

Employment in Financial Services

Contributing Editor

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

Switzerland

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Employment law in Switzerland is based mainly on the following sources, set out in order of priority:

- the Federal Constitution;
- Cantonal Constitutions;
- public law, particularly the Federal Act on Work in Industry, Crafts and Commerce (the Labour Act) and five ordinances issued under this Act regulating work, and health and safety conditions;
- civil law, particularly the Swiss Code of Obligations (CO);
- collective bargaining agreements, if applicable;
- individual employment agreements; and
- usage, custom, doctrine, and case law.

Depending on the regulatory status of the employer and the specific activities of financial services employees, respectively, Swiss financial market laws may also apply. They are, in particular, the Federal banking, financial institutions and insurance supervision regulations.

Last updated on 16/04/2024

United Kingdom

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In the UK, there are two main regulators responsible for the supervision of financial institutions. These are:

- The Prudential Regulation Authority (the PRA) – The PRA supervises over 1,500 financial institutions, including banks, building societies, credit unions, insurance companies and major investment firms. It creates policies for these institutions to follow and watches over aspects of their business.
- The Financial Conduct Authority (the FCA) – The FCA regulates the conduct of approximately 50,000 firms, prudentially supervises 48,000 firms, and sets specific standards for around 18,000 firms.

Some financial institutions are regulated by both the PRA and FCA (dual-regulated). Those financial institutions must comply with rules set down by the PRA in its rulebook (the PRA Rulebook) and by the FCA in its handbook (the FCA Handbook). Other firms are regulated solely by the FCA (solo-regulated) and must comply with the FCA handbook alone. Different rules can apply depending on the nature and size of the firm. The PRA and FCA work closely on certain issues and firms, but the FCA focuses specifically on ensuring fair outcomes for consumers.

The Senior Managers and Certification Regime (SM&CR) sets out how the UK regulators oversee people in businesses supervised and regulated by them, and how those people must act. As the FCA has summarised, “The SM&CR aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct and competence” (<https://www.fca.org.uk/firms/senior-managers-certification-regime>).

SM&CR consists of three elements:

- The Senior Managers Regime (SMR) – This applies to the most senior people in a firm (senior managers) who perform one or more senior management functions (SMFs). These functions are specified in the PRA Rulebook and the FCA Handbook. Senior managers must be pre-approved by the PRA or FCA before starting their roles. Each senior manager must also have a “Statement of Responsibilities” (that sets out what they are responsible and accountable for), which may include (depending on the firm) certain responsibilities prescribed by the regulator known as “Prescribed Responsibilities”. Every year, senior managers must be certified as fit and proper to carry out their role by their firm.
- The Certification Regime (CR) – This applies to employees who, because of their role, could pose a risk of significant harm to the firm or its customers, such as employees who offer investment advice (certified staff). For solo-regulated firms, these roles are generally called certification functions. Firms must certify that these employees are fit and proper for their roles both at the outset of their employment and continuously.
- The Conduct Rules – The Conduct Rules set minimum standards of individual behaviour in financial services in the UK. They apply to almost all employees of a firm. They also include particular rules applicable only to senior managers.

Certain parts of SM&CR apply to particular firms only. This is outside the scope of this note, which sets out the general position under SM&CR.

Last updated on 22/01/2023

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