

# DEBARMENT CODE

## SMIT AND KIE

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### **DEFINITIONS**

- **'Debarment'** means the withdrawal of a Key Individual ('KI') or Representative ('Rep') from rendering any Financial or Intermediary services on behalf of the FSP as a result of their infringement of a provision on the Financial Advisory and Intermediary Services Act ('FAIS') or no longer meeting the necessary requirements;
- **'FAIS'** means the Financial Advisory and Intermediary Services Act 37 of 2002;

- **'FSB'** means the Financial Services Board;
- **'FSP'** means a Financial Services Provider as authorised by FAIS;
- **'KI'** means a Key Individual of the FSP who is responsible for the managing and overseeing of the business activities of the FSP relating to the rendering of Financial and Intermediary Services;
- **'Profile'** means the FSP's list of Reps KI's and any other relevant information as contained on the FSB website;
- **'Rep'** is an abbreviation for Representative and means any person, including a person employed or mandated by such first mentioned person, who renders a financial service to a client for or on behalf of an FSP;
- **'Smit and Kie Brokers Pty(Ltd).'** means and includes the Short-Term Insurance Intermediary branches as shown on Smit and Kie Brokers Pty(Ltd). website [www.smitk.co.za](http://www.smitk.co.za), all of whom are authorised FSP's and who are managed by an Internal Compliance Function. Each branch and their corresponding employees are governed by this policy;
- **'The Branch'** means an FSP which forms part of Smit and Kie Brokers Pty(Ltd).; for purposes of this agreement each employee must understand the Branch to be the Smit and Kie FSP whom they presently work for i.e. their employer;
- **'The Parties'** means The Supervisor and The Supervisee collectively

## **PURPOSE**

It is the statutory duty of an authorised FSP to ensure that any KI or Rep who no longer complies with the requirements set out in section 8 (1) (a) and section 13 (2) (i) of FAIS 1 respectively be debarred. Should a KI or Rep no longer comply with these section or fails to comply with any FAIS provision in a material manner then such person will be withdrawn from rendering any new financial or intermediary services on behalf of the Branch and will as a result be removed from their profile. The FSP will then immediately take steps to ensure that the debarment does not prejudice the interests of the clients and that any unfinished business will be properly concluded. The Branch will consider any other

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- <sup>1</sup> Section 8 (1) (a) reads: An application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the registrar in the form and manner determined by the registrar by notice in the Gazette, and be accompanied by information to satisfy the registrar that the applicant complies with the requirements for fit and proper financial services providers or categories of providers, determined by the registrar by notice in the Gazette, after consultation with the Advisory Committee, in respect of –
- a) personal character qualities of honesty and integrity

Section 13(part) reads: 1) A person may not –

- a) carry on business by rendering financial services to clients for or on behalf of any person who –
  - i) is not authorised as a financial services provider; and
  - ii) is not exempted from the application of this Act relating to the rendering of a financial service; or
- b) act as a representative of an authorised financial services provider, unless such person –
  - i) is able to provide confirmation, certified by the provider, to clients –
    - (aa) that a service contract or other mandate, to represent the provider, exists; and
    - (bb) that the provider accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any such contract or mandate; and
  - ii) If debarred as contemplated in section 14, complies with the requirements determined by the registrar, after consultation with the Advisory Committee, by notice in the Gazette, for the reappointment of a debarred person as a representative. 2) An authorised financial services provider must –
- a) at all times be satisfied that the provider's representatives, and key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with the requirements contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable; and
- b) Take such steps as may be reasonable in the circumstances to ensure that representatives comply with any applicable code of conduct as well as with other applicable laws on conduct of business.

information from the registrar, Ombud or other interested party pertaining to the debarred person as per section 14 of FAIS.

## **PROCEDURE**

1. Smit and Kie Brokers Pty(Ltd). Compliance Officers will take reasonable steps to ensure all applicable Codes of Conduct and Laws (such as those contained in FAIS) are adhered to by KI's and Reps at all times. From time to time workshops and seminars will take place in order to familiarize and update all KI's and Reps of new and changing legislation.
2. Smit and Kie Brokers Pty(Ltd). will notify the registrar of debarment in writing within 15 (fifteen) working days of removal of debarred person from their profile. The necessary forms (Annexure A) will be filled out.

## **DEBARMENT BY THE REGISTRAR**

1. The registrar may at any time debar a KI and/or Rep for a specified period of time should a Rep or KI not meet the abovementioned requirements or is in contravention of a FAIS provision.
2. Within a period of 5 (five) days of being notified by the registrar of debarment, the FSP must remove said person from their profile.
3. The registrar may make any debarment and the reasons thereof known in the Gazette or any other appropriate media.

## **REAPPOINTMENT OF DEBARRED REPRESENTATIVES**

1. The registrar, after consultation with the Advisory Committee, will decide what requirements must be met before a debarred person may be reappointed by an FSP.
2. On the date of reappointment the debarred person must have:
  - 2.1 12 (twelve) months lapse since debarment date unless debarment was due to the applicant not having yet qualified or successfully completed the Regulatory Examinations and the applicant has within that period qualified or successfully completed the exams;
  - 2.2 all unfinished business of former KI or Rep properly concluded;
  - 2.3 all legal proceedings, complaints or relating matters, relating directly or indirectly to their debarment, properly and legally resolved; and
  - 2.4 all fit and proper requirements complied with.<sup>1</sup>

## **FIT AND PROPER REQUIREMENTS**

1. Fit and proper requirements are those as contemplated by Section 8 and 13 of FAIS.

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<sup>1</sup> As contemplated by section 8 (1) a and (b) read with Section 13 (2) of FAIS.

2. The Determination of Fit and Proper requirements must be read and understood by all

KI's and Reps as well as any changes or updates to the determinations and FAIS Act.

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**ANNEXURE A**

NOTIFICATION OF DEBARMENT IN TERMS OF SECTION 14 OF THE FAIS ACT



**NB: PLEASE COMPLETE THE FORM IN FULL**

**1. Particulars of the debarring FSP:**

FSP Name : \_\_\_\_\_

FSP No : \_\_\_\_\_

Physical address

Postal Code

Postal Address

Postal Code

Telephone number

Fax Number

Website Address

**2. Particulars of the \_\_\_\_\_ person at the FSP effecting the debarment:**

Full Name : .....

Surname :

Position ( designation) : .....

Cell phone number :

.....

Telephone number : .....

Fax number : .....

E-mail address : .....

**3. Recent particulars of the debarred representative:**

Title (Mr,Mrs,Ms)

Initials:

Surname:

I D no/ Passport no/ Registration no:

Physical address

Postal Code

Postal Address

Postal Code

Telephone Numbers

E-mail address

4. Date on which the representative was debarred: .....

5. Indicate reasons for the debarment:

6.1	<b>Non-compliance with Fit and Proper Requirements</b>	
	<b>(a) Honesty and Integrity</b>	
	<b>(b) Competency</b>	
6.2	<b>Material contravention or non-compliance with provisions of the FAIS Act</b>	

6. Where the debarment has been made in terms of section 14(1), was the representative still employed or under mandate at the time of the debarment?

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7. If the answer to 6. is “no”, did the cause for debarment occur when the representative was still employed or under mandate at the time of the debarment?

8. What process / procedure was followed by the FSP before the debarment?:

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**9. Attach all relevant documentation including, but not limited to-**

- (i) Documentary evidence and information supporting the reasons for debarment;
- (ii) Notice to attend a disciplinary hearing;
- (iii) a copy of the service contract or mandate between FSP and debarred representative;
- (iv) transcript/ minutes and outcome of the disciplinary hearing;
- (v) was the representative given an opportunity to be heard and, if so, what was the response?;
- (vi) Forensic/investigation report and any other relevant documents.

**10. Was the representative notified of the debarment? How?**

.....  
( Please attach proof of delivery or acknowledgement of receipt )

**ADDITIONAL INFORMATION: SECTION 14 RECOMMENDATIONS:**

**11. If this form is completed for the purposes of debarment in terms of Section 14A, in addition to the documentation requested in paragraph 9 above, please provide the following information:**

- 11.1. Sufficient and acceptable reason(s) why the representative was not debarred in terms of Section 14(1);
- 11.2. What processes and procedures are in place to ensure compliance with the provisions of section 14(1) by the provider;
- 11.3. If the representative has left employment before debarment, please provide proof thereof; and/or
- 11.4. Detailed affidavit by the complainant or by investigation officer stating the date, time and place on which the representative committed the material contravention or non-compliance with provisions of the FAIS Act.

**Note: It is important that all relevant and complete documents are submitted with this form. Failure to do so may delay the processing of the information and the provider may be held accountable for noncompliance with the provisions of the FAIS Act.**

**Name:**.....

**Date:**.....

**Signature Place:**.....

**Designation:**.....



