

# 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

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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.

Last updated on 16/04/2024



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.

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?



## India

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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.

Last updated on 16/04/2024



## UAE

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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.

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?



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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 AIFIs, 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>>

Last updated on 16/04/2024



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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.

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?**



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

Last updated on 16/04/2024

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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?**

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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<sup>[5]</sup>, 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)>

Last updated on 16/04/2024



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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.

Last updated on 24/04/2024



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



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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.

Last updated on 16/04/2024



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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 untaken 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?



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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*<sup>[2]</sup>. 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.<sup>[3]</sup>

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*<sup>[1]</sup> 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

Last updated on 16/04/2024



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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

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?



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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)>

Last updated on 16/04/2024



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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.

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?



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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>>

Last updated on 16/04/2024

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## **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?



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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.

Last updated on 16/04/2024



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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.

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?



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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.

Last updated on 16/04/2024



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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.

Last updated on 24/04/2024

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