

# 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?**

### India

Author: *Vikram Shroff*  
at AZB & Partners

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

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

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

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<sup>[1]</sup> Information Technology Act, 2000 & Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011.

<sup>[2]</sup> A ‘gazetted officer’ is a high rank government official working as an officer for the government of India or any state government whose name and credentials are published in the Gazette of India.

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## Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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<sup>[1]</sup>, 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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<sup>[1]</sup> 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?

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



#### **India**

Author: *Vikram Shroff*  
at AZB & Partners

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

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#### **Isle of Man**

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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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### **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?**

## India

Author: *Vikram Shroff*  
at AZB & Partners

The recruitment of financial services employees for public-sector enterprises may be done through competitive scores secured through multi-level tests held for generalist and specialist posts. For instance, the Institute of Banking Personnel Selection conducts tests for selection for public sector banks; and the Securities and Exchange Board of India (SEBI), LIC, etc, hold similar tests for their recruitment.

In terms of industry practice, eligibility to appear at the preliminary levels or the final interview stages of the above tests may sometimes require certain specific certifications (eg, computer certifications for clerical posts in the banking sector. These certifications are prescribed by industry regulators and are actioned by industry collectives. For instance, the RBI<sup>[1]</sup> has made it mandatory for all banking and non-banking financial institutions to obtain certification for their employees. Industry collective the Indian Banking Association provides such certifications in specific areas like treasury operations, risk management, accounting and credit management. Along with this, further certifications may also be required for Anti-Money Laundering (AML), Know Your Customer (KYC), compliance with foreign exchange regulations, awareness of legal aspects of cyber security, etc.<sup>[2]</sup>

Similarly, the National Institute of Securities Markets (NISM), an institute promoted by SEBI, accredits institutions that coach and certify wealth management advisors. NISM-accredited qualifications are compulsory for wealth managers in the capital market segment. Also, the Indian Institute of Banking and Finance (IIBF) gives certification for Debt Recovery Agents based on RBI guidelines. Various collectives like the Fixed Income Money Market and Derivatives Association of India, Foreign Exchange Dealers Association of India and the Institute of Company Secretaries of India, inter alia, collaborate with the IIBF in the certification process in the treasury, forex and compliance sectors. The IIBF's certification for customer service, KYC/AML programmes of the IIBF, and other similar certified courses from the NISM/AMFI/IRDA etc, are essential before hiring employees for certain specialised roles.

As part of the registration process, the SEBI regulations relating to portfolio managers and investment advisors require certain specific employees to be employed with minimum qualifications.

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[1] Capacity Building in Banks and AIFs, August 11, 2016 available at <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI36A5A106C515E84422947AB1D42F6EB391.PDF>>; IBA Circular no. CIR/HR&IR/KSC/2017-18/2602.

[2] RBI mandate on capacity building in banks, KPMG, available at <<https://home.kpmg/in/en/home/services/learning-academy/aas-learning-solutions/rbi-mandate-capacity-building-banks.html>>

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## Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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



### India

Author: *Vikram Shroff*  
at AZB & Partners

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

However, the conduct rules for employees in the financial sector mandate employees to adhere to higher standards of code of conduct and self-discipline. Their codes of conduct include inter alia anti-bribery obligations, prohibition from accepting gifts in an official capacity, making representations to media, making contribution to political parties, holding demonstration against public interest, exercising undue influence to secure appointments of family members at same organisation or granting banking facilities without permission. They are supposed to observe secrecy in general and specifically, maintain financial secrecy about stocks too.

This question was upheld in *Harinarayan Seet v. Andhra Bank*<sup>[1]</sup>, wherein the Andhra Pradesh High Court recognised that banking sector employees are mandated to exhibit higher standards of honesty, integrity, devotion and diligence and any failure to discharge such duty with diligence may trigger dismissal.

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<sup>[1]</sup> WP No. 23310 of 2011.

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### Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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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## 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: *Vikram Shroff*  
at AZB & Partners

There is no one-point register for financial services employees that individuals need to be listed on to undertake business activities. Such a register may vary depending upon the industry one is seeking and whether the post is that of a specialist or a generalist. Specialists like IT professionals, lawyers etc., working in financial services are bound by registration requirements mandated by the practice rules of their domains. For example, IT or ITES industry professionals may register themselves with the “National Skills Registry”<sup>[1]</sup>, an initiative of the technology industry body NASSCOM. This registry maintains a central database of their qualifications, experiences and demographic information. NASSCOM also runs a BFSI Sectoral Skill Council (BFSI SSC) to cater to the financial services sector. The National Institute of Securities Market (NISM) Skills Registry is another similar initiative by the NISM.

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<sup>[1]</sup> FAQs on Understanding NSR, available at <<https://nationalskillsregistry.com/faq-understanding-nsr.htm>>

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Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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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## **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?**



Author: *Vikram Shroff*  
at AZB & Partners

There are certain rules relating to compensation payable to financial services employees, such as those in the banking, mutual fund or asset management, and insurance industries.

The central bank of India, the RBI, deals with the compensation policy for all private-sector banks and foreign banks operating in India by requiring them to formulate their own compensation policy and annually reviewing it. Banks are not allowed to employ or continue the employment of any person whose remuneration is excessive in the RBI's opinion. For instance, the RBI lays down guidelines on the compensation of "Whole Time Directors ("WTD") / Chief Executive Officers / Material Risk Takers and Control Function Staff"[1], elaborate guidelines encompassing the governance of compensation and its alignment with prudent risk-taking, policies for risk control and compliance staff, the identification of "material risk takers", and disclosure and engagement by stakeholders. It even envisages deferred payments being subjected to malus or clawback arrangements if there was negative performance. For variable pay, it mandates banks to incorporate malus or clawback mechanisms and suggests they specify periods of malus or clawback application to cover at least deferral and retention periods.[2] It is pertinent to highlight that private sector and foreign banks in India must obtain regulatory approval[3] for the grant of remuneration to WTDs or CEOs.

The RBI also prescribes guidelines around compensation for key managerial personnel (KMP) and senior management in non-banking financial companies (NBFCs)[4]:

- NBFCs are mandated to form "Nomination and Remuneration Committees" (NRCs) as per Section 178 of the Companies Act, 2013, which will then be entrusted with framing, reviewing and implementing the compensation policy to be approved by the board of the company.
- The compensation must align with the risk related to the decision-making process. The compensation package can comprise both fixed and variable pay and may also be a mix of cash, equity or other forms, in line with projected risk factors.
- A bonus has no bearing on the performance of the individual. The bonus is guaranteed based on the fulfilment of certain criteria as may be specified in the compensation policy. A guaranteed bonus should neither be considered part of fixed pay nor variable pay and the same is not payable to KMP and senior management. However, a guaranteed bonus can be paid to new employees as part of a sign-on bonus whereby potential employees can be incentivised to join NBFCs.
- "Deferred compensation may be subject to malus/clawback arrangements." The compensation policy concerning malus or clawback must mandatorily apply for the period equal to at least the deferred retention period.

Despite the aforementioned guidelines being applicable from 1 April 2023, NBFCs must immediately begin aligning their internal procedures to comply with the mandatory guidelines above to assist the transition. Existing remuneration policies being followed by the NBFCs should be reviewed to make the necessary changes to be compliant with the above-mentioned policies.

When it comes to regulations on an "employee stock option plan" (ESOP) for financial services employees, regulators may impose industry-specific guidelines. For instance, as per the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021[5], the employee stock option scheme should be drafted in a manner that no such employee violates SEBI (Insider Trading) Regulations, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995. ESOPs issued to managerial staff and for non-cash consideration shall be treated as part of managerial remuneration. In another development, the RBI has directed that ESOPs should be at a fair value, shooting up costs and creating the cascading effect of replacing ESOPs with deferred bonus payments for senior managerial personnel.

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[1] Guidelines on Compensation of Whole Time Directors/Chief Executive Officers/Material Risk Takers and Control Function staff, November 4, 2019, available at  
<<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI898C120D41D0E3465B8552E5467EDD7A56.PDF>>

[2] Guidelines on Compensation of Whole Time Directors/Chief Executive Officers/Material Risk Takers and Control Function staff, November 4, 2019, available at  
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI898C120D41D0E3465B8552E5467EDD7A56.PDF>

[3] Section 35B, Banking Regulation Act 1949.



[4] Guidelines on Compensation for Key Managerial Personnel (KMP) and Senior Management in non-banking financial companies (NBFCs), April 29, 2022, available at <<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/KMPNBFCs962EC76438C845A6846A5BD59BC7513D.PDF>>

[5] Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations 2021, August 13, 2021, available at <[https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021\\_51889.html](https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021_51889.html)>

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## Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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

### India

Author: *Vikram Shroff*  
at AZB & Partners

Financial services employees may undergo necessary training once they are selected and onboarded.

Financial services sectors categorise employees as specialists and generalists. On one hand, those in charge of specialist roles are deployed in treasury, derivatives trading, IT, forex, risk management, service delivery groups, product roles, legal, etc., while on the other, the generalists are deployed in branches, administrative functions, finance, some areas of treasury, taxation, general management, operations, relationship or sales managing, etc. They should possess differentiated requisite academic qualifications with skill certifications (if any) or obtain competitive scores in recruitment tests.

As such, there are no legal requirements for prior training of employees in the financial services sector. There are various certificate courses, workshops and diplomas by financial institutions and agencies, which are recommended to be attended regularly to stay abreast of industry knowledge and to secure an edge in intra-organisational promotions.

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## Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains



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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## **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?**



### **India**

Author: *Vikram Shroff*  
at AZB & Partners

Financial services regulators like the RBI, SEBI and Insurance Regulatory and Development Authority of India (IRDAI) regulate employees through prescribed frameworks and their organisation-specific rules.

The obligations for the conduct of employees in financial services are determined depending upon the type of organisation: public sector banks (majorly owned by the state) or private banks; sectors (banking, non-banking, insurance, capital market); regions (different local laws); and level of seniority (liability of officers or manager is different from regular employees or clerical staff). Though there are no statutory standards, judicial pronouncements have set a higher threshold of duty of care for employees in the financial services sectors. The Andhra Pradesh High Court in *Harinarayan Seet v Andhra Bank*<sup>[1]</sup> held dismissal of service as a proportionate punishment for dereliction of duty by banking employees, which would have otherwise attracted a lesser penalty for employees in less-critical sectors.

In terms of general labour legislation also applicable to financial services employees, financial services organisations fall under the definition of "commercial establishments", whose definition has been laid down by the Shops & Commercial Establishments Act (state level). They provide certain conduct-specific obligations, for example, a prohibition against discrimination, suspension or dismissal for misconduct.

The other major piece of labour legislation that lays down standards of conduct is the Industrial Employment (Standing Orders) Act, 1946 (IESOA). However, its applicability to commercial establishments or to a specific industry is dependent upon state-wide laws. For example, the states of Haryana and

Karnataka have notified the application of the IESOA to commercial establishments with a minimum of 50 employees. This implies that financial services institutions in these states, meeting the above criteria, are bound to comply with the IESOA. Upon the application of the IESOA, the establishments are required to submit to the certifying officer draft standing orders proposed for their establishment, which should cover acceptable standards for employees.

In the banking sector, employees of public-sector banks, private-sector banks and foreign banks are bound by the obligations laid down by the RBI and their organisation rules. The provisions of these rules, which are different from other industries, are stricter: observance of secrecy; prohibition against using influence to secure employment for family members; bypassing regular compliance checks for availing of banking facilities; prohibition against media contributions, participating in politics or standing for election; demonstrations prejudicial to the public interest; and acceptance of gifts in an official capacity.

In terms of financial propriety, employees must not indulge in speculation in stocks and shares, but must avoid personal insolvency and even disclose their moveable and immoveable assets. During employment, they are also forbidden from engaging in any outside employment (stipendiary or honorary) without the prior approval of the organisation. Higher managerial employees are subject to additional scrutiny. Those belonging to public sector enterprises are brought within the jurisdiction of the Central Vigilance Commission, the apex vigilance institution. It is due to the gravity of corruption cases that the senior management of private sector banks is also included within the ambit of “public servant”, which usually includes employees of only public sector organisations. This was upheld by the Supreme Court of India in the case of Central Bureau of Investigation v Ramesh Gelli[2]. The organisations in the insurance and capital markets sectors also have similar institution-wide conduct and disciplinary rules.

Directors of organisations in the financial services sector may also be subject to duties stated in Schedule IV of the Companies Act 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.

When it comes to outsourcing activities, financial institutions formulate a board-approved “Code of Conduct” as part of the “Outsourcing Agreement”, which is to be complied with by the outsourced service providers and their employees.[3]

Though financial services employees are held to a higher set of moral standards, their right to participate in trade union actions for voicing their concerns has been upheld time and again. Recently, the Madras High Court in the case of D Thomas Franco Rajendra Dev v The Disciplinary Authority and Circle Development Officer and State Bank of India[4] observed bank officers’ right to unionise. However, the right of bank employees to go on a strike gets limited since banks and other financial institutions are declared as ‘Public Utility Services’ (“PUS”). Accordingly, while they are not barred from going on strike, they must adhere to certain pre-requisites namely service of notice of at least 6 weeks before going on a strike, prohibition of any strike within 14 days from date of service of above notice, prohibition of going on a strike before the expiry of the date of that strike and non-authorization of any strike during the pendency of any conciliation proceedings or 7 days after the conclusion of such a proceeding. Upon being declared a PUS, the concerned industry must adhere to these conditions failing which the strikes would be declared as illegal.

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[1] WP No. 23310 of 2011.

[2] (2016) 3 SCC 788.

[3] Directions on Managing Risks and Code of Conduct in Outsourcing of Financial Services by NBFCs, November 9, 2017, available at <[https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NT87\\_091117658624E4F2D041A699F73068D55BF6C5.PDF](https://rbidocs.rbi.org.in/rdocs/Notification/PDFs/NT87_091117658624E4F2D041A699F73068D55BF6C5.PDF)>

[4] W.A. No. 432 of 2013 and W.P. No. 16746 of 2013

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Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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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## **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?**



### **India**

Author: *Vikram Shroff*  
at AZB & Partners

The RBI requires banks to conduct an annual review of fraud committed and provide a note of the total number to the board of directors or the local advisory board. These reports are not to be sent to the RBI but are to be preserved for verification by the RBI’s inspecting officers<sup>[1]</sup>. Necessary disclosures may also need to be made to SEBI under some of its regulations.

Publicly listed financial services companies may be required to make necessary disclosures, including to the stock exchanges and their auditors, in case of workplace fraud.

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<sup>[1]</sup>Master Directions on Frauds – Classification and Reporting by commercial banks and select FIs (Updated as on July 03, 2017), available at <[https://rbi.org.in/scripts/BS\\_ViewMasDirections.aspx?id=10477](https://rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10477)>

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### **Isle of Man**

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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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## **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?**



### **India**

Author: *Vikram Shroff*  
at AZB & Partners

Corporate whistleblowing is still at a nascent stage in India and there isn't a robust legislative framework for it. Section 177[1] of the Companies Act 2013, clause 49 on "Corporate Governance" of the Listing Agreement between a listed entity and a stock exchange and the guidelines issued by RBI under Section 35(A) of the Banking Regulation Act 1949 [2] constitute the corpus of early whistleblower jurisprudence in India. Publicly listed financial services companies are required to have whistleblowing policies.

In terms of generally applicable laws, the IDA lists "Unfair Labor Practices" that the employer is prohibited from engaging in. There are certain state-specific laws which reiterate the same. There might also be sector-specific initiatives. One such example is the "Protected Disclosures Scheme for Private Sector and Foreign Banks" by the RBI, which cover areas such as corruption, criminal offences, non-compliance with rules, misuse of office, suspected or actual fraud causing financial and reputational loss and detriment to the public interest.

When it comes to the prevention of harassment, the general statutes are also applicable to financial sector organisations. Employers are required to comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act, 2013, by taking reasonable steps to assist affected women workers. If harassment is coupled with any other issue like caste-based discrimination, then employees may register complaints through well-established civil or criminal redress mechanisms in the legal system.

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[1] Section 177, Companies Act 2013, available at <<https://ca2013.com/177-audit-committee/>>

[2] Section 35A, Banking Regulation Act 1949, available at <<https://indiankanoon.org/doc/587034/#:~:text=it%20is%20necessary%20to%20issue,to%20comply%20with%20such%20directions>>

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## Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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.

Last updated on 17/04/2024

## **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?**

## India

Author: *Vikram Shroff*  
at AZB & Partners

The general legal standards on termination of employment are also applicable to employees in the financial services sector. India is not an "at-will" jurisdiction but is also not an "employment-for-life" jurisdiction. In general, termination of employment may be carried out for reasonable cause or on account of misconduct. In cases of termination on any ground other than misconduct, the employee must be provided with prior notice of termination or pay in lieu thereof. The body of laws that govern employee rights around termination are the IDA, state-specific shops and establishments acts, standing orders, and the employment contract. Workmen (basically non-managers) have additional protection in terms of the right to retrenchment compensation when terminated.

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## Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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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## 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?



India

Author: *Vikram Shroff*  
at AZB & Partners

Post-termination non-competes are not enforceable, as they are treated as a restraint of trade. Courts have given prevalence to the livelihood of the employee over the employer's interests. However, a reasonable non-solicit restriction may be enforceable in India.<sup>[1]</sup>

Employees in financial services are also bound by post-employment (for both resignation and retirement) obligations.<sup>[2]</sup> RBI employees<sup>[3]</sup> who cease to be in service should not accept or undertake "commercial employment"<sup>[4]</sup> for one year from the date on which they cease to be in service without the prior approval of the concerned authority. For SEBI employees<sup>[5]</sup>, the cooling-off period is also one year. "Commercial employment"<sup>[6]</sup> broadly includes employment in any company or setting up their own practice without having professional qualifications and relying only on official experience. Such engagement may bestow an unfair advantage upon clients by virtue of the ex-employees' prior experience at the organisation. The grant of prior approval by the concerned authority is dependent on whether there is any ensuing conflict of interest from such engagement.

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[1] Employment Contracts in India: Enforceability of Restrictive Covenants, available at <[https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Employment\\_Contracts\\_in\\_India.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Employment_Contracts_in_India.pdf)>

[2] Section 55, SEBI (Employees' Service) Regulations 2001.

[3] General Administration Manual, RBI, available at <<https://rbidocs.rbi.org.in/rdocs/content/pdfs/71073.pdf>>

[4] Section 2, Regulation 37A, RBI Staff Regulations, 1948.

[5] Section 55(3), SEBI (Employees' Service) Regulations 2001.

[6] Section 55(2), SEBI (Employees' Service) Regulations 2001; Section 2, Regulation 37A, RBI Staff Regulations, 1948.

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Isle of Man

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Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

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



### India

Author: *Vikram Shroff*  
at AZB & Partners

NDAs are governed by the Indian Contract Act, 1872 and are generally lawful in India.

Generally, post-contract restrictive covenants like non-compete clauses that restrain a person's exercise of lawful trade, profession or business are declared void because of Section 27 of the Indian Contract Act.

The enforceability of NDAs may be affected if they restrain an employee from exercising a lawful profession, trade or business. Accordingly, an NDA crafted to protect the "confidential information" of the former employer but not to impose the above-mentioned restraints on the employee is saved from any clash with Section 27 of the Indian Contract Act and is, therefore, enforceable in the courts of law in India. If NDAs prohibit an employee from disclosing commercial or trade secrets, then they cannot be held to be in restraint of trade. This was observed by the Bombay High Court in *VFS Global Services Pvt Ltd v Mr Suprit Roy*<sup>[1]</sup>.

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<sup>[1]</sup> 2008 (2) BomCR 446.

Last updated on 16/04/2024



### Isle of Man

Author: *Katherine Sheerin, Lindsey Bermingham, Kirsten Porter, Emily Johnson*  
at Cains

Yes, non-disclosure agreements are potentially lawful in the Isle of Man. A contract of employment may also contain confidentiality provisions for financial services employees. However, a non-disclosure agreement or confidentiality clause would not (and could not) prevent a financial services employee (or any employee) from making a protected disclosure, (ie, a disclosure made by an employee where they reasonably believe there is serious wrongdoing within the workplace (whistleblowing)).



A financial services employee may, furthermore, be subject to a legal requirement to disclose information in certain circumstances that might override an NDA. For example, an individual can be compelled to provide information by the IoM FSA during an interview, and such compulsion will generally override an employee's duties of confidentiality. Alternatively, an individual can be subject to a requirement to disclose information in the context of legal proceedings (eg, by court order).

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## Contributors



### India

Vikram Shroff  
*AZB & Partners*



### Isle of Man

Katherine Sheerin  
Lindsey Bermingham  
Kirsten Porter  
Emily Johnson  
*Cains*

[www.internationalemploymentlawyer.com](http://www.internationalemploymentlawyer.com)