

Employment in Financial Services

Contributing Editor

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

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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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UAE

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

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

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

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

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

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



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

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

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

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

- the parties' names;
- the start date;
- remuneration;
- the applicable pay period;
- hours and days of work; and
- any terms and conditions relating to:
 - vacation leave and pay, national holiday entitlement and pay;
 - sick leave and sick pay;
 - the notice period that either party is required to give to the other in order to terminate employment;
 - the employee's job title;

- whether the employment is for an indefinite or fixed term;
- the place of work;
- any disciplinary rules or grievance procedures applicable to the employee; and

any other matter that may be prescribed by the employer.

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04. Do any categories of employee need to have special certification in order to undertake duties for financial services employers? If so, what are the requirements that apply?



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

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

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

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

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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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There is no public register of authorised individuals.

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



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

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



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

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

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

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

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

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

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10. Are there any circumstances in which

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

In addition, the DFSA and FSRA General Rulebooks contain broad obligations on any authorised firm to report to the regulator if it becomes aware of a range of occurrences, including any matter which could have a significant adverse effect on the authorised firm's reputation, or a matter in relation the authorised firm which could result in serious adverse financial consequences to the financial system or to other firms, or a significant breach of a rule by the authorised firm or its employees.

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

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



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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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The DFSA and FSRA Rulebooks do not regulate the use of post-termination restrictive covenants. It is fairly typical for financial services firms in both free zones to include non-dealing, non-solicitation, non-compete and similar restrictive covenants in their employment contracts. These are subject to the same common law rules on interpretation and enforceability as in any other sector. In addition, whilst the courts in both the DIFC and ADGM will award injunctive relief, there is no similar right in the federal courts. This means that the enforceability of an injunctive order outside of the geographic scope of the two free zones is uncertain.

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