

# Employment in Financial Services

## Contributing Editor

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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?**

#### Switzerland

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at Walder Wyss

No special contractual documents are required when engaging employees within the financial services industry.

However, it is generally recommended to conclude a written employment contract with each employee. FINMA, for instance, requires a copy of employment contracts concluded with senior management of regulated entities.

In particular, the employment contract should reference the employer's (regulatory) set of directions and the employee's obligation to comply with said instructions. In addition, because regulated companies such as banks, securities firms, fund management companies, managers of collective assets or asset managers are required to obtain authorisation from FINMA before the engagement of key personnel, it may be sensible to include a condition precedent relating to FINMA's acceptance of the relevant employee in the employment contract.

The mandatory, partially mandatory, and optional elements of an individual employment contract are outlined in article 319 et seq of the CO (in particular regarding remuneration, working time, vacation, and incapacity for work). Further regulations may apply based on collective bargaining agreements.

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

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Specifically, employees holding executive, overall management, oversight or control functions in regulated companies are responsible for ensuring that the companies' organization ensures the continued compliance with applicable financial market laws. Swiss financial market laws do not have enhanced responsibilities for different employee categories. Instead, a person's fitness and propriety are assessed within the context of the specific requirements and functions of a given company, the scope of activities at that company, and the complexity of that company.

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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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Swiss civil law provides for special rules that govern the compensation of current and former members of inter alia the board and executive committee (Ordinance against Excessive Compensation) of Swiss companies limited by shares that are listed on a Swiss or foreign stock exchange. In addition, there are disclosure provisions listed companies need to follow concerning remuneration under stock exchange regulations.

In addition to the above, FINMA has formulated ten principles regarding remuneration that banks, securities firms, financial groups and conglomerates, insurance companies, insurance groups and conglomerates are required to implement. The principles serve as minimum standards for the design, implementation and disclosure of remuneration schemes.

These schemes should not incentivise to take inappropriate risks and thereby potentially damage the stability of financial institutions.

One of the focal points of the principles is variable remuneration that depends on business performance and risk. In particular, all variable remuneration must have been earned by the company over the long term. Consequently, remuneration is dependent on performance, taking into account the sustainability of such performance as well as the risks. That said, FINMA's principles do not limit the amount of variable remuneration. However, FINMA aims to prevent the granting of high remuneration based on large risks and the generation of short-term, unsustainable earnings. Furthermore, persons who have significant responsibility relating to the risk or receive a high total remuneration, must receive a significant part of the variable remuneration on a deferred basis and consequently, in a way that is linked to the current risk. Under the FINMA principles, "clawback" and "malus" arrangements are permitted.

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