

# 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?**

### France

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In the financial services sector, candidates must comply with standard recruitment practices, but also with suitability, requirements and, for certain positions, with supervision by the ACPR or the European Central Bank (ECB).

Traditionally, employees in the financial services sector are required to provide the usual documents requested when applying for a job: a cover letter and a curriculum vitae. This is especially important because, as we will see, access to certain positions is conditional. For example, investment advisors must provide proof of either a national diploma attesting to three years of study, or training, or professional experience in the field.

Also, due to the very nature of the financial services business, employees of companies in the sector are required to be honourable.

The Monetary and Financial Code provides that certain operational activities in the financial services sector, such as being a managing director, are barred in the event of a felony conviction, a prison sentence of at least six months with a suspended sentence in connection with the financial world, or a management ban (article L. 500-1 of the Monetary and Financial Code). For this reason, the criminal record of a concerned candidate is generally requested at the time of hiring.

In addition, the appointment or renewal of a senior executive of a credit institution, a finance company, an investment firm other than a portfolio management company, a payment institution or an electronic money institution must be ratified by the ACPR, and by the ECB in the case of major credit institutions. Validation of the appointment or renewal is based on good reputation and competence, which is assessed based on

five criteria: experience, reputation, absence of conflicts of interest and independence of mind, availability, and collective ability.

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UAE

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

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

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

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

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

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



France

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The hiring of employees in the financial services sector follows the common law regime. Thus, in principle, the hiring of an employee means the contractualising of the employment relationship. Although it is not in principle mandatory for the parties to sign an employment contract, but for exceptional cases (part-time employment contract, fixed-term contract, etc), it is nevertheless recommended to contractualise the relationship to avoid any future dispute.

It is also common, at the time of hiring, for the employee to commit to a non-compete and confidentiality obligation concerning his employer, either through clauses in his employment contract or through a separate agreement. These obligations must be the subject of a signed document and are therefore generally incorporated into the employment contract. In addition, most companies in the financial services sector make the hiring of an employee conditional upon that person signing a charter of good conduct or a policy to prevent and manage conflicts of interest.

The employer is also required to make a pre-employment declaration.

Finally, as stated, for certain positions, the employer must notify the ACPR or the ECB of the hire, and they must ratify the appointment.

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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.

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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?**

### France

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Since 1 July 2010, the FMA General Regulation requires investment services providers to pass an examination to ensure that certain employees have a minimum knowledge base in the field.

This applies to salespersons, managers, financial instrument clearing managers, post-trade managers, financial analysts, financial instruments traders, compliance and internal control officers, and investment services compliance officers.

Since 1 January 2020, the following must also obtain certification: natural persons acting as a financial investment advisor; natural persons with the power to manage the legal person authorised as a financial investment advisor; and persons employed to provide investment advice by the legal person authorised as a financial investment advisor.

FMA certification must be obtained within a maximum of six months of the beginning of that person's employment with an investment services provider. Certification is issued by FMA-certified organisations.

People already in practice before 1 July 2010 are exempt from this certification. This is known as a grandfather clause.

In addition to this minimum knowledge requirement, certain professionals are subject to an assessment of their knowledge and skills. This applies to natural persons who provide not only information but also financial advice, and generally takes the form of an annual evaluation interview.

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

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



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The activities of certain categories of employees in the financial services sector benefit from greater supervision, due to the risky nature of their activity. These include employees who have business dealings with individuals and employees who may have exposure to the financial markets.

Thus, Article L.533-10 of the Monetary and Financial Code provides that portfolio management companies and investment service providers must, on the one hand, put in place rules and procedures to ensure compliance with the provisions applicable to them. On the other hand, they must put in place rules and procedures defining the conditions and limits under which their employees may carry out personal transactions on their behalf.

They must still take all reasonable steps to prevent conflicts of interest that could affect their clients. In practice, these employees may be referred to as "sensitive personnel".

In addition, Law No. 2013-672 of 26 July 2013, on the separation and regulation of banking activities introduced several provisions constraining employees who may expose their company to the financial markets. These employees must comply with strict obligations in their activity to limit risk-taking.

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

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## **06. Is there a register of financial services employees that individuals will need to be listed on to undertake**

# particular business activities? If so, what are the steps required for registration?



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In principle, working in the financial services sector does not require registration. However, some companies, such as banks, must be licensed.

The following natural persons who are not employees of a legal person must be registered in the Single Register of Insurance, Banking and Finance Intermediaries (article L.546-1 of the Monetary and Financial Code, amended by article 18 of order no. 2021-1735 of December 22, 2021 modernizing the framework for participative financing):

- intermediaries in banking and payment services as defined in article L. 519-1 of the Monetary and Financial Code.
- financial investment advisors as defined in article L. 541-1 of the Monetary and Financial Code;
- tied agents as defined in article L. 545-1 of the Monetary and Financial Code and intermediaries in participatory financing.

To be registered, these intermediaries must meet four professional conditions: professional liability insurance, good repute, professional capacity and financial guarantees, which are verified by the unique register of insurance, banking and financial intermediaries when they are registered.

In addition, the providers of participative financing services mentioned in article L. 547-1 of the Monetary and Financial Code must be approved by the Financial Markets Authority (FMA).

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There is no public register of authorised individuals.

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



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Under French law, several mechanisms regulate the compensation of employees in the financial services sector to limit risk-taking.

Concerning guaranteed variable remuneration (welcome bonus, recruitment bonus, etc) for new staff, establishments are not allowed to guarantee this beyond the first year of employment; it is said to be "exceptional" and can only be granted if the financial base is sufficiently sound and solid.

In addition, European Directive 2013/36 EU, UCITS V, of 26 June 2013 introduced a "clawback" mechanism that the legislature has transposed into French law. Thus, article L.511-84 of the Monetary and Financial Code provides that "the total amount of variable remuneration may, in whole or in part, be reduced or give rise to restitution when the person concerned has failed to comply with the rules laid down by the institution with regard to risk-taking, in particular because of his responsibility for actions that have led to significant losses for the institution or in the event of failure to comply with the obligations of good repute and competence".

In addition and following the above-mentioned Directive 2013/36/EU (article 94) concerning the deferral of remuneration, the payment of variable remuneration should be made in part immediately and in part on a deferred basis.

Institutions are encouraged to implement a deferral schedule, that properly aligns staff compensation with the institution's business, economic cycle, and risk profile, so that a sufficient portion of variable compensation can be adjusted to results through ex-post risk adjustments.

This schedule consists of the portion of variable compensation deferred, the length of the deferral period and the speed of vesting of the deferred compensation.

In the event of poor or negative performance by the institutions, leading to a reduction in the total amount of variable compensation, the payment of variable compensation may be subject to specific arrangements implemented by the institutions, as referred to in Directive 2013/36/EU.

In addition, article L.511-84-1 of the French Monetary and Financial Code specifies that the variable portion that may be reduced or even recovered as a penalty is excluded from the calculation of several indemnities in the event of dismissal, including the legal indemnity for dismissal.

Finally, following Law No. 2013-672 of 26 July 2013 on the separation and regulation of banking activities, the variable remuneration of managers and traders is capped, and cannot exceed the fixed part. In addition, a "say on pay" mechanism has been implemented (ie, the general meeting of shareholders must be consulted on the remuneration paid to executives and traders).

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

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



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In general, "the employer shall ensure that employees are adapted to their workstation" and "shall ensure that their ability to hold a job is maintained, particularly with regard to changes in jobs, technologies and organizations". This general obligation is imposed on the employer if there is a change in the job description.

In addition, the FMA General Regulation requires all persons mentioned in article 325-24 of the Monetary and Financial Code, including investment service providers, salespersons, managers, and persons responsible for clearing financial instruments, to undergo annual training appropriate to their activity and experience.

Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life also provides that in companies employing at least 500 people, or belonging to a group of companies whose parent company has its registered office in France and whose workforce includes at least 500 people, and whose revenue or consolidated revenue is more than €100 million, a training system must be set up for managers and staff most exposed to the risks of corruption and influence peddling.

Decree no. 2022-894 of 15 June 2022 on the conditions governing the exercise of the profession of intermediary in banking operations and payment services introduces a new obligation in terms of continuing training. From now on, all intermediaries in banking operations and payment services carrying out intermediary activities in real estate credit and their staff must update their professional knowledge and skills, as part of their continuing education, "through professional training of sufficient duration adapted to their activities, taking particular account of changes in the applicable legislation or regulations" (article L. 519-11-3 of the Monetary and Financial Code). Finally, as we have seen, some positions in the financial services industry may require specific training and certification.

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

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



is able to apply this knowledge.

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## **09. Is there a particular code of conduct and/or are there other regulations regarding standards of behaviour that financial services employees are expected to adhere to?**



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First of all, various obligations discussed so far have the effect of forcing, if they were not already there, employees in the financial services sector to behave in an honourable manner and respect prudential rules.

In addition, Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life states in article 17 that in certain large companies, managers must take all measures to prevent and detect the commission, in France or abroad, of acts of corruption or influence peddling.

This means setting up a code of conduct that will be integrated into the internal regulations, in compliance with the procedure for consulting employee representatives provided for in article L. 1321-4 of the French Labour Code.

This code of conduct involves the implementation of measures and procedures that will be monitored by the French Anti-Corruption Agency. In particular, the code of conduct must define and provide examples of the various types of behaviour to be prohibited as likely to constitute corruption or influence peddling. It must also establish an evaluation and control system, as well as a disciplinary system, enabling the company's employees to be sanctioned if there is a violation of the company's code of conduct.

In addition to this code of conduct, which is part of the internal regulations, almost all players in the financial services sector have put in place charters and policies to protect confidential information and regulate risky activities.

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

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

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

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

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## **10. Are there any circumstances in which notifications relating to the employee or their conduct will need to be made to local or international regulators?**



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In principle, the relationship between companies and employees in the financial services sector is private. As such, companies do not have to communicate confidential information about their employees to third parties, as this would constitute an infringement of their fundamental freedoms. However, in certain cases, employers must alert the competent authorities in the event of behaviour or "suspicions" of behaviour by one of their employees that is contrary to the law.

Thus, the Monetary and Financial Code provides that companies in the financial services sector, referred to in article L.561-2 of the code (the list of which was updated by Ordinance no. 2023-1139 of December 6, 2023 on credit managers and credit buyers to include "Credit managers"), must report to the national financial intelligence unit (Tracfin) all sums or transactions that they suspect to be the result of an offence punishable by a prison sentence of more than one year, or related to the financing of terrorism or tax evasion. This declaration may be made in respect of any employee of one of these companies.

In addition, when facts likely to constitute violations of the anticorruption code of conduct or to qualify as corruption or influence peddling are brought to the attention of the company and its managers, an internal investigation must be conducted (article 17 of Law No. 2016-1691 of 9 December 2016 on transparency). If the investigation confirms the suspicions, the employer must, on the one hand, sanction the employee, but also inform the prosecuting authority of the facts.

In smaller companies, the employer will also be able to report to the prosecution authorities any behaviour that could lead to criminal sanctions.

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

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

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## **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?**

### France

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Financial services companies, like any private employer, must implement procedures to prevent wrongdoing.

Concerning harassment, the Labour and the Penal Codes punish acts constituting moral and sexual harassment. It is the employer's responsibility, under their safety obligation, to prevent and, if necessary, deal with any behaviour constituting moral harassment. In this respect, an individual must be appointed by the social and economic committee to combat sexual harassment and sexist behaviour.

For whistleblowing, following Directive 2019/1937/EU, the system for whistleblowers that already existed in France was strengthened by Law 2022-401 of 21 March 2022 on the protection of whistleblowers. From now on, companies with more than 50 employees must internally set up a procedure for collecting and handling whistleblowers. Without an internal procedure, the whistleblower can go through an external channel, which presents a risk to the company's reputation.

In addition, following Law 2022-401, the FMA and the French Prudential Supervision and Resolution Authority have set up special procedures allowing any person to report to them, even anonymously, any infringement of European legislation, the Monetary and Financial Code or the AMF General Regulation (articles L. 634-1 to L. 634-4 of the Monetary and Financial Code).

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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.

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# **12. Are there any particular rules or protocols that apply when terminating the employment of an employee in the financial services sector, including where a settlement agreement is entered into?**



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The general law regarding dismissals applies to employees in the financial services sector. Under French law, there are two grounds for dismissal: personal reasons, which are related to the employee's behaviour

or state of health; and economic reasons, which are not related to the employee. In both cases, the cause must be real and serious (ie, the reason must be objective and materially verifiable, as well as proportionate to the facts put forward). Failing that, the judge may propose the reinstatement of the employee, but if one of the parties refuses, then the employee is entitled to compensation for dismissal without real and serious cause, the latter depending on the employee's seniority.

Certain grounds for dismissal are null and void, in particular dismissals that are discriminatory or contrary to a fundamental freedom. The employee may then be reinstated (in very specific cases) or compensated, but this compensation may not be less than six months' salary.

Dismissal for personal reasons cannot be declared before a preliminary interview with the employee and must be notified at least two working days after this interview, unless otherwise stipulated by collective bargaining agreement. For example, the national collective bargaining agreement for the banking industry stipulates that the preliminary interview cannot take place less than 7 calendar days, except in the case of more favourable legal provisions or specific arrangements (e.g. inaptitude), from the date of first presentation to the employee of the letter of summons (article 26).

Dismissal for economic reasons may be individual or collective. Individual dismissals for economic reasons also require a prior interview and notification of redundancy, but above all notification to the Administration. Collective dismissals for economic reasons require consultation of the Social and Economic Committee, as well as the establishment of an employment protection plan if the termination concerns at least 10 employees within 30 days.

Since 1 July 2010, the FMA's General Regulation requires investment service providers to pass an examination to obtain certification. This certification must be obtained within six months of hiring, so not securing this certification by the end of this period may justify a dismissal.

A dismissal means a redundancy payment is excluded, except in the case of employment protection plans, from assessment for social security contributions for the portion not subject to income tax within certain exemption limits. In addition, article L.511-84-1 of the French Monetary and Financial Code excludes the variable portion of compensation that may be reduced or recovered as a penalty under the "clawback" mechanism from assessment for severance pay.

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

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

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Three specific clauses are potentially relevant to employees in the financial services sector.

Firstly, regarding the confidentiality clause, employees in the financial services sector are bound to respect professional and banking secrecy.

More specifically, article 25 of Section III of Chapter 4 of Title II of Book 1 of the national collective agreement for financial companies of 22 November 1968, provides that all staff members are bound by professional secrecy within the company and towards third parties. Employees may not knowingly pass on to another company information specific to their employer or previous employer.

Article 24 of Chapter 3 of Title III of the national collective bargaining agreement for bank employees of 10 January 2000 codifies the absolute respect of professional secrecy.

Article 44 of Chapter 2 of Title IV of the national collective bargaining agreement for the financial markets of 11 June 2010 states that the employee must comply specifically with the rules of conduct regarding professional secrecy, both within the company and concerning third parties.

Confidentiality clauses can also be concluded between the employee and his or her employer, to reinforce the obligation of confidentiality.

In principle, a confidentiality clause allows for the protection of certain information exchanged during the contract and can be enforced after the termination of the employment contract if it is not perpetual. In this case, it is quite conceivable to contractualise such an obligation for employees in the financial services sector because of their functions, which by their very nature require discretion.

The law already states that anyone who uses or discloses confidential information obtained in the course of negotiations without authorisation is liable. Case law has addressed the issue of confidentiality clauses by ruling that an employee not executing this clause after his or her departure makes him or her liable for the resulting damage, without the employer having to prove gross negligence. The clause may be accompanied by a pecuniary sanction, which may be altered by the judge if it is lenient or excessive.

This clause in no way imposes a non-compete obligation and, therefore, does not entitle the employee to financial compensation.

In practice, it is complex to ensure compliance with this clause; however, the more specific the clause, the more effective it is.

Secondly, a non-compete clause allows an employer to limit an employee's professional activity at the end of an employment contract to prevent that employee from working for a competing company.

Despite the specificity of the activities of the financial sector, it seems that the common law of noncompetition clauses applies.

Thus, such a clause may be provided for by a collective agreement, in which case it is a conventional non-compete obligation. To be enforceable, the employee must have been informed of the existence of the applicable collective agreement. In this case, article 35 of Chapter I of Title IV of the national collective bargaining agreement for financial markets of 11 June 2010 provides for a non-compete obligation.

The non-compete clause is, in the majority of cases, contractual (ie, present in the employee's employment contract). To be valid, this clause must meet various cumulative conditions to be compatible with the principle of freedom to work.

It must be essential to the protection of the legitimate interests of the company, limited in time and space, take into account the specificities of the employee's job, and include an obligation for the employer to pay the employee meaningful financial compensation. All these conditions are cumulative, and the employer cannot unilaterally extend the scope of the clause, otherwise it is null and void. Given the specificity of the

activity of companies in the financial services sector, the condition of protection of the legitimate interests of the company would be met. However, taking into account the specificities of the employee's job may undermine such a clause if it is proven that his or her training and experience would prevent him or her from finding a job. The company's interest in imposing a non-compete clause must therefore be demonstrated.

The judge may restrict the application of the non-compete clause by limiting its effect in time, space or other terms when it does not allow the employee to engage in an activity consistent with his or her training and experience. However, the scope of application of the clause cannot be reduced by the judge if only the nullity of the clause has been invoked by the employee. If the non-compete clause is not enforced, the employer may take summary proceedings against the former employee who does not respect it, and also against the employee's new employer if they were hired with full knowledge of the facts, or if they continue to be employed after learning of the clause.

The employer may waive the clause if this is explicit and results from an unequivocal will. In the specific case of contractual termination, the employer who wishes to waive the clause must do so no later than the termination date set in the agreement.

Finally, concerning the non-solicitation clause, such a clause can be concluded between two companies through a commercial contract. These companies mutually prohibit each other from hiring their respective employees. Therefore, this clause is distinct from a non-compete clause and does not meet its conditions of validity. However, it must be proportionate to the legitimate interests to be protected given the purpose of the contract.

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

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