

Employment in Financial Services

Contributing Editor

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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?

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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.

^[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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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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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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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.

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



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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*^[1], 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.

^[1] WP No. 23310 of 2011.

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



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There is no 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"^[1], 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.

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

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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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07. Are there any specific rules relating to compensation payable to financial services employees in your jurisdiction, including, for example, limits on variable compensation, or provisions for deferral, malus and/or clawback of monies paid to employees?



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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.

[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-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021_51889.html>

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

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

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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*^[1] 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[2]. 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.[3]

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[4] 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.

[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>

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



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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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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?



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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^[1]. 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.

^[1]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>

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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.

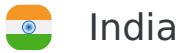
Also, if officers and general managers no longer comply with the legal requirements to occupy their positions (eg, not having a satisfactory credit record, or no longer being in good standing), financial entities may inform the CNBV or CNSF, as applicable, so the authorities may disqualify or remove 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.

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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?



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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.

[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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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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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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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.

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Mexico

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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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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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.

[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>

[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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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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