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?

Belgium

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Members of management should at all times be of good repute and possess sufficient knowledge, skills and experience to perform their duties (article 91, Directive 2013/36/EU; and article 9, Directive 2014/65/EU).

Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must exclusively be natural persons and must at all times have the necessary professional standing and expertise to perform their duties (article 19, Act of 25 April 2014). Since 2023, it is specified that “in particular, these persons must demonstrate honesty, integrity and independence of mind which, in the case of members of the legal administrative body, enable them to effectively evaluate and, if necessary, question the decisions of the actual management and to ensure the effective supervision and monitoring of the management decisions taken” (Art. 19, Act of 25 April 2014).

In addition, they must not have been convicted of any of the offences listed in article 20 of the Act of 25 April 2014. This concerns convictions with a professional ban and violations of financial legislation, company codes and insurance law.

The NBB will verify that these persons meet the conditions listed above. Forms for a new appointment, additional elements during the employment, termination of an appointment or renewal of an appointment are available on the NBB website (www.nbb.be). These forms require information mainly regarding education, past financial services experience, training, any criminal or administrative or civil proceedings or investigations, disciplinary decisions, bankruptcy, insolvency, potential conflicts of interest, and time commitments for the new appointment.

The NBB will assess the ability of the person based on five criteria:

- expertise, covering knowledge, experience and skills;
- professional repute;
- independence of mind;
- time commitment; and
- collective suitability for the board (ie, to verify whether the expertise within the said body is sufficiently guaranteed, given the person's knowledge, experience and skills (NBB Fit & Proper Handbook of 22 December 2022, 2:26, p. 16)).

Concerning "N-1" effective managers (managers who exercise direct and decisive influence over the management of the institution, but who are not members of the management committee) other than branch managers, the supervisory authority does not have to authorise them (NBB Fit & Proper Handbook of 22 December 2022, 2:9, p. 14). This does not mean that these persons must not have the required expertise and professional reputation, but only that the NBB will not conduct an assessment.

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Isle of Man

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There is a general obligation on employers in the Isle of Man to undertake legal working checks to ensure that the prospective employee has the right to work lawfully in the Isle of Man.
In addition, financial institutions must take reasonable steps to ensure that individuals who perform any regulated activity in the course of their employment, or under any contract with the financial institution, are fit and proper for the tasks they perform, by providing adequate training and supervision and (where necessary) undertaking additional checks. Where the financial institution wishes to employ an individual in a Controlled Function, the financial institution must carry out sufficient due diligence to satisfy itself that the candidate is fit and proper to perform the proposed functions.

There are two types of Controlled Functions, those that require notification to, and acceptance by, the IoM FSA and those that require notification only. In either case, the financial institution is required to notify the IoM FSA of the appointment or intended appointment of certain key roles at least 20 business days before the appointment takes effect. Where the Controlled Function also requires acceptance, the financial institution will require the IoM FSA's consent to the appointment of a prospective candidate to a particular role. It is recommended that job offers in such circumstances are made subject to the written acceptance of the IoM FSA.

While the IoM FSA does not specify any particular pre-screening measures, it provides guidance on the nature of the expected due diligence that it would expect a financial institution to carry out, particularly where the individual will be undertaking a key role. Such due diligence includes carrying out a professional body check (ie, any memberships held and if disciplinary action has been taken), capacity check[1], criminal record check, credit check and website checks. The financial institution should also consider the individual's qualifications, training and competency.

The IoM FSA may ask for evidence of the due diligence carried out by the financial institution at any time, either remotely or during a supervisory visit.

The IoM FSA recommends financial institutions request a reference from the prospective candidate's current employer and previous employers covering, as a minimum, the past ten years of employment.

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[1] For instance, does the individual have enough time to devote to the role when considering other roles held with the regulated entity and other roles held elsewhere?

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

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

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

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

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

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

Belgium

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Regarding anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution, it is necessary to use the forms

provided by the NBB to ensure that they are “fit and proper” and are authorised by the NBB (see question 2).

It is also recommended to foresee restrictive covenants in the employment contract, such as confidentiality, other professional activities, non-solicitation, non-competition and intellectual property provisions.

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As a matter of general Isle of Man employment law, employers must give employees written particulars of their terms and conditions of employment within four weeks of them starting work, pursuant to section 8 of the Employment Act 2006. This mandatory information includes (but is not limited to) the names of the employer and employee; the date of commencement of employment and the date when continuous service began for statutory employment rights purposes; scale or rate of remuneration; hours of work; and holiday entitlement. Typically, a written employment contract will contain the relevant information and satisfy these requirements.

Financial institutions should also ensure that contracts of employment reinforce the requirements of meeting and maintaining the employee’s “fit and proper” status.

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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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Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must, at all times, have the necessary professional standing and expertise to perform their duties.

This will be assessed by the NBB through standard forms to complete if there is a new appointment, new elements during employment, termination of appointment or renewal of appointment.

"N-1" effective managers must meet the same criteria, but authorisation by the NBB is not necessary (see question 2).

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Yes, please see question 2.

Any individual performing a prescribed key role must be pre-approved by the IoM FSA and be certified as “fit and proper”. The IoM FSA has issued detailed guidance for financial institutions that set out the criteria that they normally apply in considering the fitness and propriety of individuals who wish to undertake Controlled Functions. Appendix 2 of the guidance contains a table setting out which Controlled Functions require consent and which functions are notification only.

Guidance can be found here:
https://www.iomfsa.im/media/2464/regulatoryguidancefitnessandpropriety.pdf

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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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Specifically, employees holding executive, overall management, oversight or control functions in regulated companies are responsible for ensuring that the companies' organization ensures the continued compliance with applicable financial market laws. Swiss financial market laws do not have enhanced responsibilities for different employee categories. Instead, a person's fitness and propriety are assessed within the context of the specific requirements and functions of a given company, the scope of activities at that company, and the complexity of that company.

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Employees who carry out a Controlled Function will have a duty of responsibility to ensure compliance with the financial institution's ongoing regulatory requirements.

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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?

Belgium

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There is no list of financial services employees as such, but the NBB will assess, among others, the experience and the credibility of the person when granting the “fit and proper” authorisation.

This concerns anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution (see question 2).

However, it should be noted that financial services institutions approved by the NBB are listed on its website. Moreover, banking and investment services intermediaries must be registered and file through an online application to the FSMA (www.fsma.be) documents attesting, inter alia, their knowledge, clean criminal record, and professional liability insurance.

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The IoM FSA maintains a public register of entities that are regulated by them. The register lists the classes of regulated activity that the licence holder is authorised to carry out. However, there is no prescribed list or public register for financial services employees that individuals need to be included in to undertake regulated activities.

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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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Specific rules apply to personnel whose professional activities have a significant impact on the company's risk profile (article 92, 2. Directive 2013/36/EU; article 67, Act of 25 April 2014), including:

- all members of the legal administrative body and senior management;
- staff members with supervisory responsibility for control functions or business units;
- employees who received significant remuneration during the previous year (ie, 500,000 EUR or more and equal to or greater than the average remuneration of members of the legal administrative body and senior management) and the employee performs the professional activity in a critical business unit and the nature of the activity is such that it has a significant impact on the risk profile of the business unit concerned.

Variable remuneration is capped at 50% of the fixed remuneration or 50,000 EUR, without exceeding the fixed remuneration, whichever is higher (article 1, Annex II, Act of 25 April 2014). Moreover, it is forbidden to have a guaranteed variable remuneration (article 5). 40% of variable remuneration is delayed for four to five years, with a minimum of five years for members of the legal administrative body and senior management. When the variable remuneration is very high, the percentage of the delayed variable remuneration is 60% (article 7).

The total variable remuneration will be significantly reduced if the company generates a reduced or negative financial return. This applies to variable remuneration not yet earned, variable remuneration earned but not yet paid, and variable remuneration that has already been paid. It occurs through malus or clawback schemes, in particular when the person has participated in practices that have resulted in significant losses, has not respected the “fit and proper” duties or has set up a specific mechanism for tax fraud (article 8).

A termination indemnity is considered a variable remuneration, except for a legal indemnity in lieu of notice or a non-compete indemnity (based on the calculation provided by the Employment Contracts Act). Furthermore, a termination indemnity higher than 12 months, or 18 months for a motivated decision from the remuneration committee, can only be granted subject to the approval of the first ordinary general meeting following the termination (articles 12 and 12/1).

For companies that benefit from government intervention, there is in principle no variable remuneration, except for the person recruited after the public intervention to carry on the restructuring. Moreover, the termination indemnity is capped at nine months, unless the legal indemnity in lieu of notice (based on seniority) is higher (articles 16 and 17).

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There are no prescribed rules relating to compensation payable to financial services employees and any remuneration, bonuses or clawback will be a matter of contract between the financial services employee and the financial institution. Inevitably, this will reflect what is typical in the market for experienced, qualified, financial services personnel performing the role for which they are applying or are currently carrying out.

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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?

Belgium

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To keep the "fit and proper" authorisation, the concerned persons must ensure that they follow the relevant training.

Regarding the prevention of money laundering, financial institutions must ensure that personnel whose function requires it is aware of the legislation, knows the internal policies, is aware of the internal reporting procedure and receives special continuing education programmes (article 11, §1, Act of 18 September 2017).

At a sectoral level, JC Nos. 310 and 341 provide for an individual right to five days of training per year per full-time equivalent employee.

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The IoM FSA's "Training and Competence Framework" sets the minimum standards that must be achieved by individuals working in the financial services industry. The framework sets out the IoM FSA's expectations regarding competency, not only for employees who carry out a Controlled Function (and who are subject to fitness and propriety criteria) but for all staff.

The framework is split into two segments: general training and competence requirements for all staff; and training and competence expectations for Controlled Functions and Other Functions – essentially additional expectations for individuals undertaking or aspiring to undertake certain Controlled Functions or other designated functions.

The IoM FSA also sets requirements concerning continuing professional development (CPD) for different types of regulated entities and staff at different levels. For example, Rule 8.5 of the Rule Book specifies that directors and key persons within a licence holder must undertake a minimum of 25 hours of relevant CPD per year or meet the level prescribed by their professional body (where higher). There are further CPD requirements on individuals who provide investment advice to retail investors.

Even absent a prescribed minimum level of CPD, the IoM FSA believes that ongoing training and CPD for all financial services staff and officers is good practice. Such training and CPD should be relevant to the role of the individual and take account of new developments (ie, changes to tax legislation, new regulatory requirements and new products).

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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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The NBB has issued a Fit & Proper Handbook, which was last updated on 22 December 2022.

Besides, Febelfin has adopted codes of conduct and regulations for relations between financial institutions and their customers, which can be considered standard practice in the sector.

Each financial institution may also provide more concrete or more precise quality standards for its clientele.

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Yes, financial institutions are required to comply with the rules and standards of conduct as set out in the Rule Book (as a minimum).

Financial institutions must notify the IoM FSA of any departure or intended departure of an employee who undertakes a Controlled Function within ten business days. Furthermore, where a financial institution discovers an event which may lead to a final warning being given to, or other serious disciplinary action being taken against, any of its employees, the financial institution must inform the IoM FSA within ten business days. The notice must specify the event, and the name of the employee where the employee holds a Controlled Function or is a “key person”. Where the employee is not a “key person” and does not hold a Controlled Function role, the financial institution is not required to inform the IoM FSA of the name of the employee unless – following an investigation – the employee is given a final warning or other serious disciplinary action is taken (in which case, the financial institution will have to inform the IoM FSA of the employee’s name at that point).

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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?

Belgium

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If a new element occurs that can influence one or more of the five criteria assessing the suitability of a person for the “fit and proper” authorisation (see question 2), the financial institution must file the adequate form with the NBB.

Notification to the NBB is also required in the event of termination or reappointment.

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Yes, please see question 9.

Financial institutions in the Isle of Man are required to comply with various statutory requirements. Breaches of those statutory requirements impose an obligation on the relevant entity to self-report to the IoM FSA. While ordinarily, businesses will endeavour not to supply information about individuals within the business to the regulator as part of this reporting, from time to time this may be necessary to comply with their regulatory obligations. Where this is the case, usually the regulator will be asked to use their powers of compulsion to seek the information rather than such information being given voluntarily. This is particularly the case where the regulator may have formed concerns about an individual’s fitness and propriety and wishes to investigate this further.

Regulators from other jurisdictions may use certain reciprocal agreements and reciprocal enforcement legislation to seek information from the IoM FSA or more directly from a financial services business. Where such requests are made, this may include information about individual employees (ordinarily those exercising Controlled Functions). However, any mechanism for reciprocal enforcement or exchange of information is subject to scrutiny and such information would normally only be offered by an employer under compulsion.

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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?

Belgium

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EU Directive 2019/1937 on whistleblowing has been transposed in Belgium by the Act of 28 November 2022. Financial services are included in its material scope (article 2, 1°, b)). In general, companies with more than 250 employees had to create an internal whistleblowing system by 15 February 2023. For companies with between 50 and 250 employees, the deadline was 17 December 2023. However, these thresholds do not count for legal entities who are active in financial services, therefore they needed to install an internal whistleblowing system no matter their employee count and respect the deadline of 15 February 2023 (article 57, §3). The FSMA will have to verify whether the financial institutions are respecting their whistleblowing obligations (article 36). Furthermore, persons who report violations relating to financial services receive better protection and are awarded higher lump sum compensation if they are the victim of a retaliation measure (six months gross remuneration; article 27, §3).

Regarding the prevention of money laundering, financial institutions were already required to provide a procedure to enable their personnel, agents or distributors to report a violation of the legislation, through a specific, independent and anonymous channel (article 10, Act of 18 September 2017).

The employer must ensure the wellbeing of its employees, which includes the prevention of harassment. If harassment has occurred, they must provide appropriate support, including remediating measures, protection against dismissal and investigation by a prevention advisor specialising in psychosocial risks (Wellbeing Act of 4 August 1996, Wellbeing Code of 28 April 2017). The procedure must be detailed in the work rules of the financial institutions.

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Yes, from 1 January 2017 financial institutions must have an internal whistleblowing policy in place. Financial services employees are encouraged to first raise issues with their employer. However, employees

may also raise serious concerns with the IoM FSA if they remain unsatisfied at the end of the employer's process.

Under employment legislation, if an employee is dismissed because they have made a "protected disclosure" (ie, blown the whistle), that dismissal is automatically unfair. Compensatory damages for whistleblowing are uncapped in the Isle of Man Employment and Equality Tribunal.

While there is no sector-specific guidance on harassment in the workplace, all employers have a legal duty to ensure that employees are not harassed at work (this would extend to bullying and being subjected to discrimination). Failure to have and enforce appropriate policies on bullying and harassment is likely to impair any defence that the employer may raise to a legal claim because it will not be able to show that it took "all reasonable steps" to prevent such acts.

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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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If the person concerned is subject to "fit & proper" authorisation from the NBB (see question 2), a form must be filed with the NBB to inform it of the termination.

Furthermore, the settlement agreement cannot include payments that would not respect the caps for remuneration and termination indemnities (see question 7).

Finally, job security clauses have been negotiated at a sectoral level, meaning a specific procedure must be followed for individual or collective dismissal under JC No. 310, with a sanction of six to nine months' remuneration.

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Terminating an employee's employment must occur in accordance with the terms of their contract, otherwise the employer risks a claim for wrongful dismissal.

Additionally, financial institutions have certain notification obligations to the IoM FSA as outlined in question 10. Where a settlement agreement is entered into in respect of the exit of an employee and a factor in their departure is a disciplinary issue, the IoM FSA will usually wish to know the terms of, and circumstances leading to, the settlement agreement. In particular, the IoM FSA will want to understand whether the reason for the termination was a systemic failure on the part of the financial institution or an issue with the individual and their capability or conduct. The settlement agreement cannot prevent an employee from making a protected disclosure and must not require the employee to warrant that they have not made a protected disclosure.

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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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There are no specific rules for the financial services sector, except that they cannot have an effect that does not respect the caps for remuneration (see question 7).

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The IoM FSA does not regulate the use of post-termination restrictive covenants for employees in the financial services sector. Post-termination restrictive covenants will be a matter of contract and will typically include non-compete, non-solicitation and non-dealing restrictions. These are subject to the same common law rules on interpretation and enforceability as in any other sector. Restraint of trade provisions are, in principle, contrary to public policy as a result of which it is for the employer to justify the length and scope of the restrictive covenant and show that it goes no further than necessary to protect its legitimate business interests. If a restraint is considered to be excessive, the courts will not generally rewrite or modify it to make it enforceable and, therefore, the whole of a defective covenant could fall away or be of no effect.

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Singapore

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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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