

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?



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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?



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?



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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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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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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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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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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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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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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.

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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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

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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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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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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