

# Employment in Financial Services

## Contributing Editor

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## 01. What is the primary regulatory regime applicable to financial services employees in your jurisdiction?

### Ireland

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The Central Bank of Ireland (CBI) is responsible for the authorisation and supervision of regulated financial service providers (RFSPs) in Ireland. RFSPs can include credit institutions, credit unions, brokers/retail intermediaries; and other RFSPs such as electronic money institutions, insurance and reinsurance undertakings, investment firms and payment institutions. The regulatory regime applies in a bespoke way to each sector and its employees and tailored legal advice should be taken for a specific situation. The general principles of the regulatory framework are set out below.

#### **Fitness and Probity**

The primary regulatory regime applicable to employees of RFSPs is the Fitness & Probity ("F&P") framework under the CBI Reform Act 2010 (2010 Act) as amended. Its function is to assess and monitor the suitability of individuals for certain key positions, known as Controlled Functions (CFs), including Pre-approved Controlled Functions (PCFs). The general rule is that an RFSP cannot permit a person to perform a controlled function unless the RFSP is satisfied on reasonable grounds that the person complies with the F&P Standards prescribed under the 2010 Act and further set out in the regulations and Guidance prescribed by the CBI. A link to resources governing the F&P Standards is [here](#).

Fitness relates to an individual's competency, experience, qualifications and capacity to perform the role (including time commitments and being free from conflicts of interest).

Probity relates to an individual's honesty, diligence, independence, ethics and integrity in performing their role.

Employers are required to perform due diligence to confirm that individuals they propose placing in CF roles are fit and proper. Employers are also required to hold a certificate of compliance in respect of each in scope employee, certifying that the employee complies with the F&P Standards. Employees of RFSPs must agree in writing to comply with the F&P Standards.

A breach of an individual's F&P obligations can result in criminal and administrative sanctions for the RFSP and suspension and disqualification for the individual from holding a controlled function.

#### **Minimum Competency Requirements**

The CBI also operates a minimum competency regime under the Minimum Competency Code 2017 and the CBI (Supervision and Enforcement) Act 2013 (section 48(1)) Minimum Competency Regulations 2017, which set out professional standards and competencies, and continuing professional development (CPD) requirements, for persons providing certain financial services and products across certain sectors e.g., credit union and insurance services. The aim is to protect consumers by ensuring a minimum acceptable level of competence from individuals acting for or on behalf of RFSPs providing advice and information and associated activities (such as dealing with insurance claims or complaints), in connection with in-scope financial products.

### **The Individual Accountability Framework**

The CBI (Individual Accountability) Act 2023 (the "2023 Act") was signed into law on 9 March 2023. The 2023 Act introduced a new Individual Accountability Framework ("IAF"):

- An enhanced Fitness and Probity Framework;
- New Common Conduct Standards, including Additional Conduct Standards for PCFs, applicable to employees and officers of RFSPs as well as Business Conduct Standards;
- The Senior Executive Accountability Regime ("SEAR"); and
- Administrative Sanctions Procedures ("ASP") which empowers the CBI to investigate and sanction individuals for breaches of their obligations under the IAF including the Conduct Standards and their F&P obligations.

The IAF commenced in Ireland from 29 December 2023. The F&P Framework and the application of the new Conduct Standards became effective from this date. Other parts of the IAF will be effective later in 2024.

### **Conduct Standards**

Under the 2010 Act, both CFs and PCFs must take any step that is reasonable in the circumstances in the performance of their role, to ensure that they meet the requirements of the Common Conduct Standards. The Common Conduct Standards are explained in Guidance published by the CBI [here](#). The Conduct Standards include the requirement to act with honesty and integrity, due skill and care, co-operate in good faith with the CBI, act in the best interests of customers and comply with applicable rules governing market conduct and trading as applicable to the relevant RFSP's sector. The F&P Standards set a standard that CFs and PCFs must meet to ensure that they are sufficiently skilled and have the competence and capability to perform their roles. Whereas the Common Conduct Standards impose positive, enforceable legal obligations on individuals in those roles, governing their conduct and requiring them to act in accordance with a single set of standards of expected behaviour. Employers must train their employees on the applicable Conduct Standards. Employees are required to attend at that training and to fully understand and comply with the Conduct Standards. Additional Conduct Standards apply to PCFs.

### **Senior Executive Accountability Regime**

SEAR which applies to senior managers/officers holding PCF and CF1 roles, will be applicable from 1 July 2024. SEAR will come into force in respect of Non Executive Directors (NEDs) and Independent Non Executive Directors (INEDs) with effect from 1 July 2025.

In terms of the scope of application, SEAR will be introduced on a phased basis and will initially apply from 1 July 2024 to credit institutions, insurance undertakings (excluding reinsurance undertakings, captive (re)insurance undertakings and insurance special purpose vehicles) and investment firms that underwrite on a firm commitment basis, deal on own account, or are authorised to hold client monies or assets; and third-country branches of the above.

However, the CBI has noted in its Consultation Paper 153 (CP153) that "there is much in the spirit of the SEAR that firms not initially falling within scope should consider as aligned with good quality governance". RFSPs which are not in Phase 1 of SEAR should therefore consider the presence of the new regime and whether it may be appropriate to comply with the spirit of SEAR by ensuring that individual responsibilities for senior managers are mapped and clearly allocated across the firm's senior management. This is to ensure that it is very clear who is individually accountable for what and in order to ensure that the business and its risks are being properly managed.

## Business Standards

The 2023 Act provides for the ability of the CBI of Ireland (CBI) to prescribe the "Business Standards" for the purposes of ensuring that in the conduct of its affairs a firm:

1. acts in the best interests of customers and of the integrity of the market;
2. acts honestly, fairly and professionally; and
3. acts with due skill, care and diligence.

The Business Standards are obligations which apply to the RFSP.

## Protected Disclosures Legislation - Whistleblowing

The Protected Disclosures Act 2014 as amended provides that all employers (with 50 or more employees) and most RFSPs regardless of head count (including MiFID firms, UCITS management companies, AIFMs, externally managed UCITS and externally managed AIFs) have and maintain secure, confidential and effective internal reporting channels and investigation procedures that comply with its requirements. Employees and other workers, including INEDS and NEDS as well as contractors have significant anti retaliation protection in connection with making a protected disclosure. Employers are required to appoint a designated person to acknowledge a report within 7 days, make diligent inquiries and to follow up with the reporter within three months in relation to the progress/outcome of the investigation. The Central Bank (Supervision and Enforcement) Act, 2013 as well as the European Union (Market Abuse) Regulations, 2016 set out whistleblowing requirements for in scope employees and anti retaliation protection.

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## Singapore

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

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

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

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

Contravening legislation (primary or subsidiary) and directions would generally constitute a criminal offence. Contravening advisories, guidelines, codes and practice notes would not generally constitute a

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

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## **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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RFSPs must satisfy themselves that all CF and PCF candidates or employees comply with the F&P Standards. Pre-employment due diligence must be performed, including asking the candidate to certify they will comply with the F&P Standards and notify the RFSP immediately of any change in circumstance that may mean they no longer comply. Employers must continue to ensure that in scope employees comply with the F&P Standards and must complete an annual declaration to this effect. This means that due diligence must continue throughout the employment relationship and not just at the recruitment stage.

Candidates for PCF roles must complete an online individual questionnaire, which is submitted to the CBI in advance of appointment to the role through the Central Bank portal. The CBI must grant its approval for the PCF appointment before a candidate can take up the role. Any PCF offer of employment must be conditional on that approval being obtained. The CBI may request applicants attend an interview as part of the approval process.

Employers should take all reasonable steps to secure references from previous employers in order to due diligence the candidate's compliance with the F&P Standards and their suitability for the role. However, an employer is not obliged to issue a reference in respect of a former employee which means that a prospective employer may not be able to secure a reference from a previous employer. The CBI does not oblige employers to either issue or obtain a reference as part of screening checks, however employers must make good efforts to do so.

There are material obstacles from a data privacy and practical perspective to employers conducting criminal background checks in relation to prospective employees. Data relating to criminal convictions is special category data under the GDPR. Employers would need to satisfy both Article 6 and Article 9 requirements under the GDPR to justify the processing of this data. In terms of Article 9, this means employers would need to show reasons of substantial public interest or that they are carrying out their legal obligations in processing the data. In terms of Article 6 the employer will need to show that the processing is necessary to comply with a legal obligation to which the employer is subject or the processing is necessary for the employer's legitimate interests for example to ensure the suitability and honesty of its employees and to protect its reputation. Employers are also prevented from asking candidates about "spent convictions" which are usually minor criminal offences dating back over seven years.

Pre-employment medical checks must also have a clear legal basis justifying the processing of an

employee's medical and health information.

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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 standardised. The MAS will look to consult on the relevant draft notices in this respect in due course, and this will bear watching.

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

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



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The following documents should be in place:

- written statement of terms of employment e.g., a written contract of employment that complies with

the Terms of Employment (Information) Act 1994-2014 and the European Union (Transparent and Predictable Working Conditions) Regulations 2022;

- grievance and disciplinary policy;
- protected disclosures policy;
- dignity at work policy (anti-harassment and bullying prevention);
- safety statement; and
- where possible, an employee handbook that details all the statutory leave policies and other bespoke policies of the RFSP.

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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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## **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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Yes, under the Minimum Competency Regime (see question 1), employees who perform certain prescribed functions and roles in prescribed RFSPs such as insurance businesses and credit unions, must meet the required competencies and qualifications standards.

The 2023 Act also introduces a new requirement that persons can only be permitted to perform a CF role (including a PCF role) where a certificate of compliance with the F&P Standards given by the firm is in force (Certification Regime).

As part of the Certification Regime, a certificate of compliance may only be given if:

1. the firm is satisfied on reasonable grounds that the person complies with the F&P Standards; and
2. the person has agreed to abide by the F&P Standards and to notify the firm without delay if for any

reason they no longer comply with the F&P Standards.

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



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Yes. Common Conduct Standards and Additional Conduct Standards were introduced by the 2023 Act and employers need to update employees' contractual documents to reflect same.

The Common Conduct Standards set out standards of behaviour expected of individuals carrying out Controlled Functions (CFs) within firms. The Common Conduct Standards are basic standards such as acting with honesty and integrity with due skill, care and diligence and in the best interest of customers. An individual that is subject to the Common Conduct Standards will be expected to take reasonable steps to ensure that the Common Conduct Standards are met.

In addition, senior executives, which includes individuals performing PCF roles (e.g. the directors, designated persons) and other individuals who exercise significant influence on the conduct of a firm's affairs (CF1) will also have Additional Conduct Standards related to running the part of the business for which they are responsible. An individual who performs a PCF/CF1 role should take reasonable steps to ensure that the Additional Conduct Standards are met.

When SEAR comes into effect, those performing senior executive functions will be required to have detailed statements of responsibility setting out the scope of their role. The Duty of Responsibility which the PCF will have under SEAR is extensive. The duty extends to taking any step that is reasonable in the circumstances to avoid a breach by their firm of its obligations in relation to an aspect of the firm's affairs for which the PCF is responsible.

There are a number of General Prescribed Responsibilities that will need to be assigned to PCFs:

- (a) Performance by the Firm of its obligations under SEAR
- (b) Performance by the Firm of its obligations under the F&P framework
- (c) Performance by the Firm of its obligations under the new Conduct Standards
- (d) Responsibility for overseeing the adoption of the firm's policy on diversity and inclusion.

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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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## **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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No.

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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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## **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 prescriptive, sector-specific requirements, which apply to the remuneration of specified categories of employees or directors, and which apply in the asset management, investment services, banking, and insurance sectors.

Employers in these sectors are tasked with ensuring that the remuneration paid to material risk takers (individuals whose professional activities have a material impact on an RFSP's risk profile) or identified staff align with the RFSP risk profile.

There are detailed rules with technical guidance (emanating from EU law) specific to each sector, but at a high level they (to differing degrees) set out rules on; variable remuneration composition, ratios or other metrics to compare variable to fixed remuneration to ensure it is appropriate; malus requirements, which would allow the RFSP to cancel or reduce the employee's variable remuneration before it is paid out; and clawback provisions which allow RFSPs to recover variable remuneration after it has been awarded. It is important to ensure that employees' contracts of employment acknowledge that any variable remuneration will be subject to all regulatory restrictions and rules and may be clawed back in certain circumstances.

The CBI's 2014 Guidelines on Variable Remuneration Arrangements for Sales Staff also emphasise the importance of remuneration structures to have sufficient deterrents built into them (such as malus and clawback mechanisms) to avoid incentivising undesirable/risky behaviours from sales staff in the banking, insurance and investment services sectors.

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

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Yes. A CF employee, subject to the Minimum Competency regime, will be required to complete CPD training. Evidence of meeting that CPD requirement is also a factor in determining a person's F&P. RFSPs must maintain records of CPD training provided to CFs to demonstrate compliance with the minimum competency regime.

The 2023 Act also introduces new training obligations for those subject to the Common and Additional Conduct Standards, with firms being required to train those persons on how these obligations apply to them and their new duties of responsibility. Attendance at, or completion of, training in respect of the Conduct Standards should be mandatory and such attendance should be carefully documented with refresher training rolled out periodically.

Employers within the scope of the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 - 2021 (including RFSPs) are required to provide annual training to relevant staff and directors on its requirements and the RFSP must have procedures in place to comply with that legislation and associated guidance.

Depending on the RFSP's business, additional mandatory training may be needed annually, for example, on topics such as market abuse.

The designated person for responding to protected disclosures should be trained and competent in the identification and handling of protected disclosures.

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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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### **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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Yes there are. They are:

- the F&P Standards;
- the minimum competency regime; and
- the IAF and SEAR (see question 1).

There are also sector-specific conduct of business requirements in legislation and codes, including the Consumer Protection Code 2012, the MiFID II regime, and other regulatory requirements applicable to RFSPs based on their industry sector that apply and deal with matters such as:

- error handling,
- disclosures to customers,
- acting in the best interests of customers; and
- complaints handling.

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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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## 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 CBI expects RFSPs to be open and transparent in their engagement, including concerning compliance with the F&P Standards and the Common Conduct Standards. While early versions of the IAF regulations and related guidance contained an obligation on a RFSP to report to the CBI if disciplinary action had been taken against an individual, the obligation was removed from the latest version of the draft legislation. The Guidance indicated that the CBI would expect that they would have already received relevant details as it provides that firms and persons performing PCF roles are required to report to the CBI where they suspect that a "prescribed contravention" may have occurred for the purposes of the CBI legislative framework and the CBI states that a breach of the Common Conduct Standards and/or Additional Conduct Standards is a "prescribed contravention" for these purposes.

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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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## 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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Yes. Concerning the prevention of wrongdoing, RFSPs should implement a written protected disclosures/whistleblowing policy that explains the secure and confidential internal and external reporting channels available to workers who wish to report relevant wrongdoings. The anti-retaliation protection should be explained and workers should understand from the policy how a report of relevant wrongdoing will be dealt with by the RFSP.

RFSPs should ensure that they have clear, up-to-date and fully compliant policies governing:

- dignity at work (including anti-harassment and anti-bullying measures); and
- grievance and disciplinary policies.

RFSPs should ensure that employees are trained on the RFSP's dignity at work (anti-bullying and harassment) policies to ensure that the RFSP's values, culture and commitment to preventing harassment and bullying are clear regarding their rights and obligations.

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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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## **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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Where possible it is important to try to resolve any outstanding issues that a PCF has or may have before

the PCF's contract is terminated. An RFSP is required to give details of the circumstances of a PCF's termination of employment and to confirm whether or not there are outstanding issues regarding the PCF.

It is important to ensure that there are adequate provisions to govern the following in any settlement agreement or termination arrangements:

- adequate handover of operational responsibility;
- continued co-operation on operational matters within the employee's knowledge or in relation to matters that may subsequently be investigated by the CBI;
- secure return of all company property including any personal data; and
- post-termination confidentiality obligations and any other necessary post-termination restrictions.

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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.

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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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No there are no bespoke rules that apply. Post termination restrictions in Ireland are void as being in restraint of trade unless it can be shown that the restrictions are necessary to protect an employer's legitimate proprietary interest and they are proportionate and reasonable in their scope and duration to achieve that protection<sup>[i]</sup>.

[i] Law as of 15 April 2024

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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.

Last updated on 16/04/2024

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

### Ireland

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Yes. It is possible to use NDAs in Ireland and it is quite common for them to be used, but there are some limitations on their use and enforceability.

Certain mandatory reporting obligations will override a contractual non-disclosure agreement, such as the requirement for PCFs under section 38(2) of the CBI (Supervision and Enforcement) Act 2013 to disclose certain matters to the CBI.

Further, an NDA cannot extinguish an employee's right to anti-retaliation protection where the employee makes a protected disclosure either internally or externally under the Protected Disclosures Act 2014 - 2022.

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### Singapore

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NDAs are generally lawful in Singapore, although the extent of their enforceability depends on their

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

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

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