

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?

India

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

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

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

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

character certificate, etc.

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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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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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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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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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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.

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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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 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/KMPNBFC5962EC76438C845A6846A5BD59BC7513D.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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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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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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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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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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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 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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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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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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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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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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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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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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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[i].

[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.

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