

# Employment in Financial Services

## Contributing Editor

*Louise Skinner at Morgan Lewis & Bockius*

**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

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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](http://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.

Last updated on 16/04/2024



UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

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



Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024



Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

## **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?**

### Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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).

Last updated on 16/04/2024

### UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

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



Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024



Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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

Last updated on 24/04/2024

## 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?



Author: *Nicolas Simon*  
at Van Olmen & Wynant

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](http://www.fsma.be)) documents attesting, inter alia, their knowledge, clean

criminal record, and professional liability insurance.

Last updated on 16/04/2024



UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

There is no public register of authorised individuals.

Last updated on 24/04/2024

## **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?**



Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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).

Last updated on 16/04/2024



UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

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



Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024



UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

## **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?**



### **Belgium**

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024



### **UAE**

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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

Last updated on 24/04/2024

## **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

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024

### UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

## **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**

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024



### **UAE**

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

#### **Whistleblowing**

In the DIFC, whistleblowing is addressed both by the DFSA, who introduced its regulatory regime for whistleblowing in 2022 through amendment to its Regulatory Law 2004, as well as the more general obligations contained in the Operating Law of the DIFC Authority.

Under the Regulatory Law, any person who makes a qualifying disclosure to a specified person is entitled to protection under the law. Similar provisions are contained in the Operating Law.

The disclosure may be made internally within the company, for example, to a director, officer or any person in a management position of the relevant company, or any person designated by that company to receive the disclosure of such information; or externally, for example, to the Registrar, Financial Services Regulator, Office of Data Protection, or criminal law enforcement agency in the UAE.

The qualifying disclosure must relate to the disclosure of information made in good faith, that relates to a reasonable suspicion that a regulated entity, or any of its employees or officers, has or may have, contravened a provision of legislation administered by the DFSA, or has engaged in money laundering, fraud, or other financial crime.

A person making a protected disclosure shall not be subject to any civil or contractual liability for making the disclosure, nor shall they be dismissed or otherwise suffer a detriment or disadvantage in connection with making the disclosure.

The corresponding DFSA module sets out the DFSA's expectations that companies should implement appropriate written policies in order to facilitate the reporting of any regulatory concerns by whistleblowers, and to assess, and, where appropriate, escalate regulatory concerns reported to it.

The ADGM published Guiding Principles on Whistleblowing in December 2022, which whilst non-binding, were designed to assist entities and individuals in the ADGM in establishing whistleblowing frameworks and ensure that potential whistleblowers were encouraged to speak up and were fairly treated when they did so. In March 2024, the ADGM announced a public consultation on proposals for a whistleblowing framework, which will lead to the introduction of Whistleblower Protections Regulations and amendments to the Employment Regulations.

#### **Harassment**

Harassment is not dealt with in the regulatory framework outlined above, but is contained in the applicable employment legislation.

Last updated on 24/04/2024

## **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?**



### **Belgium**

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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.

Last updated on 16/04/2024

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

### **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?**

Author: *Nicolas Simon*  
at Van Olmen & Wynant

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).

Last updated on 16/04/2024

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

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.

Last updated on 24/04/2024

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

# particular form or rules?

## Belgium

Author: *Nicolas Simon*  
at Van Olmen & Wynant

Employees must not, both during and after the termination of the contract, obtain, use or unlawfully disclose a business secret he or she became aware of in the course of his or her professional activity, or disclose the secrecy of any matter of a personal or confidential nature of which he or she became aware in the course of his or her professional activity (article 17, 3°, a, Employment Contracts Act).

The company can include a NDA in the employment contract to underline what is considered confidential information. A penalty clause (with a lump sum to be paid) can be foreseen in case of a breach after the end of the employment contract, but not during the period of the employment relationship. This is because of the prohibition on restricting the rights of employees or increasing their obligations in comparison with what is foreseen by the Employment Contracts Act (article 6).

Last updated on 16/04/2024

## UAE

Author: *Rebecca Ford*  
at Morgan Lewis & Bockius

Non-disclosure agreements may be used in the UAE (including DIFC and ADGM free zones). There are no particular requirements regarding the form or rules for those NDAs.

Last updated on 24/04/2024

### Contributors

#### Belgium

Nicolas Simon  
*Van Olmen & Wynant*

#### UAE

Rebecca Ford  
*Morgan Lewis & Bockius*