act, 1970
- Payment of Gratuity Act, 1972
- Payment of Bonus Act, 1965
- Equal Remuneration Act, 1976
- Maternity Benefit Act, 1961
- Apprentices Act, 1961
- Employees' Compensation Act, 1923
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952
- Shops and Establishments Act(s)[\[1\]](#).

In addition, there are financial services regulations in India such as the Banking Regulation Act, 1949; Reserve Bank of India Act, 1934; Securities and Exchange Board of India Act, 1992 (and the regulations thereunder); Insurance Act, 1938; Income-tax Act, 1961; and the Foreign Exchange Management Act, 1999 (and the regulations thereunder). There are also multiple regulators established under these laws.

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[\[1\]](#) State-specific.

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## Mexico

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Articles 5 and 123 of the Constitution of the United Mexican States provide express protection of labour rights and establish that legal rights are protected by the Federal Labour Law (the FLL).

Pursuant to article 5 thereof, no-one can be stopped from providing services in industry, commerce, or any other activity, provided it is not illegal; thus, individuals may only be prohibited from performing their duties as financial services employees if there is a legal justification. The activity may only be prohibited by a judicial declaration. Also, the law will define occupations that require a licence, the conditions to be met to obtain that licence and the issuing authorities.

Furthermore, no contract or provision that affects an individual's freedom will be enforced.

All employers and employees within the private financial services sector are primarily subject to the FLL. Additionally, financial entities and their employees are subject to different laws and general provisions depending on the entities' core business and activities, such as:

- Law to Regulate Finance Associations;
- Credit Institutions Law;
- General Provisions of Credit Institutions, issued by the supervisory authorities;
- Law to Regulate Credit Information Entities;
- General Law of Auxiliary Credit Organizations and Activities;
- Investment Funds Law;
- Popular Savings and Credit Law;

- Law to Regulate Technological Finance Institutions;
- General Provisions of Technological Finance Institutions, issued by the supervisory authorities;
- Law of Transparency and Promotion of Competition in Guaranteed Credit;
- Securities Market Law;
- Law for the Transparency and Regulation of Financial Services;
- Federal Law for the Prevention and Identity of Transactions with Illegally Obtained Resources;
- General Provisions applicable to securities operations carried out by counsel, managers and employees of financial entities and other obligated parties, issued by the supervisory authorities;
- Insurance and Bonding Institutes Law; and
- Insurance and Bonding Agents Regulations.

Some of the financial entities regulated are the following (Financial Entities):

- controlling entities (controlling entities of financial groups);
- credit institutions;
- credit information entities;
- multiple purpose financial entities;
- exchange bureaus and brokerage houses;
- auxiliary credit organisations;
- technological finance institutions;
- investment funds;
- financial cooperative associations and community finance entities; and
- insurance and bond institutes.

Authorities that regulate and supervise the compliance of financial laws and provisions are the National Banking and Securities Commission (CNBV), National Insurance and Bonding Commission (CNSF), National Commission of Retirement Savings Fund (CONSAR), National Commission for Financial Service Consumer Protection, Bank of Mexico, and the Ministry of Finance and Public Credit (SHCP).

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## Switzerland

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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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## 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?**

## France

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In the financial services sector, candidates must comply with standard recruitment practices, but also with suitability, requirements and, for certain positions, with supervision by the ACPR or the European Central Bank (ECB).

Traditionally, employees in the financial services sector are required to provide the usual documents requested when applying for a job: a cover letter and a curriculum vitae. This is especially important because, as we will see, access to certain positions is conditional. For example, investment advisors must provide proof of either a national diploma attesting to three years of study, or training, or professional experience in the field.

Also, due to the very nature of the financial services business, employees of companies in the sector are required to be honourable.

The Monetary and Financial Code provides that certain operational activities in the financial services sector, such as being a managing director, are barred in the event of a felony conviction, a prison sentence of at least six months with a suspended sentence in connection with the financial world, or a management ban (article L. 500-1 of the Monetary and Financial Code). For this reason, the criminal record of a concerned candidate is generally requested at the time of hiring.

In addition, the appointment or renewal of a senior executive of a credit institution, a finance company, an investment firm other than a portfolio management company, a payment institution or an electronic money institution must be ratified by the ACPR, and by the ECB in the case of major credit institutions. Validation of the appointment or renewal is based on good reputation and competence, which is assessed based on five criteria: experience, reputation, absence of conflicts of interest and independence of mind, availability, and collective ability.

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## India

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The pre-screening measures, when employing a financial service employee, are carried out in compliance with the frameworks laid down by the respective industry regulators. For instance, the Reserve Bank of India (RBI), the central banking sector regulator in India, periodically issues certain guidelines for banking and non-banking employers to conduct mandatory employee background checks. These regulators also recognise certain “Self-Regulatory Organisations” (SROs), who then play the primary role in conducting grassroots verifications. SROs conduct character and antecedent verification of employees registered with them as per the standards set by the regulator. Strict police verification of at least the last two addresses is

usually mandated and verifications are periodically updated and shared on a common database at an industry level. For instance, the Finance Industry Development Council is an SRO of Non-Banking Finance Companies (NBFCs) and is registered with the RBI.

A financial services employer should be sensitive to the data being used for pre-screening measures as India protects individual privacy. Hence, both the employer and the service provider engaged by the employer should obtain prior consent from the prospective employee before pre-screening. If the pre-screening measures include the collection of “sensitive personal data information[1]”, then an employer must seek the individual’s consent, which would also help mitigate risks for any claims concerning the invasion of an employee’s privacy. Employers should ideally ensure that pre-screening is complete before the employee is hired. A comprehensive pre-screening will include verification of educational qualifications, checks with past employers, verification of residential addresses, police records, and passport status. Usually, with seniority of the role, checks with past employers happen more rigorously, while for entry-level employees, checks with academic institutions about educational qualifications may be done more rigorously. Similar standards must be met by contract employees empanelled by the service providers.

There is no regulator-specified reference that must be provided by previous employers in the financial services industry. However, in practice, most public sector banks (eg, Bank of India) and many central public sector undertakings in financial services (eg, Life Insurance Corporation of India (LIC)), as per their selection or onboarding protocols, require at least two “Character Certificates”, one of which should be from the head of the educational institution last attended or the present employer and the other should be from gazetted officers[2] or bank officers, without any familial ties to the employee.

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[1] Information Technology Act, 2000 & Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011.

[2] A ‘gazetted officer’ is a high rank government official working as an officer for the government of India or any state government whose name and credentials are published in the Gazette of India.

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## Mexico

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For employees with general positions, there are no pre-screening measures. Under article 1 of the Constitution and article 21 of the FLL, discrimination is prohibited. Furthermore, article 21 of the FLL establishes that distinctions will not be deemed discriminatory if certain qualifications are required for certain work. Specifically, if there is no legal ground or work-related justification to request criminal records for a determined position, conditioning the position on that information may be deemed discriminatory.

For example, financial entities must include a list of the expected members of the board of directors, general manager, and main officers, including their respective professional and academic backgrounds, in the filing to obtain authorisation of the CNBV (except insurance and bond institutions) to start operations. These positions require certain special requirements, and thus financial entities must verify – by prior appointment and thereafter, at least every year – that general managers and officers:

- have a standing reputation;
- have expertise in legal, financial and management matters;
- have a satisfactory credit record and credit eligibility;
- are residents in Mexico (for credit entities); and
- have no other legal impediment (see below).

All financial entities must guarantee that high-level employees are capable, experienced and not subject to any procedure involving conduct contrary to financial stability or compliance with business or financial business standards. General managers and officers in controlling entities and auxiliary credit organisations,

and in exchange bureaus and brokerage houses, and general managers in insurance and bonding institutions must have at least five years' experience at a high decision-making level that required financial and management expertise.

Also, these individuals must not have any of the following legal impediments:

- a pending dispute with the financial entity or any other financial entities in the group;
- a conviction for a wilful economic crime;
- a disqualification from owning a business, public service positions or the Mexican financial system;
- declared bankruptcy or insolvency;
- carried out regulation, inspection, and monitoring of the financial entity or any other financial entities in the group; or
- participated in the board of directors of the financial entities.

Additionally, for exchange bureaus and brokerage houses, such individuals must not have been an external auditor of the exchange bureau or related entity in the 12 months before their appointment.

Specifically, in credit organisations, general managers and officers must not:

- be a partner or have a position within entities or associations that render services to the entity or its related entities;
- be a client, provider, debtor, creditor, partner, member of the board of directors or employee of an entity that is a client or provider (whose services or sales represent more than 10% of the client's services or sales), or a debtor or creditor (of which the debt is higher than 15% of the assets);
- be an employee of a foundation, association or civil society that receive important contributions from the entity (which represent more than 15% of the total contributions received by such entities in a fiscal year).
- be a general manager, officer, or employee of another entity that is part of the financial group;
- be a spouse or domestic partner of any individual mentioned above, or be in a cohabiting relationship with them; or
- carry out regulation duties of credit organisations and exchange bureaus.

Financial entities must inform the CNBV, CNSF, or CONSAR, as applicable, of general managers' and officers' appointments, resignations or removals, within five business days of such events. Meanwhile, controlling entities, brokerage houses, surety deposit institutions and compensation chambers must inform the CNBV, CNSF, or CONSAR within 10 days of the same.

There are also limits to employees participating in the board of directors of these companies. Only the general manager and officers two levels below may be members, and no other employees may occupy these positions.

According to the Insurance and Bonds Regulations, officers and employees of credit institutions, insurance institutions, bond institutions, brokerage houses, stock market specialists, auxiliary credit organisations, investment companies, operating companies of investment companies, exchange houses, financial commissioners, retirement fund managers, specialised investment companies of retirement funds, and controlling companies with 10% or more of representative shares of such companies will not be authorised to act as insurance or bond agents.

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## Switzerland

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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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### **03. What documents should be put in place when engaging employees within the financial services industry? Are any particular contractual documents required?**



#### **France**

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The hiring of employees in the financial services sector follows the common law regime. Thus, in principle, the hiring of an employee means the contractualising of the employment relationship. Although it is not in principle mandatory for the parties to sign an employment contract, but for exceptional cases (part-time employment contract, fixed-term contract, etc), it is nevertheless recommended to contractualise the relationship to avoid any future dispute.

It is also common, at the time of hiring, for the employee to commit to a non-compete and confidentiality obligation concerning his employer, either through clauses in his employment contract or through a separate agreement. These obligations must be the subject of a signed document and are therefore generally incorporated into the employment contract. In addition, most companies in the financial services sector make the hiring of an employee conditional upon that person signing a charter of good conduct or a policy to prevent and manage conflicts of interest.

The employer is also required to make a pre-employment declaration.

Finally, as stated, for certain positions, the employer must notify the ACPR or the ECB of the hire, and they must ratify the appointment.

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#### **India**

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When engaging employees within the financial services industry, documents covering past employment, educational qualifications, certificates of achievement, income tax returns, medical health fitness certificates attested by a registered doctor, official identity cards and proof of address (Aadhar Card and Voter ID card, Driving Licence or Passport) and documentation for anything mentioned on a curriculum vitae. In the financial services industry, certificates showing excellence in finance-related services will increase the candidature of a potential employee. The contract of employment of an employer usually contains clauses that make the offer conditional upon the fulfilment of the employee's representations relating to educational qualifications, background, work experience, skill certifications (if applicable), character certificate, etc.

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## Mexico

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According to article 25 of the FLL, the following information must be included in an employee's contract: full name, date of birth, nationality, gender, marital status, address, Federal Taxpayers Registry number, and Unique Population Registration Key. To verify such information, employers may ask employees to provide their official identification, proof of address, Tax Identification Card, and professional and academic records, among other documents as deemed necessary.

Furthermore, given the requirements to be met by the general manager and officers, it is common practice in Mexico to include a statement in their employment contracts whereby they state that they:

- are in good standing;
- are resident in Mexico;
- have legal, financial and management expertise;
- have satisfactory credit record and credit eligibility; and
- have no legal impediment to occupying such positions and rendering their services.

Additionally, the general manager of controlling entities and brokerage houses must provide a written document stating that he or she:

- has no impediment to being appointed as general manager or officer;
- is up to date with his or her credit obligations and of any other nature; and
- acknowledge all rights and obligations to be assumed as a consequence of his or her appointment.

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## Switzerland

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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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## **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?**



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Since 1 July 2010, the FMA General Regulation requires investment services providers to pass an examination to ensure that certain employees have a minimum knowledge base in the field.

This applies to salespersons, managers, financial instrument clearing managers, post-trade managers, financial analysts, financial instruments traders, compliance and internal control officers, and investment services compliance officers.

Since 1 January 2020, the following must also obtain certification: natural persons acting as a financial investment advisor; natural persons with the power to manage the legal person authorised as a financial investment advisor; and persons employed to provide investment advice by the legal person authorised as a financial investment advisor.

FMA certification must be obtained within a maximum of six months of the beginning of that person's employment with an investment services provider. Certification is issued by FMA-certified organisations.

People already in practice before 1 July 2010 are exempt from this certification. This is known as a grandfather clause.

In addition to this minimum knowledge requirement, certain professionals are subject to an assessment of their knowledge and skills. This applies to natural persons who provide not only information but also financial advice, and generally takes the form of an annual evaluation interview.

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The recruitment of financial services employees for public-sector enterprises may be done through competitive scores secured through multi-level tests held for generalist and specialist posts. For instance,

the Institute of Banking Personnel Selection conducts tests for selection for public sector banks; and the Securities and Exchange Board of India (SEBI), LIC, etc, hold similar tests for their recruitment.

In terms of industry practice, eligibility to appear at the preliminary levels or the final interview stages of the above tests may sometimes require certain specific certifications (eg, computer certifications for clerical posts in the banking sector. These certifications are prescribed by industry regulators and are actioned by industry collectives. For instance, the RBI[1] has made it mandatory for all banking and non-banking financial institutions to obtain certification for their employees. Industry collective the Indian Banking Association provides such certifications in specific areas like treasury operations, risk management, accounting and credit management. Along with this, further certifications may also be required for Anti-Money Laundering (AML), Know Your Customer (KYC), compliance with foreign exchange regulations, awareness of legal aspects of cyber security, etc.[2]

Similarly, the National Institute of Securities Markets (NISM), an institute promoted by SEBI, accredits institutions that coach and certify wealth management advisors. NISM-accredited qualifications are compulsory for wealth managers in the capital market segment. Also, the Indian Institute of Banking and Finance (IIBF) gives certification for Debt Recovery Agents based on RBI guidelines. Various collectives like the Fixed Income Money Market and Derivatives Association of India, Foreign Exchange Dealers Association of India and the Institute of Company Secretaries of India, inter alia, collaborate with the IIBF in the certification process in the treasury, forex and compliance sectors. The IIBF's certification for customer service, KYC/AML programmes of the IIBF, and other similar certified courses from the NISM/AMFI/IRDA etc, are essential before hiring employees for certain specialised roles.

As part of the registration process, the SEBI regulations relating to portfolio managers and investment advisors require certain specific employees to be employed with minimum qualifications.

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[1] Capacity Building in Banks and AIFIs, August 11, 2016 available at <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI36A5A106C515E84422947AB1D42F6EB391.PDF>>; IBA Circular no. CIR/HR&IR/KSC/2017-18/2602.

[2] RBI mandate on capacity building in banks, KPMG, available at <<https://home.kpmg/in/en/home/services/learning-academy/aas-learning-solutions/rbi-mandate-capacity-building-banks.html>>

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## Mexico

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Employees in general positions are not required to obtain specific certification to perform their duties within financial entities. However, in brokerage houses, individuals involved in operations with the public, counselling, promotion and, if applicable, acquisition and sale of securities, must be authorised by the CNBV and obtain a certification issued by a regulated body recognized by the CNBV.

The CNBV and CNSF, as applicable, may caution, remove, adjourn, or disqualify board members and the general manager if they believe the individual does not comply with legal requirements to occupy such positions or if their conduct constitutes a breach of applicable laws and regulations.

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## Switzerland

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



### France

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The activities of certain categories of employees in the financial services sector benefit from greater supervision, due to the risky nature of their activity. These include employees who have business dealings with individuals and employees who may have exposure to the financial markets.

Thus, Article L.533-10 of the Monetary and Financial Code provides that portfolio management companies and investment service providers must, on the one hand, put in place rules and procedures to ensure compliance with the provisions applicable to them. On the other hand, they must put in place rules and procedures defining the conditions and limits under which their employees may carry out personal transactions on their behalf.

They must still take all reasonable steps to prevent conflicts of interest that could affect their clients. In practice, these employees may be referred to as "sensitive personnel".

In addition, Law No. 2013-672 of 26 July 2013, on the separation and regulation of banking activities introduced several provisions constraining employees who may expose their company to the financial markets. These employees must comply with strict obligations in their activity to limit risk-taking.

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### India

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

However, the conduct rules for employees in the financial sector mandate employees to adhere to higher standards of code of conduct and self-discipline. Their codes of conduct include inter alia anti-bribery obligations, prohibition from accepting gifts in an official capacity, making representations to media, making contribution to political parties, holding demonstration against public interest, exercising undue influence to secure appointments of family members at same organisation or granting banking facilities without permission. They are supposed to observe secrecy in general and specifically, maintain financial secrecy about stocks too.

This question was upheld in *Harinarayan Seet v. Andhra Bank*<sup>[1]</sup>, wherein the Andhra Pradesh High Court recognised that banking sector employees are mandated to exhibit higher standards of honesty, integrity, devotion and diligence and any failure to discharge such duty with diligence may trigger dismissal.

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<sup>[1]</sup> WP No. 23310 of 2011.

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## Mexico

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All employees, including general managers and officers, must keep information and documents confidential and may only provide information to the competent authorities or authorised parties, with the prior express authorisation of the user or client.

Also, employees must:

- not stop internal committees from carrying out their functions;
- disclose to the financial entity all information regarding the use of illegal resources, or any act against goods, services, an individual's life, or physical or emotional integrity, the use of toxic substances, or terrorist acts, so that the financial entity may provide the SHCP with a report on the subject; and
- in insurance or bonding Institutes, not offer discounts, reduce premiums or grant different benefits than those outlined in the corresponding policy.

General managers and officers must provide reports and information to the board of directors and the corresponding authorities periodically. The general manager must also provide precise data and reports to assist the board of directors in making prudent decisions.

General managers must develop and present to the board of directors, for its approval, adequate policies for employment and the use of material and human resources, including restrictions on the use of goods, supervision and control mechanisms, and the application of resources to the company's activities consistent with their business purposes.

Insurance and bond companies will respond to the conduct of the general manager and officers, without prejudice to the civil and criminal liabilities that they may personally incur.

Also, if any conflict of interest exists or arises, general managers and officers must inform their employers immediately and suspend any activity within the scope of the contract that gives rise to the conflict until the matter is addressed.

Additionally, general managers and officers must verify the compliance of all individuals under their

responsibility with all applicable legal provisions for financial services. These include: confidential obligations; the development of reports; informing their direct superior, officers, general manager or board of directors if there is a conflict of interest; informing the SCHP and Prosecutor's Office if there is an act, operation or service using illegal resources, or an act that may harm the company, or the health or wellbeing of an individual or the general public.

Specifically, general managers in brokerage houses must:

- design and carry out a communications policy regarding identifying contingencies;
- implement and distribute the continuity business plan within the brokerage house and establish training programmes;
- inform the CNBV of contingencies in any of the systems and channels for clients, authorities and central securities counterparties;
- ensure that the continuity business plan is submitted for efficiency testing; and
- inform the CNBV in writing of the hiring or removal of the responsible party for internal audit functions.

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## Switzerland

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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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## **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?**

## France

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In principle, working in the financial services sector does not require registration. However, some companies, such as banks, must be licensed.

The following natural persons who are not employees of a legal person must be registered in the Single Register of Insurance, Banking and Finance Intermediaries (article L.546-1 of the Monetary and Financial Code, amended by article 18 of order no. 2021-1735 of December 22, 2021 modernizing the framework for participative financing):

- intermediaries in banking and payment services as defined in article L. 519-1 of the Monetary and Financial Code.
- financial investment advisors as defined in article L. 541-1 of the Monetary and Financial Code;

- tied agents as defined in article L. 545-1 of the Monetary and Financial Code and intermediaries in participatory financing.

To be registered, these intermediaries must meet four professional conditions: professional liability insurance, good repute, professional capacity and financial guarantees, which are verified by the unique register of insurance, banking and financial intermediaries when they are registered.

In addition, the providers of participative financing services mentioned in article L. 547-1 of the Monetary and Financial Code must be approved by the Financial Markets Authority (FMA).

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## India

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There is no one-point register for financial services employees that individuals need to be listed on to undertake business activities. Such a register may vary depending upon the industry one is seeking and whether the post is that of a specialist or a generalist. Specialists like IT professionals, lawyers etc., working in financial services are bound by registration requirements mandated by the practice rules of their domains. For example, IT or ITES industry professionals may register themselves with the “National Skills Registry”<sup>[1]</sup>, an initiative of the technology industry body NASSCOM. This registry maintains a central database of their qualifications, experiences and demographic information. NASSCOM also runs a BFSI Sectoral Skill Council (BFSI SSC) to cater to the financial services sector. The National Institute of Securities Market (NISM) Skills Registry is another similar initiative by the NISM.

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[1] FAQs on Understanding NSR, available at <<https://nationalskillsregistry.com/faq-understanding-nsr.htm>>

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## Mexico

Author: *Héctor González Graf*  
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Under the FLL, all employees must be registered with the Social Security Mexican Institute (IMSS) to receive social security benefits.

Except for stock operators or employees that are granted proxies in brokerage houses, in financial entities employees are not required to be registered other than with the IMSS.

To obtain the authorisation of the CNBV to act as a stock operator or representative within a brokerage house, an individual must:

- pass the technical quality certification exams, and comply with the specific requirements outlined in the internal regulations of the stock market in which the individual intends to participate;
- prove before the regulatory body that he or she has a satisfactory credit record and is in good standing; and
- file before the regulatory body a writ of a brokerage house, credit institution, or the operating company of investment companies and retirement funds managers, establishing their wish to hire the individual as soon as he or she obtains an authorisation.

Within five days, the self-regulated body must file an application with the CNBV. They will then have 20 calendar days to issue the corresponding authorisation.

Stock operators and representatives, once authorised and provided with powers of attorney, must be registered before the Mexican Association of Stock Brokers (AMIB).

Brokerage houses must display, in a public place, a list of authorised proxies and stock operators, as well as on the website of the CNBV so this information may be verified.

Finally, financial entities must inform the CNBV, CNSF or CONSAR, as applicable, of the appointment and removal of general managers and officers within five calendar days for financial entities, or ten calendar days for controlling entities, brokerage houses, surety deposit institutions and compensation chambers. Also, a list of general managers and officers must be provided within the filing to operate as a financial entity.

Last updated on 14/03/2023

## Switzerland

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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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## **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?**



## France

Author: *Béatrice Pola*  
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Under French law, several mechanisms regulate the compensation of employees in the financial services sector to limit risk-taking.

Concerning guaranteed variable remuneration (welcome bonus, recruitment bonus, etc) for new staff, establishments are not allowed to guarantee this beyond the first year of employment; it is said to be "exceptional" and can only be granted if the financial base is sufficiently sound and solid.

In addition, European Directive 2013/36 EU, UCITS V, of 26 June 2013 introduced a "clawback" mechanism that the legislature has transposed into French law. Thus, article L.511-84 of the Monetary and Financial Code provides that "the total amount of variable remuneration may, in whole or in part, be reduced or give rise to restitution when the person concerned has failed to comply with the rules laid down by the institution with regard to risk-taking, in particular because of his responsibility for actions that have led to significant losses for the institution or in the event of failure to comply with the obligations of good repute and competence".

In addition and following the above-mentioned Directive 2013/36/EU (article 94) concerning the deferral of remuneration, the payment of variable remuneration should be made in part immediately and in part on a deferred basis.

Institutions are encouraged to implement a deferral schedule, that properly aligns staff compensation with the institution's business, economic cycle, and risk profile, so that a sufficient portion of variable compensation can be adjusted to results through ex-post risk adjustments.

This schedule consists of the portion of variable compensation deferred, the length of the deferral period and the speed of vesting of the deferred compensation.

In the event of poor or negative performance by the institutions, leading to a reduction in the total amount of variable compensation, the payment of variable compensation may be subject to specific arrangements implemented by the institutions, as referred to in Directive 2013/36/EU.

In addition, article L.511-84-1 of the French Monetary and Financial Code specifies that the variable portion that may be reduced or even recovered as a penalty is excluded from the calculation of several indemnities in the event of dismissal, including the legal indemnity for dismissal.

Finally, following Law No. 2013-672 of 26 July 2013 on the separation and regulation of banking activities, the variable remuneration of managers and traders is capped, and cannot exceed the fixed part. In addition, a "say on pay" mechanism has been implemented (ie, the general meeting of shareholders must be consulted on the remuneration paid to executives and traders).

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## India

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There are certain rules relating to compensation payable to financial services employees, such as those in the banking, mutual fund or asset management, and insurance industries.

The central bank of India, the RBI, deals with the compensation policy for all private-sector banks and foreign banks operating in India by requiring them to formulate their own compensation policy and annually reviewing it. Banks are not allowed to employ or continue the employment of any person whose remuneration is excessive in the RBI's opinion. For instance, the RBI lays down guidelines on the

compensation of “Whole Time Directors (“WTD”) / Chief Executive Officers / Material Risk Takers and Control Function Staff”[1], elaborate guidelines encompassing the governance of compensation and its alignment with prudent risk-taking, policies for risk control and compliance staff, the identification of “material risk takers”, and disclosure and engagement by stakeholders. It even envisages deferred payments being subjected to malus or clawback arrangements if there was negative performance. For variable pay, it mandates banks to incorporate malus or clawback mechanisms and suggests they specify periods of malus or clawback application to cover at least deferral and retention periods.[2] It is pertinent to highlight that private sector and foreign banks in India must obtain regulatory approval[3] for the grant of remuneration to WTDs or CEOs.

The RBI also prescribes guidelines around compensation for key managerial personnel (KMP) and senior management in non-banking financial companies (NBFCs)[4]:

- NBFCs are mandated to form “Nomination and Remuneration Committees” (NRCs) as per Section 178 of the Companies Act, 2013, which will then be entrusted with framing, reviewing and implementing the compensation policy to be approved by the board of the company.
- The compensation must align with the risk related to the decision-making process. The compensation package can comprise both fixed and variable pay and may also be a mix of cash, equity or other forms, in line with projected risk factors.
- A bonus has no bearing on the performance of the individual. The bonus is guaranteed based on the fulfilment of certain criteria as may be specified in the compensation policy. A guaranteed bonus should neither be considered part of fixed pay nor variable pay and the same is not payable to KMP and senior management. However, a guaranteed bonus can be paid to new employees as part of a sign-on bonus whereby potential employees can be incentivised to join NBFCs.
- “Deferred compensation may be subject to malus/clawback arrangements.” The compensation policy concerning malus or clawback must mandatorily apply for the period equal to at least the deferred retention period.

Despite the aforementioned guidelines being applicable from 1 April 2023, NBFCs must immediately begin aligning their internal procedures to comply with the mandatory guidelines above to assist the transition. Existing remuneration policies being followed by the NBFCs should be reviewed to make the necessary changes to be compliant with the above-mentioned policies.

When it comes to regulations on an “employee stock option plan” (ESOP) for financial services employees, regulators may impose industry-specific guidelines. For instance, as per the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021[5], the employee stock option scheme should be drafted in a manner that no such employee violates SEBI (Insider Trading) Regulations, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995. ESOPs issued to managerial staff and for non-cash consideration shall be treated as part of managerial remuneration. In another development, the RBI has directed that ESOPs should be at a fair value, shooting up costs and creating the cascading effect of replacing ESOPs with deferred bonus payments for senior managerial personnel.

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[1] Guidelines on Compensation of Whole Time Directors/Chief Executive Officers/Material Risk Takers and Control Function staff, November 4, 2019, available at <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI898C120D41D0E3465B8552E5467EDD7A56.PDF>>

[2] Guidelines on Compensation of Whole Time Directors/Chief Executive Officers/Material Risk Takers and Control Function staff, November 4, 2019, available at <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI898C120D41D0E3465B8552E5467EDD7A56.PDF>

[3] Section 35B, Banking Regulation Act 1949.

[4] Guidelines on Compensation for Key Managerial Personnel (KMP) and Senior Management in non-banking financial companies (NBFCs), April 29, 2022, available at <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/KMPNBFCs962EC76438C845A6846A5BD59BC7513D.PDF>>

[5] Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations 2021, August 13, 2021, available at <<https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and->

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## Mexico

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Brokerage houses must implement a compensation system under the general provisions set forth by the CNBV. This system must include all compensation provided and must contain the responsibilities of the boards that implement the compensation schemes, ordinary and extraordinary compensation policies, and periodic reviews of payment policies. The board of directors must incorporate a special committee for compensation.

Under article 9 of the general provisions applicable to brokerage houses, account management fees may be paid to stock proxies provided that they comply entirely with the applicable laws in the exercise of their duties. Stock operators must not execute operations with the public or receive any remuneration or account management fees, except if, with the proxy's authorisation, they execute orders of institutional investors in the brokerage house's reception and allocation system.

Brokerage houses must not pay fees, commissions, and other remuneration of third parties that act as promoters, sellers, associates, independent commissioners, investment advisors or any similar roles. This also applies to proxies of the investor client without being proxies of the brokerage house, or those who have a conflict of interest to receive fees, commissions, or any other remuneration from the investor client.

If there is a critical event, such as a control measure, the CNBV may order the brokerage house to suspend the payment of extraordinary compensation and bonuses to the general manager and senior officers. This includes preventing the granting of new compensation until the matter is properly resolved. This should be included in employment contracts, to avoid labour-related disputes should the extraordinary measure of the CNBV be enacted.

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## Switzerland

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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.

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



### France

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In general, "the employer shall ensure that employees are adapted to their workstation" and "shall ensure that their ability to hold a job is maintained, particularly with regard to changes in jobs, technologies and organizations". This general obligation is imposed on the employer if there is a change in the job description.

In addition, the FMA General Regulation requires all persons mentioned in article 325-24 of the Monetary and Financial Code, including investment service providers, salespersons, managers, and persons responsible for clearing financial instruments, to undergo annual training appropriate to their activity and experience.

Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life also provides that in companies employing at least 500 people, or belonging to a group of companies whose parent company has its registered office in France and whose workforce includes at least 500 people, and whose revenue or consolidated revenue is more than €100 million, a training system must be set up for managers and staff most exposed to the risks of corruption and influence peddling.

Decree no. 2022-894 of 15 June 2022 on the conditions governing the exercise of the profession of intermediary in banking operations and payment services introduces a new obligation in terms of continuing training. From now on, all intermediaries in banking operations and payment services carrying out intermediary activities in real estate credit and their staff must update their professional knowledge and skills, as part of their continuing education, "through professional training of sufficient duration adapted to their activities, taking particular account of changes in the applicable legislation or regulations" (article L. 519-11-3 of the Monetary and Financial Code). Finally, as we have seen, some positions in the financial services industry may require specific training and certification.

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### India

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Financial services employees may undergo necessary training once they are selected and onboarded.

Financial services sectors categorise employees as specialists and generalists. On one hand, those in charge of specialist roles are deployed in treasury, derivatives trading, IT, forex, risk management, service

delivery groups, product roles, legal, etc., while on the other, the generalists are deployed in branches, administrative functions, finance, some areas of treasury, taxation, general management, operations, relationship or sales managing, etc. They should possess differentiated requisite academic qualifications with skill certifications (if any) or obtain competitive scores in recruitment tests.

As such, there are no legal requirements for prior training of employees in the financial services sector. There are various certificate courses, workshops and diplomas by financial institutions and agencies, which are recommended to be attended regularly to stay abreast of industry knowledge and to secure an edge in intra-organisational promotions.

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## Mexico

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In terms of articles 132, 153-A to 153-X of the FLL, employers must provide employees with training so they can render their services and comply with the duties of their positions, and employees should receive such training under the plans and programmes formulated by mutual agreement of the employer and employees. Nevertheless, as indicated in previous questions, for employees to occupy certain positions, they must meet the requirements, and for brokerage houses proxies must be authorised to exercise their duties under their position within the brokerage houses.

According to article 117 bis 9 of the general provisions applicable to brokerage houses, general managers are responsible for implementing, maintaining and distributing the continuity plan of the business within the brokerage house. Therefore, the general manager must establish a training programme outlining the actions to be carried out if an operation contingency arises.

On the other hand, the AMIB provides courses and training for interested individuals to obtain the necessary skills and capacity to perform the activities of proxies in brokerage houses, and thereafter, to obtain authorisation from the AMIB and CNBV to act and perform the corresponding duties of the position.

A Finance Educational Committee has been created by several financial institutions, authorities, and the Bank of Mexico and is presided over by the SHCP. This committee is in charge of, among other things, defining a finance educational policy; preparing a national strategy for financial education and guidelines; and identifying new work areas and proposing new actions and programmes in financial education.

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## Switzerland

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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.

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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?**



### **France**

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First of all, various obligations discussed so far have the effect of forcing, if they were not already there, employees in the financial services sector to behave in an honourable manner and respect prudential rules.

In addition, Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life states in article 17 that in certain large companies, managers must take all measures to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling.

This means setting up a code of conduct that will be integrated into the internal regulations, in compliance with the procedure for consulting employee representatives provided for in article L. 1321-4 of the French Labour Code.

This code of conduct involves the implementation of measures and procedures that will be monitored by the French Anti-Corruption Agency. In particular, the code of conduct must define and provide examples of the various types of behaviour to be prohibited as likely to constitute corruption or influence peddling. It must also establish an evaluation and control system, as well as a disciplinary system, enabling the company's employees to be sanctioned if there is a violation of the company's code of conduct.

In addition to this code of conduct, which is part of the internal regulations, almost all players in the financial services sector have put in place charters and policies to protect confidential information and regulate risky activities.

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### **India**



Financial services regulators like the RBI, SEBI and Insurance Regulatory and Development Authority of India (IRDAI) regulate employees through prescribed frameworks and their organisation-specific rules.

The obligations for the conduct of employees in financial services are determined depending upon the type of organisation: public sector banks (majorly owned by the state) or private banks; sectors (banking, non-banking, insurance, capital market); regions (different local laws); and level of seniority (liability of officers or manager is different from regular employees or clerical staff). Though there are no statutory standards, judicial pronouncements have set a higher threshold of duty of care for employees in the financial services sectors. The Andhra Pradesh High Court in *Harinarayan Seet v Andhra Bank*<sup>[1]</sup> held dismissal of service as a proportionate punishment for dereliction of duty by banking employees, which would have otherwise attracted a lesser penalty for employees in less-critical sectors.

In terms of general labour legislation also applicable to financial services employees, financial services organisations fall under the definition of “commercial establishments”, whose definition has been laid down by the Shops & Commercial Establishments Act (state level). They provide certain conduct-specific obligations, for example, a prohibition against discrimination, suspension or dismissal for misconduct.

The other major piece of labour legislation that lays down standards of conduct is the Industrial Employment (Standing Orders) Act, 1946 (IESOA). However, its applicability to commercial establishments or to a specific industry is dependent upon state-wide laws. For example, the states of Haryana and Karnataka have notified the application of the IESOA to commercial establishments with a minimum of 50 employees. This implies that financial services institutions in these states, meeting the above criteria, are bound to comply with the IESOA. Upon the application of the IESOA, the establishments are required to submit to the certifying officer draft standing orders proposed for their establishment, which should cover acceptable standards for employees.

In the banking sector, employees of public-sector banks, private-sector banks and foreign banks are bound by the obligations laid down by the RBI and their organisation rules. The provisions of these rules, which are different from other industries, are stricter: observance of secrecy; prohibition against using influence to secure employment for family members; bypassing regular compliance checks for availing of banking facilities; prohibition against media contributions, participating in politics or standing for election; demonstrations prejudicial to the public interest; and acceptance of gifts in an official capacity.

In terms of financial propriety, employees must not indulge in speculation in stocks and shares, but must avoid personal insolvency and even disclose their moveable and immoveable assets. During employment, they are also forbidden from engaging in any outside employment (stipendiary or honorary) without the prior approval of the organisation. Higher managerial employees are subject to additional scrutiny. Those belonging to public sector enterprises are brought within the jurisdiction of the Central Vigilance Commission, the apex vigilance institution. It is due to the gravity of corruption cases that the senior management of private sector banks is also included within the ambit of “public servant”, which usually includes employees of only public sector organisations. This was upheld by the Supreme Court of India in the case of *Central Bureau of Investigation v Ramesh Gelli*<sup>[2]</sup>. The organisations in the insurance and capital markets sectors also have similar institution-wide conduct and disciplinary rules.

Directors of organisations in the financial services sector may also be subject to duties stated in Schedule IV of the Companies Act 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.

When it comes to outsourcing activities, financial institutions formulate a board-approved “Code of Conduct” as part of the “Outsourcing Agreement”, which is to be complied with by the outsourced service providers and their employees.<sup>[3]</sup>

Though financial services employees are held to a higher set of moral standards, their right to participate in trade union actions for voicing their concerns has been upheld time and again. Recently, the Madras High Court in the case of *D Thomas Franco Rajendra Dev v The Disciplinary Authority and Circle Development Officer and State Bank of India*<sup>[4]</sup> observed bank officers’ right to unionise. However, the right of bank employees to go on a strike gets limited since banks and other financial institutions are declared as ‘Public



Utility Services' ("PUS"). Accordingly, while they are not barred from going on strike, they must adhere to certain pre-requisites namely service of notice of at least 6 weeks before going on a strike, prohibition of any strike within 14 days from date of service of above notice, prohibition of going on a strike before the expiry of the date of that strike and non-authorization of any strike during the pendency of any conciliation proceedings or 7 days after the conclusion of such a proceeding. Upon being declared a PUS, the concerned industry must adhere to these conditions failing which the strikes would be declared as illegal.

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[1] WP No. 23310 of 2011.

[2] (2016) 3 SCC 788.

[3] Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs, November 9, 2017, available at [https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NT87\\_091117658624E4F2D041A699F73068D55BF6C5.PDF](https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NT87_091117658624E4F2D041A699F73068D55BF6C5.PDF)

[4] W.A. No. 432 of 2013 and W.P. No. 16746 of 2013

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## Mexico

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Financial entities must establish, implement and apply, among other things:

- confidentiality policies;
- policies for internal control to confirm the acts, operations and services of individuals are carried out in an ethical, professional and legal manner;
- policies regarding the prevention of acts and operations with illegal resources;
- policies to prevent psychological risk factors;
- policies that allow the identification, follow-up and control of risks inherent to operations; and
- conflict of interest resolution policies.

Under the general provisions applicable to operations with securities carried out by members of the board of directors, officers and employees of financial entities and other obligated parties, the principles that must be complied with are the following:

- transparency in operations;
- equal opportunity before all other market participants in sureties operations;
- compliance with fair stock market customs and practices;
- absence of a conflict of interest; and
- prevention of improper behaviour that may have as its origin the use of privileged or confidential information.

Policies, manuals and codes must also include guidelines for the resolution of potential conflicts of interest, as well as the mechanisms to avoid the existence of such conflicts.

Financial entities must inform the CNBV annually, within 15 days, a report on the conduct, operations, and services of individuals. If any act or operation with illegal resources is detected, financial entities must inform the authorities immediately, including the CNBV and the SHCP.

The board of directors of operating companies of investment funds, distribution entities, and stock appraisers of investment funds must approve a code of conduct, which must consider:

- activities in compliance with the applicable laws;
- internal control rules for the compliance of provisions and policies contained in the code, including investment provisions issued by the CNBV;

- security mechanisms to ensure confidential information is used solely for authorised purposes and security measures to protect clients' files from fraud, robbery or misuse;
- an obligation on the general manager, officers and employees to conduct themselves in a fair, honest and professional manner in the performance of their activities; and
- a prohibition on officers, employees and proxies executing any type of operation with the public that contravenes market practices.

Members of the board of directors, the general manager, officers, regulatory comptrollers, proxies, and other employees must immediately report the existence of illegal or unethical conduct or activity to the regulatory comptroller.

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## Switzerland

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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.

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## **10. Are there any circumstances in which notifications relating to the employee or their conduct will need to be made to local or international regulators?**

## France

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In principle, the relationship between companies and employees in the financial services sector is private. As such, companies do not have to communicate confidential information about their employees to third parties, as this would constitute an infringement of their fundamental freedoms. However, in certain cases, employers must alert the competent authorities in the event of behaviour or "suspensions" of behaviour by one of their employees that is contrary to the law.

Thus, the Monetary and Financial Code provides that companies in the financial services sector, referred to in article L.561-2 of the code (the list of which was updated by Ordinance no. 2023-1139 of December 6, 2023 on credit managers and credit buyers to include "Credit managers"), must report to the national financial intelligence unit (Tracfin) all sums or transactions that they suspect to be the result of an offence punishable by a prison sentence of more than one year, or related to the financing of terrorism or tax evasion. This declaration may be made in respect of any employee of one of these companies.

In addition, when facts likely to constitute violations of the anticorruption code of conduct or to qualify as corruption or influence peddling are brought to the attention of the company and its managers, an internal investigation must be conducted (article 17 of Law No. 2016-1691 of 9 December 2016 on transparency). If the investigation confirms the suspicions, the employer must, on the one hand, sanction the employee, but also inform the prosecuting authority of the facts.

In smaller companies, the employer will also be able to report to the prosecution authorities any behaviour that could lead to criminal sanctions.

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## India

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The RBI requires banks to conduct an annual review of fraud committed and provide a note of the total number to the board of directors or the local advisory board. These reports are not to be sent to the RBI but are to be preserved for verification by the RBI's inspecting officers<sup>[1]</sup>. Necessary disclosures may also need to be made to SEBI under some of its regulations.

Publicly listed financial services companies may be required to make necessary disclosures, including to the stock exchanges and their auditors, in case of workplace fraud.

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<sup>[1]</sup>Master Directions on Frauds – Classification and Reporting by commercial banks and select FIs (Updated as on July 03, 2017), available at <[https://rbi.org.in/scripts/BS\\_ViewMasDirections.aspx?id=10477](https://rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10477)>

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## Mexico

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Pursuant to the Federal Law for the Prevention and Identity of Transactions with Illegally Obtained Resources, all acts carried out by financial entities are considered a vulnerable activity; therefore, financial entities must:

- set forth measures and procedures to prevent and detect acts and operations;
- file reports to the SHCP regarding acts, operations and services carried out by clients and employees if they suspect illegal resources are involved; and
- keep for at least 10 years any information and documents related to the identification of clients and users.

Given the above, if any action, operation or service is identified as undertaken with illegal resources or there is a breach of any of the provisions outlined in the above law, employers must inform the SHCP and prosecutor.

Also, if officers and general managers no longer comply with the legal requirements to occupy their

positions (eg, not having a satisfactory credit record, or no longer being in good standing), financial entities may inform the CNBV or CNSF, as applicable, so the authorities may disqualify or remove those individuals from their positions.

Furthermore, if there is a breach of the code of conduct, the regulatory comptroller must inform the board of directors and keep such information available to the CNBV at all times. The board of directors will be in charge of establishing disciplinary measures.

Finally, if employees breach psychological risk prevention obligations (see question 11), employers must inform the labour authorities to impose corresponding sanctions.

Last updated on 14/03/2023

## Switzerland

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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

# **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?**

## France

Author: *Béatrice Pola*  
at DS Avocats

Financial services companies, like any private employer, must implement procedures to prevent wrongdoing.

Concerning harassment, the Labour and the Penal Codes punish acts constituting moral and sexual harassment. It is the employer's responsibility, under their safety obligation, to prevent and, if necessary, deal with any behaviour constituting moral harassment. In this respect, an individual must be appointed by the social and economic committee to combat sexual harassment and sexist behaviour.

For whistleblowing, following Directive 2019/1937/EU, the system for whistleblowers that already existed in France was strengthened by Law 2022-401 of 21 March 2022 on the protection of whistleblowers. From now on, companies with more than 50 employees must internally set up a procedure for collecting and handling whistleblowers. Without an internal procedure, the whistleblower can go through an external channel, which presents a risk to the company's reputation.

In addition, following Law 2022-401, the FMA and the French Prudential Supervision and Resolution Authority have set up special procedures allowing any person to report to them, even anonymously, any infringement of European legislation, the Monetary and Financial Code or the AMF General Regulation (articles L. 634-1 to L. 634-4 of the Monetary and Financial Code).

Last updated on 16/04/2024



## India

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Corporate whistleblowing is still at a nascent stage in India and there isn't a robust legislative framework for it. Section 177[1] of the Companies Act 2013, clause 49 on "Corporate Governance" of the Listing Agreement between a listed entity and a stock exchange and the guidelines issued by RBI under Section 35(A) of the Banking Regulation Act 1949 [2] constitute the corpus of early whistleblower jurisprudence in India. Publicly listed financial services companies are required to have whistleblowing policies.

In terms of generally applicable laws, the IDA lists "Unfair Labor Practices" that the employer is prohibited from engaging in. There are certain state-specific laws which reiterate the same. There might also be sector-specific initiatives. One such example is the "Protected Disclosures Scheme for Private Sector and Foreign Banks" by the RBI, which cover areas such as corruption, criminal offences, non-compliance with rules, misuse of office, suspected or actual fraud causing financial and reputational loss and detriment to the public interest.

When it comes to the prevention of harassment, the general statutes are also applicable to financial sector organisations. Employers are required to comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act, 2013, by taking reasonable steps to assist affected women workers. If harassment is coupled with any other issue like caste-based discrimination, then employees may register complaints through well-established civil or criminal redress mechanisms in the legal system.

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[1] Section 177, Companies Act 2013, available at <<https://ca2013.com/177-audit-committee/>>

[2]Section 35A, Banking Regulation Act 1949, available at <<https://indiankanoon.org/doc/587034/#:~:text=it%20is%20necessary%20to%20issue,to%20comply%20with%20such%20directions>>

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## Mexico

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In addition to the obligations previously described, employers and employees are subject to Official Mexican Rule NOM-035-STPS-2018 Employment Psychological Risks – Identification, Analysis and Prevention.

The purpose of NOM-035 is to establish the criteria to identify, analyse and prevent psychosocial risks; and to promote a favourable organisational environment in the workplace.

NOM-035 establishes specific obligations for employers, including:

- informing employees about policies to prevent psychosocial risk factors and labour violence, and promoting a favourable organisational environment;
- identifying and analysing factors of psychosocial risk;

- assessing the organisational environment;
- adopting measures to prevent psychosocial risk and promote a favourable organisational environment;
- adopting corrective actions when identifying psychosocial risk factors;
- identifying workers that could have been exposed to traumatic events and providing help; and
- keeping records of the analysis and identification of psychosocial risks, evaluations of the organisational environment, and corrective action.

To prove compliance, employers must adopt the following measures:

- develop a psychosocial risk policy;
- establish a complaints channel to receive and deal with reports of possible practices preventing a favourable organizational environment and report acts of workplace violence;
- conduct surveys to identify employees that have been exposed to psychosocial risks;
- conduct surveys to identify psychosocial risk factors and potential threats to the organisational environment; and
- create intervention programmes with specific actions based on the results obtained.

The Ministry of Labour and Social Welfare is the authority that inspects compliance with these obligations. NOM-035 does not establish specific sanctions for non-compliance, but inspectors may apply fines derived from the FLL. Also, employers must regularly carry out evaluations, research and follow-up on complaints. They must also prepare regular reports on the subject.

These provisions apply to all employers and there are no particular provisions regarding the prevention of harassment in financial entities.

Last updated on 14/03/2023



## 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

## **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?**



Author: *Béatrice Pola*  
at DS Avocats

The general law regarding dismissals applies to employees in the financial services sector. Under French law, there are two grounds for dismissal: personal reasons, which are related to the employee's behaviour or state of health; and economic reasons, which are not related to the employee. In both cases, the cause must be real and serious (ie, the reason must be objective and materially verifiable, as well as proportionate to the facts put forward). Failing that, the judge may propose the reinstatement of the employee, but if one of the parties refuses, then the employee is entitled to compensation for dismissal without real and serious cause, the latter depending on the employee's seniority.

Certain grounds for dismissal are null and void, in particular dismissals that are discriminatory or contrary to a fundamental freedom. The employee may then be reinstated (in very specific cases) or compensated, but this compensation may not be less than six months' salary.

Dismissal for personal reasons cannot be declared before a preliminary interview with the employee and must be notified at least two working days after this interview, unless otherwise stipulated by collective bargaining agreement. For example, the national collective bargaining agreement for the banking industry stipulates that the preliminary interview cannot take place less than 7 calendar days, except in the case of more favourable legal provisions or specific arrangements (e.g. inaptitude), from the date of first presentation to the employee of the letter of summons (article 26).

Dismissal for economic reasons may be individual or collective. Individual dismissals for economic reasons also require a prior interview and notification of redundancy, but above all notification to the Administration. Collective dismissals for economic reasons require consultation of the Social and Economic Committee, as well as the establishment of an employment protection plan if the termination concerns at least 10 employees within 30 days.

Since 1 July 2010, the FMA's General Regulation requires investment service providers to pass an examination to obtain certification. This certification must be obtained within six months of hiring, so not securing this certification by the end of this period may justify a dismissal.

A dismissal means a redundancy payment is excluded, except in the case of employment protection plans, from assessment for social security contributions for the portion not subject to income tax within certain exemption limits. In addition, article L.511-84-1 of the French Monetary and Financial Code excludes the variable portion of compensation that may be reduced or recovered as a penalty under the "clawback" mechanism from assessment for severance pay.



## India

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The general legal standards on termination of employment are also applicable to employees in the financial services sector. India is not an “at-will” jurisdiction but is also not an “employment-for-life” jurisdiction. In general, termination of employment may be carried out for reasonable cause or on account of misconduct. In cases of termination on any ground other than misconduct, the employee must be provided with prior notice of termination or pay in lieu thereof. The body of laws that govern employee rights around termination are the IDA, state-specific shops and establishments acts, standing orders, and the employment contract. Workmen (basically non-managers) have additional protection in terms of the right to retrenchment compensation when terminated.

Last updated on 16/04/2024

## Mexico

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Under the Constitution and the FLL, an employee has the right to secure employment (employment stability right) and an employer cannot terminate an employment contract without legal cause.

An employer may only dismiss an employee under one or more of the legal causes provided for in article 47 of the FLL (eg, lack of ethics, dishonesty, violence, harassment, absence more than three times in a month without authorisation, disobedience, and intoxication). Dismissal should be carried out within the one month after the employer becomes aware of the legal cause for termination (statute of limitations).

The FLL requires employers to provide the employee with a written notice of dismissal in which the date and causes are expressly described. A lack of written notice makes the termination unlawful and triggers the severance obligation described below.

In addition, financial entities may end the employment of individuals without notice in the following circumstances:

- if a general manager or officer no longer complies with the legal requirements to occupy their position (see question 2);
- if the CNBV or the CNSF, as applicable, disqualifies, removes, or relieves individuals from their positions; and
- if a brokerage house’s proxies are no longer authorised by the CNBV.

If there are no legal grounds to justify the termination and an employee is dismissed, the dismissal is wrongful and the employee has the right to:

- be reinstated (article 49 of the FLL establishes the cases where an employer is exempt from reinstating an employee, for example employees of trust); or
- a severance payment (three months of salary, plus 12 days of salary for each year of service capped at twice the general minimum wage of the geographic area where the employee rendered services, plus 20 days of salary per year of service, and, if applicable, back pay).

These obligations are only enforceable (reinstatement and payment of severance) if the dismissal is deemed wrongful by the labour authorities in their corresponding resolution. Nevertheless, if there are no legal grounds that justify the termination, it is common practice to pay the severance in advance if there is

no intention to reinstate the employee after termination.

When termination occurs, financial entities must inform the self-regulated bodies to revoke powers of attorney within five days. The self-regulated body must then inform the CNBV of the revocation. For the removal or resignation of the general manager and officers, financial entities must inform the corresponding authority within five to ten days, depending on the type of financial entity.

For the termination of employment of employees in general positions, there is no particular document to execute other than a termination document (resignation or employment termination agreement and release).

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## Switzerland

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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

## **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?**



France

Author: *Béatrice Pola*  
at DS Avocats

Three specific clauses are potentially relevant to employees in the financial services sector.

Firstly, regarding the confidentiality clause, employees in the financial services sector are bound to respect professional and banking secrecy.

More specifically, article 25 of Section III of Chapter 4 of Title II of Book 1 of the national collective agreement for financial companies of 22 November 1968, provides that all staff members are bound by professional secrecy within the company and towards third parties. Employees may not knowingly pass on to another company information specific to their employer or previous employer.

Article 24 of Chapter 3 of Title III of the national collective bargaining agreement for bank employees of 10 January 2000 codifies the absolute respect of professional secrecy.

Article 44 of Chapter 2 of Title IV of the national collective bargaining agreement for the financial markets of 11 June 2010 states that the employee must comply specifically with the rules of conduct regarding professional secrecy, both within the company and concerning third parties.

Confidentiality clauses can also be concluded between the employee and his or her employer, to reinforce the obligation of confidentiality.

In principle, a confidentiality clause allows for the protection of certain information exchanged during the contract and can be enforced after the termination of the employment contract if it is not perpetual. In this case, it is quite conceivable to contractualise such an obligation for employees in the financial services sector because of their functions, which by their very nature require discretion.

The law already states that anyone who uses or discloses confidential information obtained in the course of negotiations without authorisation is liable. Case law has addressed the issue of confidentiality clauses by ruling that an employee not executing this clause after his or her departure makes him or her liable for the resulting damage, without the employer having to prove gross negligence. The clause may be accompanied by a pecuniary sanction, which may be altered by the judge if it is lenient or excessive.

This clause in no way imposes a non-compete obligation and, therefore, does not entitle the employee to financial compensation.

In practice, it is complex to ensure compliance with this clause; however, the more specific the clause, the more effective it is.

Secondly, a non-compete clause allows an employer to limit an employee's professional activity at the end of an employment contract to prevent that employee from working for a competing company.

Despite the specificity of the activities of the financial sector, it seems that the common law of noncompetition clauses applies.

Thus, such a clause may be provided for by a collective agreement, in which case it is a conventional non-compete obligation. To be enforceable, the employee must have been informed of the existence of the applicable collective agreement. In this case, article 35 of Chapter I of Title IV of the national collective bargaining agreement for financial markets of 11 June 2010 provides for a non-compete obligation.

The non-compete clause is, in the majority of cases, contractual (ie, present in the employee's employment contract). To be valid, this clause must meet various cumulative conditions to be compatible with the principle of freedom to work.

It must be essential to the protection of the legitimate interests of the company, limited in time and space, take into account the specificities of the employee's job, and include an obligation for the employer to pay the employee meaningful financial compensation. All these conditions are cumulative, and the employer cannot unilaterally extend the scope of the clause, otherwise it is null and void. Given the specificity of the activity of companies in the financial services sector, the condition of protection of the legitimate interests of the company would be met. However, taking into account the specificities of the employee's job may undermine such a clause if it is proven that his or her training and experience would prevent him or her from finding a job. The company's interest in imposing a noncompete clause must therefore be demonstrated.

The judge may restrict the application of the non-compete clause by limiting its effect in time, space or other terms when it does not allow the employee to engage in an activity consistent with his or her training and experience. However, the scope of application of the clause cannot be reduced by the judge if only the nullity of the clause has been invoked by the employee. If the non-compete clause is not enforced, the employer may take summary proceedings against the former employee who does not respect it, and also against the employee's new employer if they were hired with full knowledge of the facts, or if they continue to be employed after learning of the clause.

The employer may waive the clause if this is explicit and results from an unequivocal will. In the specific case of contractual termination, the employer who wishes to waive the clause must do so no later than the termination date set in the agreement.

Finally, concerning the non-solicitation clause, such a clause can be concluded between two companies through a commercial contract. These companies mutually prohibit each other from hiring their respective employees. Therefore, this clause is distinct from a non-compete clause and does not meet its conditions of validity. However, it must be proportionate to the legitimate interests to be protected given the purpose of the contract.

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India

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Post-termination non-competes are not enforceable, as they are treated as a restraint of trade. Courts have given prevalence to the livelihood of the employee over the employer's interests. However, a reasonable non-solicit restriction may be enforceable in India.[\[1\]](#)

Employees in financial services are also bound by post-employment (for both resignation and retirement)

obligations.[2] RBI employees[3] who cease to be in service should not accept or undertake “commercial employment”[4] for one year from the date on which they cease to be in service without the prior approval of the concerned authority. For SEBI employees[5], the cooling-off period is also one year. “Commercial employment”[6] broadly includes employment in any company or setting up their own practice without having professional qualifications and relying only on official experience. Such engagement may bestow an unfair advantage upon clients by virtue of the ex-employees’ prior experience at the organisation. The grant of prior approval by the concerned authority is dependent on whether there is any ensuing conflict of interest from such engagement.

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[1] Employment Contracts in India: Enforceability of Restrictive Covenants, available at <[https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Employment\\_Contracts\\_in\\_India.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Employment_Contracts_in_India.pdf)>

[2] Section 55, SEBI (Employees’ Service) Regulations 2001.

[3] General Administration Manual, RBI, available at <<https://rbidocs.rbi.org.in/rdocs/content/pdfs/71073.pdf>>

[4] Section 2, Regulation 37A, RBI Staff Regulations, 1948.

[5] Section 55(3), SEBI (Employees’ Service) Regulations 2001.

[6] Section 55(2), SEBI (Employees’ Service) Regulations 2001; Section 2, Regulation 37A, RBI Staff Regulations, 1948.

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## Mexico

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There are no particular rules or legal provisions concerning the use of post-termination restrictive covenants. Nevertheless, it is common practice to execute termination agreements with officers and general managers whereby non-disclosure, non-compete and non-solicitation provisions are set forth by the parties. The use of non-compete and non-solicitation provisions in termination agreements is only recommended for very specific employees and must be negotiated when the employment is terminated.

Plain non-compete and non-solicitation provisions binding employees after termination are not enforceable under Mexican law, because the Mexican Constitution grants individuals the right to perform any job, industry, commerce or work as long it is legal and not prohibited by a judicial or governmental decision.

Post-employment non-compete obligations, which are treated as an exception, must be agreed upon in connection to specific activities that may be deemed unfair competition, and may be enforced with economic compensation.

The period of enforceability must be proportional to:

- the number of years of employment;
- the level of information and importance of the position;
- the economic compensation; and
- the scope of the non-compete obligations.

Unfair competition and solicitation – either for business, or to induce other individuals to leave the company, while the employment contract between an individual and employer is in effect – may be considered misconduct. This misconduct is a cause of termination without notice for the company, and therefore it is feasible to enforce it.

The terms and conditions must be specifically addressed in writing, within the employment termination

agreement, making express reference to the importance of the information, potential competition, activities that may be deemed unfair competition, intellectual property, and commercial advantages. The compensation paid is usually similar to or above the income of the employee while he or she was active with the company. Clawback and damages payments for breach of contract are standard practices.

Last updated on 14/03/2023

## Switzerland

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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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## **14. Are non-disclosure agreements (NDAs) potentially lawful in your jurisdiction? If so, must they follow any particular form or rules?**

### France

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All actors in the financial services sector are bound by strict professional and banking secrecy.

But beyond the professional secrecy that is inherent to the employment contract, there may be an interest

in particular circumstances to strengthen this requirement and make it an obligation of absolute professional secrecy. This is legal under French law and generally takes the form of a confidentiality clause (non-disclosure) inserted in the employee's employment contract.

In principle, a confidentiality clause, which includes an obligation of professional secrecy to which the employee is bound as well as an obligation of discretion, is not subject to any particular conditions. In particular, it does not require the payment of any financial consideration.

On the other hand, when an employee by an agreement or transaction goes further and waives his freedom of expression, the case law sets stricter conditions of validity. The agreement must be adapted, necessary and proportionate to the aim sought.

Confidentiality clauses must also comply with any obligations in terms of transparency, the fight against corruption and influence peddling provided for by Law No. 2016-1691 of 9 December 2016.

The only entities against which banking secrecy cannot be invoked are the French Prudential Supervision and Resolution Authority, the Banque de France and the judicial authority acting in the context of criminal proceedings (article L. 511-33 of the Monetary and Financial Code). On the other hand, bank secrecy is enforceable in civil court proceedings, as confirmed by abundant case law.

Last updated on 16/04/2024



## India

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NDAs are governed by the Indian Contract Act, 1872 and are generally lawful in India.

Generally, post-contract restrictive covenants like non-compete clauses that restrain a person's exercise of lawful trade, profession or business are declared void because of Section 27 of the Indian Contract Act.

The enforceability of NDAs may be affected if they restrain an employee from exercising a lawful profession, trade or business. Accordingly, an NDA crafted to protect the "confidential information" of the former employer but not to impose the above-mentioned restraints on the employee is saved from any clash with Section 27 of the Indian Contract Act and is, therefore, enforceable in the courts of law in India. If NDAs prohibit an employee from disclosing commercial or trade secrets, then they cannot be held to be in restraint of trade. This was observed by the Bombay High Court in *VFS Global Services Pvt Ltd v Mr Suprit Roy*<sup>[1]</sup>.

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<sup>[1]</sup> 2008 (2) BomCR 446.

Last updated on 16/04/2024



## Mexico

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Non-disclosure provisions under Mexican law are applicable and enforceable. All information to which employees have access, given their position and services, regarding third parties and deemed sensitive or confidential (ie, non-public information) may not be disclosed at any time after the termination of employment or used for any other purposes.

The breach of non-disclosure obligations of confidential information and trade secrets may lead to economic sanctions or imprisonment. The disclosure of confidential information or using it to an employer's



detriment is an offence under criminal law. Also, employees that breach confidential obligations may have to pay damages to the affected party.

Pursuant to article 186 of the general provisions applicable to brokerage houses, internal policies must be in place to establish guidelines and procedures for the use, management, conservation and, as applicable, destruction of books, records, documents, and other information; and must guarantee the adequate use and control of documents containing the confidential information of clients. Also, these entities must establish strict controls to avoid the improper use of books, records, and documents in general.

According to the Law to Regulate Technological Finance Institutions, entities must include measures and policies to control operational risks within their filing for authorisation at the CNBV. They must also provide information security and confidentiality policies, with evidence of secure, trustable and precise technological support for their clients and with minimum standards of security to ensure the confidentiality, availability and integrity of information, as well as to prevent fraud and cyberattacks.

Additionally, financial entities must guarantee the security and integrity of the information, and implement security measures to preserve the integrity and confidentiality of the information generated, stored, or processed.

Lastly, under the Federal Law for the Prevention and Identity of Transactions with Illegally Obtained Resources, filing notices, information and documentation related to vulnerable activities to the SHCP does not qualify as a breach of confidentiality obligations.

Last updated on 14/03/2023

## Switzerland

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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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