# Employment in Financial Services

## Contributing Editor

*Louise Skinner at Morgan Lewis & Bockius*

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

### 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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## Singapore

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

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

competence and capability; and financial soundness.

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

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

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

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## UAE

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

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

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

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

Where a firm proposes to appoint someone in a controlled function, an application to the ADGM must be made in advance, The ADGM will make an assessment of that individual in order to satisfy itself that they are fit and proper to be an approved individual. The Regulator will consider the individual's integrity, competence and capability, financial soundness, their proposed role and any other relevant matters. That

individual may not be considered as fit and proper where they have been declared bankrupt, convicted for a serious criminal offence, or incapable - through mental or physical incapacity - of managing their affairs.

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

### 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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### Singapore

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

There should also be an employment contract in place, addressing matters such as individual licences (where required) and continued compliance with all applicable MAS guidelines, notices, advisories and regulations. In drafting these contracts, FIs should take into account MAS' Guidelines and Advisories, including the Guidelines on Fit and Proper Criteria, Individual Accountability and Conduct, and (where

relevant) Risk Management Practices – Board and Senior Management. Robust confidentiality obligations and other restrictive covenants are also commonplace.

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## UAE

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

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

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

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

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

any other matter that may be prescribed by the employer.

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# 04. Do any categories of employee need to have

## special certification in order to undertake duties for financial services employers? If so, what are the requirements that apply?

### 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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### Singapore

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

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

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### UAE

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

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## 05. Do any categories of employee have enhanced

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

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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## Singapore

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

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

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

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

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## UAE

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

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

## Mexico

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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.

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## Singapore

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

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## UAE

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There is no public register of authorised individuals.

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# 07. Are there any specific rules relating to compensation payable to financial services employees in your jurisdiction, including, for

## example, limits on variable compensation, or provisions for deferral, malus and/or clawback of monies paid to employees?

### 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 is enacted.

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### Singapore

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

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

Companies listed on the Singapore stock exchange have similar requirements under MAS' Code of

Corporate Governance, and these also exist in subsidiary legislation applicable to the FI. As for all other non-exempt companies, director and employee remuneration will ordinarily have to be disclosed through publicly available financial statements, under applicable accounting standards.

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

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## UAE

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

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

## 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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## Singapore

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

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## UAE

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

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

Last updated on 24/04/2024

# 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?

## 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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## Singapore

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

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

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## UAE

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

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

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

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

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

### 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.

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## Singapore

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

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

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

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## UAE

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

In addition, the DFSA and FSRA General Rulebooks contain broad obligations on any authorised firm to report to the regulator if it becomes aware of a range of occurrences, including any matter which could

have a significant adverse effect on the authorised firm's reputation, or a matter in relation the authorised firm which could result in serious adverse financial consequences to the financial system or to other firms, or a significant breach of a rule by the authorised firm or its employees.

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

### 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.

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## Singapore

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

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## UAE

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**Whistleblowing**

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

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

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

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

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

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

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

**Harassment**

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

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

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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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## Singapore

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

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

Last updated on 16/04/2024

## UAE

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

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

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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.

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

The Singapore Courts have recognised that an employer has legitimate proprietary interests in its trade connections (commonly protected by restraints against the solicitation of clients or customers); the maintenance of a stable, trained workforce (commonly protected by restraints against the poaching of employees); and its confidential information and trade secrets (commonly protected by confidentiality restraints). This is not a closed list.

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

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

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## UAE

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The DFSA and FSRA Rulebooks do not regulate the use of post-termination restrictive covenants. It is fairly typical for financial services firms in both free zones to include non-dealing, non-solicitation, non-compete

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

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