



Employment in Financial Services

Contributing Editor

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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?



Hong Kong

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There are no particular pre-screening measures specified by the financial regulators in Hong Kong. Nevertheless, financial institutions would generally conduct background checks on prospective employees (especially those taking on senior positions) to ensure they comply with the “fit and proper” requirements of the financial regulators.

There is no particular form of regulator-specified reference to be provided by previous employers in the financial services industry. Nevertheless, the SFC has specified disclosure obligations for licensed corporations in respect of outgoing employees who were subject to internal investigations (see question 10).

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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^[1], 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.

^[1] 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?

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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?



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In addition to an employment contract, there are additional documentation requirements in connection with the application or transfer of the employee's licence with the financial regulators.

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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?



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SFC

The "Guidelines on Competence" published by the SFC lists the necessary qualifications for employees carrying on regulated activities. For academic qualifications, employees should attain at least Level 2 in either English or Chinese as well as in Mathematics in the Hong Kong Diploma of Secondary Education or equivalent. In addition, employees are expected to obtain recognised industry qualifications and pass the local regulatory framework paper. For responsible officers (ROs), the SFC requires higher levels of educational qualifications and experience.

IA

The "Guideline on 'Fit and Proper' Criteria for Licensed Insurance Intermediaries Under the Insurance Ordinance" published by the IA sets out the education requirements for licenced employees under the IO. Higher levels of educational qualifications are required for responsible officers.

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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?



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Under the SFO, ROs have enhanced responsibilities. They assume primary responsibility for compliance at a licensed corporation and are involved in supervising the regulated activities. A licensed corporation is required to appoint no less than two ROs to directly supervise the conduct of each regulated activity. Similarly, under the BO, registered institutions are required to appoint no less than two executive officers to be responsible for directly supervising the conduct of each regulated activity under the SFO. For each regulated activity, at least one RO must be available at all times to supervise the business and must be an executive director.

Under the IO, an RO of a licensed insurance agency or licensed insurance broker company has enhanced responsibilities. Responsible officers must use their best endeavours to ensure the agency or broker has established and maintains proper controls and procedures for securing compliance with the conduct requirements under the IO.

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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?



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The HKMA, SFC and IA each have a register for licensed employees to be listed on to undertake regulated activities:

- HKMA – the register of securities staff of authorised institutions is available on the HKMA’s website[1]. For registration, the names and particulars of the relevant individuals are required to be submitted to the HKMA for inclusion on the HKMA Register.
- SFC – the register of licensed persons is available on the SFC’s website[2]. For registration, individual applicants would need to submit an electronic application to the SFC through its online platform. When there is a change of employment, the licensed representative may apply for a transfer of accreditation through SFC’s online platform within 180 days after the cessation of the previous employment. It takes approximately seven business days to process an application for transfer of accreditation to carry on the same types of regulated activity for which the licensed representative was licensed immediately before the cessation.
- IA – the register of licensed insurance intermediaries is available on the IA’s website[3]. For registration, applicants can submit their licence applications to the IA by paper submission or electronic submission via an online portal.

[1] <https://apps.hkma.gov.hk/eng/index.php>

[2] <https://apps.sfc.hk/publicregWeb/searchByName?locale=en>

[3] <https://iir.ia.org.hk/#/index>

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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?

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There are no specific mandatory rules relating to compensation payable to financial services employees in Hong Kong.

The HKMA has issued a Supervisory Policy Manual CG-5 “Guideline on a Sound Remuneration System”. This focuses on providing a broad idea and introducing basic principles of how remuneration policies should be designed and implemented in the authorised institution, to encourage employee behaviour that supports the risk management framework, corporate values and long-term financial soundness of the authorised institution.

Under the Guideline, the elements of a sound remuneration system are as follows:

Governance

- Remuneration policy should be in line with objectives, business strategies and the long-term goals of the authorised institution.
- The remuneration arrangement for employees whose activities could have a material impact on the authorised institution’s risk profile and financial soundness should support, but not undermine, the overall risk management approach.
- The Board of an authorised institution is ultimately responsible for overseeing the formulation and implementation of the remuneration policy.
- The establishment of a Board remuneration committee would assist the Board in discharging its responsibility for the design and operation of the authorised institution’s remuneration system.
- Risk control personnel should have appropriate authority and involvement in the process of design and implementation of the authorised institution’s remuneration policy.

Structure of remuneration

- Balance of fixed and variable remuneration should be determined with regard to the seniority, role, responsibilities and activities of their employees and the need to promote behaviour among employees that support the authorised institution’s risk-management framework and long-term financial soundness.
- Variable remuneration should be paid in such a manner as to align an employee’s incentive awards with long-term value creation and the time horizons of risk.
- Guaranteed minimum bonus to senior management or key personnel should be subject to the approval of the Board (or the Board’s remuneration committee with the necessary delegated authority).

Measurement of performance for variable remuneration

- The award of variable remuneration should depend on the fulfilment of certain pre-determined and assessable performance criteria, which include both financial and non-financial factors.
- Size and allocation of variable remuneration should take into account the current and potential risks associated with the activities of employees, as well as the performance (overall performance of the relevant business units and the authorised institution as a whole as well as the contribution of individual employees to such performance).
- Judgement and common sense may be required during the process to arrive at a fair and appropriate remuneration decision. The rationale for the exercise of judgment and the outcomes should be recorded in writing.

Alignment of remuneration pay-outs to the time horizon of risks

- Deferment of variable remuneration is appropriate when the risks taken by the employee in question

are harder to measure or will be realised over a longer timeframe.

- The award of deferred remuneration should be subject to a minimum vesting period and pre-defined vesting conditions in respect of future performance.
- Authorised institutions should seek undertakings from employees not to engage in personal hedging strategies or remuneration and liability-related insurance to hedge their exposures in respect of the unvested portion of their deferred remuneration.

Remuneration disclosure

- Authorised institutions should make remuneration disclosures at least annually. The disclosure should include the qualitative and quantitative information that the HKMA has set out in its annual remuneration disclosure.

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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?



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SFC

Persons engaging in regulated activities are required to continuously update their knowledge and skills through continuous professional training (CPT). The “Guidelines on Continuous Professional Training” published by the SFC provides for the following CPT requirements:

- a minimum of 10 CPT hours a year for licensed representatives and relevant individuals; and
- a minimum of 12 CPT hours a year for responsible officers and executive officers (including 2 CPT hours on topics relating to regulatory compliance).

In addition, an individual should attend at least five CPT hours a year (out of the 10 hours for licensed representatives and relevant individuals and 12 hours for responsible officers and executive officers) on topics directly relevant to the regulated activities for which he or she is licensed at the time the CPT hours are undertaken.

HKMA

The HKMA has implemented the “Enhanced Competency Framework”(ECF) for banking practitioners. While

the ECF is not a mandatory regime, banks are strongly encouraged to adopt it as the benchmark for enhancing the level of core competence and ongoing professional development of banking practitioners.

IA

Under the “Guideline on Continuing Professional Development for Licensed Insurance Intermediaries”, licensed insurance intermediaries who are individuals are required to receive training through CPD to preserve their professional competence and standards in providing service to policyholders and potential policyholders.

The minimum number of CPD hours for individual licensees is 15 CPD hours for each assessment period, including a minimum of three compulsory CPD hours on “Ethics or Regulations” courses.

Financial services employees are also required to receive training on anti-money laundering and counter-financing of terrorism. New staff should be required to attend initial training as soon as possible after being hired or appointed. Apart from the initial training, refresher training should be provided regularly to ensure that staff are reminded of their responsibilities and are kept informed of new developments.

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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?



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SFC

Under the SFO, licensed representatives and ROs are required to be “a fit and proper person” to carry on the regulated activities and must adhere to the standards of behaviour set out in the “Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission”. Other relevant guidelines regarding standards of behaviour include:

- “Fit and Proper Guidelines”, which set out the general expectations of the SFC of what is necessary to satisfy the licensing or registration requirements that a person is fit and proper.
- “Guidelines on Competence”, which set out the competence requirements and its objective to ensure a person is equipped with the necessary technical skills and professional expertise to be “fit”, and is aware of the relevant ethical standards and regulatory knowledge to be “proper” in carrying on any regulated activities.

HKMA

Under the BO, employees of an authorised institution that carry on regulated activities under the SFO are required to be fit and proper. In addition, the HKMA needs to be satisfied that the chief executive, directors, controllers and executive officers of the authorised institutions are fit and proper. Other relevant guidelines regarding standards of behaviour include:

- “Code of Banking Practice”, which is to be observed by authorised institutions in dealing with and providing services to their customers.
- Supervisory Policy Manual CG – 2 “Systems of Control for Appointment of Managers”, which sets out the system of control that authorised institutions should have for ensuring the fitness and propriety of individuals appointed as managers.

IA

The conduct requirements for licensed insurance agents and brokers are set out in Division 4 of the IO. Other relevant codes and guidelines include:

- “Code of Conduct for Licensed Insurance Agents”, which sets out the fundamental principles of professional conduct that buyers of insurance are entitled to expect in their dealings with licensed insurance agents.
- “Code of Conduct for Licensed Insurance Brokers”, which sets out the fundamental principles of professional conduct that buyers of insurance are entitled to expect in their dealings with licensed insurance brokers.
- “Guideline on ‘Fit and Proper’ Criteria under the Insurance Ordinance”

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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?



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SFC - Self-reporting obligation

An SFC-licensed intermediary is subject to the self-reporting obligation under paragraph 12.5 of the “Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission”. A licensed or registered person should report to the SFC immediately upon the occurrence of any material breach, infringement or non-compliance with any laws, rules regulations, and codes administered or issued by the SFC, exchange or clearing house of which it is a member or participant of, and the requirement of any regulatory authority applicable to that intermediary. This encompasses both actual and suspected breaches, infringements or non-compliance. In the report, the particulars of the actual or suspected breach, infringement or non-compliance, and relevant information and documents must be included to fulfil the obligation.

The same is to be reported by the registered institutions to the HKMA. The HKMA also requires authorised institutions to submit an incident report on the same day of discovering the incident.

SFC - Internal investigation disclosure obligation

In addition, a licensed corporation is required to provide the SFC with information about whether a licensed individual who ceases to be accredited to it (outgoing employee) was under any investigation commenced by the licensed corporation within six months preceding his or her cessation of accreditation. If the internal investigation commences after the notification of cessation of accreditation, the licensed corporation should also notify the SFC as soon as practicable. In addition, even if a firm has completed its investigation and made no negative findings against an outgoing employee, the firm will still be required to notify the SFC of the investigation.

The SFC expects licensed corporations to proactively disclose information about all investigative actions and the following is a non-exhaustive list of examples of investigations involving an outgoing employee that a licensed corporation should disclose to the SFC:

- investigations about a suspected breach or breach of applicable laws, rules and regulations;
- investigations about a suspected breach or breach of the licensed corporation's internal policies or procedures;
- investigations about misconduct that are likely to give rise to concerns about the fitness and

properness of the outgoing employee;

- investigations about any matter that may have an adverse market or client impact; and
- investigations about any matter potentially involving fraud, dishonesty and misfeasance.

HKMA - Reporting incidents to HKMA

According to the “Incident Response and Management Procedures” published by the HKMA, once an authorised institution has become aware that a significant incident has occurred, the authorised institution concerned should notify the HKMA immediately and provide it with whatever information is available at the time. An authorised institution should not wait until it has rectified the problem before reporting the incident to the HKMA.

According to the Supervisory Policy Manual SB-1 “Supervision of Regulated Activities of SFC-Registered Authorized Institutions”, to be in line with the reporting requirements imposed by the SFC on licensed representatives, authorised institutions will be required to notify the HKMA in writing within seven business days upon knowledge of the occurrence of certain information (including any subsequent changes) of the relevant individuals. The required information is on whether or not the person is or has been:

- convicted of or charged with any criminal offence (other than a minor offence) in Hong Kong or elsewhere;
- subject to any disciplinary action, or investigation by a regulatory body or criminal investigatory body (as the case may be) in Hong Kong or elsewhere;
- subject to, or involved in the management of a corporation or business that has been or is subject to, any investigation by a criminal investigatory body or any regulatory body in Hong Kong or elsewhere concerning offences involving fraud or dishonesty;
- engaged in any judicial or other proceedings, whether in Hong Kong or elsewhere, that is material or relevant to the fitness and propriety of the individual; or
- bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance.

HKMA - Guidance Note on Cooperation with HKMA Investigations

Under the “Guidance Note on Cooperation with the HKMA in Investigations and Enforcement Proceedings”, the HKMA encourages and recognises the cooperation of authorised institutions, banks and their staff in investigations and enforcement proceedings. Under this Guidance Note, cooperation includes early and voluntary reporting of any suspected breach or misconduct, taking a proactive approach to assist the HKMA’s investigation, and making timely arrangements to provide evidence and information.

IA - Self-reporting obligation

Under “the Code of Conduct for Licensed Insurance Agents/Brokers”, there is a self-reporting obligation by licensed insurance agencies or brokerages to the IA. A licensed insurance agency or brokerage is required to have proper controls and procedures to ensure the following incidents are reported to the IA as soon as is reasonably practicable:

- a disciplinary action taken by the HKMA, the SFC or the Mandatory Provident Fund Schemes Authority;
- a criminal conviction (other than a minor offence) by any court in Hong Kong or elsewhere;
- any material breaches of requirements under the IO or any rules, regulations, codes or guidelines administered or issued by the IA; and
- any material incidents which happen to the agency or brokerage.

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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?



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Anti-money laundering and counter-financing of terrorism

Financial services employees are required to receive training on anti-money laundering and counter-financing of terrorism. New staff should be required to attend initial training as soon as possible after being hired or appointed. Apart from the initial training, refresher training should be provided regularly to ensure that staff are reminded of their responsibilities and are kept informed of new developments (see question 8).

Whistleblowing

There is no single comprehensive whistleblowing legislation to protect whistleblowers in Hong Kong. However, piecemeal provisions in various ordinances may protect specific whistleblowers for the reporting of specific offences. For example, the Employment Ordinance provides that an employer shall not terminate (or threaten to terminate) the employment of, or in any way discriminate against, an employee because the employee has given evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.

While it is not legally required, as good practice, employers should consider implementing a whistleblowing policy to set out, among others, the type of incidents that should be reported and the procedures for filing the report.

Workplace harassment

Under the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance, any harassment in the workplace based on sex, pregnancy, disability and race (which includes colour, descent, ethnic or national origins) is unlawful.

As employers are vicariously liable for the wrongful acts of their employees (whether or not the act was done with the employer's knowledge or approval), one of the statutory defences is for employers to establish that they took "reasonably practicable steps" to prevent the wrongful act in the workplace. Employers should therefore put in place anti-harassment policies and procedures to prevent harassment from happening in the workplace and to provide complaint or reporting procedures to handle such incidents.

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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.

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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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There are no particular rules or protocols that apply when terminating the employment of an employee in the financial services sector. The termination procedures will follow the requirements under the Employment Ordinance and the contractual terms of the employment contract. In certain cases (eg, termination of senior executives), the parties may enter into a mutual release and settlement agreement.

The licensed corporations should notify the regulators of any changes, including cessation of appointment of the licensed representative and responsible officer or managers-in-charge of core functions, within seven business days. In the case of registered institutions, the notification should be made to both the SFC and the HKMA.

Under section 64R of the IO, within 14 days after the day on which an authorised insurer, a licensed insurance agency or a licensed insurance broker company (collectively, "Appointing Principal") terminates

the appointment of a licensed insurance agency, a licensed individual insurance agent, a licensed technical representative (agent), a licensed technical representative (broker) or a responsible officer (as the case may be), then the Appointing Principal should notify the IA in writing of the termination.

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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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